

ADVANCING HIV JUSTICE 3

Growing the global movement
against HIV criminalisation



Together we can make
**HIV JUSTICE
WORLDWIDE**
a reality

ACKNOWLEDGEMENTS

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We would especially like to acknowledge the courage and commitment of the growing number of advocates around the world who are challenging laws, policies and practices that inappropriately regulate and punish people living with HIV. Without them, this report would not have been possible.

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ABOUT THIS REPORT

The aim of *Advancing HIV Justice 3* is to provide a progress report of achievements and challenges in global advocacy against HIV criminalisation. We hope it will be useful for individuals and organisations working to end or mitigate the harm of HIV criminalisation around the world, as well as for others with an interest in HIV and human rights issues.

The report was created through a collaborative effort between the HIV Justice Network and our HIV JUSTICE WORLDWIDE partners that included:

- A desk review of materials relating to HIV criminalisation laws, cases, social science and advocacy (including, but not limited to, the HIV Justice Network website, the HIV JUSTICE WORLDWIDE newsletter and English- and French-language listservs; HIV Justice Network’s Facebook and Twitter feeds; the Global Commission on HIV and the Law website; PubMed; and AIDS 2016 and AIDS 2018 conference programmes).
- Systematically contacting individuals and organisations engaging with the HIV Justice Network for further information in countries where laws, cases and/or advocacy had taken place but where details were unclear.
- An internal and external review process that included HIV JUSTICE WORLDWIDE Steering Committee members and other key organisations working in this area including the Joint United Nations Programme on HIV and AIDS (UNAIDS) and the United Nations Development Programme (UNDP).

The data and case analyses in this report cover a 39-month period, 1 October 2015 to 31 December 2018. This begins where the second *Advancing HIV Justice*¹ report – which covered a 30-month period, 1 April 2013 to 30 September 2015 – left off.

All cases were analysed by cross-referencing those recorded on the HIV Justice Network website with those documented by civil society organisations keeping records in their own countries, supplemented with data provided to the HIV Justice Network via email.

LIMITATIONS OF THE DATA AND ANALYSIS

Obtaining accurate information on HIV-related cases can be challenging – even more so in countries where such information is not freely available. Given the lack, or inadequacy, of systems to track HIV-related criminal cases in most jurisdictions, it is not possible to determine an exact number for every country. Much of what is known about individual cases comes from media reports, and often the outcome of a reported arrest, or the legal disposition of a criminal case, remains unknown.

Other limitations that may favour case reporting in one jurisdiction, country or region compared with another, include: the role and ‘effectiveness’ of public health offices in pursuing partner notification; whether or not individuals and communities rely on the criminal justice system to manage HIV-related disputes; accessibility to information including through the media and case records; and the existence of civil society organisations working on and/or monitoring the issue.

Therefore, our data should be seen as an illustration of what may be a more widespread, but generally undocumented, use of the criminal law against people living with HIV.

Similarly, despite the growing movement of advocates and organisations working on HIV criminalisation, it is not possible to document every piece of advocacy, some of which takes place behind the scenes and is therefore not publicly communicated.

Despite our growing global reach we may still not be connected with everyone who is working to end HIV criminalisation, and if we have missed you or your work, we apologise and hope that you will join the movement (visit: www.hivjusticeworldwide.org/en/join-the-movement) so we can be in touch and you can share information about your successes and challenges.

Consequently, this report can only represent the tip of the iceberg: each piece of information a brief synopsis of the countless hours and many processes that individuals, organisations, networks, and agencies have dedicated to advocacy for HIV justice.



1. GLOBAL OVERVIEW

HIV criminalisation is a growing, global phenomenon with a significant impact on both public health and human rights, therefore undermining the HIV response², that is finally being given the attention it deserves due to increased co-ordination and funding, resulting in some impressive advocacy successes as detailed throughout this report.

The Global Commission on HIV and the Law³, the Joint United Nations Programme on HIV and AIDS (UNAIDS)⁴, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW)⁵, the United Nations Special Rapporteur on the Right to Health⁶ and the World Health Organization (WHO)⁷, amongst others, have raised concerns regarding the harm inherent in the unjust application of criminal law in the context of HIV on both public health and human rights grounds.

In many instances, HIV criminalisation laws are exceedingly broad – either in their explicit wording, or in the way they have been interpreted and applied – making people living with HIV (and those perceived by authorities to be at risk of HIV) extremely vulnerable to a wide range of human rights violations.⁸

Many allow prosecution for acts that constitute no or very little risk by failing to recognise condom use or low viral load or by criminalising oral sex, or single acts of breastfeeding, biting, scratching or spitting. These laws – and their enforcement – are often based on myths and misconceptions about HIV and its modes of transmission.⁹

HOW MANY COUNTRIES HAVE HIV CRIMINALISATION LAWS?

In our last report, *Advancing HIV Justice 2*, we found that a total of **72 countries** had adopted laws that specifically allow for HIV criminalisation, either because the law is HIV-specific, or because HIV is specified as a disease covered by the law (sometimes also punishing people with HIV more severely).

Our most recent global audit of HIV-related laws has found that a total of **75 countries** (103 jurisdictions including Nigerian and US states) currently have such laws.

Sub-Saharan Africa is the region with the greatest number of countries with HIV criminalisation laws: 29 countries, although this is down from 30 since the repeal of an HIV-specific law in the Democratic Republic of Congo (DRC) in 2018. (See Chapter 10 *Engaging with policy makers: HIV law reform in the Democratic Republic of Congo*.)

Although the North American region is one of the most active in terms of cases (see below), only one country – the United States – has jurisdictions with HIV criminalisation laws, numbering

WHAT DO WE MEAN BY HIV CRIMINALISATION?

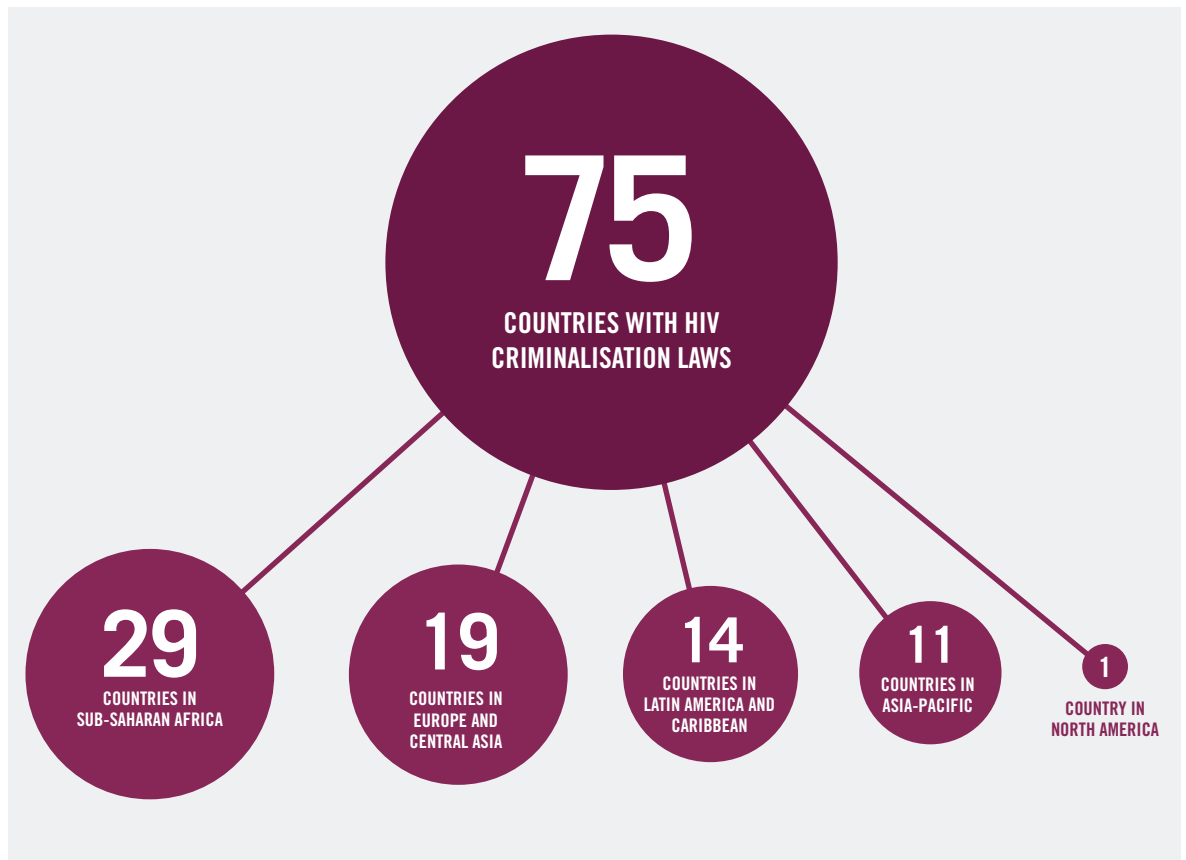
HIV criminalisation describes the unjust application of criminal and similar laws to people living with HIV based on HIV-positive status, either via HIV-specific criminal statutes or general criminal or similar laws. It is a pervasive illustration of how state-sponsored stigma and discrimination works against a marginalised group of people with immutable characteristics. As well as being a human rights issue of global concern, HIV criminalisation is a barrier to universal access to HIV prevention, testing, treatment and care.

27 state jurisdictions in total. During the period covered by this report, Colorado modernised its HIV-related statutes in 2016 (See Chapter 13 *Thinking global, acting local: Locally led advocacy in Colorado*); California modernised its HIV-specific law in 2017 (See Chapter 8 *Thinking and working intersectionally: Californians for HIV Criminalization Reform*); and Michigan and North Carolina modernised their HIV-specific laws in 2018.

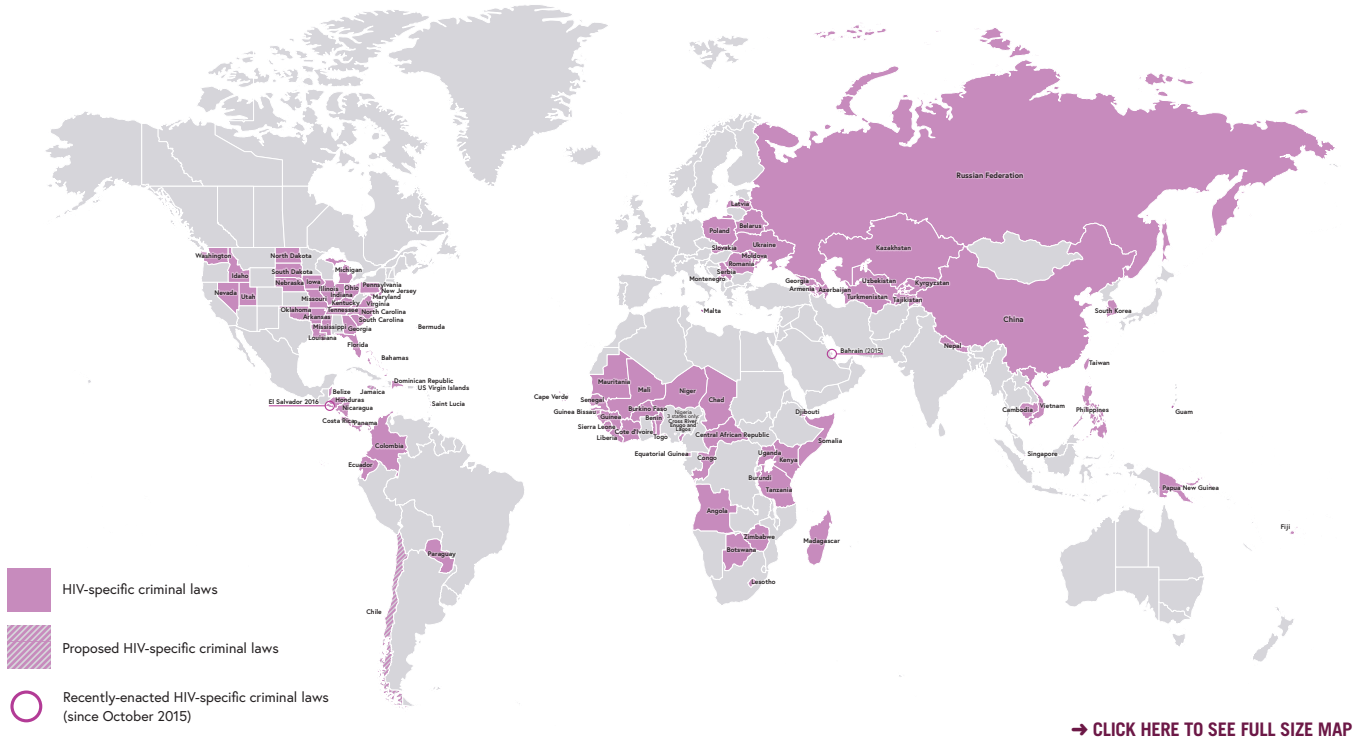
Europe and Central Asia – covering Northern, Southern and Western Europe, and Eastern Europe and Central Asia (EECA) – is the region with the second greatest number of HIV criminalisation laws, enacted in 19 countries, although 18 of those are in EECA, with Malta being the only non-Eastern European country to have such laws. In 2018, Belarus amended its law to allow a disclosure defence for the first time (See also Chapter 10 *Engaging with policy makers*).

The Latin America and Caribbean region (LAC) includes 14 countries with HIV criminalisation laws, including a recently enacted law in El Salvador (2016) and proposed laws pending in Chile and Jamaica. A proposed law in Brazil was withdrawn in 2017. In Mexico, laws in Chihuahua, Quintana Roo and San Luis Potosi states were proposed and withdrawn in 2017, and the law in Veracruz enacted in 2015 was found to be unconstitutional in 2018. (See also Chapter 4 *Training to build community capacity: Building capacity through team work: The Mexican Network of Organisations against the Criminalisation of HIV*.)

The Asia-Pacific region has 11 countries with HIV criminalisation laws, including a recently enacted law in Nepal (2018); and in the Middle East and North African region (MENA), just one country, Bahrain, may have enacted an HIV criminalisation law that was proposed in 2015.

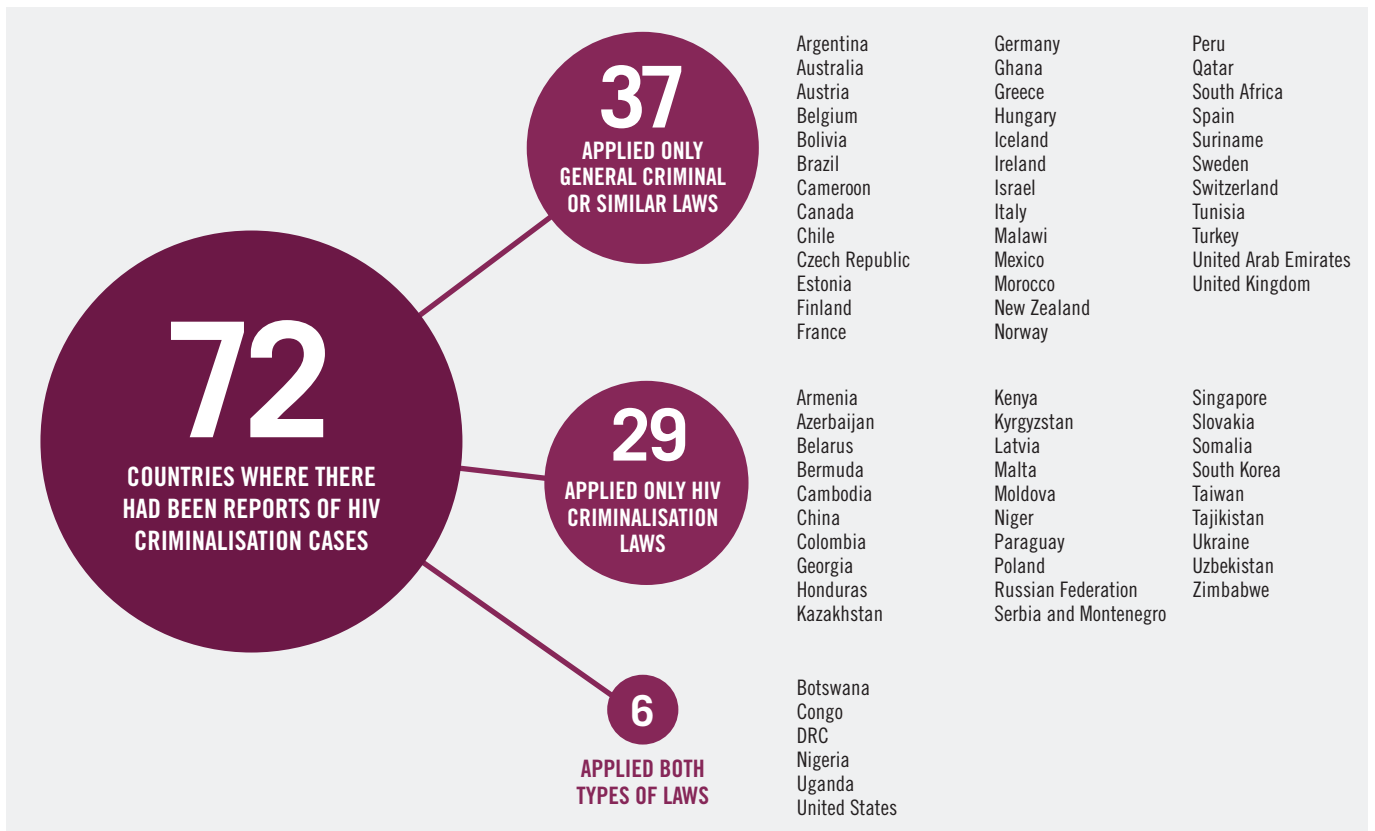


WHERE HIV-SPECIFIC LAWS EXIST



WHERE HAVE HIV-RELATED CRIMINAL CASES EVER BEEN REPORTED?

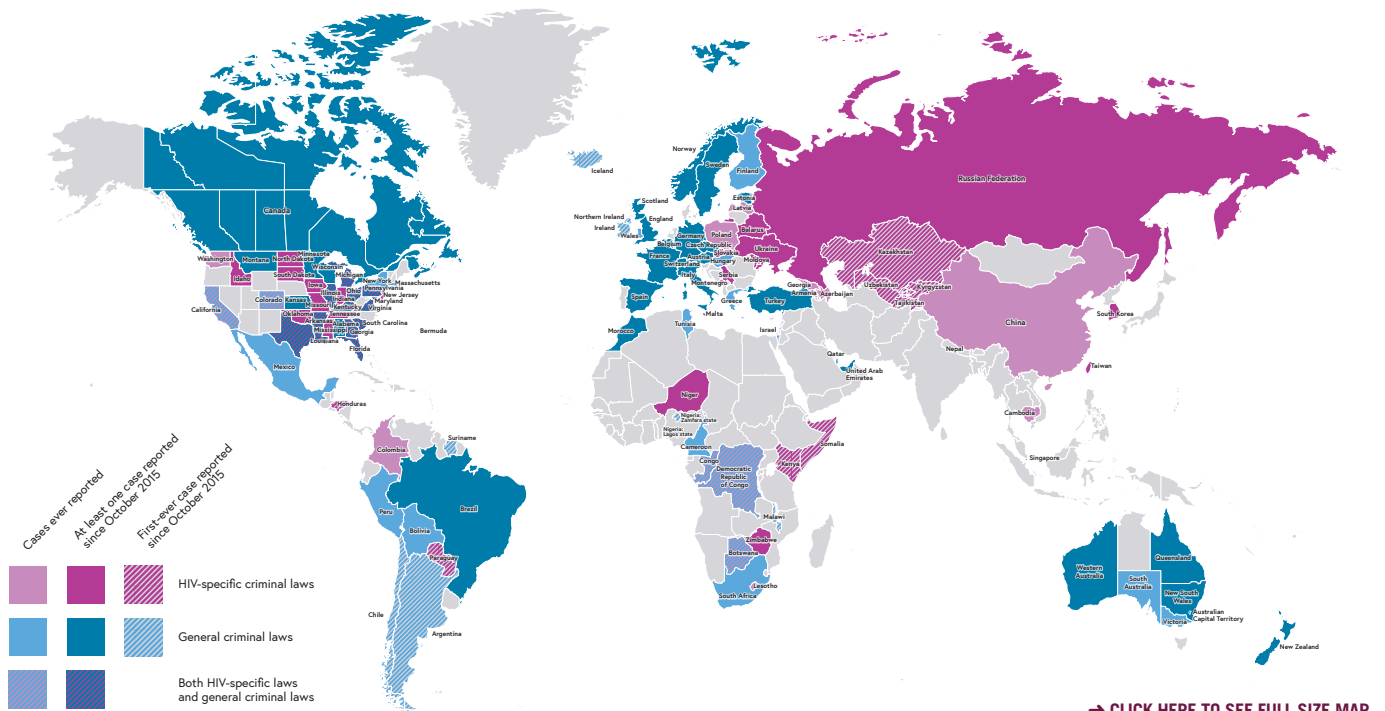
In our global audit of HIV-related arrests, investigations, prosecutions and/or convictions, we counted at least **72 countries** where there had been reports of HIV criminalisation cases: **29 countries** applied only HIV criminalisation laws, **37 countries** applied only general criminal or similar laws, and **6 countries** applied both types of laws.



WHERE HAVE HIV-RELATED CRIMINAL CASES RECENTLY BEEN REPORTED?

Our analysis of recent cases covers the 39-month period October 2015 to December 2018. We found reports of at least¹⁰ 913 arrests, prosecutions, convictions, appeals and/or acquittals in **49 countries**. The law appeared to be applied for the first time to people living with HIV for non-disclosure, potential or perceived exposure or alleged transmission in **14 countries**.

The highest number of cases during the period covered by this report were reported in:



Our analysis of recent cases suggests that these HIV criminalisation cases do not reflect the demographics of local epidemics, with the likelihood of prosecution exacerbated by discrimination against marginalised populations on the basis of drug use, ethnicity, gender, gender identity, immigration status, sex work and/or sexuality. Cases in the United States also appear to disproportionately impact people already in the purview of the criminal justice system, such as prisoners, and people living in poverty, including homeless people, with a high number of cases related to ‘HIV exposure’ via biting or spitting during arrest or whilst incarcerated.

Recent reports of increased numbers of cases in sub-Saharan Africa and in EECA illustrate what some prescient advocates have long-feared: that women are more likely to be prosecuted (and less likely to have adequate legal representation), since they are often the first in a relationship to know their status as

a result of routine HIV testing during pregnancy, and are less likely to be able to safely disclose their HIV-positive status to their partner as a result of inequality in power relations, economic dependency, and high levels of gender-based violence within relationships. Women with HIV also face the possibility of being prevented from becoming pregnant, and/or of being prosecuted for passing HIV on to their child during pregnancy, birth or breastfeeding, further constricting their reproductive choices and rights.¹¹

In addition, migrants from high HIV prevalence regions (notably sub-Saharan Africa and/or EECA) appear to be disproportionately prosecuted in Canada, Northern and Western Europe and Australasia, and usually have limited access to adequate legal representation. Non-citizens are also likely to be deported to their country of origin after serving their sentence even if they have family ties in their adopted country.

