



HIV CRIMINALIZATION

HUMAN RIGHTS FACT SHEET SERIES

2021

OVERVIEW

In 2020, 92 countries

reported to UNAIDS that they **criminalized HIV non-disclosure, exposure and transmission** through either specific or general laws (1). Such laws are counterproductive because they undermine, rather than support, efforts to prevent new HIV infections. They also breach human rights, including the rights to equality and non-discrimination.



In practice, HIV criminalization disproportionately impacts already **marginalized populations, including women**. Laws are often applied without reference to up-to-date HIV-related science, including in cases where exposure or transmission has not, or cannot, occur (2–4).



HIV criminalization undermines effective HIV prevention, treatment, care and support because fear of prosecution can dissuade people from seeking testing and treatment, and deter people living with HIV—or those most at risk of HIV infection—from talking openly to their medical providers, disclosing their HIV status or using available treatment services, all of which undermine HIV prevention efforts (5–7).

INTERNATIONAL HUMAN RIGHTS BODIES RECOMMEND THE REMOVAL OF HIV-SPECIFIC CRIMINAL LAWS (3, 8–12).

The application of general criminal law should be limited to cases of intentional transmission, where a person knows his or her HIV status, acts with intention to transmit HIV, and does in fact transmit it (2, 13).

THE DATA



In 2020, **92 countries reported to UNAIDS that they criminalize HIV (1)**. Data from civil society indicate that the number may be as high as 130 countries (14).

Between

October 2015 – December 2018,



there were at least **913** arrests, prosecutions, appeals and/or acquittals for HIV non-disclosure, exposure or transmission in 49 countries (14). In 2020, the HIV Justice Network documented at least 90 HIV criminalization cases across 25 countries (15).

Though there is no risk of transmission through saliva (including spitting) or biting where there is minimal blood (24), several people living with HIV have been charged and/or convicted for HIV exposure for such acts despite no risk of HIV transmission (14, 16). **Criminal law has also been used to charge breastfeeding women (14).**



Laws allowing for HIV criminalization have been rejected, modernized or repealed in a small but growing number of countries and jurisdictions, as countries embrace rights-based and evidence-informed approaches. Change has come through legislative processes, including in Australia (Victoria), Belarus, Bolivarian Republic of Venezuela, Canada, the Democratic Republic of the Congo, Ghana, Greece, Honduras, Malawi, Mongolia, Switzerland, parts of Mexico and the United States of America and Zimbabwe; or through court processes, as in Colombia and Kenya (14, 17–19). In many other countries, HIV criminalization laws are being challenged before national courts.

THE SCIENCE

In 2018, a statement on the science of HIV transmission in the context of criminalization was jointly developed by 20 leading HIV scientists and endorsed by more than 70 leading scientists from 46 countries (20). The statement made clear that:

HIV is not transmissible by air or casual contact. **There are no known cases of transmission through saliva, even when it contains small quantities of blood.**

The possibility of HIV transmission through biting and oral sex ranges from none to negligible. The few clinical studies investigating transmission through oral sex have failed to find any cases of HIV transmission. Transmission is not possible through biting where there is minimal or no blood. Even where the person living with HIV has a lot of blood in their mouth that makes contact with an open wound, and the person's viral load is not low/undetectable, the possibility still ranges from none to negligible.

HIV cannot be transmitted when condoms are used correctly or a person has an undetectable viral load.¹ The possibility of transmission when the HIV-negative person is using pre-exposure prophylaxis (PrEP) ranges from none to negligible.

The possibility of HIV transmission during a single episode of condomless sex with a person not on HIV treatment is low, ranging between

0.08%
for penile-vaginal sex to
1.4%
for penile-anal sex.

Phylogenetic analysis alone cannot prove beyond a reasonable doubt that one person infected another, although it can be used to show that viruses are unrelated and, therefore, to exonerate a defendant.

Modern antiretroviral therapies have improved the life expectancy of most people living with HIV to a point similar to their HIV-negative counterparts, transforming HIV infection into a chronic, manageable health condition.

Research strongly supports the findings of the Global Commission on HIV and the Law's 2012 report that HIV criminalization fails to encourage safer behaviour; it may even result in greater risks (21, 22).



¹ When a person living with HIV is taking effective antiretroviral therapy, the viral load becomes so low that it is undetectable (less than 50 copies per millilitre of blood).

