

# BEYOND BLAME

Challenging HIV Criminalisation



De Balie, Amsterdam, 23 July 2018

## Meeting Report

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**HIV JUSTICE  
WORLDWIDE**

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## **Beyond Blame 2018: Challenging HIV Criminalisation**

**Beyond Blame 2018: Challenging HIV Criminalisation** was a one-day meeting for activists, advocates, judges, lawyers, scientists, healthcare professionals and researchers working to end HIV criminalisation. Held at the historic De Balie in Amsterdam, immediately preceding the 22nd International AIDS Conference (AIDS 2018), the meeting was convened by **HIV JUSTICE WORLDWIDE** and supported by a grant from the **Robert Carr Fund for Civil Society Networks**.

The meeting discussed progress on the global effort to combat the unjust use of the criminal law against people living with HIV, including practical opportunities for advocates working in different jurisdictions to share knowledge, collaborate, and energise the global fight against HIV criminalisation. The programme (see Appendix A) included keynote presentations, interactive panels, and more intimate workshops focusing on critical issues in the fight against HIV criminalisation around the world.

The more than 150 attendees at the meeting came from 30 countries covering most regions of the world including Africa, Asia and the Pacific, Eastern Europe and Central Asia, Latin and North America and Western Europe. Participation was extended to a global audience through livestreaming of the meeting on the **HIV JUSTICE WORLDWIDE YouTube Channel**, with interaction facilitated through the use of Twitter (using the hashtag **#BeyondBlame2018**) to ask questions of panellists and other speakers.

*Beyond Blame 2018* built on the successes of previous meetings held prior to International AIDS Conferences, in Melbourne (*Beyond Blame*, 2014) and Vienna (Criminalisation of HIV Exposure and Transmission: Global Extent, Impact and the Way Forward, 2010), with the most recent *Beyond Blame* held in Durban in 2016. Following the meeting, participants were surveyed to gauge the event's success. All participants rated the *Beyond Blame 2018* meeting as good (6%), very good (37%), or excellent (57%), with 100% of participants saying that *Beyond Blame 2018* had provided useful information and evidence

they could use to advocate against HIV criminalisation. A full copy of the *Beyond Blame 2018* evaluation is included at Appendix B .

A video recording of the entire meeting is available on **HIV JUSTICE WORLDWIDE's YouTube Chanel**.



## ABOUT HIV JUSTICE WORLDWIDE

HIV JUSTICE WORLDWIDE was launched in March 2016 as a result of a **Robert Carr civil society Networks Fund** grant that enabled seven civil society networks from around the globe to come together to develop a coordinated global response to the unjust use of laws against people with HIV. Those networks - AIDS and Rights Alliance for Southern Africa, Canadian HIV/AIDS Legal Network, Global Network of People Living with HIV, HIV Justice Network, International Community of Women Living with HIV, Positive Women's Network - USA, and Sero Project became the formal steering committee. In 2017, three additional steering committee members were added, AIDS Action Europe, AIDS-Free World, and the Southern African Litigation Centre.

In June 2017, HIV JUSTICE WORLDWIDE invited organisations from around the world who share our values and principles to **join the movement**. As of August 2018, more than 80 organisations have joined the vibrant global community of advocates fighting to abolish HIV-related criminalisation.

HIV JUSTICE WORLDWIDE aims to abolish criminal and similar laws, policies and practices that regulate, control and punish people living with HIV based on their HIV positive status. We are working to shape the discourse on HIV criminalisation and to share information and resources, network, build capacity, mobilise advocacy, and cultivate a community of transparency and collaboration. This work is based on an understanding that:

- HIV criminalisation is discriminatory, a violation of human rights, undermines public health, and is detrimental to individual health and well-being
- HIV criminalisation is part of a larger problem of scapegoating, targeting, harassing and policing vulnerable and marginalised communities
- efforts to end HIV criminalisation should be led by those most impacted, including people living with HIV and organisations, networks, and institutions led by people living with HIV and/or those most impacted by these laws and prosecutions.
- the knowledge and perspectives of those most impacted by an issue should be central to the decision-making processes
- regional differences matter, and we respect local knowledge and local leadership.