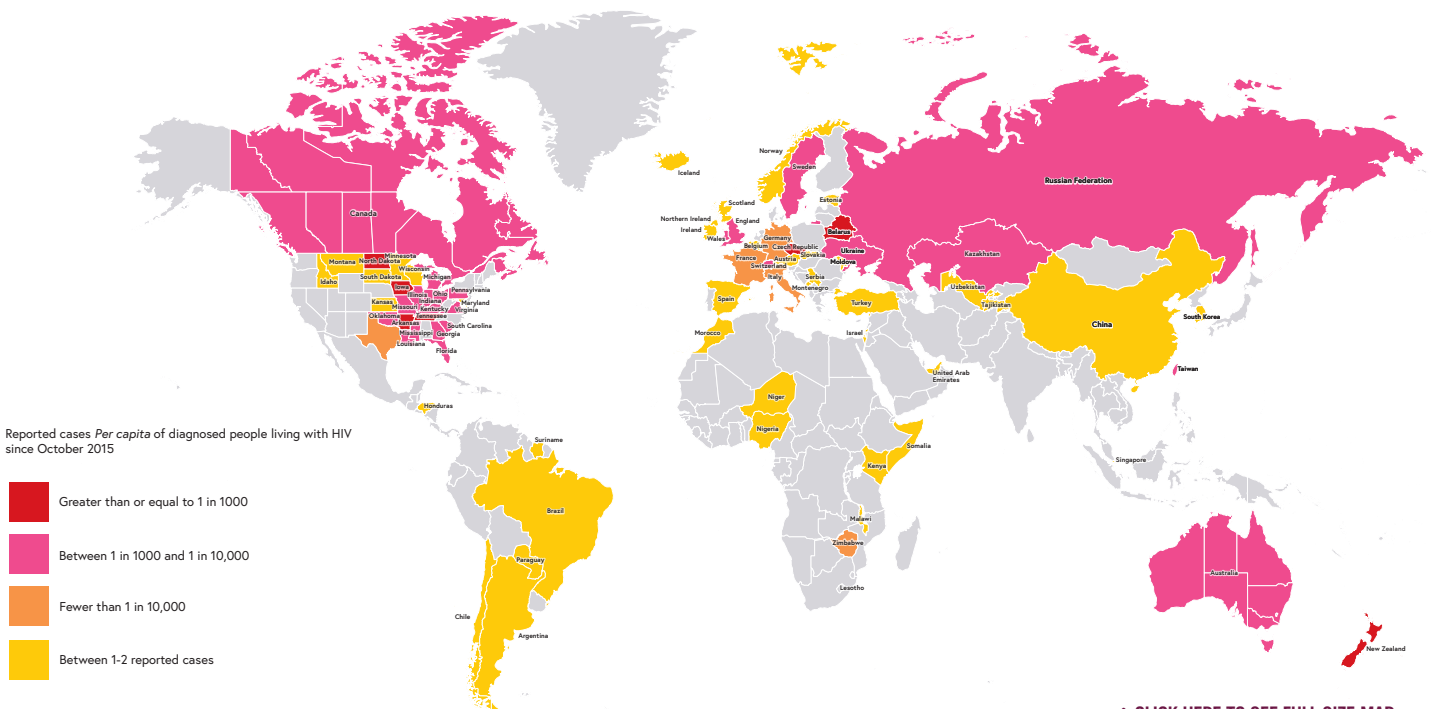
WHERE ARE THE HIV CRIMINALISATION HOTSPOTS?

To estimate where the criminal law appears to be disproportionately applied, we analysed the number of known recent cases (i.e. during the period covered by this report) according to the estimated number of diagnosed people living with HIV (PLHIV) in a country or jurisdiction.

We found fifteen countries where the number of cases was equal to or greater than 0.5 in 10,000 *per capita* of diagnosed PLHIV.



This map shows four hotspot levels: Greater than or equal to 1 in 1000 *per capita* of diagnosed PLHIV; between 1 in 1000 and 1 in 10,000 *per capita* of diagnosed PLHIV; fewer than 1 in 10,000 *per capita* of diagnosed PLHIV; and where only one or two cases were reported during the period covered by this report, where the calculation would be unreliable.



[→ CLICK HERE TO SEE FULL SIZE MAP](#)

IMPROVING OUR KNOWLEDGE OF HIV CRIMINALISATION THROUGH REGIONAL AND GLOBAL REPORTS

Advancing HIV Justice 3 is, in part, a compilation of other reports published by HIV JUSTICE WORLDWIDE over the past three years.

Between November 2017 and October 2018, HIV JUSTICE WORLDWIDE's regional hubs in Francophone Africa, Asia, Eastern Europe and Central Asia, and Latin America and the Caribbean produced regional HIV criminalisation reports that summarised the state of play regarding HIV criminalisation laws and reported cases in these regions. As well as providing us with more robust reporting of cases, these reports have already been used to highlight unjust laws and prosecutions for in-country advocacy and will serve as the baseline for further advocacy and analysis.

Visit this page to download any of the regional reports: <http://www.hivjusticeworldwide.org/en/regionalreports/>

In addition, the reports from our *Beyond Blame: Challenging HIV Criminalisation* symposia prior to AIDS 2016 ([download the report](#) or [watch the video](#)) and AIDS 2018 ([download the report](#) or [watch the livestream of the entire event](#)) provide detailed analysis of the various strategies, challenges and successes faced by advocates from around the world.

ADVOCACY AGAINST HIV CRIMINALISATION IS SHOWING RESULTS

During the period covered by this report, important and promising developments in case law, law reform and policy have taken place in many countries and jurisdictions, most of which came about as a direct result of advocacy from individuals and organisations working to end the inappropriate use of the criminal law to regulate and punish people living with HIV. This work is not only varied in terms of the complex intersection of laws, policies and practices, but also in terms of their unique social, epidemiological and cultural contexts.

During the period covered by this report, two HIV criminalisation laws were repealed; two HIV criminalisation laws were found to be unconstitutional; seven laws were modernised (i.e. applied up-to-date science on HIV-related risk or harm and/or legal and human rights principles to limit the application of the law); and at least four proposed laws were withdrawn.



In addition, in countries or jurisdictions that use the general criminal law for HIV criminalisation cases, we saw policy improvements in Canada (federal and provincial prosecutorial directives: see the case study in Chapter 9 *Using science for justice: Impact of the 2014 Canadian Statement*) and precedent-setting cases in Finland, Germany, Greece, Italy, Sweden and Morocco, which have the potential to limit the overly broad application of the law through the recognition of up-to-date HIV-related science.

All of these outcomes were primarily due to sustained and effective advocacy and much of the rest of this report explores the various ways in which advocates organised to challenge these and other HIV criminalisation laws, covering:

- Building the evidence base
- Ensuring the voices of survivors are heard
- Training to build community capacity
- Using PLHIV-led research to build community engagement capacity
- Community organisations as facilitators of grassroots action
- Training to build lawyers' and judges' understanding of HIV criminalisation
- Thinking and working intersectionally
- Using science for justice
- Engaging with policy makers
- Using international and regional instruments
- Changing laws through legal processes
- Thinking global, acting local
- Building and co-ordinating national and regional networks
- Getting the word out
- Engaging with media

GROWING THE GLOBAL MOVEMENT AGAINST HIV CRIMINALISATION

The linking of national networks of people living with HIV to regional and global networks, human rights defenders, and legal and scientific experts has proven a successful strategy to bring about positive change. Core funding from the Robert Carr Fund for civil society networks has transformed an informal group of activists, advocates, lawyers and human rights defenders from all over the world into an increasingly co-ordinated global voice, with members working collaboratively and routinely sharing expertise and resources.

Examples of effective collaboration through HIV JUSTICE WORLDWIDE include:

- Monitoring of HIV-related laws and prosecutions to provide an evidence base for analysis and advocacy, centralising global data on HIV laws and prosecutions at: www.hivjustice.net.
- Creation of new national and regional networks to address HIV criminalisation in Canada, Mexico, Francophone Africa, Eastern Europe and Central Asia and Latin American and the Caribbean.
- Development of a clearinghouse of HIV criminalisation resources from around the world, and a centralised online advocacy resource consolidating all current HIV criminalisation resources: *The HIV Justice Toolkit*, currently in English and French and soon to be available in Russian and Spanish: <http://toolkit.hivjusticeworldwide.org>
- Training for networks of people living with HIV and key stakeholders to better understand HIV

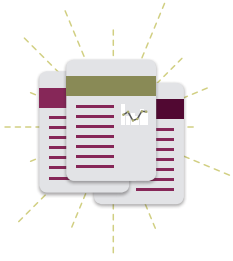
criminalisation and to develop advocacy strategies, including multi-day training events for sub-Saharan Africa; Eastern and Western Europe; and Mexico, and the *Beyond Blame: Challenging HIV Criminalisation* symposia prior to AIDS 2016 and AIDS 2018.

- Sharing of cross-jurisdictional legal expertise to support a timely and successful constitutional challenge in Veracruz, Mexico; prevent problematic provisions being enacted in Malawi's omnibus HIV/AIDS law; and providing technical support to help acquit people unjustly accused of HIV-related crimes around the world.

Without HIV JUSTICE WORLDWIDE, there would be no globally co-ordinated civil society response to HIV criminalisation, and civil society would be deeply restricted in its ability to mobilise to protect individuals facing prosecution, to remove and reform HIV criminalisation laws, and to prevent new punitive laws and policies from being enacted.

To see what other milestones have been achieved since HIV JUSTICE WORLDWIDE launched in 2016, visit: <http://www.hivjusticeworldwide.org/en/milestones/>

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- UNAIDS. *On the Fast-Track to end AIDS: 2016-2021 Strategy*. Geneva, 2016. Available at: http://www.unaids.org/sites/default/files/media_asset/20151027_UNAIDS_PCB37_15_18_EN_rev1.pdf; IAPAC. *Guidelines for Optimizing the HIV Care Continuum for Adults and Adolescents*. 2015. Available at: <http://jia.sagepub.com/content/early/2015/10/23/2325957415613442.full>.
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 - UNAIDS. *Policy Brief: Criminalisation of HIV Transmission*. August 2008. Available at: http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/basedocument/2008/20080731_jc1513_policy_criminalization_en.pdf; UNAIDS. *Ending overly-broad criminalisation of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations*. May 2013. Available at: http://www.unaids.org/en/resources/documents/2013/20130530_Guidance_Ending_Criminalisation
 - CEDAW. *Concluding observations on the combined eighth and ninth periodic reports of Canada*. 2017. and CEDAW. *Concluding observations on the 6th periodic report of Tajikistan*. 2018.
 - Grover, A. *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, June 2010. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>
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 - Global Commission on HIV and the Law. (2012) *op cit*; Grover, A. (2010) *op. cit*. WHO. (2015) *op. cit*.
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 - See 'About this report' to understand why numbers of cases can only be considered the 'tip of the iceberg' and are always an underestimation.
 - See Athena Network. *10 Reasons Why Criminalisation of HIV Exposure or Transmission Harms Women*. 2009. Available at: <http://toolkit.hivjusticeworldwide.org/resource/10-reasons-why-criminalisation-of-hiv-exposure-or-transmission-harms-women/>
 - See this 2018 article in The Body for a detailed description of how the law was changed in Switzerland <http://www.thebody.com/content/80835/held-harmless.html>
 - Section 237 of the Penal Code was amended by the Norwegian Parliament in June 2017. The act now clearly states that a person living with HIV and having taken adequate steps to prevent transmission cannot be prosecuted. To be found guilty of an offence, the prosecuting authority must prove an act of gross negligence. Section 237 only comes into effect if you fail to take your medication and have a lot of condomless sex or have shown threatening or violent behaviour. In summary:
 - Cannot be prosecuted if on successful treatment
 - Cannot be prosecuted if using condoms
 - Oral sex is not seen as hazardous behaviour
 - Consent to sex with a person living with HIV frees the person from criminal liability
 - Exempted from punishment are also infections from sex workers and people who inject drugs, as well as transmission from mother to child. (Source: HIV Nordic, August 2017)



2. BUILDING THE EVIDENCE BASE

Our research corrects what continues to be a long-held and mistaken belief: that these laws keep the public, you and your loved ones safe. These laws have no effect on the HIV epidemic other than to destroy the lives of people coming into contact with the criminal justice system.

Ayako Miyashita

The Williams Institute & Los Angeles HIV Law and Policy Project¹⁴

Evidence derived from research can be vital to efforts to advocate against HIV criminalisation.

Social science research, one of the largest areas of research, considers the effects of HIV criminalisation on HIV prevention, public health, and the lives of people living with HIV. It can be persuasive as it often ‘adds weight’ to what may be considered anecdotal reports from grassroots organisations doing the work on the ground.

Advocates can use social science research on the effects of HIV criminalisation in many ways, including demonstrating that many of the arguments used to support HIV criminalisation have no basis in evidence. For example, legislators and politicians often justify laws criminalising people living with HIV by arguing that such laws reduce HIV transmission rates. In fact, studies have not shown that HIV criminalisation has a positive impact on HIV prevention.

Research on the social effects of HIV criminalisation can also be used to develop allies in the public health sector. People who do frontline HIV prevention and counselling work have direct experiences of the problems created by HIV criminalisation, but they rarely occupy the positions of authority where public health policy decisions are made. Research documenting the negative effects of HIV criminalisation on HIV prevention can help encourage public health officials to take a more public stand against HIV criminalisation.

Further, research on the effects of HIV criminalisation on people living with HIV who have been prosecuted helps to build our movement against HIV criminalisation in ways that are informed by the experiences of people living with HIV. It gives voice to people who are oppressed and marginalised by the criminal justice and prison systems and whose perspectives are often left out of research and policy. It identifies important areas of advocacy work and helps to link our movement with broader anti-racist and anti-oppression movements that fight for the rights of prisoners, sex workers, people of colour, people who use drugs and others.

Some passages in this chapter were initially published in, ‘Using research in the fight against HIV criminalization: A guide for activists’ (May 2019) by Eric Mykhalovskiy, Edwin J Bernard, Sally Cameron and Laurel Sprague which contains much more information on how to use research in advocacy against HIV criminalisation. See: <http://www.hivjustice.net/activistsguide/>

During the period covered by this report, social scientists – primarily from the United States and Canada – published many pieces of research, including those listed below. A more extensive list of social science research is available in the *HIV Justice Toolkit*.

REVIEW OF DOMESTIC TRENDS	<p>Harsono, D et al. <i>Criminalization of HIV Exposure: A Review of Empirical Studies in the United States</i>. AIDS and Behavior, 21(1): 27-50, 2017.</p> <p>Hastings, C et al. <i>HIV Criminalization in Canada: Key Trends and Patterns</i>. Canadian HIV/AIDS Legal Network, 2017.</p>
EFFECTIVENESS OF LAWS	<p>Korvath, KJ et al. <i>Men Who have Sex with Men Who Believe that Their State has a HIV Criminal Law Report Higher Condomless Anal Sex than Those Who are Unsure of the Law in Their State</i>. AIDS and Behavior, 21(1):51-58, 2017.</p> <p>Sweeney, P et al. <i>Association of HIV diagnosis rates and laws criminalizing HIV exposure in the United States</i>. AIDS, 19;31(10):1483-1488, 2017.</p> <p>Yang, YT and Underhill, K. <i>Rethinking Criminalization of HIV Exposure — Lessons from California’s New Legislation</i>. New England Journal of Medicine, 378:13, 2018.</p>
IMPACT ON MEDICAL TREATMENT	<p>Sah, P et al. <i>HIV criminalization exacerbates subpar diagnosis and treatment across the United States: response to the ‘Association of HIV diagnosis rates and laws criminalizing HIV exposure in the United States’</i>. AIDS. 13;31(17):2437-2439, 2017.</p> <p>Patterson, S et al. <i>The impact of criminalization of HIV non-disclosure on the healthcare engagement of women living with HIV in Canada: a comprehensive review of the evidence</i>. Journal of the International AIDS Society, 22;18:20572, 2015.</p> <p>Kesler, M et al. <i>Prosecution of non-disclosure of HIV status: Potential impact on HIV testing and transmission among HIV-negative men who have sex with men</i>. PLOS ONE, 13(2), 2018.</p> <p>Phillips, J et al. <i>HIV Care Nurses’ Knowledge of HIV Criminalization: A Feasibility Study</i>. Journal of the Association of Nurses in AIDS Care, 27(6):755-767, 2016.</p>
INTERSECTIONS WITH SEX WORK	<p>Baskin, S et al. <i>Criminal Laws on Sex Work and HIV Transmission: Mapping the Laws, Considering the Consequences</i>. Denver Law Review, 93(2): 355-388, 2016.</p> <p>Hasenbush, A et al. <i>HIV Criminalization and Sex Work in California</i>. The Williams Institute, California Women’s Law Center, California HIV/AIDS Policy Research Centers, 2017.</p> <p>Hasenbush, A. <i>Criminal laws on sex work and HIV transmission: Mapping the laws, considering the consequences</i>. The Williams Institute, October 2018.</p>
INTERSECTIONS WITH DRUG USE	<p>Patterson, S et al. <i>Awareness and understanding of HIV non-disclosure case law among people living with HIV who use illicit drugs in a Canadian setting</i>. International Journal of Drug Policy, 43:113-121, 2017.</p> <p>Patterson, S et al. <i>Prevalence and predictors of facing a legal obligation to disclose HIV serostatus to sexual partners among people living with HIV who inject drugs in a Canadian setting: a cross-sectional analysis</i>. CMAJ Open, 4(2): E169–E176, 2016.</p>
DISPARITIES: GEOGRAPHY, RACE, GENDER AND SEX WORKER STATUS	<p>Hasenbush, A. <i>HIV Criminalization in Georgia: Penal Implications for People Living with HIV/AIDS</i>. The Williams Institute, 2018.</p> <p>Hasenbush, A. <i>HIV Criminalization in Florida: Penal Implications for People Living with HIV/AIDS</i>. The Williams Institute, 2018.</p>
GENDER ANALYSIS AND THE IMPACT OF LAWS ON WOMEN	<p>Krüsi, A et al. <i>Positive sexuality: HIV disclosure, gender, violence and the law - A qualitative study</i>. PLOS ONE, 13(8): e0202776, 2018.</p> <p>Barreto, D et al. <i>HIV disclosure without consent linked to increased risk of verbal and physical violence against women living with HIV in Metro Vancouver, Canada</i>. Canadian Association of HIV Research Conference, Montréal, 2017.</p> <p>Krüsi, A et al. <i>Through our eyes</i>. Medicine Anthropology Theory, 4, 3: 204-211, 2017.</p> <p>Ribeiro, K. <i>De la protection de la Nation à la protection des femmes : genèse de la criminalisation du VIH en France</i>. (From Protecting the Nation to Protecting Women: The Genealogy of the Criminalization of HIV in France.) Cahiers du Genre, 1(60):61-78, 2016. Available only in French.</p> <p>Jansson, M. <i>An economy of protection: agency, responsibility and the criminalization of HIV</i>. 2018 Women’s Studies International Forum, 69:171-179, 2018.</p>

**SOCIAL CONSTRUCTIONS,
STIGMA AND MEDIA**

Mykhalovsky, E et al. *'Callous, Cold and Deliberately Duplicitous': Racialization, Immigration and the Representation of HIV Criminalization in Canadian Mainstream Newspapers*. SSRN, 2016.

Speakman, ER. *Constructing an "HIV-Killer": HIV Non-Disclosure and the Techniques of Vilification*. *Deviant Behaviour*, 38(4): 392-405, 2017.

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CASE STUDY**SUCCESSFUL ADVOCACY BASED ON EVIDENCE: THE WORK OF THE WILLIAMS INSTITUTE IN CALIFORNIA**

Social science research regularly informs advocacy against HIV criminalisation but sometimes research can become a driving force for change. In 2015, The Williams Institute at the University of California – Los Angeles (UCLA) undertook research into the application of California's HIV-specific laws. Their investigations found that:

- 800 people had come into contact with the criminal justice system under HIV-specific laws between 1988 and mid-2014.
- 98% of convictions had not required any proof of intent to transmit HIV.
- 93% of convictions had not required proof of conduct likely to transmit HIV.
- No convictions required HIV transmission as an element of the offence.

Contrary to rhetoric supporting use of California's HIV-specific laws, the laws were neither framed nor being used 'to keep the community safe'. Instead, 95% of HIV-specific criminal incidents had occurred under the felony solicitation law where a misdemeanour solicitation charge becomes a felony if a person has a positive HIV test result in their criminal record. That felony solicitation statute included no intent element or any requirement that the activity could transmit HIV. Consequently, a sex worker could receive a felony conviction just for engaging in a conversation with a potential client or for exchanging money, even if they were on treatment, had an undetectable viral load, used condoms, or did not even have penetrative sex.

The study also found that HIV criminalisation disproportionately impacted women and people of colour: 13% of people living with HIV in California were women, but women comprised 43% of those prosecuted under HIV-specific laws. Further, 51% of people living with HIV were black or Latino/a, but 67% of people prosecuted under HIV-specific laws were black or Latino/a. The research further explored disparities based on race/ethnicity and sex, finding white men were far less likely to be charged with felony solicitation (13%) compared to 33% of cases not involving white men. Further, felony solicitation charges were likely to disproportionately impact LGBTQ (lesbian, gay, bisexual, transgender and queer) youth and transgender women of colour, and the impact on foreign-born people could be devastating, triggering deportation.¹⁵

The Williams Institute research became a crucial tool for advocates who used these data to push for reform. The data were also quoted by legislators when discussing the real impact of California's laws. Finally, in late 2017, three years of advocacy culminated in the 'modernisation' of California's HIV laws when Senate Bill 239 was passed. Now, people living with HIV in California can no longer be convicted of a felony for potentially exposing others to HIV, and can no longer be convicted of a felony for soliciting sex while HIV-positive, bringing the laws' treatment of HIV in line with other communicable diseases. (For more on California's law reform efforts, see page 40.)

The Williams Institute has also published more recent HIV criminalisation research undertaken in [Florida](#) (2018) and [Georgia](#) (2018).

Enter the Toolkit by clicking on any of the boxes below, or search using keywords by clicking on the magnifying glass in the top right corner.

You can save as many items as you like to a personalised reading list for downloading, emailing or sharing.

How HIV Criminalisation Undermines the HIV Response 75 resources	What the Experts Say 39 resources	Organising Advocacy 33 resources
Understanding the Law 52 resources	Initiating Policy & Law Reform 28 resources	Supporting Fair & Robust Trials 17 resources
Using Science to Prove your Argument 41 resources	Working with Police 6 resources	Educating Prosecutors 19 resources
Educating Judges 9 resources	Getting the Message Right 22 resources	Other Toolkits 14 resources

Recent social science research is included on HIV JUSTICE WORLDWIDE's *HIV Justice Toolkit*, with a large number of articles catalogued under the subheading, 'How HIV Criminalisation Undermines the HIV Response'. French, Russian and Spanish versions of the HIV Justice Toolkit will go online during 2019.

14 Rich, J. *UCLA Law team makes successful case for decriminalizing HIV transmission*. 2017. At: <http://newsroom.ucla.edu/stories/ucla-law-team-makes-successful-case-for-decriminalizing-hiv-transmission>.

15 The Williams Institute. *HIV Criminalization in California: What We Know*. At: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-What-We-Know-2017.pdf>



3. ENSURING THE VOICES OF SURVIVORS ARE HEARD

“Since 2002, [when prosecuted under a sex work charge] I’ve been classified as a violent registered sex offender in the state of Tennessee. It’s the most suffocating form of criminalisation being on the registry. I now have a 4-year-old little girl and there’s no tier system in the state so I’m under all paedophile statute restrictions. I can’t take my daughter to the park.”

Tiffany Moore,

*HIV Criminalization and Women*¹⁶

The Greater/Meaningful Involvement of People Living with HIV and AIDS (GIPA/MIPA) principle demands that people living with HIV are meaningfully involved at all stages of the decision-making processes that affect their lives.