INTERNATIONAL RIGHTS OBLIGATIONS, STANDARDS AND RECOMMENDATIONS



International human rights bodies and experts have held that HIV criminalization violates human rights, including the rights to health, privacy, equality and non-discrimination and impedes HIV treatment and prevention (3, 8–12).

The UN Committee on Economic, Social and Cultural Rights found that

HIV criminalization impedes the exercise of the right to sexual and reproductive health (10).



This finding is supported by the World Health Organization (WHO) (4), the Global Commission on HIV and the Law (2, 17), the United Nations (UN) Secretary General (11) and UNAIDS (13). National apex courts (17, 19) and parliaments (23) have found such laws to be unconstitutional, breaching the rights of equality and non-discrimination, including discrimination against women.



Prosecutions disproportionately affect people who are economically or socially vulnerable, and increase the risk of violence toward affected people, especially women, who are often the first in a relationship to be diagnosed as living with HIV because of antenatal HIV testing policies and practices. The law also fails to recognize that for many women, **it is difficult to negotiate safer sex or disclose their status without fear of violence** (3).



In 2012, civil society came together to adopt the **Oslo Declaration on HIV Criminalisation**, which calls for an end to HIV-specific criminalization. The Declaration recommends measures that create an environment to enable people to seek testing, support and treatment, and to safely disclose their HIV status as an alternative to a punitive approach to HIV prevention (24).



GLOBAL AIDS SOCIETAL ENabler TARGETS 2025

Less than 10% of countries have laws criminalizing HIV non-disclosure, exposure and transmission.

The application of general criminal law should be **limited to cases of intentional HIV transmission** (e.g. where a person knows their HIV status, acts with the intention to transmit HIV, and does in fact transmit the virus), informed by the best available scientific and medical evidence about HIV and modes of transmission, prevention and treatment. The harm of HIV non-disclosure or potential or perceived exposure, without actual transmission, is not sufficient to warrant prosecution and should not be criminalized (13).



Outside of intentional transmission, criminal law should not be applied to HIV. HIV criminalization should never apply in situations including, but not limited to, where the person did not know his or her HIV status or took effective precautions to prevent HIV transmission, including using condoms, taking effective HIV treatment or having a low viral load. Criminal law should never apply to vertical transmission, including breastfeeding (13).²

Instead of criminalization, states should act to create enabling social and legal environments that support safe and voluntary disclosure of HIV, free of stigma and discrimination. They should ensure access to available, acceptable, affordable HIV prevention, testing and treatment and empower individuals to be able to negotiate safe sex (13).



States must uphold human rights and criminal law principles, and ensure that courts require proof—to the applicable criminal law standard—of intent to transmit HIV (17). They should review and set aside any convictions where scientific and medical facts and general criminal law principles were not applied (2).

Police, prosecutors and judges should be trained on relevant and up-to-date scientific and medical aspects of HIV, including those that affect the assessment of risk, harm, mental culpability, proof and defences in the context of HIV-related criminal law cases.



Police and prosecutorial guidelines developed in collaboration with all relevant stakeholders should clearly establish under what circumstances criminal charges could be brought for HIV-related matters.

KEY RESOURCES FOR FURTHER INFORMATION

- Francoise Barre-Sinoussi and Salim S Abdool Karim, et al., [Expert consensus statement on the science of HIV in the context of criminal law](#), *Journal of the International AIDS Society*, 2018, 21:e25161, 1
- [Oslo Declaration on HIV Criminalisation](#) (prepared by international civil society in Oslo, Norway), 2012
- HIV Justice Network, [Advancing HIV Justice 3: Growing the Global Movement against HIV Criminalisation](#), 2019 and [Global HIV Criminalisation Database](#)
- Global Commission on HIV and the Law, [Risks, Rights & Health](#), 2012, and 2018 supplement
- UNAIDS, [Guidance Note on Ending Overly Broad HIV Criminalisation: Critical Scientific, Medical and Legal Considerations](#), 2013
- International Community of Women Living with HIV (ICW), [Updated position paper on the criminalisation of HIV non-disclosure, exposure and transmission](#), 2015
- United Nations Development Programme, [HIV-related criminal cases: guidance for prosecutors](#), 2021 (forthcoming)

This policy brief is produced by UNAIDS as a reference point the issue of criminalization of HIV non-disclosure, exposure and transmission and human rights. It does not include all recommendations and policies relevant to the issue covered. Please refer to the key resources listed above for further information.

² For a more complete list of situations, please see UNAIDS, [Ending overly broad criminalization of HIV non-disclosure, exposure and transmission](#). Geneva: UNAIDS; 2013.

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