A list of HIV criminalisation-related events presented by HIV JUSTICE WORLDWIDE partners at AIDS 2018 is at Appendix C.



## Beyond Blame: Session by Session

### 1. Welcome to *BEYOND BLAME*

In their opening address, **Laela and Naomi Wilding**, granddaughters of Elizabeth Taylor and ambassadors of the Elizabeth Taylor AIDS Foundation, described their commitment to raise awareness and challenge HIV criminalisation.

**Laela Wilding** spoke about her attendance at *Beyond Blame* 2016 in Durban with a team from the Elizabeth Taylor AIDS Foundation, which she described as a turning point, both for herself and for the Foundation. Particularly important was the call from Kerry Thomas from his prison cell in Idaho, where he is serving a 30-year sentence for not disclosing his HIV status prior to a consensual sexual encounter during which he used a condom while having an undetectable viral load.

Laela stressed that hearing stories, true stories, particularly first-hand accounts of HIV criminalisation, is extremely powerful, and thanked those who were able to speak out for not only championing this cause but also for living positively. She noted that many of the basic rights of people living with HIV are at risk principally because of stigma, and called for conference participants to do everything possible to break down the walls of stigma. Laela explained that learning about the criminalisation of people living with HIV had been so eye opening and dismaying that it has pushed a shift in their advocacy focus to the issue of HIV criminalisation.

**Naomi Wilding** explained that Elizabeth Taylor took on the role of AIDS activist because she saw great injustice. Elizabeth Taylor recognised that as AIDS took hold, it was more than a health crisis: it was a growing human rights and social justice crisis. AIDS was taken up by many as an opportunity to express discrimination, ignorance and homophobia.

*"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



Laela and Naomi Wilding, Elizabeth Taylor's grandchildren, on behalf of the Elizabeth Taylor AIDS Foundation

*"That people living with HIV are being singularly targeted and criminalised in every corner of the world is outrageous."*

Laela Wilding  
Elizabeth Taylor AIDS Foundation

Twenty-six years after Elizabeth Taylor attended the 8th International AIDS Conference in Amsterdam in 1992, her Foundation remains determined to continue her legacy.



## 2. The Lived Experience: What it's like to be personally impacted by HIV criminalisation and be part of the movement to end it



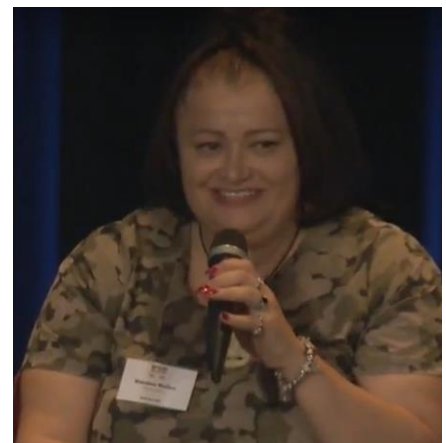
### Key points

- The experience of HIV criminalisation was a poor fit for individual's actions and the consequences of those actions, particularly where actions included little or no possibility of transmission or where courts did not address scientific evidence
- The consequences of prosecution for alleged HIV non-disclosure prior to sex are enormous and may include being ostracised, dealing with trauma and ongoing mental health issues, loss of social standing, financial instability, multiple barriers to participation in society, and sex offender registration
- Survivors of the experience shared a sense of solidarity with others who had been through the system, and were determined to use their voices to create change so that others do not have to go through similar experiences
- Becoming an advocate against HIV criminalisation is empowering and helps to make sense of individuals' experiences

### Marama Mullen (New Zealand)

Marama Mullen, an Indigenous woman from Aotearoa (New Zealand), spoke about her experience of HIV criminalisation as a prosecution witness/complainant. Marama described how, 25 years ago, she met a man who was travelling through New Zealand. She went on to have condomless sex with him, a decision which changed her life forever. That man became the first person in New Zealand prosecuted for infecting a person with HIV, and, at the age of 22, Marama was coerced into acting as a witness. Marama explained that she was young, naïve and did not know what she had got herself involved with. She felt herself pulled into a system that said he needed to be locked up and put away. The criminal justice system made her the complainant and she found herself unable to extricate herself.