However, HIV criminalisation demands more than this, starting with the principle of ensuring that survivors of HIV criminalisation are welcomed and supported to share their experiences and included as leading advocates and decision-makers. The benefits are multi-faceted: as well as drawing individuals into a supportive environment, the process widens survivors’ framing of their experiences to better understand that they are not alone, with their experiences similar to many who have been targeted by a system heavy in multiple layers of bias against people considered outside the ‘mainstream’, compounded by outdated notions of HIV.

For everyone involved in the movement to end HIV criminalisation, hearing first-person accounts is powerful and persuasive. Learning about the lived experience of HIV criminalisation from the person who lived it, including the profound and lasting stigma, is moving and almost always uncovers facts that have not been recorded in the media or elsewhere. It also reveals the lasting effects of criminalisation that continue long after sentences have been served including, for some, through sex offender registration. In an environment dealing with massive public health goals responding to a pandemic, it is vital we are reminded that, at the end of the day, HIV criminalisation has profound impacts on an individual level.

We would like to take this opportunity to acknowledge and thank those courageous individuals who have made the decision to step forward to tell their stories and, in doing so, changed the course of the movement against HIV criminalisation for the better.

During the period covered by this report, great and diverse initiatives included:

- The Sero Project’s outstanding work, which includes:
 - Co-ordinating a listserv of HIV criminalisation survivors.
 - Providing referrals and support to those charged or threatened with charges, including introducing them to the Survivors Network listserv, where they can connect with others who have gone through similar experiences.
 - Working with survivors who are interested in becoming advocates, providing media training, support to enable attendance at conferences, and assistance connecting with appropriate journalists writing about criminalisation.

- ‘The Criminalisation Survivors’ Panel’ at the ‘HIV is Not a Crime Training Academy 2018’ which included testimony from Robert Suttle, Ariel Sabillon, Ken Pinkela, Monique Howell and Kerry Thomas on their experiences of HIV criminalisation. You can watch the entire panel on the [HIV is Not a Crime YouTube channel](https://www.youtube.com/watch?v=zf4fTNstpE8): <https://www.youtube.com/watch?v=zf4fTNstpE8>

- ‘HIV Criminalization and Women: A Roundtable Conversation with Survivors’ webinar organised by the Women’s Advocacy and Treatment Coalition on HIV. The roundtable included testimony from Monique Howell, Tiffany Moore, Tiommi Jenae Lockett, and Jessica Whitbread on the way they have been impacted by HIV criminalisation laws. Discussions included consideration of the ways HIV criminalisation intersects with issues of gender, reproductive rights, breastfeeding, transgender and sex work. The entire webinar can be heard at: <https://www.thewellproject.org/hiv-information/webinars>.



Webinar #2 in our 2018 series

WATCH!
Women's Advocacy and Treatment Coalition on HIV

HIV Criminalization and Women: A Roundtable Conversation with Survivors

Tuesday, October 30, 2018 | 12:00 PM - 1:30 PM ET

SPEAKER: **Carrie Foote, PhD**
Chair, HIV Modernization Movement-Indiana

PANELISTS: **Julie Graham, Monique Howell, Tiommi Jenae Lockett, Tiffany Moore, and Jessica Whitbread**
Moderated by Krista Martel
Executive Director, The Well Project

Visit www.thewellproject.org for a link to register

thewellproject

- *HIV Criminalization in Canada: Personal Testimonies* which features stories compiled from research interviews conducted by Alexander McClelland as part of his doctoral research at Concordia University. To protect the confidentiality of research participants, the stories are composites and pseudonyms have been used, however, the videos have sought to respect individual experiences. The audio is available at: <http://www.hivcriminalization.ca/testimonials/>
- The Eurasian Women’s Network on AIDS published powerful testimony on HIV criminalisation on their website, ‘*We have experienced tremendous shame: The story of Yana, who was convicted of transmitting HIV*’. Yana tells the story of her prosecution, initiated by medical workers, which occurred against the wishes of her husband, the alleged victim.
- Australian ABC radio’s interview with Ugandan nurse Rosemary Namubiru and Dora Kiconco Musinguzi from the Uganda Network on Law Ethics and HIV/AIDS on the challenge to the problematic HIV criminalisation statutes within Uganda’s HIV/AIDS Prevention and Control Act in *The brutal politics of a virus that won’t go away*.

As both the movement against HIV criminalisation grows, and laws are expanded to criminalise other diseases, advocates are broadening their reach to provide inclusive spaces for all those criminalised by disease, including viral hepatitis and tuberculosis.

CASE STUDY

HIGHLIGHTING SURVIVORS’ EXPERIENCES AT BEYOND BLAME

‘Beyond Blame: Challenging HIV Criminalisation 2016’ included a session, ‘Honouring HIV criminalisation survivors’, during which three criminalisation survivors spoke of their experiences. The session can be viewed as part of the meeting video on the [HIV JUSTICE WORLDWIDE YouTube channel](#). A synopsis of the session is also available in the [Beyond Blame 2016 report](#):

- Lieutenant Colonel Ken Pinkela referred to his decades of service in the United States Army which have effectively been erased after his prosecution in a case in which there was no possibility of HIV transmission. Despite no consideration of evidence relating to HIV transmission risk, Ken

spent almost a year in a military prison. Ken’s testimony can be seen in the [meeting video](#) (at approximately 12:20).

- Kerry Thomas joined the gathering via phone from an Idaho prison where he is serving two consecutive 15-year sentences for having consensual sex with a female partner, using condoms while having an undetectable viral load. Kerry’s testimony can be seen in the [meeting video](#) (at approximately 15:30).
- Rosemary Namubiru, a nurse from Uganda with more than 30 years’ experience, was arrested and jailed following unfounded allegations that she exposed a young patient to HIV as the result of a needlestick injury. Rosemary experienced a brutal police arrest, including being paraded in front of media and being called a monster and a killer in an egregious media circus. An extract of Rosemary’s testimony can be seen in the [meeting video](#) (at approximately 18:20).

The voices of HIV criminalisation survivors were also heard at ‘Beyond Blame: Challenging HIV Criminalisation 2018’ which included a session entitled ‘The Lived Experience: What it’s like to be personally impacted by HIV criminalisation and be part of the movement to end it’. The session can be viewed on the [HIV JUSTICE WORLDWIDE YouTube channel](#). A synopsis of the session is also available in the [Beyond Blame 2018 report](#):

- Marama Mullen, an Indigenous woman from Aotearoa (New Zealand) spoke about her experience of HIV criminalisation as a prosecution witness/complainant, including feeling coerced into acting as a witness when she was young, naïve and did not understand the ramifications for herself, the community or the HIV response. Marama’s experience was at odds with her Maori culture but she was unable to extricate herself from the prosecution process. Marama now advocates against HIV criminalisation and has since supported people involved on both sides of a criminal case.
- Chad Clarke spoke of his experience in prison in Canada as the motivation for becoming an advocate against HIV criminalisation. Chad stated that his registration as a sex offender (despite the sex being consensual within a relationship) is the hardest part of his experience to deal with – far tougher than having HIV – and that he deals with it daily.
- Ariel Sabillon from Honduras described his investigation by his university under a regulation called ‘Title 9’, for sexual misconduct which relates to an allegation of HIV non-disclosure prior to oral sex. Ariel said his experience of investigation has changed everything for him, describing the experience as being like having fallen from a great height.
- Ken Pinkela (who also spoke at Beyond Blame 2016) spoke of his conviction for aggravated assault in a military court based solely on one soldier’s accusation (with no evidence) that Ken had infected him with HIV, and subsequently spending 272 days in an army prison. Despite serving in the army for 29 years, Ken lost all his army benefits, including medical insurance, is no longer allowed to serve his country, and will not get a flag for his coffin when he dies. Ken has been advocating to have his case reviewed, particularly to have phylogenetic analysis of medical evidence made available to the courts to get his case dismissed. Ken was able to announce the good news that he had just received word that a large law firm had agreed to take on his case.

Robert Suttle
presenting at AIDS
2018. Copyright:
Matthijs Immink/IAS



TESTIMONY ON THE WORLD STAGE: AIDS 2018

In 2018, HIV criminalisation was highlighted at the International AIDS Conference (AIDS 2018) as never before, as Allan Maleche and Robert Suttle addressed the entire conference in the opening plenary session, alongside Charlize Theron, Elton John and ‘Prince Harry’, the Duke of Sussex.

Allan Maleche, Executive Director of The Kenya Legal & Ethical Issues Network on HIV and AIDS (KELIN) spoke about KELIN’s work combatting both HIV and TB criminalisation, encouraging scientists and clinicians to make a difference by serving as expert witnesses in order to bring science into the justice system.

Robert Suttle, Assistant Director of Sero Project, then gave a heartfelt presentation based on his personal experience as an HIV criminalisation survivor. Robert explained that as the result of an HIV non-disclosure charge, he served six months in the Louisiana state prison and will be registered as a sex offender for 15 years. Robert stressed that the effects of HIV criminalisation do not end upon release, citing difficulties around a host of issues including employment, housing, dating, travelling, and of course ongoing stigma.

The effect was extraordinary; visibly impacting many of the scientists, clinicians, health officials, funders, and community members present. The movement is grateful to Robert for his courage, stepping forward to put a face to the absurdity of HIV criminalisation, which until that moment was considered to be a low priority and an abstract concept for many involved in the global HIV response.

Video of the session, including Robert’s presentation, is available on the [AIDS2018 YouTube channel](#). Robert’s presentation commences at 1 hour, 38 minutes.



16 The Well Project. HIV Criminalization and Women: A Roundtable Conversation with Survivors webinar organised by the Women’s Advocacy and Treatment Coalition on HIV, 30 October 2018. At: <https://www.thewellproject.org/hiv-information/view-webinar-hiv-criminalization-and-women-roundtable-conversation-survivors>



4. TRAINING TO BUILD COMMUNITY CAPACITY

“I work with an NGO [non-governmental organisation] trying to reduce HIV among LGBT people in my country. Your training to me was like training the whole of society because I will share this knowledge among my colleagues back at home. I wish to be welcomed back again to gain more and more.”

Respondent 13, Beyond Blame

Beyond Blame: Challenging HIV Criminalisation 2018 Evaluation¹⁷

HIV criminalisation is complex, involving a range of intersecting factors related to law, public policy, science, medicine, stigma and discrimination. It intersects with myriad issues of social disadvantage and injustice and operates differently depending on the jurisdiction.

Given the complexity of issues involved, training forms an integral component of community capacity building in the movement against HIV criminalisation. Successful strategies have focused on the training needs of grassroots activists; providing a space for participants to understand the issues, identify knowledge gaps, learn new technical and practical information, recognise existing skills, and build new skills. Successful training initiatives have been based on an understanding that training events must be community owned, allowing time for diverse community members to come together, to hold discussions, set their agendas, and build more inclusive coalitions and communities of action.

Many highly productive training events have been held all over the world. Large-scale training events have included:

- **Beyond Blame** In 2016, more than 140 advocates, researchers, and community leaders from 36 countries came together in Durban, South Africa, for ‘**Beyond Blame: Challenging HIV Criminalisation 2016**’, a full-day meeting preceding the 21st International AIDS Conference (AIDS 2016). Expanding on similar, smaller-scale meetings held in Vienna in 2010 and Melbourne in 2014, the meeting drew inspiration from the testimony of individuals who have experienced HIV criminalisation and provided an opportunity for advocates across the globe to consider examples of advocacy and to strategise moving forward. The meeting was convened by **HIV JUSTICE WORLDWIDE**, with support from local partner AIDS Legal Network, and from the Joint United Nations Programme on HIV and AIDS (UNAIDS). For more, see the **Beyond Blame 2016 video** or **Beyond Blame 2016 report**.

In 2018, HIV JUSTICE WORLDWIDE again held a Beyond Blame symposium preceding an International AIDS Conference (AIDS 2018). The event included 150 attendees at the historic De Balie venue in Amsterdam, with participation extended to a global audience through live-streaming on HIV JUSTICE WORLDWIDE’s YouTube channel and using Twitter (*#BeyondBlame2018*) to ask questions of panellists and other speakers. Participants used this opportunity to exchange information and brainstorm with their counterparts, with the post-meeting evaluation revealing that all believed Beyond Blame 2018 had provided useful information and evidence they could use to advocate against HIV criminalisation. The video recording of the entire meeting is available on YouTube. See also the **Beyond Blame 2018 meeting report**.

- **European HIV Academy for Enabling Legal Environments** In 2017, 25 community representatives from across Europe attended two days of training focusing on building skills to address punitive and disabling legal environments, including the intersecting issues of overcoming barriers to HIV testing, migrants' healthcare, and ending HIV criminalisation. Co-organised by [AIDS Action Europe](#), [European AIDS Treatment Group \(EATG\)](#), [Global Network of People Living with HIV \(GNP+\)](#) and the HIV Justice Network, the training was a catalyst to strengthen networks and enhance co-ordination and planning in the lead up to AIDS 2018. A video showing the meeting highlights is [available on YouTube](#).

- **The HIV is Not a Crime (HINAC) National Training Academy** has gone from strength to strength. After the success of the Iowa event in 2014, HINAC2 was held in 2016 in Alabama and HINAC3 in 2018 in Indiana. The training academy brings together advocates living with HIV and allies from across the US (and increasingly, the entire American



Activists at HIV is Not a Crime Training Academy III, 2018. Photo by Jennie Smith-Camejo for Positive Women's Network – USA.

continent) to undertake skills-building to inform advocacy efforts to repeal or modernise state laws. With an emphasis on grassroots organising, advocacy, coalition-building and campaign-planning, HINAC provides participants with concrete tools and resources to work on state-level strategies when they return home. You can watch a [highlights video of HINAC2](#) and most of the sessions at HINAC3 (with live interviews conducted by Mark S King) on the [HIV is Not a Crime YouTube channel](#).

- **Virtual training and webinars** Given the financial and logistical challenges involved in running face-to-face meetings, numerous organisations have also undertaken innovative technology-based training, including webinars. The Eurasian Women's Network on AIDS (EWNA) hosted two webinars: 'Decriminalisation of HIV transmission: a webinar for activists' and 'Questions of decriminalisation of HIV infection'; Positive Women's Network – USA (PWN-USA) hosted 'Making media work for HIV justice'; and the AIDS and Rights Alliance for Southern Africa (ARASA) runs an annual online HIV criminalisation short course (described in [chapter 15](#)).

CASE STUDY

BUILDING CAPACITY THROUGH TEAM WORK: THE MEXICAN NETWORK OF ORGANISATIONS AGAINST THE CRIMINALISATION OF HIV (LA RED MEXICANA DE ORGANIZACIONES CONTRA LA CRIMINALIZACION DEL VIH)

When the Sero Project invited three delegates from Mexico's burgeoning movement against HIV criminalisation to attend the US-focused, 2016 'HIV Is Not a Crime Training Academy' in Alabama, no-one could have predicted just how quickly Mexican advocacy would deliver results!

That meeting generated an international campaign to support the efforts of the Grupo Multisectorial en VIH/sida e ITS del Estado de Veracruz (Veracruz Multisectorial Group) led by Dra. Patricia Ponce and the National Commission for Human Rights, challenging the constitutionality of Article 158 in Veracruz State. In September 2016, Mexican civil society delegates, including members of the Multisectorial

Speakers from the VIH No Es Un Crimen meeting Mexico, 2017. Photo by Nicholas Feustel for HIV Justice Network.



Group and representatives of the Sero Project and HIV Justice Network, held a press conference at the headquarters of the National Commission of Human Rights in Mexico City to present a letter of support which was delivered by hand to the headquarters of the Supreme Court later that day.

In response to the growing anti-criminalisation work in Mexico, and with the financial support of HIV JUSTICE WORLDWIDE, Sero Project posted an open invitation to Mexican organisations working in the area of HIV, LGBTIQ (lesbian, gay, bisexual, transgender, intersex and queer), sex work and human rights to apply for a scholarship for organisational representatives to attend a meeting to consider HIV criminalisation in Mexico. Following a review of applications, 22 representatives from all over the Mexican Republic were selected, as well as representatives from organisations in Mexico City and The Belize Network of people living with HIV: C-NET+.

In October 2017, the first Spanish language ‘HIV is Not a Crime’ (VIH No Es Un Crimen) meeting was held in Mexico City, funded by HIV JUSTICE WORLDWIDE and hosted by a coalition including Sero Project, HIV Justice Network and GNP+, with in-kind support from Aids Healthcare Foundation Mexico, the Multisectoral Group, Letra S, Comisión Nacional de los Derechos Humanos and Consejo Nacional para Prevenir la Discriminación. The two-day meeting brought together people living with HIV, activists, lawyers, human rights defenders, and academics from across Mexico. The meeting was

The Mexican Network of Organisations against the Criminalisation of HIV. Photo by Nicholas Feustel for HIV Justice Network.



unprecedented in Mexico, as it was the first time that civil society organisations had come together to think through and discuss the impact of HIV criminalisation.

Speakers presented on HIV criminalisation around the world, the global movement to end HIV criminalisation, and strategies that have been used to date. In particular, the meeting noted the importance of the leadership of networks of people living with HIV. Participants then turned discussions to what needs to be done, with advocates deciding to form a new network: **The Mexican Network of Organisations against the Criminalisation of HIV**, co-ordinating the work of 29 organisations across Mexico. (Agencies interested in joining can apply at **HIV is Not a Crime Mexico**.)

The network, now known as La Red Mexicana, drafted a powerful, 11-point declaration (based on the **Oslo Declaration**) addressed to various governmental agencies and to society in general. The Mexican declaration stresses that it is not the task of judicial authorities to develop and implement measures to prevent transmission of HIV, and that public health statutes are generating more harm than good. Significant positive media coverage was generated.

Just days after its creation, La Red Mexicana had its first victory in Quintana Roo, forcing the State Congress committee to **vote against the proposal to criminalise HIV** in that state. Thanks to further organising by the network, a similar proposal was withdrawn in the state of Chihuahua by Representative Miguel Alberto Vallejo Lozano, several weeks later. Then, the biggest achievement of the network so far: in 2018 the National Supreme Court of Justice determined the invalidity of the proposed amendment to Article 158 of the Criminal Code of the State of Veracruz, which had aimed to add the term “sexually transmitted infection” to the “crime of danger of contagion” so that people could be punished “for endangering the infection of other people”.

A little more than a year after the first meeting of La Red Mexicana, the network has grown to include 44 civil society organisations working on the response to HIV and other human rights issues, calling attention to human rights violations against people living with HIV. The network continues to monitor new developments in Jalisco state where there is a possibility of amendments to the penal code criminalising HIV.

Watch a short video produced by the HIV Justice Network for HIV JUSTICE WORLDWIDE about La Red Mexicana and its achievements on **YouTube**.



5. USING PLHIV-LED RESEARCH TO BUILD COMMUNITY ENGAGEMENT CAPACITY

“Community-led research uncovers what is usually hidden because, as community, we are allowed in. The very high level of trust between ‘researcher’ and ‘participant’ challenges traditional research hierarchies, delivering data that is truly brilliant. Still, its greatest beauty is that it drives empowerment and advocacy. This research will never be put on a shelf and forgotten. We own our own research and we will use it to create real change. We describe our reality to change our reality.”

Alexandra Volgina, GNP+

Research has long been a cornerstone of the HIV response, providing the evidence on which to base effective policy and programmes. Community-led research offers so much more – providing a mechanism to engage communities to develop in-depth understanding of social issues and to build relationships, mobilise and organise.

Done well, community-led research enables the development of existing skills, acquisition of new skills, better understanding of complex issues, and ownership of community-set goals and evidence-based practices to drive social change.¹⁸ It is a model that has long been adopted in the [People Living with HIV Stigma Index](#), where the process of people living with HIV (PLHIV) organising and undertaking research is considered just as important as ‘the results’. In this way, people living with HIV are not subjects or objects but active participants.

During the period covered by this report, PLHIV-led research has proven an effective tool to increase community engagement in HIV criminalisation advocacy in numerous settings, including through the process of researching and writing regional HIV criminalisation reports in Francophone Africa and Eastern Europe.

CASE STUDY

COMMUNITY-LED RESEARCH: UNDERTAKING THE EECA REGIONAL REPORT

In 2017, the Global Network of People Living with HIV (GNP+) led an HIV JUSTICE WORLDWIDE project¹⁹ to identify and support non-governmental organisations that could gather regionally-based evidence on HIV-related laws and prosecutions. GNP+ allocated four small sub-grants to regional organisations, including a grant to the Eurasian Women’s Network on AIDS (EWNA) to undertake an HIV criminalisation scan of Eastern Europe and Central Asia (EECA). EWNA, which brings together representatives from 11 countries in the region and is the EECA regional network of the International Community of Women Living with HIV, developed a very specific process – with impressive results.

UNCOVERING NEW EVIDENCE

The scan found that most EECA countries have strict, punitive laws relating to HIV non-disclosure, exposure and/or transmission. Fifteen of the 20 countries that make up the region have HIV-specific laws criminalising exposure or transmission with sentences ranging from community service to 15 years in prison. Three other countries use HIV-non-specific criminal laws to prosecute people living with HIV.

COUNTRIES	HIV-SPECIFIC LAWS	HIV-NON-SPECIFIC LAWS	CASES
Albania	No	No	No/Unknown
Armenia	Yes	Yes	Yes
Azerbaijan	Yes	Yes	Yes
Belarus	Yes	Yes	Yes
Bosnia and Herzegovina	No	No	No/Unknown
Estonia	No	Yes	Yes
Georgia	Yes	Yes	Yes
Kazakhstan	Yes	Yes	Yes
Kyrgyzstan	Yes	Yes	Yes
Latvia	Yes	Yes	Yes
Lithuania	No	Yes	No/Unknown
Macedonia	No	Yes	No/Unknown
Moldova	Yes	Yes	Yes
Montenegro	Yes	Yes	No/Unknown
Russian Federation	Yes	Yes	Yes
Serbia	Yes	Yes	Yes
Tajikistan	Yes	Yes	Yes
Turkmenistan	Yes	Yes	No/Unknown
Ukraine	Yes	Yes	Yes
Uzbekistan	Yes	Yes	Yes

Given the enormity of work uncovering HIV-related prosecutions, the project focused on seven countries: Belarus, Georgia, Kazakhstan, Moldova, Russia, Ukraine and Uzbekistan, with more limited observations from two other countries: Tajikistan and Estonia.²⁰

The scan identified a large number of previously unidentified cases. It also uncovered alarming practices undermining medical and public health responses. In some cases, police were notified of a person's HIV diagnosis by health authorities, which then became a prompt to investigate the person's relationship with their partner. In Belarus and Uzbekistan there have been many prosecutions against people living with HIV, even if their partner has consented and did not want charges laid. Cases typically commence when healthcare providers hear that an HIV-negative person is in a sexual relationship with a person living with HIV, or when a pregnancy is involved, or when a previously HIV-negative partner tests HIV-positive. In order to be charged, all that is required is for the person living with HIV to know their HIV status and to be registered with the state for HIV services.

The scan also found that since 2015, there had been a drastic increase in HIV criminalisation cases in Belarus (with at least 50 in a single region, Gomel, in the first six months of 2017).

PROCESS BUILDS CAPACITY

The EECA criminalisation scan employed an impressive methodology that delivered results far exceeding the identification of evidence. From October to December 2017, EWNA worked closely with a team of local and regional advocates to develop a community-led research process, with every step developed and led by women living with HIV. The project included a project co-ordinator, regional data co-ordinator, communications specialist, and a final report writer, as well as a team of community-based, peer data collectors who engaged with women living with HIV on the ground.

