

# HIV CRIMINALIZATION

HUMAN RIGHTS FACT SHEET SERIES

2024



## OVERVIEW

In 2024, **156 countries** criminalized HIV nondisclosure, exposure or transmission through specific or general laws or had prosecutions based on general criminal laws in the past 10 years (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 people from marginalized populations living with HIV, including women, gay men and other men who have sex with men, and sex workers, although this varies by region (2). Laws are often applied without adequate reference to current HIV-related science, including in cases where exposure or transmission did not or cannot occur (2, 3).

Globally, prosecutions for nondisclosure, exposure or transmission of HIV frequently relate to sexual activity, biting or spitting. This includes instances in which no harm was intended, HIV transmission did not occur, and HIV transmission was extremely unlikely or not possible. This suggests prosecutions are not always guided by the best available scientific and medical evidence.



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 or at risk of HIV from talking openly to their medical providers, disclosing their HIV status or using available prevention or treatment services, all of which undermine the HIV response (4–8).

**INTERNATIONAL  
HUMAN RIGHTS  
BODIES RECOMMEND  
THE REMOVAL  
OF HIV-SPECIFIC  
CRIMINAL LAWS  
(9–14)**

The application of general criminal law should be limited to cases of intentional transmission, where a person knows their HIV status, acts with intention to transmit HIV, and does in fact transmit the virus (3, 15).

## THE DATA

In 2024, **156** countries criminalized HIV nondisclosure, exposure or transmission or had prosecutions based on general criminal laws in the past 10 years. Of these, 86 countries have HIV-specific criminal laws and 45 countries have broader laws covering communicable diseases (1).



Between January 2019 and June 2024 the HIV Justice Network identified **395** media-reported HIV-related legal cases globally (2).



Despite there being no risk of transmission through saliva (including spitting) or biting where there is minimal blood (20), according to the HIV Justice Network at least 11 criminal cases related to spitting and seven related to biting have been reported to the media since 2022 (2, 16).



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 (in Belize, the Central African Republic, Colombia, Kazakhstan, parts of Mexico, Sweden, the United States of America and Zimbabwe) or through court processes (in Finland, France, Ireland and Spain) (16–19).

## RESEARCH AND SCIENCE

Current evidence suggests the possibility of HIV transmission during a single episode of sex, biting or spitting ranges from zero to low. Research has considered the positive health impact of modern antiretroviral therapy, which has improved the life expectancy of most people living with HIV to a point like that of their HIV-negative counterparts, transforming HIV infection into a manageable chronic health condition. Consideration of the use of scientific evidence in court found that phylogenetic analysis alone cannot prove beyond reasonable doubt that one person infected another, although it can be used to exonerate a defendant (20).

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

- HIV cannot be transmitted when condoms are used correctly or a person has an undetectable viral load.<sup>1</sup> The possibility of transmission when the HIV-negative person is using pre-exposure prophylaxis (PrEP) ranges from zero to negligible.



- 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 or oral sex ranges from zero 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 no or minimal 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 or undetectable, the possibility still ranges from zero to negligible.

In 2023, the World Health Organization (WHO) released new guidance confirming there is **zero risk of HIV transmission during sexual intercourse where a person has an undetectable viral load and continues taking antiretroviral treatment as prescribed, and almost zero or negligible risk where a person has a suppressed viral load** (21).



Research strongly supports the findings of the Global Commission on HIV and the Law report (3) that HIV criminalization fails to encourage safer behaviour and may even result in greater risks and harms (8, 22–24).

- 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.

<sup>1</sup> When a person living with HIV is taking effective antiretroviral therapy, the viral load becomes so low that it is undetectable (fewer 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 to health, privacy, equality and non-discrimination, and impedes HIV treatment and prevention (9, 10–14, 25, 26). This finding is supported by WHO (27), the Global Commission on HIV and the Law (2), the United Nations Secretary General (13) and UNAIDS (15). National apex courts (3, 18, 19) and parliaments (28) have found such laws to be unconstitutional, breaching the rights of equality and non-discrimination, including discrimination against women.



The United Nations Committee on Economic, Social and Cultural Rights found that **HIV criminalization impedes the exercise of the right to sexual and reproductive health** (12).



Prosecutions disproportionately affect people who are economically or socially vulnerable, and increase the risk of violence towards 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** (9).



In 2012, civil society came together to adopt the **Oslo Declaration on HIV Criminalisation**, which calls for an end to HIV-specific criminalization. The Oslo Declaration recommends measures that create an environment to enable people to seek HIV testing, support and treatment, and to safely disclose their HIV status as an alternative to a punitive approach to HIV prevention (29).



## GLOBAL AIDS SOCIETAL ENABLER TARGETS 2025

Less than 10% of countries have laws criminalizing HIV nondisclosure, exposure or 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 nondisclosure or potential or perceived exposure, without actual transmission, is not sufficient to warrant prosecution and should not be criminalized (15, 25).



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 their 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 (15).

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. States should ensure access to available, acceptable, affordable HIV prevention, testing and treatment and empower people to be able to negotiate safer sex (15).



**States must uphold human rights and criminal law principles and ensure courts require proof—to the applicable criminal law standard—of intent to transmit HIV (3, 25).**

States should review and set aside or expunge any convictions where scientific and medical facts and general criminal law principles were not applied (3).

Police and prosecutorial guidelines developed in collaboration with all relevant stakeholders should establish clearly the circumstances under which criminal charges could be brought for HIV-related matters (15).



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 (15).

## KEY RESOURCES FOR FURTHER INFORMATION

- Barré-Sinoussi F, Abdool Karim SS, Albert J, Bekker LG, Beyrer C, Cahn P, et al. [Expert consensus statement on the science of HIV in the context of criminal law](#). J Int AIDS Soc. 2018;21(7):e25161.
- [Oslo Declaration on HIV Criminalisation prepared by international civil society in Oslo, Norway](#), 2012.
- HIV Justice Network [Advancing HIV justice 4: understanding commonalities, seizing opportunities](#), 2022.
- HIV Justice Network [Global HIV criminalisation database](#).
- Global Commission on HIV and the Law [HIV and the law: risks, rights and health](#), 2012.
- Global Commission on HIV and the Law [HIV and the law: risks, rights and health—2018 supplement](#), 2018.
- UNAIDS [Guidance note on ending overly broad HIV criminalization: critical scientific, medical and legal considerations](#), 2013.
- International Community of Women Living with HIV [Updated position paper on the criminalization of HIV non-disclosure, exposure and transmission](#), 2015.
- UNDP [HIV-related criminal cases: guidance for prosecutors](#), 2021.
- WHO [The role of HIV viral suppression in improving individual health and reducing transmission: policy brief](#), 2023.
- International Commission of Jurists [March 8 Principles for a Human Rights-based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty](#), 2022.

*This fact sheet is produced by UNAIDS as a reference on criminalization of HIV nondisclosure, exposure and transmission and human rights. It does not include all recommendations and policies relevant to the issues covered. Please refer to the key resources listed above for further information.*

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11. CEDAW/C/UZB/CO/6. [Concluding observations on the sixth periodic report of Uzbekistan](#). United Nations Committee on the Elimination of Discrimination against Women; 2022.
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