Marama's experience was at odds with her traditional upbringing in Maori culture, where if someone is hurt or there is an injustice, people don't run to police but try to sort out issues themselves: a practice that continues in many Pacific Island countries. Marama would have



preferred to use traditional marae-based (restorative) justice, to have spoken to him and discuss what had happened, but instead, she had no say in the process.

*"I didn't have a say in it, and it really felt like a snowball that just rolled and rolled over the top of me because I didn't understand what was going on. I didn't know the long term."*

After the trial, Marama began to see her experience as a result of Aotearoa's colonisation. She couldn't reconcile what had occurred with the Maori beliefs she'd grown up with. Marama had felt pressured and been told that she was doing her country a service, but there were no winners. No one was better off. Her sexual partner was convicted of grievous bodily harm, served 5 years of a 7-year sentence, and was then deported. (He has since died.) Marama was very exposed in the media by the trial, and when it was over, she was left with no support, with no-

one wanting to know about it. There was no restorative justice. Instead, the effects are long lasting. Twenty-five years later, Marama continues to be described in media reports as "Peter Mwai's victim" despite not identifying as a victim at all.

Marama has seen a ripple effect of that first trial, with New Zealand becoming a country with a high *per capita* rate of HIV prosecutions. She has become an activist against HIV criminalisation, supporting people who are being prosecuted through her organisation: INA (Maori, Indigenous & South Pacific) HIV & AIDS Foundation. Marama also sits on the boards of ICW and ICASO.

*"Twenty-five years later, I'm still seen as a victim and I'll tell you right now, I'm not a victim."*

Marama spoke about the affinity she feels with others who have been involved in prosecutions, as witnesses or as accused, particularly her connection with those from key populations who are disadvantaged, and who continue to have their sexual lives scrutinised and controlled.

## Chad Clarke (Canada)

Chad Clarke referred to his experience of prosecution for non-disclosure of his HIV status as both a nightmare and a rebirth. The nightmare relates to his 2009 prosecution and the more than two years he spent in prison. The rebirth relates to the person he has since become, the person he decided he wanted to be as he appreciated being given "a second chance in life".

Chad explained that he became an advocate as a result of his experience in prison, where he'd had to tell people why he was there: that he'd been convicted of aggravated sexual assault (the law most often used in Canada to prosecute HIV non-disclosure) and was HIV-positive. Chad says his "brothers" in prison "got it". They didn't ridicule him, instead saying, "You don't belong here. You don't deserve to be here." Although some were career criminals, they told Chad that there were people who would support him. Chad decided he would become an advocate and share his voice when he got out. It's now almost seven years since Chad's release. He describes the last three years during which he's been involved in anti-HIV criminalisation work as "amazing". He thanked participants for coming and listening to "someone like me".



Chad explained that in Canada, there are at least 220 people who have been criminally charged, convicted and sentenced. Moreover, the law in Canada frames non-disclosure as aggravated sexual assault, so people also have to register as a sex offender for life. Chad is considered a sex offender although the sex was consensual and it occurred in a relationship. He explained that sex offender registration is the hardest part of his experience to deal with, far tougher than having HIV, and that he deals with it daily.