Methodology included:

1. A broad review of existing information on HIV criminalisation in the EECA region
2. Development of research and reporting tools for in-country community-based partners and a media monitoring report system
3. Selection of EWNA-affiliated community advocates and/or focal points working in country
4. Provision of mini-grants for in-country activities, including:
 - community interviews, review of relevant laws and legislation
 - documenting and/or data collection of cases through informants and state legal records
 - media monitoring between 2015 and 2017
 - formation of a database of organisations and experts, providing legal support
5. Analysis (including gender analysis) and further exploration of data collected
6. Drafting of a final report in English and Russian
7. Dissemination of findings through EWNA's social media channels.

The process provided opportunities for local organisations of people living with HIV to increase their understanding of HIV criminalisation, how it operates in their own country and, importantly, how community can be united to advocate against HIV criminalisation. It facilitated new partnerships and strengthened EWNA's involvement in the regional and global HIV movements to end criminalisation. While the process aimed to be inclusive of key populations, the number of cases relating to members of these populations was limited, possibly due to the use of other laws criminalising sex workers, men who have sex with men, transgender people and people who use drugs – an issue requiring further research.

Notably, EWNA's community-led process also revealed a split in the PLHIV movement between those who believe HIV criminalisation is a problem and those who do not. Moving forward, EWNA plans to facilitate discussion within communities to build a harmonised movement to advocate for an enabling legal environment and increased human rights.

GENDER ANALYSIS

One of the strengths of the EECA scan was the inclusion of gender analysis. Most cases involved heterosexual sexual encounters, with the scan clearly revealing that the experience of HIV



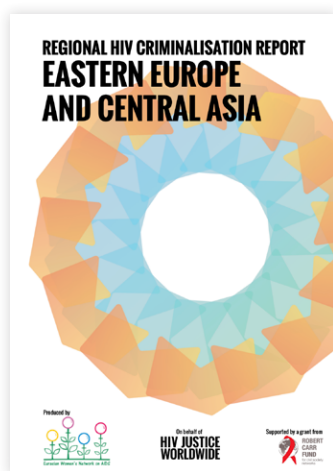
Country representatives of EWNA's General Assembly. Photo by Alina Yaroslavskaya for EWNA.

criminalisation is gendered. Previously the laws were thought to protect women from HIV but, instead, the scan found that as a consequence of HIV criminalisation, women were more vulnerable to violence and other structural inequalities, as well as property loss, removal of children, shunning in their communities and other negative economic consequences.

In-country informants identified numerous cases of women living with HIV who were charged with exposure or transmission or had been threatened by a partner to report them. Women shared experiences of violence, threats and blackmail based on fear of their HIV status being used against them in a court of law. Many of the women looked for legal support in peer-based settings, sometimes after enduring years of threats and/or abuse.

MOVING FORWARD

In 2018, EWNA has built on the momentum generated by the criminalisation scan and has launched a regional campaign, ‘HIV is not a crime’ which forms part of the broader ‘Chase the virus, not people’ campaign. Two HIV criminalisation webinars have been delivered, communicating the impact of criminalisation on people’s lives, and alternative approaches from countries without HIV criminalisation. EWNA has also provided direct support to people affected by HIV criminalisation and their advocates at a local level. For example, in Belarus, 15 appeals by people living with HIV and their family members have been supported. Materials relating to eight of those cases were included in submissions to the Belarus Parliamentary Commission considering amending the Criminal Code, with community activists contributing their expertise in those hearings (see page 49).



Download and read the *Regional HIV Criminalisation Report: Eastern Europe and Central Asia*.²¹

18 Hacker, K et al. *Community Capacity Building and Sustainability: Outcomes of Community-Based Participatory Research*. *Progress in Community Health Partnerships*, 6(3):349-360, 2012.

19 Funded by the Robert Carr Fund for civil society networks

20 Following completion of the initial scan, EWNA plans to expand the project to include more EECA countries.

21 Reports are also available for Asia, Francophone Africa and Latin America and the Caribbean.



6. COMMUNITY ORGANISATIONS AS FACILITATORS OF GRASSROOTS ACTION

“It’s amazing to see people make decisions for themselves. That’s how you build power because it’s internal.”

Deon Haywood, Women With A Vision²²

Community organisations frequently operate in difficult circumstances with limited funds and little access to the decision-making power that determines law or policy. Even so, it is important to recognise that power is relative, with organisations holding substantial political power ‘representing’ their communities. Many of the community organisations working to limit HIV criminalisation are actively working against organisations taking charge, by supporting grassroots community advocates’ voices at the decision-making table.

Community-set priorities are meaningful and advocacy is powerful when it is owned. Further, first-person accounts are persuasive, with significant shifting of power occurring when decision-makers realise they are speaking to ‘constituents’ not ‘victims’. Importantly, as well as delivering short-term results, community advocacy can drive long-term gains.

Organisational efforts to increase community capacity are often multifaceted but regularly include: creating safe spaces for people to come together to reflect on their experiences and set priorities; legal empowerment so that people understand the law and can use legal and political processes to advance their own rights and interests; practical support like funding transport to get people together to discuss issues, develop strategy or undertake advocacy; and programmes to address the many intersecting factors that increase communities’ vulnerability.

One example of community organisers facilitating community members’ leadership while working inclusively with people of HIV-positive and -negative status, is the work of Women With A Vision in Louisiana, USA. Having become increasingly concerned that black cisgender and transgender women trading sex for money were being convicted of the felony-level “crime against nature by solicitation” and consequently forced to register as sex offenders, Women With A Vision developed a strategy to

Community activists working with Women With A Vision take their case to the Louisiana Legislature. Photo credit: Women With A Vision.



bring community together to identify issues and advocacy strategies: providing tools for the community to take up the fight for themselves. Intersectional thinking was fundamental to the community's response, based on an understanding that the punitive law was operationalised in a system steeped in white supremacy. Most of those affected by the law were black women, with black women comprising 97% of those on the sex offender registry in Orleans Parish. Despite advice from numerous parties that an organisation of poor, black women had no chance of success, Women With A Vision decided to draw on their black feminist principles: to stand together and to fight. They not only fought, they won! The law was changed – with retrospectivity so that more than 800 people with prior convictions were removed from the sex offender registry.²³ (For more see *Beyond Blame 2018 meeting report*, pp.33-37 and *“There Is NO Justice in Louisiana”: Crimes against Nature and the Spirit of Black Feminist Resistance.*)

CASE STUDY

SUPPORTING GRASSROOTS ACTIONS: COMMUNITY DEFEATS HIV CRIMINALISATION BILL IN MALAWI

The defeat of provisions in Malawi's draft HIV bill criminalising HIV non-disclosure, exposure and transmission, and those mandating HIV testing pre-recruitment in certain professions, stands as testament to the power of grassroots action by women living with HIV. Even more extraordinary, is the context in which the bill was defeated.

Thirty countries in sub-Saharan Africa have HIV-specific criminal laws. Most are poorly worded, overly broad and vague statutes included in omnibus HIV/AIDS laws promoted through the region during the last decade in an attempt to rapidly deliver stronger domestic responses to HIV, on the pretext that these laws would improve the lives of people living with HIV. Consequently, there was nothing surprising about the proposal to introduce similar statutes in Malawi, bringing it in line with many other countries in the region. Further, Malawi has a strong body of gender-related laws aiming to improve the lives of women: laws which have brought about positive social changes. There was strong support among feminists, including women living with HIV, for HIV criminalisation as a means to deliver greater protections for women.

Announcement of the 2016 Malawi HIV and AIDS (Prevention and Management) Bill was welcomed by feminist advocates and other women. By then, the bill was almost a decade old and had received considerable attention, however, inclusion of HIV criminalisation provisions prompted review of the bill by a number of local and regional organisations with HIV criminalisation expertise, particularly the Women Lawyers Association of Malawi, supported by the Southern Africa Litigation Centre (SALC) and the AIDS and Rights Alliance for Southern Africa (ARASA).

Following initial considerations, the community organisations invited communities of women living with HIV to join them for more detailed consideration of the bill's possible impact. The process was very pragmatic, with organisational activists sitting with grassroots networks of women living with HIV, using their legal expertise to take them through the proposed law provision by provision. The women then applied that legal understanding to their experiences, deciding the laws were highly problematic considering it is women who become pregnant and are then tested at the antenatal clinic, whether they want to be tested or not. They are the first to know their HIV status, and that knowledge can then be used as evidence of their criminal liability for alleged transmission of HIV. As it became clear to local women how section 43 (vaguely criminalising 'wilful transmission') would play out in their lives, they decided to take up advocacy against it. Almost overnight, the situation changed as women organised!

In a last-ditch attempt to get amendments through that would remove the problematic provisions, advocates arranged a meeting with members of the Parliamentary Committee tackling health and social welfare to give the women living with HIV a chance to discuss the potential impact of the bill with the lawmakers. The bill was scheduled to be discussed in parliament the very next day. The group of women living with HIV put together posters, many of which talked about ‘My body. My right.’ and composed a song against section 43. Whenever a parliamentarian spoke about how the criminalisation provisions were so important and so necessary, they would stand up and sing, “No to section 43”. The women were effective: their first-person narratives persuasive. When one parliamentarian argued for retaining mandatory testing of pregnant women by saying “We need to protect the unborn”, one woman stood up and said, “Before you care about the baby in my womb, I care about the baby in my womb. I care.” Politicians took note.

Community activists celebrate repeal of section 43 in Malawi. Photo by Victor Mhango for Coalition of HIV and Women’s Rights Organisations, Malawi.



Organisational advocates had a role to play as legal empowerment was critical: giving women living with HIV knowledge and understanding of the law in ways they could then use. Modest funding via HIV JUSTICE WORLDWIDE enabled meetings and transport to key events, including to meetings of parliament, but once those processes were carried out, organisational advocates took a back seat and the rest of the conversation was between the women and parliamentarians. The women spoke such truth to power, work that can only be done through collaboration across sectors, across classes and races, and it was their efforts that resulted in section 43 being removed.

Going forward, community organisations have recognised the need to address the way different hierarchies of power play out to ensure ‘elite black women’s feminism’ does not reduce space at the table for grassroots activists whose feminism is based on what is current, what is urgent and what is very real in their lives. Law and policy-based discussion and negotiation can be academic and elitist, with activists having the same conversation with the same people around the table, over and over again, and the conversation not going anywhere. Breaking that cycle was vital, particularly where advocacy was stuck because the two worlds were not meeting. In the end, advocacy was successful because those whose lives were most affected were brought to the table, with the space and the power to take on the conversation on their own terms.

22 HIV Justice Network. *Beyond Blame: Challenging HIV Criminalisation Meeting Report*. 2018. At: <http://www.hivjustice.net/wp-content/uploads/2018/10/Beyond-Blame-2018-Report.pdf>

23 The legal actions were supported by teams comprising the Center for Constitutional Rights, Loyola University New Orleans College of Law Stuart H. Smith Law Clinic & Center for Social Justice, attorney Andrea J Ritchie, the law firm Kairys, Rudovsky, Messing & Feinberg LLP, and pro bono counsel Cleary Gottlieb Steen and Hamilton LLP.



7. TRAINING TO BUILD LAWYERS' AND JUDGES' UNDERSTANDING OF HIV CRIMINALISATION

“Indeed, a rigorously lawyerly approach to evidence is all those living with AIDS and HIV have ever needed to get fair treatment.”

Edwin Cameron,

Justice of the Constitutional Court of South Africa²⁴

HIV criminalisation has wide-ranging social effects but, ultimately, prosecutions play out in the court room. Advocates have long called for lawyers and judges to show leadership in their response to HIV, confronting ignorance and discriminatory attitudes. Instead, HIV continues to be singled out, with prosecutions occurring in cases where no harm was intended; where HIV transmission did not occur, was not possible or was extremely unlikely; and where transmission was neither alleged nor proven.²⁵ Further, trials often both mischaracterise HIV transmission risk associated with specific events and overstate the harms of living with HIV in an era of effective treatment. Such misrepresentations may lead to miscarriages of justice, while media reporting of misleading trial ‘evidence’ perpetuates stigma and discrimination against all people living with HIV.

Around the world, lawyers are responding to the impact of HIV-related discrimination in many areas, including in relation to child custody (Nigeria’s Coalition of Lawyers for Human Rights) and forced sterilisation (Kenya Legal and Ethical Issues Network on HIV and AIDS, KELIN). In the US, the movement to end HIV criminalisation has seen lawyers take leadership roles, including the major association representing the criminal defence bar’s *Resolution of the Board of Directors of the National Association of Criminal Defense Lawyers Concerning HIV Criminalization* (United States, May 2016). National and state legal organisations are working in close partnership to develop sound legislative alternatives to HIV criminal laws, and implement HIV legal and medical literacy campaigns targeting prosecutors and criminal defence attorneys. In numerous countries, legal organisations are taking on important HIV criminalisation cases while also supporting the next generation of lawyers to better understand HIV criminalisation through continuing legal education, and volunteer and intern programmes, including *The Center for HIV Law & Policy* in the US, Australia’s *HIV/AIDS Legal Centre Inc.* (NSW), and Canada’s *HIV & AIDS Legal Clinic Ontario (HALCO)*.

It is vital that lawyers and judges understand the broad range of issues surrounding HIV criminalisation and are equipped with the latest scientific and medical evidence, as both lawyers and judges are often “confronted with new and complex scientific, legal and medical issues that they are not equipped to consider and adjudicate”.²⁶ The recent *Expert consensus statement on the science of HIV in the context of criminal law* was devised specifically to describe current evidence on HIV transmission risk, treatment effectiveness, and HIV forensics, so that HIV-related science may be better understood in criminal law contexts. In Morocco, ALCS (Association for the Fight against AIDS) have used the Statement in their training for judges and prosecutors to increase understanding of issues related to HIV and human rights. Other recent efforts to improve judges’ understanding of HIV have included publication of *HIV and AIDS and Labour Rights: A Handbook for Judges and Legal Professionals* by the International Labour

Organization (ILO), and the United Nations Development Programme's (UNDP) support to the **Regional Judges' Forum** to discuss HIV and tuberculosis-related jurisprudence which aims to sensitise senior judges and uphold the rights of people living with HIV in Africa. (See the case study below, **The Africa Regional Judges' Forum: Jurisprudence to protect key populations.**) In the US, **The Center for HIV Law & Policy** is working in partnership with a national prosecutors' association and with the leading national organisation representing criminal defense attorneys, regularly holding joint webinars to train hundreds of lawyers on both sides of the aisle.

In April 2017, the AIDS and Rights Alliance for Southern Africa (ARASA) collaborated with other HIV JUSTICE WORLDWIDE partners to convene a two-day meeting bringing together lawyers and members of the judiciary with policy and law makers, parliamentarians and representatives of civil society organisations: **'SADC & EAC Model Laws & Beyond: Revolutionising approaches to Criminalisation of HIV non-disclosure & exposure'**. The meeting included discussion of strategic litigation and efforts to strengthen legal systems, also recognising that punitive measures further marginalise and stigmatise women living with HIV and key populations who are already criminalised on the basis of their gender identity and/or sexual orientation. Presentations included strategies employed in Malawi, Nigeria,



Niger, Uganda, and Zimbabwe, as well as testimony from HIV criminalisation survivors. To increase the reach of the meeting's messaging, the meeting was also promoted on Facebook and Twitter at **#Decrim4Health**.

For more about the meeting, refer to ARASA's excellent, comprehensive report: *From N'Djamena to SADC & EAC Model Laws & Beyond: Revolutionising approaches to Criminalisation of HIV non-disclosure & exposure*.

Participants sending a message at From N'Djamena to SADC & EAC Model Laws & Beyond. Photo by Lesley Odendal for ARASA.



CASE STUDY

BUILDING LAWYERS' UNDERSTANDING OF HIV CRIMINALISATION: LAWYERS AND JOURNALISTS FOR HIV AND TB JUSTICE TRAINING

Lawyers at HIV and TB training.
Photo credit: SALC.



The rollout of HIV-specific laws in sub-Saharan Africa has been rapid and relentless. Since the start of the 21st century, when there were no such criminal laws in the region, 30 countries have enacted overly broad and/or vague HIV-specific criminal statutes, and prosecutions have been documented in 16 countries. Prosecutions have frequently been accompanied by stigmatising and inaccurate press coverage that has compromised accused persons' safety and their right to a fair trial. Considering the high HIV burden in sub-Saharan Africa, and the harmful consequences of prosecutions, it is critical that lawyers in the region are poised to respond to individual cases of HIV criminalisation, with press reporting sensitively and responsibly.

In 2018, Lawyers for HIV and TB Justice proposed a training event to equip lawyers in the African context to:

- Understand the lived experiences of people who are surviving HIV and tuberculosis (TB) criminalisation
- Understand why overbroad criminalisation is harmful to human rights and to effective responses to HIV and TB
- Successfully defend cases and institute strategic litigation to protect human rights in cases of unjust or overbroad use of criminal law and coercive means in relation to HIV and TB
- Plan, implement and contribute to advocacy on issues of HIV and TB criminalisation
- Develop and implement regional-/national-level strategies to effectively address HIV and TB criminalisation.

A strong partnership of local and international agencies came on board to organise the event: led by the Southern Africa Litigation Centre (SALC), with ARASA, HIV Justice Network (on behalf of HIV JUSTICE WORLDWIDE), the Kenya Legal & Ethical Issues Network on HIV and AIDS (KELIN), Stop TB Partnership and the Joint United Nations Programme on HIV/AIDS (UNAIDS). The event was funded by UNDP's Africa Regional Grant on HIV: Removing Legal Barriers.

Organisers undertook a detailed selection process targeting practising lawyers with more than three years' legal experience, an interest in human rights and HIV and TB, and the capacity to apply knowledge gained by providing *pro bono* legal services, supporting activists and civil society, and demonstrating leadership within the legal community. Organisers also strived for gender balance and representation from across the continent. People from previously disadvantaged backgrounds, people living with HIV, members of key populations, and people with disabilities were encouraged to apply.

The application process was designed to maximise the likelihood of the training delivering tangible results on the ground, so included asking:

- Why applicants would like to participate in the training
- Details of experience litigating or working on issues related to HIV, TB and key populations
- Details of experience in human rights law and public interest litigation
- What applicants hope to gain from the training and how they intend to apply skills and knowledge gained.

Organisers also used the opportunity to ask applicants if there were particular areas they would like the training to address to ensure the training programme was as targeted and useful as possible. Given the impact of media coverage of HIV trials, a number of places were set aside for journalists who were provided with further training during a day-long workshop led and funded by HIV JUSTICE WORLDWIDE.

Organisers recruited more than 80 lawyers, legal advocates and journalists from 27 African countries to attend the four-day workshop which was held in Johannesburg, South Africa from 20 to 23 February 2018. To increase reach, the training was live-streamed on Facebook, opening participation to interested persons from around the world. Given the actions of state agencies against people with TB in the region, organisers sought to develop thinking on intersections with *de facto* TB criminalisation: the unjust use of criminal law and other coercive state actions against people living with TB for acts such as not completing TB treatment and the use of involuntary confinement in prisons to force people to take treatment.

Over the course of the four days, training included presentations, panel discussions, debates and group activities to introduce concepts and initiate debates around HIV and TB criminalisation, outline relevant science and its impact, describe successful legal defence and strategic litigation strategy and outline a variety of advocacy approaches. Speakers included survivors of criminalisation, Justice Edwin Cameron (of the Constitutional Court of South Africa), senior lawyers, human rights activists, medical experts, policy experts, and media specialists. On the final day, participants developed human rights-based strategies to implement the knowledge gained through the training.

A number of lawyers reflected that their perspectives had evolved from supporting HIV criminalisation to understanding the harms, with many being particularly affected by hearing from criminalisation survivors.

“The training was informative, mind blowing and eye opening. I will use what I have learned in conducting research for public interest litigation.”

Modrine Siansumo, Zambia

“As a lawyer, the science of TB and HIV was an eye opener. It answered several common stereotypes that have been used to stigmatize infected and affected persons and equipped me with critical information that will enrich my approach to HIV and TB related court cases.”

Jackson Awele, Kenya

The training has already delivered tangible results on the ground, including a newly formed coalition of Francophone defence lawyers working in the area of HIV, with focused communication through a WhatsApp group. There is also a lawyers' Google group where people have shared resources and referred cases, and excellent press coverage following the event including the important *Breaking the Jaws of TB* report by a Malawian journalist who attended the training.

Resources from the 'Lawyers for HIV & TB Justice: Strategic Litigation, Legal Defence & Advocacy Training', including training materials and presentations, are available on SALC's website, including the *HIV Criminalisation Defence Case Compendium* (available in English or French) which was developed to support the event.



CASE STUDY

THE AFRICA REGIONAL JUDGES' FORUM: JURISPRUDENCE TO PROTECT KEY POPULATIONS

Participants at the African Regional Judges' Forum in Johannesburg, South Africa. Photo credit: UNDP.



The African Regional Judges' Forum was established by a group of judges in 2014 following the release of the report of the Global Commission on HIV and the Law which found that legal environments, including protective jurisprudence, can play a powerful role in the wellbeing of people living with HIV and also those vulnerable to HIV. In light of the Commission's recommendations, judges across Africa committed to the creation of a forum on HIV, human rights and the law. The forum, led by a small number of senior judges, set a goal to meet annually to share experiences, challenges and new developments in HIV-related, and more recently also TB-related, jurisprudence. In doing so, they aimed to support and sustain judicial excellence on HIV, TB and the law, and to better uphold the rights of all people, including key populations affected by HIV and TB.

Forum meetings are owned and planned by the judges, based on identified areas of interest and new developments in jurisprudence relating to HIV, TB and key populations. UNDP's Regional Service Centre for Africa supports the forum by identifying relevant technical experts and ensuring the participation of key populations to share their expertise and experiences with the judiciary. This allows the judiciary

to hear directly from affected population groups and civil society organisations on the impact of laws, policies and practices. At the request of judges, UNDP has also developed an online searchable database of HIV-related judgements which has been shared with participants. The database continues to grow and has proven to be a useful tool.

In 2017, the fourth Africa Regional Judges' Forum, convened by UNDP through the Africa Regional Grant on HIV: Removing Legal Barriers, was attended by nearly 50 participants including 30 judges from 16 countries. In addition to legal, medical and scientific updates, judges heard about the lived experiences of a transgender doctor, a transgender man, a man who acquired TB while in prison, two women who were forced into marriage as children, and a person who uses drugs and is currently on methadone treatment.

According to feedback from the judges themselves, the Judges' Forum has had a significant positive impact on their own personal awareness and development, on their ability to sensitise other members of the judiciary, and on their access to reference materials. The impact is evident in positive judicial decisions in several cases where judges have referenced international and regional commitments as well as jurisprudence and information accessed via the Judges' Forum, to support decision-making and uphold protective outcomes for people living with HIV, TB and vulnerable and key populations. For example, in Botswana in 2015, Justice Key Dingake, an inaugural member of the Judges' Forum, found the failure of the government to provide HIV treatment to foreign prisoners (as was required under a previous court decision) to be unlawful, and ordered the government to provide treatment immediately.

In 2016, in a landmark judgement in Malawi involving the overly broad criminalisation of HIV transmission, Justice Zion Ntaba drew on her experience with and resources from the Judges' Forum, and overturned the conviction of an HIV-positive woman for negligently and recklessly committing an act "likely to spread the infection of any disease which is dangerous to life" while accidentally breastfeeding another woman's child. The woman did not know or believe that breastfeeding was likely to transmit HIV, the breastfeeding of another's child was accidental, and the child did not contract HIV. In her decision, Justice Ntaba noted that the proceedings in the trial court were "blatantly bias[ed]" against the woman in violation of her right to a fair trial. She also made clear that the role of the criminal law should be to protect people living with HIV from "the unjust consequences of public panic".

In 2017, the Judges' Forum established a Steering Committee comprising five judges from the forum and led by Justice Dingake of Botswana. The Steering Committee will set the strategic direction of the forum and work with UNDP and other partners to implement a plan of action, including discussions for expanding the forum to cover countries from the Middle East and Eastern Europe regions.

"One of the key issues in the case was how HIV can be transmitted and the risk of HIV transmission when breastfeeding. I was able to use the information from previous meetings of the Judges' Forum as well as material on the database to assist me in determining whether breastfeeding a baby put the baby at significant risk of contracting HIV."
Justice Zion Ntaba

24 UNAIDS. *Judging the epidemic: A judicial handbook on HIV, human rights and the law*. Geneva, 2013. At: http://www.unaids.org/sites/default/files/media_asset/201305_Judging-epidemic_en_0.pdf

25 Barré-Sinoussi, F et al. *Expert consensus statement on the science of HIV in the context of criminal law*. Journal of the International AIDS Society, 2018.

26 UNAIDS. *Judging the epidemic: A judicial handbook on HIV, human rights and the law*. Geneva, 2013. At: http://www.unaids.org/sites/default/files/media_asset/201305_Judging-epidemic_en_0.pdf



8. THINKING AND WORKING INTERSECTIONALLY

“Part of what we know is that HIV criminalisation does not exist in a vacuum. It exists in the context of lots of other forms of social inequality and the way that bodies are policed and surveilled very differently.”

Naina Khanna

Executive Director, Positive Women’s Network USA²⁷

HIV criminalisation is rooted in stigma and inequality and is intrinsically linked to the criminalisation of behaviours or identities associated with other, often intersecting, populations. Advocacy is complex, requiring localised, multifaceted strategies targeting the many different processes and actors who initiate, undertake and decide legal proceedings against people living with HIV.

Working intersectionally requires consideration of the lived experiences of people with multiple social identities and how those identities intersect to affect access to power, health and wellbeing. Social categories such as gender, race, sexual orientation, class, and many others may be useful when considering how populations are affected by an issue, but categories can mask the experiences of individuals, who experience social inequality through the interaction of the many characteristics and social identities that contribute to their experiences, at times amplifying prejudice and discrimination.

Intersectionality encourages exploration of stigma and discrimination, requiring the questioning of power: who has it; who has access to it, and who is excluded? That work is vital to consideration of healthcare barriers and to the development of strategies to address HIV criminalisation, including consideration of whose voices are heard, why other voices are not valued, and how work can be more inclusive. Done well, intersectional work encourages solidarity as people of disparate identities and backgrounds unite around commonalities and a shared struggle against discrimination and oppression.

At a pragmatic level, we know that HIV criminalisation frequently intersects with other areas of people’s lives through which they face discrimination and disadvantage, including issues relating to drug use, gender, gender identity, immigration status, poverty, race/ethnicity, sex work and sexuality. Organisations are working to acknowledge and explore intersectionalities in various ways including prioritising the issue through:

- **Conferences and workshops** where intersectionality has been approached in different ways including:
 - Accountability International’s ‘**Challenging Criminalisation Globally: unPolicing identity, morality, sexuality and bodily autonomy**’ events: the first, at Yale University in April 2018, and the second at AIDS 2018 in Amsterdam. The events brought together multiple stakeholders to hear how criminalisation and legal barriers impacting key populations undermine the HIV response in diverse and intersecting ways. The meetings aimed to mobilise a critical mass to advance a global discourse on the impact of penal provisions on capacity to end the AIDS epidemic and achieve the Sustainable Development Goals.
 - At the 2016 and 2018 ‘HIV is Not a Crime’ training academies where organisers have increased efforts to ensure the intersecting issues of race, gender, gender identity, immigration status, and sexuality are given as much weight as strategy sessions such as ‘working with legislators and lawyers’.

- **Training** including training programmes to explicitly consider issues related to the criminalisation of other illnesses or diseases which may or may not intersect directly with HIV. For example, the [Southern African Lawyers for HIV and TB Justice training programme](#) considering synergies between HIV and TB criminalisation, and the Center for HIV Law and Policy’s work based on their expertise in HIV criminalisation, including a webinar and meeting on the criminalisation of viral hepatitis.
- **Community resources** including the production of capacity-building tools that address criminalisation across intersecting issues, for example, Amnesty International’s *Body Politics: A Primer on Criminalization of Sexuality and Reproduction*.
- **Social science research** including works by Baskins, et al.: *Criminal Laws on Sex Work and HIV Transmission: Mapping the Laws, Considering the Consequences*; and Patterson, et al.: *Prevalence and predictors of facing a legal obligation to disclose HIV serostatus to sexual partners among people living with HIV who inject drugs in a Canadian setting: a cross-sectional analysis*.
- **Campaigns** including the US ‘Call to Action for Racial Justice in HIV Criminal Law Reform’ which involves a coalition of racial justice, HIV and criminal justice organisations coming together to support law reform grounded in racial justice, recognising the likelihood that a reliance on science-based arguments will leave people behind.

CASE STUDY

CALIFORNIANS FOR HIV CRIMINALIZATION REFORM

In October 2017, advocates scored a major victory in California when lawmakers voted to reform a number of criminal statutes that specifically targeted people living with HIV. Changes include:

- Repeal of the law relating to ‘solicitation’ while HIV-positive.
- Reform of the law on HIV non-disclosure prior to sexual activity, which changed from a felony (with up to eight years’ imprisonment) to a misdemeanour (with a maximum penalty of six months).
- Limiting the scope of the law, requiring both intent to transmit HIV and proven HIV transmission.

Campaign priorities were informed by earlier research from The Williams Institute which had found that HIV criminalisation in California involved a range of intersecting issues, and that specific populations were bearing the brunt of its enforcement. Specifically, it found that women comprised 43% of those prosecuted under HIV-specific laws despite comprising only 13% of people living with HIV in California. Further, 67% of people prosecuted were black or Latino/a, although this group comprised only 51% of people living with HIV. The majority of charges related to sex work, with felony solicitation charges disproportionately impacting LGBTQ (lesbian, gay, bisexual, transgender and queer) youth and transgender women of colour. Further, 98% of convictions did not require any proof of intent to transmit HIV.²⁸ (See case study, [Successful advocacy based on evidence: The work of The Williams Institute in California](#).)

Law reform work in California was driven by a broad coalition of organisations and individuals as needed to represent the interests of multiple affected communities. Californians for HIV Criminalization Reform (CHCR) included the American Civil Liberties Union (ACLU) of California, APLA Health (formerly AIDS Project Los Angeles), Black AIDS Institute, Erotic Service Provider Legal Educational and Research Project, Equality California, Health Officers Association, Lambda Legal, Los Angeles HIV Law and Policy Project, Los Angeles LGBT Center, Mexican American Legal Defense and Educational Fund, Positive Women’s Network-USA (PWN-USA), Sex Workers Outreach Project, and

Transgender Law Center. Significant effort was made to develop a working structure that addressed power imbalances and developed trust between the principal players so decisions could be made quickly, reflecting input from all, particularly those most affected.

In building the coalition, community organisations pushed for the realisation of MIPA – the meaningful involvement of people living with HIV – which meant ensuring mechanisms for people living with HIV and their representative organisations to provide leadership and direction. Aside from the involvement of representative organisations, at times it was necessary to organise meetings of people living with HIV specifically to get input on decisions informing the direction the bill might take. It also meant practical support like paying for transportation to events and catering for participants.

In California, MIPA was clearly not a race- or gender-neutral priority, with advocacy requiring the involvement of black and brown people living with HIV, and also people from other targeted communities such as trans people and sex workers. Organisations used a range of initiatives to increase the meaningful involvement of those most affected, who were often the same people already disadvantaged and locked out of conversations by issues additional to HIV status. For example, PWN-USA used the law reform process as a catalyst for community education and mobilisation. That included recognition of the need to ensure communities most affected by the law were supported and resourced to participate in law reform efforts: an opportunity to build political power in communities. In one instance, before an advocacy day organised by Equality California, PWN-USA held legislative training to ensure communities were informed about the impacts of the bill and were ready to speak to legislators about the impact of the laws in their lives. Further, PWN-USA defined California's criminal laws as being based on structural violence but also applied gender analysis to explain that those laws left women vulnerable to gender-based violence and undermined reproductive rights. The application of gender and racial justice analysis, and recognition of the intersection of HIV criminalisation and other areas of structural disadvantage and prejudice, encouraged many from outside the inner circle of HIV activist organisations to sign on to the campaign.

27 Khanna, N. *Beyond Blame 2018 – Plenary 2*. At: https://www.youtube.com/watch?v=TbZ_56PAir0

28 The Williams Institute. *HIV Criminalization in California: What We Know*. 2017. At: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-What-We-Know-2017.pdf>



9. USING SCIENCE FOR JUSTICE

“Scientists now have a clear understanding that the benefits of effective antiretroviral treatment are transformative. Now the challenge is to get jurists and legislators to understand the science.”

Chris Beyrer,

Johns Hopkins Bloomberg School of Public Health²⁹

Most HIV-related prosecutions relate to a perceived risk of HIV transmission during sexual activity, biting, spitting, scratching or, occasionally, breastfeeding. Notably, prosecutions frequently involve cases where no harm was intended; where HIV transmission did not occur, was not possible or was extremely unlikely; and where transmission was neither alleged nor proven beyond a reasonable doubt.³⁰

Criminal law continues to be applied in a manner that is inconsistent with contemporary medical and scientific evidence: overstating the risk of HIV transmission and the potential for harm to a person’s health and wellbeing. In turn, the misuse of criminal law, grounded in an exaggerated sense of risk and harm associated with HIV, contributes to misinformation about HIV and feeds fear, stigma and discrimination. Despite remarkable scientific advancements, many people living with HIV remain vulnerable to prosecution in part because up-to-date science on HIV-related risks and harm is not recognised in criminal law and policy.

Relying on science alone will not end HIV criminalisation, but science offers the possibility of greatly reducing the number of prosecutions that are occurring while further inroads are made to address HIV-related stigma, prejudice and disadvantage that drive the criminal law response. Over the last decade, a better appreciation for, and application of, science has delivered improvements in numerous jurisdictions. The Netherlands was the first country to consider low viral load as a factor in HIV risk in 2005, resulting in the decriminalisation of all but intentional exposure or transmission.³¹ Following the ‘Swiss statement’ published in January 2008³² a growing number of courts, government ministries and prosecutorial authorities have accepted antiretroviral therapy’s impact on reducing the risk of both HIV exposure and transmission. In 2011, Denmark suspended its HIV-specific law, due to the government’s understanding of the reduced ‘harm’ of HIV as a result of effective treatments. The ‘Canadian statement’ on sexual HIV risk, published in 2014, began affecting lower court rulings and subsequently has influenced discussions with and by federal and some provincial Attorneys General, including contributing to decisions in a growing number of Canadian jurisdictions to cease prosecution in certain cases (e.g. where an accused has a suppressed viral load). In 2018, the ‘Swedish statement’ on sexual HIV risk played out in a Supreme Court ruling that having an undetectable viral load precludes legal liability. General laws in Norway and North Carolina, amended in 2017/18, also exclude prosecution of people with an undetectable viral load.

During the period covered by this report, a number of agencies undertook projects to promote an evidence-informed approach to the criminal law as a means to limit the overuse of criminal law and ensuing miscarriages of justice:

- In July 2018, 20 of the world’s leading HIV scientists published the peer-reviewed *Expert consensus statement on the science of HIV in the context of criminal law*,³³ which describes current evidence on HIV transmission, treatment effectiveness and forensics so that HIV-related science may be better understood in criminal law contexts. (See further details in the case study below.)

- In September 2018, *The Lancet* published an editorial promoting the Expert Consensus Statement, titled, *HIV criminalisation is bad policy based on bad science*. The editorial argues that criminalising people for having HIV is a violation of human rights that undermines public health efforts to control the epidemic. Further, the article recognised that HIV criminalisation alienates and stigmatises already vulnerable populations at a time when their engagement with services is most critical.³⁴
- Inspired by the work of the *Canadian consensus statement on HIV and its transmission in the context of criminal law*, in November 2016, leading Australian scientists and health practitioners specialising in HIV authored *Sexual transmission of HIV and the law: an Australian medical consensus statement*. This statement articulates modern science on HIV transmission risk, the way HIV treatments have radically improved quality of life and life-expectancy of people living with HIV, and the limitations of current forensic science; aiming to make that information accessible to Australian courts.
- Researchers continued efforts to collect and describe important scientific evidence in a form accessible to courts and policy makers, including the expert work of Cresswell, et al. in *A systematic review of risk of HIV transmission through biting or spitting: implications for policy*³⁵ and Abecasis, et al. in *Phylogenetic analysis as a forensic tool in HIV transmission investigations*.³⁶

CASE STUDY

EXPERT CONSENSUS STATEMENT ON THE SCIENCE OF HIV IN THE CONTEXT OF CRIMINAL LAW

In July 2018, the peer-reviewed *Expert consensus statement on the science of HIV in the context of criminal law*³⁷ was published in the *Journal of the International AIDS Society* (JIAS), authored by 20 of the world's leading HIV scientists and endorsed by 70 others, as well as the International AIDS Society (IAS), International Association of Providers of AIDS Care (IAPAC) and the Joint United Nations Programme on HIV/AIDS (UNAIDS). The authors were prompted by concerns raised by civil society that the criminal law is often applied in a manner that is inconsistent with contemporary scientific evidence, including overstating both the risk of HIV transmission and the potential for harm to a person's health and wellbeing.

The Expert Consensus Statement was written to assist scientific experts considering individual criminal cases, and to encourage governments and those working in the criminal justice system to make all efforts to ensure a correct and complete understanding of current scientific knowledge informs any application of the criminal law in cases related to HIV. It describes current evidence on HIV transmission, treatment effectiveness and forensics so that HIV-related science may be better understood in criminal law contexts.

As of writing, the Expert Consensus Statement is ranked #1 of (1316) articles published by JIAS, and in the top 5% of research outputs ever, as tracked by Altmetric. A successful media campaign saw it picked up by at least 57 news outlets (see [Communicating the Expert Consensus Statement: maximising media attention](#)) with an additional strong social media impact.³⁸ It has also sparked articles and editorials in *The Lancet*, *The BMJ* and the *Canadian Medical Association Journal*.

In the six months following the launch of the Expert Consensus Statement, lawyers and advocates have begun putting it to good use. For example, the Expert Consensus Statement has been used:

- by the Kenya Legal & Ethical Issues Network on HIV and AIDS (KELIN), supporting five people living with HIV petitioning for Section 26 of Kenya’s Sexual Offences Act to be declared unconstitutional.
- by People PLUS in advocacy to the health and justice arms of the government of Belarus.
- by a coalition of organisations³⁹ at Zimbabwe’s 4th Symposium on HIV and the Law which hosted representatives of the executive, legislature, judiciary, community-based organisations, lawyers, and survivors of criminalisation to get commitment for reform and repeal of Zimbabwe’s HIV criminalisation law.
- by ALCS (Association for the Fight against AIDS) in Morocco in their advocacy meetings with the Public Prosecutor’s Office, General Directorate of National Security and the Higher Institute of Magistracy. ALCS has also undertaken sensitisation and capacity-building seminars for judges and prosecutors, where the Expert Consensus Statement has proven a valuable resource.⁴⁰

ALCS staff with judges and prosecutors attending training on HIV, human rights and gender, December 2018. Photo credit: ALCS.



CASE STUDY

USING SCIENCE FOR JUSTICE: IMPACT OF THE 2014 CANADIAN STATEMENT

In 2012, the Supreme Court of Canada ruled that people living with HIV can continue to be convicted under sexual assault law for not disclosing their HIV-positive status before having sexual contact that poses a “realistic possibility of transmission”. However, the Supreme Court was only prepared to rule that there was no realistic possibility of transmission (through vaginal sex) if the act included **both** use of a condom **and** if the partner with HIV had a “low” viral load (defined as below 1500 copies/ml). In other words, a person could be convicted of aggravated sexual assault even if they had used a condom **or** had an undetectable or low viral load. The Supreme Court noted that the law might evolve in light of advances in treatment (and its impact upon transmission risk), at least with respect to the issue of a person’s viral load.

In response to the Supreme Court decision, which was widely criticised for being at odds with science, six medical experts developed the *Canadian consensus statement on HIV and its transmission in the context of criminal law* (‘the Canadian statement’) which was published in 2014 in the *Canadian Journal of Infectious Diseases & Medical Microbiology* with the endorsement of more than 75 additional scientific experts from across the country, as well as the Association of Medical Microbiology and Infectious Disease Canada.⁴¹

The Canadian statement was developed with the specific objective of providing members of the judiciary and experts testifying in court with the right tools to decide HIV non-disclosure cases based on

scientific evidence. The experts did not take a position on HIV criminalisation or develop a document intended for use in broader public health education about safer sex. Instead, they purposely used bold, simple and clear language to describe the possibility of HIV transmission under various conditions through sex, biting or spitting as existing along a continuum ranging from “low possibility to negligible possibility to no possibility of transmission” based on the most recent and reliable scientific evidence available. They also clearly defined HIV as a “chronic manageable condition”.

While lawyers and experts on HIV criminalisation were consulted during the development of the Canadian statement and provided some research support, activists’ role was focused on promoting, distributing and using the statement after its publication. In particular, the Canadian HIV/AIDS Legal Network and partners:

- generated broad media coverage about the statement and its content upon its release
- used and cited the statement in court interventions
- have constantly brought the statement to the attention of defence counsel and scientific experts involved in HIV non-disclosure cases
- organised workshops for lawyers to better understand the content and possible application of the statement
- have presented about the statement at many conferences, including scientific conferences, to keep the community informed, engaged and mobilised
- have supported experts reaching out to provincial Attorneys General and lobbied for in-person meetings with policy makers to include medical experts
- published an article in the *Journal of the International AIDS Society* to encourage other groups around the world to take similar action.⁴²

The Canadian statement has had an important impact both inside and outside Canada. The mobilisation of scientists, echoed by some public health authorities⁴³, increased the visibility and credibility of activists’ calls for action against unjust prosecutions – calls which crystallised in the *Community Consensus Statement*, developed by the Canadian Coalition to Reform HIV Criminalization (CCRHC) through national consultations and released shortly before World AIDS Day 2017, with more than 160 organisations’ endorsement.

Lawyers and scientific experts have successfully used the scientific Canadian statement in court and in negotiations with prosecutors. There has been growing recognition, including by federal and some provincial governments, of the role of science in cases of HIV non-disclosure and the impact of viral load on the possibility of HIV transmission under various conditions.⁴⁴ In December 2018, directives for Crown prosecutors precluding the application of the criminal law against people living with HIV with a suppressed viral load (i.e. under 200 copies/ml) were released by the provincial *Attorney General in Ontario*⁴⁵ and, for federal Crown prosecutors, by the *Attorney General of Canada*.⁴⁶ The prosecution service of the province of Alberta also confirmed a similar stance in writing⁴⁷ (albeit not in the form of an official directive or policy). The 2014 Canadian statement has also inspired other domestic statements and informed the development of important statements internationally, including the U=U consensus statement and campaign⁴⁸ and the recent global *Expert consensus statement on the science of HIV in the context of the criminal law*.⁴⁹

HUMAN RIGHTS + SCIENCE = HIV JUSTICE

“These HIV-specific laws, established at the height of fear and confusion around AIDS, still exist long after developments in science have rendered them completely redundant and even counterproductive, now serve only to remind us that ignorance and stigma remain our greatest obstacle as we work to achieve an AIDS-free generation.”

Naomi Wilding

Elizabeth Taylor AIDS Foundation

Use of modern science in the courtroom has the potential to significantly decrease the number of prosecutions against people living with HIV for non-disclosure, exposure, and transmission, given scientific evidence shows that people continue to be convicted where there was no or negligible possibility of HIV transmission. In fact, many people living with HIV are currently serving lengthy prison sentences for such acts. The issue is particularly compelling given the international push to increase treatment access to all people living with HIV and the likelihood that increasing numbers of people living with HIV will have a low or undetectable viral load.



Human Rights + Science = HIV Justice. Photo credit: HIV Justice Network.

Evidence of treatment effectiveness also shows that the harms of HIV infection for those who can access treatment are minimal when compared to the dreadful consequences of HIV infection when many of the highly problematic HIV laws were written decades ago. While we push for these laws to be repealed, prosecutors' understanding of modern treatments should mean people are charged with lesser offences or not charged at all. Still, it's not good enough.

Using HIV science in advocacy against HIV criminalisation comes with real risks attached. Consequently, great care must be taken when framing advocacy arguments to ensure that the many people who are not on treatment or cannot obtain a low or undetectable viral load (for whatever reason) do not become targets. We know how this plays out: the courts' incredulity that a person is not on treatment; the characterisation of complex choices as simple and selfish; the usual suspects – those battling prejudice, discrimination and structural inequality on numerous fronts are targeted as individuals and characterised as anti-social, irresponsible and criminal. Questions of science will not answer the absurdity of many being prosecuted despite no malicious thought, plan or action and no intent to cause harm.

HIV criminalisation is grounded in stigma: the same stigma that makes it difficult for people to disclose their HIV status to friends, family, employers, and before engaging in acts which may include a risk of HIV transmission; the same kind of stigma that attaches itself to issues like race, sexuality, gender, sex work, and drug use that sees people from particular communities targeted by the criminal justice system while failed by the public health system; stigma that continues to slow down concerted efforts to end the HIV pandemic.

If science is to be used to leverage change then criminalisation arguments must call on governments to answer why treatments and quality healthcare is not available to all, and why structural inequalities are so apparent when considering who has access to healthcare. As we push to get modern science into the courtroom, we must also push beyond simplistic strategy which has the potential to set up a false divide between members of our communities. We must work together to ensure no one is left behind.