Chad has post-traumatic stress disorder (PTSD) as a result of his prison experience,

*"I don't care if I've got HIV. I'm Chad Clarke and I'm a dad and I'm a grandfather. I embrace everything. I love people and if I can share my story and show how I taught myself reliance, that's what I want to give back. I know there are others coming after me."*

saying that he can be "a complete basket case" some days, stuck with his own destructive thoughts. Other times he feels good but being on that sex registry really "burns a fire inside". Chad is determined to take his case to the Supreme Court of Canada to challenge his sex offender registration. He referred to UNAIDS' 90-90-90 goals, saying that he is currently only 90% himself but he is committed to getting his sex offender status removed so that he can become 100% himself. Until then, he'll keep talking.

## Ariel Sabillon (Honduras)

Ariel is currently being investigated 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 spoke about his motivation for becoming an HIV criminalisation advocate arising out of his recent experiences living in the United States. Not long after he started college in Florida, Trump was elected President, and Ariel became increasingly aware of social injustices, including commentary about immigration. Ariel has PTSD from witnessing drug related gang violence in Honduras prior to migration to the U.S. He has family who have crossed the U.S./Mexico border, and knows people who've died trying to do so.

Ariel describes himself as an empathetic and emotional person: attributes which are perceived as negative in many cultures, including his own Honduran/Latino culture in which machismo and power dynamics based on gender and sexuality persist. Ariel empathised with those who have, and who want to, migrate and was watching media portrayal of people like him, people he went to school with, and his family, in a way that was not accurate. That motivated him to read more and take classes about social justice issues with his interests extending to issues of race, gender and queer identity as he tried to understand where this commentary was coming from and why it was happening.

During this time, Ariel became HIV-positive but he didn't really think much about it because it didn't seem like a big deal. He soon had an undetectable viral load, was healthy, and was feeling fine. Ariel is 21 years old and, although he's talked to a lot of positive people about what life was like in the 1980s or 1990s, his experience of HIV is not like that. When Ariel talks about HIV with his friends, it's just "something that happened, that can be dealt with".



Ariel's investigation relates to an incident with another student he'd met and with whom he had been on a couple of dates. The records reflect that everything they did was consensual, including the oral sex. When Ariel was questioned by the university he tried to explain that there was no risk of transmission. They kept asking questions like, "Don't you think you should have disclosed? Do you accept your responsibility?". In the end Ariel said 'yes' because that's what they wanted to hear, despite feeling like he hadn't done anything wrong.

*"In my mind I wasn't scared about disclosing and most people I know aren't scared about disclosing but I didn't really want everyone knowing all my business. That information is personal and I wasn't putting anyone at risk."*

Ariel's experience of this investigation changed everything for him. Theoretically, he understands this experience is just another layer of criminalisation of, and lack of social justice for, minorities in the state of Florida, which has very high incarceration rates. Before coming to *Beyond Blame*, Ariel became aware of a trial in Miami where a policeman shot a 15-year-old Colombian boy in the back numerous times, and two years later, the boy killed himself because he could not deal with the pain. The police officer was not punished.

When Ariel thinks about HIV criminalisation, he thinks about the stories of other survivors but also about how close he came to being incarcerated. He feels like he fell from a great height. He was from an immigrant family and was the first in his family to go to college, an experience he was really enjoying until the investigation, which completely burst his bubble. He has found it incredible to think that life could end, "just like that, just from someone being annoyed at you". Ariel decided that he needed to do something about it.

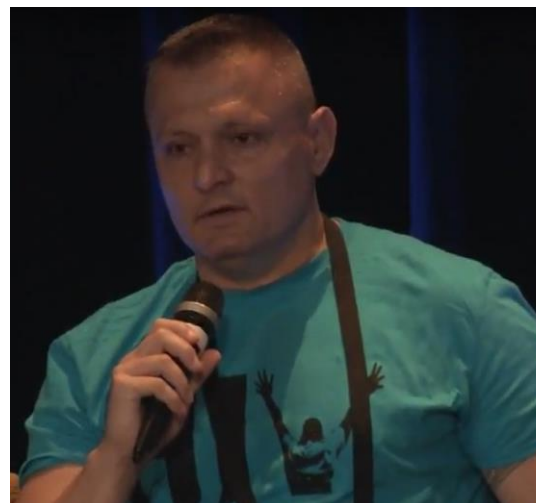
*"I need to take advantage of the privilege and speak out for those who can't."*

Ariel thanked Sean Strub and others at the Sero Project for mentoring him, and acknowledged other HIV criminalisation survivors, all those from the HIV is Not a Crime Training Academy, and those attending *Beyond Blame* for their ongoing support in his fight for justice.