See also *The Consensus Statement on HIV “Treatment as Prevention” in Criminal Law Reform, 2017*, at: <https://www.hivtasprimlaw.org/the-consensus-statement/> and HIV JUSTICE WORLDWIDE’s press release on the release of the Expert Consensus Statement, at: <http://www.hivjustice.net/news/bringing-science-to-justice-end-hiv-criminalisation-now>

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- 29 HIV Justice Network. *Beyond Blame: Challenging HIV Criminalisation Meeting Report*. 2018. At: <http://www.hivjustice.net/wp-content/uploads/2018/10/Beyond-Blame-2018-Report.pdf>
- 30 Barré-Sinoussi, F et al. *Expert consensus statement on the science of HIV in the context of criminal law*. Journal of the International AIDS Society, 2018.
- 31 van Kouwen, W and Bruinenberg, K. *Supreme Court of the Netherlands, Criminal Division. HIV Transmission: Criminalisation. The Journal of Criminal Law*, 70: 485-489, 2006.
- 32 Vernazza, P et al. *Les personnes séropositives ne souffrant d'aucune autre MST et suivant un traitement antirétroviral efficace ne transmettent pas le VIH par voie sexuelle*. Bulletin des médecins suisses, 89 (5), 2008.
- 33 Barré-Sinoussi, F et al. *Expert consensus statement on the science of HIV in the context of criminal law*. Journal of the International AIDS Society, 2018.
- 34 Editorial. *HIV criminalisation is bad policy based on bad science*. The Lancet, 5:9, Pe473, 2018.
- 35 Cresswell, FV et al. *A systematic review of risk of HIV transmission through biting or spitting: implications for policy*. HIV Medicine, 2018.
- 36 Abecasis, AB et al. *Phylogenetic analysis as a forensic tool in HIV transmission investigations*. AIDS, 32:543-554, 2018.
- 37 Barré-Sinoussi, F et al. *Expert consensus statement on the science of HIV in the context of criminal law*. Journal of the International AIDS Society, 2018.
- 38 *Altmetric Report for: Expert consensus statement on the science of HIV in the context of criminal law*.
- 39 The Zimbabwean National AIDS Council and Zimbabwe Lawyers for Human Rights hosted the 4th Symposium on HIV and the Law with a special focus on the Criminalisation of HIV Transmission with support from SALC, the AIDS and Rights Alliance for Southern Africa, HIV JUSTICE WORLDWIDE and UNWomen.
- 40 Correspondence between ALCS and HIV Justice Network
- 41 Loutfy, M et al. *Canadian Consensus Statement on HIV and its transmission in the context of the criminal law*. Canadian Journal of Infectious Diseases & Medical Microbiology, 25, 3:135-140, 2014
- 42 Kazatchkine, C et al. *Ending overly broad HIV criminalization: Canadian scientists and clinicians stand for justice*. Journal of the International AIDS Society, 18:20126, 2015.
- 43 Winnipeg Regional Health Authority. *Position Statement on Harm Reduction*. 2016. At: www.wrha.mb.ca/community/publichealth/files/position-statements/HarmReduction.pdf.
- 44 See for instance, R. v. J.T.C., 2013 NSPC 88; R. v. J.T.C., 2013 NSPC 105; R. v. C.B., 2017 ONCJ 545, R v. Thompson, 2016 NSSC 134; Department of Justice Canada. *Criminal Justice System’s Response to Non-Disclosure of HIV*. 2017. At: <http://www.justice.gc.ca/eng/rp-pr/other-autre/hivnd-vihnd/index.html>
- 45 Ministry of the Attorney General. *Crown Prosecution Manual – D. 33: Sexual Offences against Adults*. 2017.
- 46 Attorney General of Canada. *Directive to Director of the Public Prosecution Service*. Canada Gazette, I:152, 2018.
- 47 Letter from Mr Eric Tolppanen, Assistant Deputy Minister, Alberta Crown Prosecution Service Division, Alberta Ministry of Justice and Solicitor General, to Richard Elliott, Executive Director, Canadian HIV/AIDS Legal Network, January 18, 2019, on file.
- 48 Prevention Access Campaign. *Risk of Sexual Transmission of HIV from a Person with HIV who has an Undetectable Viral Load: Messaging Primer*. 2016. At: <https://www.preventionaccess.org/consensus>.
- 49 Barré-Sinoussi, F et al. *Expert consensus statement on the science of HIV in the context of criminal law*. Journal of the International AIDS Society, 2018.



10. ENGAGING WITH POLICY MAKERS

“The sight of thousands of protesters marching through the streets of Melbourne with signs reading ‘#REPEAL19A’ made the evening news. ... Behind the scenes, we used every social event and reception to buttonhole politicians and push our case, highlighting the goodwill that an announcement would generate for them on the international stage.”

Paul Kidd,

Victorian HIV Legal Working Group⁵⁰

Repeal Section 19A.
Photo by Paul Kidd.



Public policy describes the intersecting systems of law, regulation, programme priorities and funding overseen by government and public servants. Public policy directly influences the justice system – after all it is politicians who make laws – and police and public prosecutors who decide who should be investigated and prosecuted. Further, local health departments are generally delegated responsibility for designing and delivering decentralised HIV responses. Consequently, efforts to shape public policy are a vital form of advocacy against HIV criminalisation.

Around the world, advocates are working to influence the policy process: documenting the experiences of those who have been prosecuted, identifying the harms of HIV criminalisation, reviewing current laws and procedures, devising alternative policies, and communicating with politicians and public servants. Never a straightforward process, advocacy often involves working to dispel people’s preconceptions, challenging values that undermine HIV strategy and human rights, and pushing to get factual information into the debate. It also involves identification of potential allies, co-ordination of disparate (sometimes conflicting) interests among allies, the stamina to start again from scratch when faced with a change of government or staff, and the wherewithal to seize opportunities as they arise.

During the period covered by this report, advocates across many countries engaged with policy makers with notable results, including in numerous cases described in this report: Louisiana (page 30), Malawi (page 31), California (page 40), Canada (page 44) and Colorado (page 59).

In Belarus, advocates have worked tirelessly to communicate the harms of Belarus's HIV criminalisation provisions and advocate for repeal of Article 157 of Belarus's Criminal Code, which criminalises placing a person 'in danger of being infected with HIV' (i.e. exposure), and 'thoughtlessly or negligently' transmitting HIV. The exposure provision, one of the most punitive in the world, has been widely used, with more than 200 cases during the past three years. Charges have been laid regardless of whether protective measures were taken or whether a partner wanted the person prosecuted, with no defence if a person had disclosed their HIV-positive status and their partner consented to actions that may have included a risk of HIV transmission.



Representatives of People PLUS outside Gomel Court.
Photo credit: People PLUS

Advocacy by People PLUS, (Belarus's PLHIV-representative community organisation), has included meetings with staff at the Department of Epidemiology which is required to refer all cases of HIV diagnosis to the Ministry of Internal Affairs for further investigation. Those meetings have resulted in an important procedural change: an agreement that at the commencement of any notice of investigation, people must be provided with the contact details for People PLUS in order to obtain advice about how to protect themselves during the investigation process. This initiative resulted in a 40% decrease in the number of prosecutions in the first quarter of 2018, with an almost 50% drop in Gomel region, where most prosecutions have occurred.

Further, People PLUS has taken grassroots experience to parliament, sitting with representatives from a range of health, justice, policing and national security agencies. Notably, People PLUS arranged for a number of people directly affected by the criminalisation provisions to give powerful testimony. People PLUS has also worked to broaden its support base, including meeting with the Chair of the Gomel Regional Court, hoping to reduce the number of prosecutions and to gain his support for further legislative changes.

In December 2018, advocacy delivered results, as **the Government of Belarus passed an amendment to the Criminal Code** introducing a defence for the first time: a person with HIV will no longer be held criminally liable for HIV exposure or transmission if they disclose their HIV-positive status and their partner consents. Further, it will be possible to revisit previous prosecutions. **While there is still much more to be done**, this success in Belarus is a tribute to the tireless and strategic work by community activists in Belarus with support from regional HIV community networks and their UN counterparts.

CASE STUDY

ENGAGING WITH POLICY MAKERS: HIV LAW REFORM IN THE DEMOCRATIC REPUBLIC OF CONGO

In 2008, the Democratic Republic of Congo (DRC) implemented an omnibus HIV law that aimed to protect people living with HIV. However, the law also included provisions penalising the 'deliberate' transmission of HIV (Article 45), and HIV non-disclosure (Article 41). Several people, including a woman living with HIV, have been prosecuted or threatened with prosecution on the basis of this law. Most prosecutions have not resulted in conviction unless the accused was also prosecuted for sexual assault; however, the laws remained of great concern.

Since 2010, members of the DRC's civil society have mobilised to reform the HIV law, believing that the HIV criminalisation provisions were discriminatory and should not be included in a law designed to protect people living with HIV. Notably, another criminal law already criminalises the 'deliberate' transmission of an "incurable sexually transmitted infection".

In 2018, following eight years of effective civil society lobbying, parliamentarians voted to amend Article 41 and abolish Article 45. The Congolese Union of Organisations of People Living with HIV (UCOP+), which played a leading role in reform efforts, attributes success to a number of factors, notably ensuring that the National AIDS Strategic Plan (2018- 2021) included the promotion of a supportive legal environment as a specific focus. Furthermore, civil society was able to build upon the 2013 *Legal Environment Assessment (LEA) by the United Nations Development Programme (UNDP)*, which recommended the repeal of Article 45, which was followed by a national dialogue on HIV and human rights, and capacity-building activities.

So, what happened in the eight years prior to the parliamentary vote? First of all, allies were identified among members of parliament who had participated in international meetings on human rights and HIV, or who had studied in a reputed medical university, as well as newly elected, younger parliamentarians open to education in this area.

Rather than justifying calls for reform by referencing international guidelines, the advocacy strategy focused on priorities in the DRC, particularly, the counter-productivity of HIV criminalisation in the fight against the epidemic and the issue of non-harmonised legislative provisions. Advocates looked for opportunities for one-on-one dialogue with parliamentarians throughout the process in order to avoid heated debates inside the Assembly.

These parliamentarians played a vital role in the reform process by bringing the project to their peers in various parliamentary forums, as well as during committee work and debates in the Assembly. They also supported civil society representatives in their dealings with decision-makers, for example, supporting them in meetings with the Presidents of both houses of the Assembly.

This work with parliamentarians was strengthened by efforts to identify and engage other allies, including HIV and human rights organisations, the National Working Group on Law and HIV, members of the government (in particular the Ministry of Justice and Health), magistrates, the National Commission of Human Rights and the media. Civil society also benefited from the experience of the HIV JUSTICE WORLDWIDE coalition and from the financial and technical support of UNDP, and were able to involve the leaders of international agencies, such as the Joint United Nations Programme on HIV/AIDS (UNAIDS), in strategic exchanges with national decision-makers.

While mobilisation in the DRC has led to reform of the HIV-specific legislation, the process was not without difficulty in the context of ever-present stigma and homophobia. Notably, legislative reforms take time, which can be discouraging and lead to the loss of allies and partners. These efforts can also lead to the questioning of other sections of the law related to HIV, which can complicate or slow down debates. In the DRC, for example, two sections on HIV testing of minors were added at the time of the reform. Attention will now turn to strategies to review other laws and facilitate greater ownership of the issue by people living with HIV.



11. USING INTERNATIONAL AND REGIONAL INSTRUMENTS

“When communities facing human rights violations have the opportunity to engage with international human rights mechanisms and UN organisations, they speak truth to power in the highest venues created by the peoples of the world. By speaking, community members not only reaffirm their own dignity and worth in the face of mistreatment, they put all governments on notice that they can be held accountable for failing to keep their commitments to human rights and to the HIV response.”

Laurel Sprague,

Special Advisor, Community Mobilization, UNAIDS

United Nations’ (UN) human rights instruments, agencies and other mechanisms provide normative legal frameworks and guidance to address human rights additional to those provided at state level, while various committees, agencies and treaty-based judicial mechanisms provide states with direction and assistance in the implementation of HIV-related rights. States’ obligations to promote and protect HIV-related human rights are defined in a range of international treaties and conventions. These legally binding agreements are supported by other, formal instruments such as the [UN Declaration of Commitment on HIV/AIDS](#) and [UN’s International Guidelines on HIV/AIDS and Human Rights](#).

Although states retain sovereignty over their domestic laws, UN mechanisms can serve as an important tool to recognise rights violations and press for reform, including those aiming to preserve human rights and improve HIV responses. Contrary to mistaken assertions that HIV epidemics can be won by governments taking ‘a hard line’ (e.g. against drugs, against sex workers, against homosexuality, etc.), research has consistently shown that “the advancement of both public health and human rights [are] inextricably linked and mutually reinforcing.”⁵¹ Community ownership of HIV strategy pays dividends, every time.

International mechanisms are routinely used to push for specific targets (for example, the HIV Millennium Goals or the 90/90/90 treatment goals) but also to more generally advance the rights of people living with HIV and other key populations, which in turn accelerates an effective state response to HIV. A statement or report by an international body denouncing a country’s laws and practices as contrary to human rights and/or recommendations about how states should proceed can be an authoritative advocacy tool when engaging with policy makers or before courts at a national level. From a community perspective, this potential for use in HIV criminalisation advocacy is only just beginning to be explored. During the period covered by this report, trailblazing community agencies have drawn attention to the issue of HIV criminalisation through the use of international mechanisms.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

- **Canada** – In November 2017, the UN Committee on the Elimination of Discrimination against Women recommended that Canada limit the application of criminal law provisions to cases of intentional HIV transmission, as recommended by international normative agencies such as UNAIDS

and UNDP.⁵² The committee welcomed the Canadian government’s intention to review the use and application of criminal norms to certain HIV issues, including the troubling application “of harsh criminal sanctions (aggravated sexual assault) against women for not disclosing their HIV status to sexual partners, even when the transmission is not intentional, when there was no transmission or when the risk of transmission was minimal”.⁵³

Those recommendations were the direct result of a Canadian HIV/AIDS Legal Network submission on the rights of women living with HIV, also addressing the rights of women who use drugs, the rights of women in sex work, and the rights of incarcerated women.⁵⁴ The Canadian HIV/AIDS Legal Network’s shadow report asked that Canada:

- limit the use of the criminal law to the intentional transmission of HIV
- ensure that the criminal law under no circumstances is used against people living with HIV for not disclosing their status to sexual partners where they use a condom, practise oral sex or have condomless sex with a low or undetectable viral load; and
- mandate that the offence of sexual assault not be applied to HIV non-disclosure as it constitutes a stigmatising and harmful misuse of this offence.

The Canadian HIV/AIDS Legal Network’s submission to the CEDAW committee is the first-known example of this mechanism being used to advocate against HIV criminalisation. It is also the first time a UN human rights treaty body has directly called attention to the issue of unjust prosecutions of people living with HIV for not disclosing their status in Canada.

See also the Tajikistan case study below.

UN CONVENTION AGAINST TORTURE

- **Russia** – Advocates in Russia presented data from the Eurasian Women’s Network on AIDS (EWNA) regional report at the 64th session of the UN Committee Against Torture in July and August 2018. An alternative report was prepared for the session by representatives of the Russian community of people living with HIV, prioritising two thematic areas: barriers to access to antiretroviral therapy and the criminalisation of HIV transmission (page 4 in the report).

UNAIDS PROGRAMME COORDINATING BOARD

- **Belarus** – Advocates have used internal UN mechanisms to push for HIV criminalisation reforms. At the December 2017 meeting of UNAIDS Programme Coordinating Board, the Global Network of People Living with HIV (GNP+) highlighted the extraordinary number of prosecutions that had recently occurred in Belarus. Following that, discussions with the Minister of Health and Minister of Justice led to agreement to develop a joint strategy to address the over-criminalisation of HIV.

CASE STUDY:

USING INTERNATIONAL AND REGIONAL INSTRUMENTS: CEDAW RECOMMENDS AGAINST HIV CRIMINALISATION IN TAJIKISTAN

In an important moment for the entire Eastern Europe and Central Asia (EECA) region, the 71st Session of the UN Committee on the Elimination of Discrimination against Women recommended that Tajikistan “decriminalise HIV/AIDS transmission (article 125 of the Criminal Code) and repeal the

Government decrees of 25 September 2018 and 1 October 2004, prohibiting HIV-positive women from pursuing a medical degree, adopting a child or being a legal guardian”.⁵⁵

That recommendation is a direct result of advocacy by the Tajikistan Network of Women Living with HIV supported by the committee considering Tajikistan’s compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Their shadow report was prepared with the technical support of the Eurasian Women’s Network on AIDS (EWNA). The report outlined that women and girls living with HIV are suffering multiple forms of discrimination and stigma within family and society, including some being unable to access certain types of healthcare because of discrimination and ostracism by healthcare practitioners in some health centres.

As well as calls to repeal HIV criminalisation provisions, their submission called for training for judges, police officers, prosecutors and representatives of the penitentiary system on the rights of people living with HIV in the context of international human rights and HIV standards, including consideration of the impact of gender.

Given the sensitive nature of proceedings, the issue of HIV criminalisation was not included in the NGO oral statement but presented during a lunchtime briefing with committee members. Community advocates outlined that article 125 exacerbates discrimination and effectively denies women living with HIV the right to sexuality, pushing some to suicide. In response, the CEDAW committee spokesperson referred to the feminisation of HIV in Tajikistan and highlighted the issue of HIV criminalisation during dialogue with representatives of the Tajikistan government during the meeting,⁵⁶ followed by formal recommendations in the CEDAW concluding observations on the 6th periodic report.⁵⁷

51 Mann, JM. *Health and human rights: if not now, when?* Health and Human Rights, 2:113-120, 1997.

52 Committee on the Elimination of Discrimination against Women. *Concluding observations on the combined eighth and ninth periodic reports of Canada**. 2016. At: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/03/PDF/N1640203.pdf?OpenElement>

53 Canadian HIV/AIDS Legal Network. *UN experts make historic recommendations to Canada: end unjust HIV criminalization, repeal law restricting supervised consumption services, and implement needle and syringe programmes in prison*. 2016. At: <http://www.aidslaw.ca/site/un-experts-make-historic-recommendations-to-canada-end-unjust-hiv-criminalization-repeal-law-restricting-supervised-consumption-services-and-implement-needle-and-syringe-programmes-in-prison/?lang=en>

54 Canadian HIV/AIDS Legal Network. *Review of Canada’s compliance with the Convention on the Elimination of all forms of Discrimination Against Women*. 2016. At: <http://www.aidslaw.ca/site/review-of-canadas-compliance-with-the-convention-on-the-elimination-of-all-forms-of-discrimination-against-women/?lang=en>

55 At 40 (e). The full text of the CEDAW recommendations can be found here: http://www.ewna.org/wp-content/uploads/2018/11/CEDAW_C_TJK_CO_6_29757_E.pdf

56 From 2:59 to 4:40 at: <http://webtv.un.org/meetings-events/human-rights-treaty-bodies/committee-on-the-elimination-of-discrimination-against-women/71st-session/watch/consideration-of-tajikistan-contd-1644th-meeting-71st-session-committee-on-the-elimination-of-discrimination-against-women-/5856237156001/?term=>

57 https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TJK/INT_CEDAW_NGO_TJK_31230_E.pdf



12. CHANGING LAWS THROUGH LEGAL PROCESSES

“The law can be a tool of oppression and stigma and a barrier to human rights but it can also be a powerful tool to advance HIV justice. Activists have used the law in many creative ways: they have used the legal process to set precedents to restrict unjust prosecutions; they have challenged the constitutionality of overly broad or unconstitutional laws in the courts; they have used human rights law, constitutional law and principles of criminal justice to advocate for justice. We must empower ourselves and each other to use the law to create change!”

Annabel Raw,

Southern African Litigation Centre

Defence lawyers around the world routinely defend people living with HIV for alleged HIV non-disclosure, exposure or transmission, often in circumstances where HIV transmission did not occur, was not possible or was extremely unlikely, and where transmission was neither alleged nor proven. In some places, legal organisations have worked to expand their networks of casework lawyers, for example, The Center for HIV Law and Policy’s [HIV Legal Collaborative](#), and Lambda Legal’s [Cooperating Attorney Network](#) in the US.

As well as supporting and defending individuals through trials, community organisations have used the legal process to advocate against HIV criminalisation in numerous ways. These efforts include:

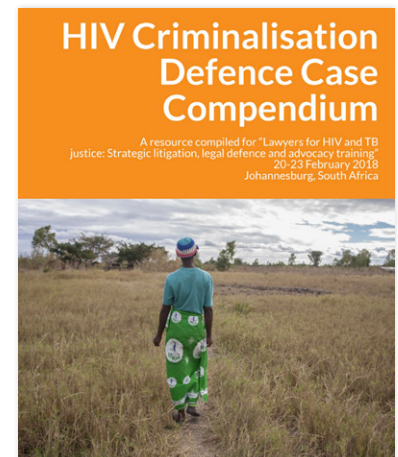
- **Preparation and distribution of core materials to better support defence lawyers**
HIV criminalisation cases are often complex, requiring specialist knowledge including an understanding of the most recent science on HIV transmission and transmission risk, the impact of treatments on life expectancy and long-term health, the limits of current technologies to identify who infected whom, and social issues including the many reasons why disclosing HIV-positive status remains difficult for many. To add to this complexity, information to help inform defence lawyers about previous HIV-related prosecutions and other relevant case law, may not be easily accessible.

During the period covered by this report, a number of community and not-for-profit legal organisations developed or amended resources to better equip lawyers and other advocates defending those accused. These include:

- *Responding to the Criminalization of HIV Transmission or Exposure: Resources for lawyers and advocates*, which includes documentation to support lawyers in the preparation of HIV criminalisation cases and selected publications that may be presented in court. *Canadian HIV/AIDS Legal Network, AIDES France, Groupe sida Genève, and the Global Network of People Living with HIV (GNP+)*
- *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, which includes laws and illustrative cases from every US state and territory as well as federal law related to people living with HIV in the criminal law and public health systems. *Center for HIV Law and Policy, United States*

- *HIV Criminalisation Defence Case Compendium* (English) / *Recueil De La Jurisprudence Pour Les Avocats De La Défense : Criminalisation Du VIH* (French), which includes all known criminal cases where there are records of a strong defence argument resulting in the acquittal of, or reduced penalty for, a person living with HIV who has been accused of HIV non-disclosure, exposure or transmission.

Developed by a coalition of partners (Southern Africa Litigation Centre, HIV JUSTICE WORLDWIDE, the Joint United Nations Programme on HIV/AIDS – UNAIDS, the AIDS and Rights Alliance for Southern Africa – ARASA, Stop TB Partnership, the Kenya Legal & Ethical Issues Network on HIV and AIDS – KELIN and African Regional Grant on HIV), the compendium was designed to support a specific training programme but its potential application goes way beyond. The compendium is available in English and French in PDF, with plans to develop an online version in 2019.



- **Acting as *amicus curiae* or intervener**

Acting as *amicus curiae* (“friend of the court”) or intervener provides an opportunity for a person or organisation who is not a party in a case to present expertise which may have a bearing on the case, particularly if the decision may affect the rights of other non-parties. In HIV criminalisation cases, this process has allowed HIV, human rights and other relevant organisations to submit evidence and arguments relating to a range of issues including the science of transmission risk, the operation of the public health system, the right to privacy, constitutional powers, and discrimination. Examples of *amicus curiae* presented during the period covered by this report⁵⁸ include:

- **Canada**

- R.v. Thompson, 2018 NSCA 13.⁵⁹ Court decision at <http://www.aidslaw.ca/site/download/16558/>

- **US**

- State of Missouri v Michael L Johnson. Court decision at *State of Missouri v Michael L Johnson*, Missouri Court of Appeals Eastern District, No. ED103217. Amicus brief at *State of Missouri v Michael L Johnson, Amicus brief, Missouri Court of Appeals (2016).pdf*⁶⁰
- State of Ohio v Orlando Batista. Court decision at *State v. Batista*, 151 Ohio St.3d 584, 2017-Ohio-8304. Amicus briefs at *Memorandum In Support of Jurisdiction, Amici Curiae Brief, Supreme Court of Ohio (2016)* and *Brief of Amici Curiae ACLU of Ohio Foundation, Inc. and Center For Constitutional Rights in Support of Appellant Orlando Batista.*⁶¹

Other examples of *amicus curiae* and Intervenor briefs may be obtained by contacting specialist HIV legal services directly.

- **Strategic litigation**

Strategic litigation can be a powerful tool to further advocacy objectives. Litigation may serve the public interest, impacting society beyond the specific interests of the parties involved. It may serve as a mechanism for government accountability and can promote the rights of marginalised populations. Whether a case is won or lost, it can also shape public opinion and bolster social movements by creating opportunities for activists to organise around a case. Strategic litigation is usually undertaken with some care given it includes risk such as unduly burdening a client who may not personally benefit from the trial and setting a detrimental precedent. Further, litigation can be extremely resource intensive over the long term.

During the period covered by this report, a number of agencies have sought to bring about legal and social change through the use of test cases. Many of these are included among the newsworthy cases on the [HIV Justice Network website](#). Highlights include:

- the 2016 constitutional challenge in Mexico, initiated by the National Commission on Human Rights with the Multisectoral Group on HIV/AIDS and STIs of Veracruz (and supported by HIV JUSTICE WORLDWIDE). The challenge related to a 2015 amendment to the State of Veracruz’s Criminal Code, making it a criminal offence to “wilfully” infect a person with a disease via sexual transmission. In May 2018, Mexico’s Supreme Court of Justice found the amendment to Article 158 of the Penal Code of the State of Veracruz to be invalid as it violated a number of fundamental rights: equality before the law; personal freedom; and non-discrimination.
- the 2016 appeal to the High Court of Australia in *Zaburoni v The Queen* (2016) to clarify the meaning of intent. The Court found that repeated acts of condomless sexual intercourse by a man living with HIV, though “callous and reckless”, did not constitute intention to infect his partner, and consequently he could be found guilty of a ‘lesser’ offence of inflicting grievous bodily harm which carried a maximum 14-year prison sentence rather than life imprisonment.
- the Estonian Network of PLHIV’s recent complaint to the European Court of Human Rights (supported by HIV JUSTICE WORLDWIDE) against the government of Estonia regarding the first-ever conviction of a person living with HIV under Estonian general criminal law for allegedly transmitting HIV to two persons. The Network has argued that the case has negatively impacted the whole community of people living with HIV in Estonia, increasing stigma and posing a barrier to accessing HIV care.

The examples below are a sample of cases, from the period covered by this report, where successful defence arguments were run in relation to HIV criminalisation charges. For a more complete list, please refer to the [HIV Criminalisation Defence Case Compendium](#).

EXAMPLES OF SUCCESSFUL DEFENCE CASES 2015 TO 2018 ⁶²

INTENT			
LG Aachen, Urteil vom 23.03.2015 - 68 KLS 1/15	District Court of Aachen, Germany	2015	No intent to transmit: non-disclosure motivated by fear of losing relationship. Also transmission risk: undetectable viral load (UVL), condom use, withdrawal before ejaculation.
Zaburoni v The Queen [2016] HCA 12 6 April 2016 B69/2015	High Court of Australia	2016	Lying and frequency of act does not prove intent.
PROOF OF RISK – USE OF CONDOMS AND/OR UNDETECTABLE VIRAL LOAD			
R v CB 2017 ONCJ 545	Ontario Court of Justice, Canada	2017	Reasonable risk of transmission not established. <i>Mabior</i> not restrictive to requirement of both condom use and UVL.
R v Thompson 2016 NSSC 134	Supreme Court of Nova Scotia, Canada	2016	Condom or UVL makes risk negligible which does not satisfy requirement for proof of “realist possibility” of transmission.

PROOF OF RISK – BREASTFEEDING

<i>EL v the State</i> , The High Court of Malawi Zomba District Registry, Criminal Case No. 36 of 2016	High Court of Malawi, Zomba	2016	Breastfeeding – No proof of knowledge of likelihood of transmission. “Extremely low” transmission risk through breastfeeding when on antiretroviral treatment. Rights to privacy, dignity and fair trial.
<i>S v Semba</i> [2017] ZWHHC 299 (12 November 2015)	High Court of Zimbabwe	2017	“Deliberate transmission” offence: mere exposure insufficient. Crime only applicable to sexual transmission. State must prove knowledge of real risk and intent to transmit.

LAWS OVERLY BROAD / UNCONSTITUTIONAL / VIOLATE HUMAN RIGHTS

<i>Aids Law Project v Attorney General & 3 Others</i> [2015], eKLR, Petition No. 97 of 2010	High Court of Kenya	2015	Law unconstitutional: vague, over-broad and violation of the right to privacy.
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USE OF EVIDENCE

<i>State of Missouri v Michael L Johnson</i> , Missouri Court of Appeals Eastern District, No. ED103217	Missouri Court of Appeals, USA	2016	Violation of fair trial rights. Ordinary rules on admission of evidence apply (State failed to disclose evidence on time).
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SENTENCING

<i>Perfect Ngwenya v The State</i> [2017] ZWBHC 59	High Court of Zimbabwe	2017	Sentence reduced on basis of complainant’s shared risk in conduct and accused’s personal circumstances (including health).
<i>R v W</i> [2016] O.J. No. 3253	Ontario Court of Justice, Canada	2016	Absolute discharge granted on basis of mitigating factors (including UVL and habit of status disclosure) and reduced responsibility for not being initiator of sexual act while intoxicated.

58 For other examples pre-October 2015, see the *HIV Criminalisation Defence Case Compendium*.

59 The Coalition of the HIV & AIDS Legal Clinic Ontario (HALCO), The Canadian HIV/AIDS Legal Network, and the Coalition des organismes Communautaires Québécois Contre le SIDA (CocQ-SIDA).

60 Center for HIV Law and Policy, AIDS Law Project of Pennsylvania, American Academy of HIV Medicine, American Civil Liberties Union of Missouri Foundation, Athlete Ally, Black AIDS Institute, Center for Constitutional Rights, Counter Narrative Project, Dr. Jeffrey Birnbaum, Empower Missouri, GLBTQ Legal Advocates & Defenders, GLMA: Health Professionals Advancing LGBT Equality, Grace, Human Rights Campaign, Missouri AIDS Task Force, National Alliance of State and Territorial AIDS Directors, National Black Justice Coalition, National Center for Lesbian Rights, National LGBTQ Task Force, One Struggle KC, Treatment Action Group, William Way LGBT Community Center, and Women With A Vision.

61 Center For HIV Law and Policy, The American Academy of HIV Medicine, GLBTQ Legal Advocates & Defenders, GLMA: Health Professionals Advancing LGBT Equality, Human Rights Campaign, The National Association of Criminal Defense Lawyers, The National Center for Lesbian Rights, The Office of the Ohio Public Defender, and Treatment Action Group.

62 From *HIV Criminalisation Defence Case Compendium*



13. THINKING GLOBAL, ACTING LOCAL

“We will not watch as they violate human rights. We will act!”⁶³

Multisectoral Group on HIV/AIDS and STIs of Veracruz⁶⁴

Although the movement to end HIV criminalisation is a global movement, one of the key principles of HIV JUSTICE WORLDWIDE is that “we believe that regional differences matter, and we respect local knowledge and local leadership”. Whilst it is important to understand what is happening elsewhere, and to co-ordinate efforts, the actual work towards ending HIV criminalisation necessarily happens on the ground. During the period covered by this report, local advocates drove successes in numerous national jurisdictions including:

- In Belarus, where a defence was introduced so that a person will no longer be held criminally responsible for HIV exposure or transmission if they inform their partner of their HIV-positive status and their partner agrees to the act in question. The defence amends article 157 of the Belarus Criminal Code. (See also page 49.)
- In Brazil, where a bill (Bill 198, 2015) aiming to make ‘deliberate’ HIV transmission a ‘heinous crime’ was withdrawn (May 2017). Withdrawal of the bill was the result of sustained lobbying by an impressive collaboration between PLHIV networks, civil society organisations, the Ministry of Health, and a number of UN agencies including the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Population Fund (UNFPA).
- In the Democratic Republic of Congo (DRC), where the HIV-specific provision criminalising “the deliberate transmission of HIV” (Article 45) was repealed, and Article 41 criminalising “the non-disclosure of one’s HIV status” was amended. (See also page 49.)
- In Canada, where the Federal Attorney General wrote a directive for federal Crown prosecutors precluding the application of the criminal law against people living with HIV with a suppressed viral load (i.e. under 200 copies/ml), with some provincial governments taking similar actions. (See also page 44.)
- In Malawi, where provisions in the Malawi HIV and AIDS (Prevention and Management) Bill criminalising HIV non-disclosure, exposure and transmission (section 43) 2016, were removed. (See also page 31.)



Brazilian advocates celebrate withdrawal of Bill 198, 2015.
Photo credit: Agência AIDS.

In other places, work has been focused at state/provincial level, including in Mexico, and in the US where state-based advocacy groups included those in Arkansas, California (see case study on page 40),

Colorado (see case study below), Florida, Georgia, Idaho, Indiana, Illinois, Louisiana, Michigan, Missouri, North Carolina and Ohio. In Canada too, advocates have continued to pressure state/provincial governments.

CASE STUDY

LOCALLY LED ADVOCACY IN COLORADO

The recent modernisation of Colorado's HIV laws reflects years of solid effort – researching, consulting, organising, lobbying and negotiating by a coalition of campaigners led by grassroots activists living with HIV. The process began in 2012, when a small group of advocates convened to consider Colorado's HIV laws and whether or not they were a problem. Unlike many US states, Colorado did not have an HIV-specific law but it did have three criminal laws with sentence enhancements that singled out people living with HIV:

- Sex work with knowledge of HIV diagnosis was a felony, including many behaviours where HIV transmission was impossible, where condoms were used and/or where the defendant had an undetectable viral load.
- Solicitation of a sex worker with knowledge of HIV diagnosis was a felony.
- 'Penetrative sexual assault' with knowledge of HIV diagnosis would result in a mandatory tripling of the sentence, including where there was no risk of HIV transmission.

It quickly became apparent that knowledge of the laws among people living with HIV and HIV organisations was low, with little understanding of whether or not the laws were being used. Activists reached out to uncover how the laws were playing out in their communities. That included travelling around Colorado educating people about the law and discussing its use. While it was not possible to uncover exactly how many times the laws had been used (because sometimes charges are laid to intimidate a defendant, changing when they plead guilty to a lesser charge or before a case reaches court), the process uncovered the reality that the laws were being used, particularly the sex work laws which were being used against women, people of colour, transgender people, and homeless young people. Advocates heard heartbreaking stories, including from people who could no longer hold jobs because they had pled guilty and consequently could not appeal, and those who had been threatened under the HIV laws and convinced to plead guilty to a lesser charge.

Initially, many people living with HIV felt they were not impacted by the state's HIV-related laws but community discussions began to reveal the uncomfortable reality that these laws could impact every person living with HIV in Colorado due to associated stigma and discrimination. It became increasingly evident that this should be considered a social justice issue.

As a matter of priority, advocates decided it was important to ensure people with HIV knew their rights, launching a 'Know Your Rights' campaign, circulating a 'Know Your Rights' flyer and palm card so people knew their rights and were less likely to give law enforcement information in the claims against them.

Advocates launched a 'Know your Rights' campaign ... "so people knew what their rights were and 'rights' weren't being explained by police officers who aren't always explaining rights. The moral of the story being 'shut your fool mouth because they are not there to help you. No one who is arresting is going to be on your side. Stop trying to make it better because it's not going to work. Just shhhh'."

Kari Hartel

In 2014, a number of Colorado-based advocates attended the first ‘HIV is Not a Crime’ training academy in Iowa. There was significant excitement at that meeting because Iowa had just become one of the first US states to ‘modernise’ its HIV laws. When asked who would be next, Colorado advocates raised their hands. Energised and inspired by the conference, they returned to Colorado and met the following week to begin planning a strategy for reform. That strategy included actions to:

- Document the problem – Early efforts to uncover use of Colorado’s HIV laws established a firm understanding that the laws were being used, with work continuing throughout the campaign to uncover and document the problem.
- Build community understanding and support – Advocates knew it was vital to keep community squarely at the centre of advocacy efforts, with a large-scale, ongoing series of consultations with diverse community stakeholders throughout the process.
- Seek out and develop allies – The campaign hinged on the development of strong relationships with key allies who supported the law reform process. For example, rather than ‘blindsided’ the health department with an exclusively community-based campaign, health department staff were approached and asked to state that, in their experience, the laws were a barrier to testing and treatment, and advanced HIV stigma. The health department, doctors from HIV clinics, and public health defenders joined the campaign. Identification of a strong ally in the health department proved a turning point.
- Leave no one behind – Early feedback suggested law reform would be easiest if efforts focused only on modernising language around HIV, with sex work issues to be addressed at some later date. That option was flatly rejected with advocates agreeing no one can be left behind in the decriminalisation movement.
- Find political champions – Vital to the movement was the support of champion parliamentarians who understood both the public health and human rights implications of the legislation, particularly Representative Daneya Esgar, and Senator Pat Steadman who had lobbied against introduction of the problematic felony offences. They fought for the bill and moved it through the legislature.
- Draw on support from experts – Community advocates gained enormously from the applications of experts’ specialised skills. For example, progress was bolstered by the support of an impressive lobbyist who made clear headway talking to disparate politicians and brokering deals. Importantly, the lobbyist understood who his client was, always returning to community for decisions. Further support was provided by expert Public Defenders who gave advice to ensure advocates had a clear understanding of the ramifications of the language in successive drafts of the bill.
- Target messaging – Different groups responded positively to different messages. While some were interested in the issues of stigma and human rights, most legislators were motivated by an understanding that current laws did not reflect current science, were bad for public health, and were a barrier to testing and treatment. Many District Attorneys were motivated by the argument that the

“There is no one who is an acceptable loss in our movement when we are decriminalising. We are all important and everyone who is targeted in these laws matter. ... We can change the world but we need to not leave anybody behind. If it is led by people living with HIV, we make sure that our populations and our partners who need to be part of this movement are at the table and that is how we accomplish victory.”

Barb Cardell

problematic laws were poorly drafted, including using language that was problematic, stigmatising and scientifically outdated.

- Think outside the box – A key strategy was moving from a concept of ‘modernising’ HIV laws to considering how treatment of people with HIV might fit within the broader legal framework. The decision was made to bring forward a very comprehensive piece of legislation which focused on modernising language and procedural matters across numerous laws relating to sexually transmitted infections (STIs), which included a whole range of issues around privacy, consent, and the rights of minors, victims of crime and pregnant women. Legislators were generally more interested in issues related to the rights of parents and minors around testing and treatment. The issue of HIV decriminalisation, which would have been the focus in a single-issue bill, was effectively decentralised and proved less contentious than it would have if it had been the sole focus of a bill.
- Know your stuff – Advocates stressed: Know what you are talking about. Know what the statutes are. Know what the prosecutions have looked like. Use the data in a way that is meaningful and push forward.

What began as a campaign by a small coalition of activists led by Positive Women’s Network (PWN) Colorado, became a massive movement involving a large coalition including PWN, Colorado Organizations Responding to AIDS (CORA) and the Colorado Department of Public Health: collectively known as the ‘Colorado Mod Squad’. Their achievements included obtaining state-wide support for law reform through education, discussion and debate at community forums; hundreds of hours drafting and redrafting an almost 50-page bill informed by community experience and concerns; and getting more than 120 stakeholders to sign-on.

Finally, in June 2016, Senate Bill 146 was passed, moving HIV into the sexually transmitted infection codes, modernising the law’s language, supporting public health laws, and guaranteeing access to a lawyer for an accused throughout the legal process. Senate Bill 146 eliminated felony offences related to sex work and solicitation. Sentencing enhancement for sexual assault by a person living with HIV remains in the criminal code, however, the sentence enhancement has been reduced and can only be applied if transmission is proven.

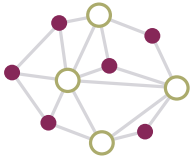
COMPARISON CHART

BEFORE	AFTER
Sex work with knowledge of HIV diagnosis is a felony, including where condoms were used.	Sex work is a misdemeanour in Colorado Statutes.
Solicitation of a sex worker with knowledge of HIV diagnosis is a felony, including where condoms were used.	Solicitation of a sex worker is a misdemeanour in Colorado Statutes.
Penetrative sexual assault with knowledge of HIV diagnosis can result in the tripling of the maximum sentence of life in prison, including where there was no risk of or actual transmission of HIV.	Penetrative sexual assault with knowledge of HIV diagnosis can result in mandatory incarceration if transmission of HIV can be proven.

See also: The HIV Justice Network’s educational video, *The Colorado Story* (2017, 15 mins) available on YouTube.

63 Translated from Spanish: “No nos quedaremos mirando como violentan los Derechos Humanos, actuaremos!”

64 Group Multisectorial en VIH/SIDA e ITS del estado de Veracruz. Boletín de Prensa at: https://vihnoescrimenmexico.files.wordpress.com/2017/10/boletin-de-prensa_contra-la-penalizacioicc80n_2015-listo.pdf.



14. BUILDING AND CO-ORDINATING NATIONAL AND REGIONAL NETWORKS

“We have a lot of work still to be done in the EECA region as we continue to lead the list of the most criminalised countries in the world. We will support communities as they increase capacity to change discriminatory laws and policies, and to support people living with HIV, particularly HIV criminalisation survivors and others affected by HIV criminalisation. We will work together across our region to keep HIV criminalisation high on the agenda and push for change!”

Svitlana Moroz, Eurasian Women’s Network on AIDS

As engagement against HIV criminalisation has increased, so too has the development of HIV criminalisation-focused networks organising at national and regional levels. In some regions, networking has occurred on an *ad hoc* basis or around training needs, such as the first ‘European HIV Academy for Enabling Legal Environments’, which attracted 30 advocates and community representatives from 20 countries to Berlin in September 2017.⁶⁵ In other places, networks have been formalised, helping bring advocates together to be part of a wider, ongoing movement: supporting each other, sharing resources, building relationships, and providing both formal and informal support. Networks have undertaken capacity-building initiatives and also stimulated the development of more nuanced strategic goals.

A number of countries where HIV-related criminalisation prosecutions occur at state or provincial level have worked to organise nationally: a strategic decision to bolster advocacy capacity in countries where activists are often separated by a focus on local laws and flashpoints. The formation of national networks includes those in:

- **Mexico** In 2017, Mexican advocates organised the first national Mexican meeting against HIV criminalisation, supported by the Sero Project and funded by HIV JUSTICE WORLDWIDE, attracting approximately 30 activists from around the country. It was there that activists formed The Mexican Network of Organisations against the Criminalisation of HIV, also developing the network’s strategic plan. The establishment of the Mexican network pays testament to the inspiring work of the committed Mexican advocates supported by colleagues working in other settings, and the impact that a modest amount of external funding can have at critical points in advocacy development (see page 23).
- **Canada** Canadian community activists have been advocating against HIV criminalisation for more than 20 years but recently advocacy has experienced a boost through the creation of the Canadian Coalition to Reform HIV Criminalization (CCRHC): a national coalition of people living with HIV, community organisations, lawyers, researchers and other advocates. Formed in October 2016, the Coalition includes people with lived experience of HIV criminalisation, and a steering committee on which a majority of members are people living with HIV.

One of the first initiatives of the Coalition was the development of the **Canadian Community Consensus Statement** which provides a critique of Canada’s approach to HIV criminalisation, calling for specific actions from federal, provincial and territorial governments to end unjust prosecutions

Canadian Coalition
to Reform
Criminalization. Photo
credit: Canadian
Coalition to Reform
HIV Criminalization.



against people living with HIV. The Community Consensus Statement provides a set of demands that organisations can sign on to, and more than 160 organisations have.

The Coalition has already achieved major results with commitments by the governments of Ontario and Alberta that they will not prosecute allegations of HIV non-disclosure in cases where the accused has a suppressed viral load. At a Federal level, in December 2016, the Justice Minister made a landmark announcement that Canada must address the “overcriminalization of HIV”.⁶⁶ One year later, the Justice Minister released the *Criminal Justice System’s Response to Non-Disclosure of HIV* report, which reiterated many of the concerns raised by community advocates in the Community Consensus Statement. Then, on 1 December 2018, Canadian advocates reached another goal: the Attorney General announced a directive to use current scientific evidence to help limit unjust prosecutions against people living with HIV. The directive states that the Director of Public Prosecutions:

- shall not prosecute where the person living with HIV has maintained a suppressed viral load (i.e. under 200 copies/ml) because there is no realistic possibility of transmission;
- shall generally not prosecute where the person has not maintained a suppressed viral load but used condoms or engaged only in oral sex or was taking treatment as prescribed unless other risk factors are present, because there is likely no realistic possibility of transmission in such cases;
- shall prosecute using non-sexual criminal offences instead of sexual offences where this would better align with the individual’s situation, such as cases where the individual’s conduct was less blameworthy; and
- must take into account whether a person living with HIV has sought or received services from public health authorities, in order to determine whether it is in the public interest to pursue criminal charges.

The statement noted that the directive was “the result of significant engagement and consultation with LGBTQ2+ advocates, including the [Canadian] HIV/AIDS Legal Network, leading academics in the field, health professionals, as well as the Director of Public Prosecutions”.⁶⁷

At a regional level, organisations have come together in:

- **Francophone Africa** (see *Case Study: Leveraging capacity through a regional network: Francophone Africa*)

and

- **Eastern Europe**

The Eurasian Women’s Network on AIDS (EWNA) grew out of discussions in 2011 by women living

with HIV preceding the International Forum on the Millennium Development Goals. By 2013, EWNA constituted an assembly comprising women leaders from 11 countries of the Eastern Europe and Central Asia (EECA) region. By 2017, with support from the Global Network of People Living with HIV (GNP+), EWNA had become a driving, co-ordinating force behind advocacy against HIV criminalisation in the region, also acting as a regional hub for HIV JUSTICE WORLDWIDE.

EWNA has now leveraged the expertise and structure of its network to lead a regional response on HIV criminalisation, particularly as criminalisation affects women. During 2017, EWNA and its members researched and published the *Regional HIV Criminalisation Report: Eastern Europe and Central Asia*⁶⁸ which identified the previously unknown scale of criminalisation in the region and galvanised advocates to action through community-based research. EWNA is also highly active supporting agencies undertaking domestic campaigns and other advocacy efforts, hosting webinars, and operating a highly informative [HIV criminalisation webpage](#) that includes key scientific research, and current information from the region, including advocacy strategy and first-person accounts of criminalisation survivors.

CASE STUDY

LEVERAGING CAPACITY THROUGH A REGIONAL NETWORK: FRANCOPHONE AFRICA

In 2016, the Canadian HIV/AIDS Legal Network undertook a project on behalf of HIV JUSTICE WORLDWIDE to monitor laws and prosecutions against people living with HIV in Francophone Africa. During that process they identified numerous actors engaged in local advocacy against criminalisation and began to explore options to bring those advocates together to share their experiences. Funding from HIV JUSTICE WORLDWIDE enabled a meeting of French-speaking advocates at the 2017 International Conference on AIDS and STIs in Africa (ICASA) in Abidjan, where a Francophone network of advocates was born.



Francophone meeting at ICASA, Abidjan, December 2017. Photo credit: HIV JUSTICE WORLDWIDE Réseau Francophone.

In April 2018, consolidation of the network took place in Bordeaux during the international Francophone conference on HIV and Hepatitis (AFRAVIH). The Francophone network, HIV JUSTICE WORLDWIDE Réseau Francophone, now comprises 26 member organisations from 14 French-speaking countries: Belgium, Burundi, Burkina Faso, Canada, Cameroon, Côte d'Ivoire, Gabon, Morocco, Niger, Democratic Republic of Congo (DRC), Senegal, and Tunisia.

The Francophone network has become a dynamic space for Francophone activists to share resources and strategies and connect with non-French speaking activists from HIV JUSTICE WORLDWIDE. The Francophone network has created a listserv and a WhatsApp group to share information; held strategy meetings during international HIV conferences; undertaken capacity building through participation in regional workshops; and translated multiple strategy and advocacy documents into French (for inclusion in the French *HIV Justice Toolkit*).