## **Ken Pinkela (United States)**

Ken was convicted of aggravated assault in a military court based solely on one soldier's accusation (with no evidence) that Ken had infected him with HIV. He spent 272 days in an Army prison. Despite serving in the army for 29 years, Ken lost all his army benefits, including medical insurance. He is no longer allowed to serve his country and he 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 has just recently received some good news. He was convicted on his birthday and this year was the first birthday since the conviction that he has allowed himself to celebrate. That very day, he received a contract from a large law firm in DC who



*"Didn't matter that I was a Colonel they wanted 'the last gay guy out of the building'. The HIV: it was a target."*

have agreed to take on his case. Ken described the experience of talking with those lawyers, including one of the partners, a full partner in an extremely large law firm, and the overwhelming feeling when he realised they 'got it'. It felt like a rare privilege to have such a learned person who understands the injustice; someone who has clerked for a Supreme Court Justice. It was amazing to hear these

intelligent people trying to grasp what HIV criminalisation is, asking questions like: 'What happened to you?; Wait a minute, how did you go to trial without an investigation?; and 'How did you get convicted without evidence?'. They struggle to get their heads around it and are then amazed to realise that there are people around the world being criminalised just for living with a virus. As they start 'peeling back the onion' they realise that the legal system, which they've given their lives to – to stand up for justice and rights – they see how the law is being abused and how discrimination is used in a court against people that don't look like you, or dress like you, or speak like you.

Ken explained that it felt amazing that after six years of yelling and screaming, that this law firm has picked up his case. Ken describes himself as being "pretty lucky" for being brought into the anti-HIV criminalisation movement, acknowledging the work of HIV Justice Network's Edwin Bernard (who facilitated this panel) who brought him into the movement and introduced him to Sean Strub at the Sero Project.

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## What It's Like to Be HIV Positive in the Military

Soldiers can be prosecuted for having sex, latest medications aren't widely available – are the armed forces living in the 1980s when it comes to AIDS?

By JOSEPH JAAFARI



Kenneth Pinkela is a former Army lieutenant colonel served eight months in prison, lost his home and was dishonorably discharged from the Army for having consensual sex.  
Courtesy of Kenneth Pinkela

### 3. The Movement to End HIV Criminalisation Globally: Where are we now?



#### Key points

- The movement against HIV criminalisation has grown significantly over the last decade but as the movement has grown, so has understanding of the breadth of the issue, with new cases and laws frequently uncovered in different parts of the world.
- As well as stigma, there are multiple structural barriers in place enabling HIV criminalisation, including lags in getting modern science into courtrooms and incentives for police to bring cases for prosecution.
- Community mobilisation is vital to successful advocacy. That work requires funding, education, and dialogue among those most affected to develop local agendas for change.
- Criminalisation is complex and more work is required to build legal literacy of local communities.
- Regional and global organisations play a vital role supporting local organisations to network and increase understanding and capacity for advocacy.
- There have already been many advocacy successes, frequently the result of interagency collaboration and effective community mobilisation.

#### Global Overview: Edwin Bernard (HIV Justice Network)

Although the issue of HIV criminalisation is too often “overlooked and underfunded”, the global movement to end HIV criminalisation has come a long way. It has grown from the work of a few isolated activists a decade ago to a recognised issue on the agenda of many local and international agencies, with coverage at national and international conferences, including AIDS 2018. Still, too many people living with HIV are being convicted of ‘crimes’ contrary to international guidelines on HIV and human rights, scientific and medical evidence, and best public health advice.