One of the outstanding outcomes of the Francophone network was the creation of a National Coalition for

the Decriminalization of HIV in Niger in June 2018. Initiated by the Association of Young Jurists of Niger (AJJN), with technical and financial support from HIV JUSTICE WORLDWIDE, the coalition comprises 13 civil society organisations. The coalition has set concrete objectives to be achieved by 2021:

- repeal of offences criminalising HIV exposure and transmission
- research and dissemination of reliable, evidence-based data on the impact of HIV criminalisation on access to HIV services; and
- creation of a list of doctors accredited by the Ministry of Justice to be consulted by judges in HIV criminalisation cases.

65 Joint collaboration of the HIV Justice Network, AIDS Action Europe, European AIDS Treatment Group and Global Network of People living with HIV (GNP+).

66 Department of Justice Canada. *Minister Wilson-Raybould Issues Statement on World AIDS Day*. 2016. At: <https://www.canada.ca/en/department-justice/news/2016/12/minister-wilson-raybould-issues-statement-world-aids.html>

67 Department of Justice Canada. *Attorney General of Canada to issue Directive Regarding Prosecutions of HIV Non-Disclosure Cases*. 2018. At: <https://www.canada.ca/en/department-justice/news/2018/12/attorney-general-of-canada-to-issue-directive-regarding-prosecutions-of-hiv-non-disclosure-cases.html>

68 Reports are also available for the Asia, Francophone Africa, and Latin America and the Caribbean regions.



15. GETTING THE WORD OUT

“We have to find ways to be heard.”

Robert Carr⁶⁹

Throughout the period covered by this report, activists continued to employ diverse strategies to extend the reach of advocacy against HIV criminalisation including:

- **Pushing HIV criminalisation onto conference agendas**

Advocates made considerable efforts to get HIV criminalisation onto local, national and international conference agendas to expand and diversify the audience for anti-HIV-criminalisation messaging. Their efforts saw the issue highlighted at many HIV and LGBTQ (lesbian, gay, bisexual, transgender and queer) conferences, including unprecedented coverage at AIDS 2018.

- **Presenting advocacy messaging through video**

A number of video documentaries and promotional campaigns were developed for use as advocacy tools. Further, video has proven a useful tool to capture presentations and discussions at HIV criminalisation events including showing highlights ([Beyond Blame: Challenging HIV Criminalisation @ AIDS 2016](#) and [HIV is Not a Crime Training Academy II - August 2016](#)) or whole conference sessions ([Beyond Blame @ AIDS 2018](#)). (See more at the [HIV JUSTICE WORLDWIDE YouTube channel](#).)

- **Working through digital media forums**

As the reach of digital media grows, advocates have worked to get anti-HIV-criminalisation messaging into digital forums. Particularly notable was the 27 June 2016 TV and web broadcast on [The Stream, on Al Jazeera English](#).

- **Using information technology to keep advocates connected**

A number of advocates have undertaken education campaigns through the use of webinars including [Positive Women’s Network-USA](#), the [Sero Project](#) and the [Eurasian Women’s Network on AIDS \(EWNA\)](#).

- **Using public exhibitions to push campaign messages**

Belarus’s People PLUS developed a ‘People PLUS’ campaign using a photographic exhibition and first-person accounts of people living with HIV from different parts of the country to reduce HIV stigma: the basis of HIV criminalisation. Supported by the Joint United Nations Programme on HIV/AIDS (UNAIDS), the World Health Organization Regional Office, and the Belarus Ministry of Health, the exhibition was mobile to allow it to travel and be seen by as many people as possible.



People PLUS exhibition. Photo credit: People PLUS.

- **Using public demonstrations as part of multi-pronged, targeted campaigns**

A coalition of regional community networks from Eastern Europe and Central Asia (EECA)⁷⁰ joined forces during AIDS 2018 to

launch their ‘Chase the virus, not people!’ (Chase the virus) campaign. Chase the virus aimed to draw attention to many of the issues experienced by key population groups which are limiting the region’s HIV response: noting that EECA remains the only region in the world where numbers of new HIV cases and AIDS deaths continue to grow. In particular, Chase the virus shone a light on stigma and discrimination against people living with HIV and other key populations such as sex workers, people who use drugs and men who have sex with men. Of note, as part of Chase the virus, the EWNA led an ‘HIV Is Not a Crime’ campaign, highlighting the criminalisation of HIV as one of the key barriers to access to treatment and support, and a violation of human rights.



CASE STUDY

USING TECHNOLOGY TO FURTHER THE REACH OF TRAINING

The AIDS and Rights Alliance for Southern Africa (ARASA) has taken HIV criminalisation training to the next level through the development of their [Online HIV Criminalisation Course](#), run in 2017 and 2018, and due to take place again in the second half of 2019. The free, four-week course targets civil society activists and service providers, policy makers, religious leaders, healthcare providers, judiciary, law enforcement officials and lawyers from the South African Development Community and East Africa. In 2017, 23 participants completed the course. In 2018, interest and enrolments had grown to 82, with participants coming from countries including Botswana, Kenya, Lesotho, Malawi, Mauritius, Namibia, Tanzania, Seychelles, South Africa, Swaziland, Uganda, Zambia and Zimbabwe.

The course was developed from the [ARASA training manual](#), with materials and videos uploaded on the [online training website](#). A pre-test via Google forms was administered to participants to assess their knowledge of HIV criminalisation and to better understand participants’ professions and skills before commencing the course. Course content was divided over four weeks with quizzes designed to assess participants’ knowledge on topical issues. Course content covered:

Week 1: Introduction to criminalisation of HIV

- Defining criminalisation of HIV transmission, exposure and non-disclosure
- Understanding why countries criminalise HIV
- UNAIDS policy brief on HIV criminalisation
- Impact of criminalisation on the HIV response

Week 2: Proof and scientific evidence

- Video experience sharing on HIV criminalisation
- Lawyer expert on HIV criminalisation

Week 3: Impact of criminalisation and alternatives

- Impact of HIV criminalisation on women
- Stigma and discrimination from HIV criminalisation

Week 4: International and regional frameworks that address HIV criminalisation

Week 5: Assessment, course evaluation and sharing of advocacy plans

The course has increased participants' capacity to:

- argue that criminal law provisions applicable to HIV must uphold general criminal law and human rights principles and be informed by the best scientific and medical evidence
- support people living with HIV to challenge overly broad HIV criminalisation through programmes such as legal assistance and 'know your rights' campaigns
- use international and regional guidance, model laws and other instruments as advocacy tools to advocate against HIV criminalisation
- support monitoring and research to further inform an appropriately limited application of criminal law in the context of HIV in order to support public health, justice and human rights
- work with governments to expand proven HIV prevention, treatment, care and support services that address HIV-related stigma and discrimination, and increase access to justice
- support initiatives for the development of police and prosecutorial guidelines, as well as the training of civil society, police, judges and others on HIV-related legal and human rights issues.

Participants have undertaken a number of initiatives arising from the training, including work in:

- Seychelles, engaging with the Police Commissioner and training more than 30 police officers about HIV criminalisation and application of laws, as well as campaigns and peer-to-peer talks. Work has also included liaison with many local civil society organisations to support awareness campaigns on HIV criminalisation and its impact on women, focusing on violence against women.
- Zimbabwe, including training sessions and awareness campaigns with police and civil society organisations on existing HIV-criminalising provisions and practices.

69 Dr Robert Carr. *The Global Forum on MSM & HIV: Closing Plenary Address. Vienna, July 2010*. Available at <https://www.youtube.com/watch?v=Zkw7fP4X07I>

70 Eurasian Coalition on Male Health (ECOM), East Europe and Central Asia Union of People Living with HIV (ECUO), EECA Sex Workers' Alliance, Eurasian Harm Reduction Association (EHRA), Eurasian Network of People Who Use Drugs (ENPUD), Eurasian Union of Adolescents and Youth "Teenergizer", Eurasian Women's Network on AIDS (EWNA), Sex Workers' Rights Advocacy Network (SWAN), and AFEW International.



16. ENGAGING WITH MEDIA

“Before even entering a courtroom, those accused of HIV-related offences are often tried and convicted in the court of public opinion – the result of poor media reporting by journalists who may not appreciate the damage they are doing. Still, ignorance is no defence. The media has a duty to understand this complex issue and to address it accurately, respectfully and with care. If needs be, it is our job to teach them.”

Janet Butler McPhee,

Canadian HIV/AIDS Legal Network

HIV-related prosecutions continue to be sensationalised and misrepresented in the media across the world. Those accused are routinely portrayed as callous individuals who have set out to harm a sexual partner despite the fact that intention to cause harm is almost never a feature of HIV criminalisation cases.

Often ‘journalists’ appear incredulous that a person would not readily disclose their HIV-positive status while simultaneously representing HIV as something quite appalling, which surely suggests disclosure of HIV-positive status may not be such a simple matter after all. All sympathy lies with the person who may (or may not) have been ‘exposed’ to HIV: none with the person living with HIV, signifying HIV-related stigma is alive and well. Unfortunately, sensationalised media not only perpetuates HIV-related stigma, it also fuels it: further marginalising people living with HIV while also undermining HIV prevention efforts.

Sensationalist headlines and reporting remain a major issue, perpetuating HIV stigma while misrepresenting the facts. Accurate reporting may also be undermined by the need to satisfy a rapid news cycle, including the verbatim reproduction of stories by multiple news outlets, which can mean that factual errors and misleading headlines are repeated (and forever archived on the internet) even after an original report has been corrected.

Activists are endeavouring to interrupt this pattern of salacious reporting, working to improve media by pushing alternative, factual narratives and asking journalists to accurately report HIV-related cases with care. Efforts have included the development of an advocates’ guide to working with media, *Making Media Work for HIV Justice: An introduction to media engagement for advocates opposing HIV criminalisation* (see page 70); the inclusion of a number of journalists at the *Lawyers for HIV & TB Justice: Strategic Litigation, Legal Defence & Advocacy Training*; and the development of coalition media strategy such as that designed to launch the *Expert consensus statement on the science of HIV in the context of criminal law* (see page 71).

CASE STUDY

MAKING MEDIA WORK FOR HIV JUSTICE

Media is a crucial battleground on which HIV criminalisation cases publicly play out, too often with devastating results for those accused. Similarly, campaign strategy involving media as a tool to support advocacy initiatives can backfire, effectively undermined by unsympathetic, inaccurate reporting. Given the importance of media and advocates' mixed experiences engaging with media around HIV criminalisation, in March 2018, HIV JUSTICE WORLDWIDE released *Making Media Work for HIV Justice: An introduction to media engagement for advocates opposing HIV criminalisation*. This media toolkit provided an important new resource on media engagement both for those new to communicating about HIV criminalisation and for well-seasoned anti-criminalisation advocates seeking to augment their media work. Produced by Positive Women's Network – USA, the toolkit was reviewed and revised by HIV JUSTICE WORLDWIDE partner organisations all over the world.



Making Media Work for HIV Justice is intended as a tool to help advocates generate solutions based on their own contexts and cases. It examines key considerations of HIV criminalisation messaging, such as the challenges of ensuring that messages do not tacitly promote stigmatising ideas about people living with HIV, and the nuances of discussing current HIV science in the context of the criminal law. In keeping with the intersectional nature of HIV criminalisation, the resource draws not only from texts and anecdotes from within the HIV community, but also from other movements engaged in media work around similar core issues such as the abortion rights and racial justice movements. The toolkit aims to help advocates understand and embrace their role opposing HIV criminalisation, but also to challenge society's broader prejudices while doing it.

Making Media Work for HIV Justice begins with a brief overview of HIV criminalisation. 'What Is Happening?', and the importance of engaging with media to change narratives around this unjust practice. The bulk of the resource is devoted to the section 'What Can We Do?', which includes the following subsections:

- Do no harm
- Get the message right
- Gather comrades, allies, accomplices
- Use your tools
- Watch your language
- Know that you are not alone

It contains templates for writing press materials and other campaign collateral. It includes in-depth case studies from Iowa, Malawi, Mexico, and Uganda, as well as brief examples of media engagement around HIV criminalisation from other countries.

While the toolkit contains plenty of information that groups can apply on their own without professional communications support, it also includes some guidance for smaller groups or campaigns looking to partner with larger organisations that have a higher level of communications capacity.

The resource closes with a two-page appendix of tips for journalists to more ethically cover this issue. A 'teaser' resource was distributed as a two-sided glossy palm card in English and French at

the International Conference on AIDS and STIs in Africa (ICASA) in Cote d'Ivoire in December 2017, featuring a truncated '3 tips for journalists' covering HIV criminalisation on one side and '3 tips for community members' responding to such coverage on the other.

CASE STUDY

COMMUNICATING THE EXPERT CONSENSUS STATEMENT: MAXIMISING MEDIA ATTENTION

The AIDS 2018 Expert Consensus Statement press conference. Photo credit: UNAIDS. Watch the entire press conference on YouTube.



One of the highlights of the 22nd International AIDS Conference (AIDS 2018) in Amsterdam was the release of the *Expert consensus statement on the science of HIV in the context of criminal law*. The Expert Consensus Statement was authored by 20 globally eminent scientists and published in the peer-reviewed *Journal of the International AIDS Society (JIAS)*. Since the statement has the potential to dramatically reduce the number of HIV-related prosecutions worldwide, HIV JUSTICE WORLDWIDE decided to prioritise development of a communications strategy to publicise both the statement and its core messages.

HIV JUSTICE WORLDWIDE's support for the development of the Expert Consensus Statement alongside the Joint United Nations Programme on HIV/AIDS (UNAIDS), the International Association of Providers of AIDS Care (IAPAC) and the International AIDS Society (IAS) meant we were kept informed regarding its pending publication date, and had some large and powerful partner organisations with whom we could work closely on communications for maximum impact.

The HIV JUSTICE WORLDWIDE team tasked with communicating the statement determined early on that the AIDS 2018 conference would be exactly the right place to launch the statement, knowing that members of the media who would be most interested in its content would either be in attendance or paying close attention. We also knew that this would be an exciting moment for people living with HIV, advocates and allies around the world, and felt that, if framed correctly and communicated with a unified message, we could capitalise on the energy at the conference without the message being 'lost' amidst competing news items. Indeed, launching at AIDS 2018 provided a unique opportunity to work with the IAS, the conference organisers, to position the statement and communicate its importance throughout the entire week, allowing the message to reverberate and gain momentum in various fora.

The key to the success of the statement's launch was building good relationships with communications staff from IAPAC and UNAIDS, and particularly with the IAS who collaborated with us to consider

a plan of action. Discussions via email and international teleconferences began months in advance, allowing the necessary time to build trust, explore the newsworthiness of the statement, refine messaging, co-ordinate any public-facing communications, consider and train spokespeople, and ultimately, put together a world-class news conference that rallied people living with HIV (including those who had been prosecuted), allies and journalists alike. Particularly poignant during the news conference was when the Sero Project Board Member Kerry Thomas spoke via telephone from a prison in Idaho. As a result of his unjust prosecution and prison sentence, Kerry was unable to be in Amsterdam in person and was represented by an empty chair at the table. This small but powerful detail was an effective method of attracting media interest by communicating the severity of his situation.

Prior to AIDS 2018, a media strategy was deployed to pre-position the launch of the statement and make journalists aware of the importance of the story to come. In conjunction with the Human Rights Networking Zone at the conference (co-ordinated by the Canadian HIV/AIDS Legal Network and the AIDS and Rights Alliance for Southern Africa, both member organisations of HIV JUSTICE WORLDWIDE), we decided to focus on those countries with the worst records of unjust prosecutions so we could specifically target journalists in those areas. We asked partner organisations in these locations about relevant journalists and target publications, and were able to secure some important media hits, for example, in Russia and Canada, using this method and without giving too much away and detracting from the news conference itself. Simultaneously, a tried and true approach to connecting with reporters was taken, with communications team members working with the AIDS 2018 conference media centre to provide copies of the news release and arrange follow-up interviews. Additionally, some organisations released complementary country-specific media statements welcoming the statement, thereby securing more favourable coverage in those locales. The complementary media statement released in Canada by the Canadian HIV/AIDS Legal Network was a good example of the success of this tactic, with this strategic outreach resulting in a number of reporters writing about the statement and how it might impact the criminal law in Canada.

The result of the high degree of cross-organisation co-ordination and collaboration was strong global media coverage, including in North America, Asia, Europe and even a pan-African newswire service in both English and French. Ultimately, the launch and communication of the Expert Consensus Statement has elevated the global conversation about HIV criminalisation, and the co-ordinated messaging employed by those spokespeople with whom we have worked, has translated into a powerful narrative the world over.



Community advocates and communications team celebrate the launch of the *Expert consensus statement on the science of HIV in the context of criminal law* at AIDS 2018. Photo credit: ARASA/Canadian HIV/AIDS Legal Network.

KNOWN MEDIA COVERAGE ON THE EXPERT CONSENSUS STATEMENT

MEDICAL/SCIENCE COVERAGE

- Africa Science News, Kenya
- Aidsmap/NAM, UK
- The BMJ, UK
- Conseil National du Sida et des hépatites virales, France
- Contagion Live, USA
- FHI 360 / Crowd 360, USA
- Fundación Española del Aparato Digestivo (FEAD), Spain
- Health 24, South Africa
- Health News Online, USA
- HIV Share Space, South Africa
- Infosalus, Spain
- The Lancet, UK
- Medical Brief, South Africa
- Medical express, UK
- Med Page Today, USA
- Medscape, USA
- Sexual and Reproductive Health Matters, UK

LEGAL COVERAGE

- Lawyers Daily (Canada)

MAINSTREAM NEWS COVERAGE IN

- Canada (Globe & Mail, Newswire, Radio Canada Intl, La Presse)
- Cambodia (Khmer Times)
- France (Agence France Presse, Transversal Magazine)
- Italy (Quotidianosanita)
- India (Firstpost, Latestly, Hashtakshep)
- Kenya (The Nation)
- Malawi (Zodiak Malawi)
- Mexico (La Vanguardia, El diario de Yucatan)
- Netherlands (Expatica)
- Nigeria (News Agency of Nigeria, Nigerian Voice, The Nation, PM News, BusinessDay)
- Singapore (Channel NewsAsia)
- Spain (EFE, El Pais, Periodistadigital, SIGLO XX1)
- South Africa (Business Live, IOL, Polity.org.za)
- Pakistan (SamaaTV)
- Russia (Kommersant, TV Rain)
- Zimbabwe (Newsday, Spiked)
- US (KFF/CSPAN2, Veterans Today)

COMMUNITY NEWS COVERAGE IN

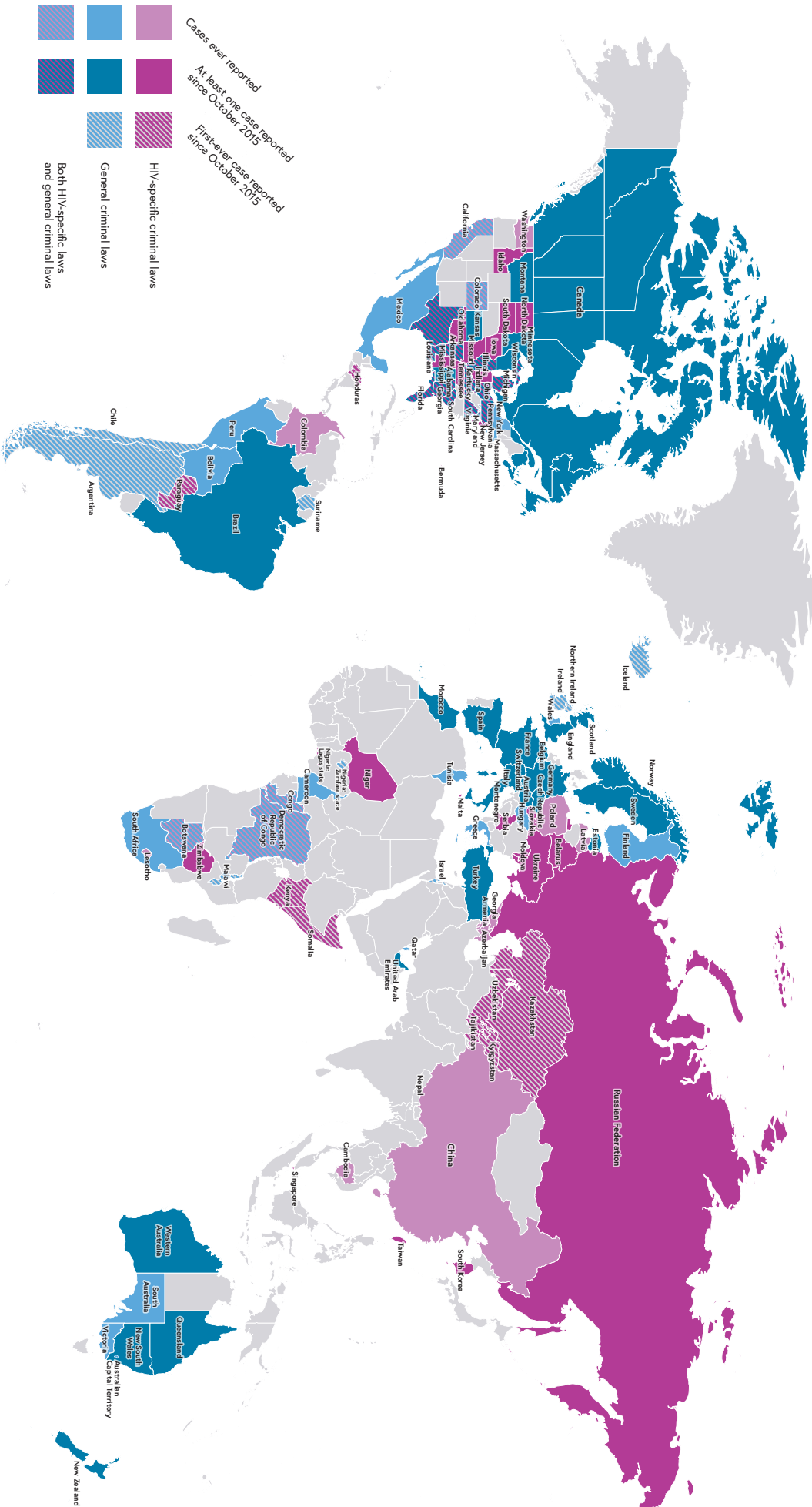
- Australia (Star Observer, Out in Perth, NAPWHA)
- Belgium (Observatoire du Sida et des sexualités)
- Canada (Catie blog, HALCO)

- Eastern Europe and Central Asia region (Eurasian Women's Network on AIDS)
- France (vih.org, Transversal, Coalition Plus, Assemblée parlementaire de la Francophonie)
- Italy (Poloinformativo HIV/AIDS, Anlaids, HelpAIDS)
- Nigeria (Rustin Times)
- Russia (Life4me+)
- Spain (gTt)
- Switzerland (Aide Suisse contre le Sida)
- UK (NAT blog)
- US (POZ Magazine, Bay Area Reporter, A&U Magazine, Beta Blog, Central Voice PA, Positively aware)

TWITTER COVERAGE IN

- Australia
- Austria
- Bangladesh
- Brazil
- Cameroon
- Canada
- Chile
- Denmark
- Ecuador
- Germany
- Ghana
- Greece
- Ireland
- Italy
- Japan
- Kazakhstan
- Kenya
- Mexico
- Mozambique
- Netherlands
- Niger
- Nigeria
- Philippines
- Portugal
- Russian
- South Africa
- Spain
- Thailand
- Turkey
- Uganda
- UK
- US
- Venezuela
- Zimbabwe

WHERE HIV-RELATED CRIMINAL CASES HAVE BEEN REPORTED



HIV CRIMINALISATION HOTSPOTS