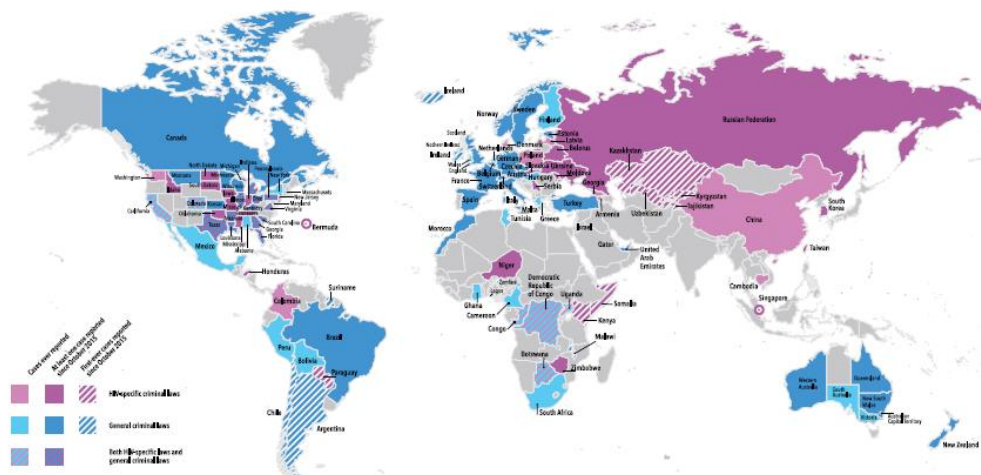
One hundred jurisdictions in 73 countries currently have HIV-specific criminal laws. During the most recent audit period, spanning October 2015 to June 2018, two new HIV-specific criminal laws were enacted in Bahrain and El Salvador and two HIV-specific criminal laws were proposed in Chile and Nepal<sup>1</sup>.

WHERE HIV-SPECIFIC CRIMINAL LAWS EXIST



The issue extends beyond HIV-specific laws as often general laws are applied, for example, grievous bodily harm, aggravated sexual assault or even attempted murder. At least 115 jurisdictions in 76 countries have ever applied HIV-specific or general laws (or both) to prosecute people with HIV for alleged HIV non-disclosure, potential or perceived exposure or non-intentional transmission.

WHERE HIV-RELATED CRIMINAL CASES HAVE BEEN REPORTED



During the audit period, nine jurisdictions applied their HIV-specific criminal laws for the first time: Honduras, Kenya, Kazakhstan, Kyrgyzstan, Nigeria (Lagos State), Paraguay, Somalia, Tajikistan and Uzbekistan.

<sup>1</sup> Update: Nepal's law was enacted post-*Beyond Blame* on 15 August 2018.

Cases were reported for the first time in a further nine jurisdictions that applied general criminal laws: Chile, Iceland, Ireland, Israel, Malawi, Nigeria (Zamfara state), Suriname and United Kingdom (Northern Ireland).

The majority of reported cases occurred in the US (143), Belarus (128), Russia (126), Ukraine (29), Canada (22) and Zimbabwe (15), with high numbers of cases reported in three US states: Florida (26), Ohio (18) and Tennessee (18). The highest proportion of cases *per capita* of people living with HIV were recorded in Belarus (8.5 per 1000 diagnosed people living with HIV) and the Czech Republic (3.3 per 1000 people living with HIV).

There were also numerous positive developments during the October 2015-June 2018 audit period. These included: the withdrawal of proposed problematic statutes in Brazil, Malawi, Mexico (San Luis Potosí and Quintana Roo states) and several United States (US) states; repeal of Australia's only HIV-specific law (Victoria); modernisation of HIV-specific laws in three US states (California, Colorado, and North Carolina); and suspension of HIV-specific criminal laws after being ruled unconstitutional in Kenya and Mexico (Veracruz state). In addition, policy changes in Canada (Ontario), law reform in Norway, and a precedent-setting case in Sweden have all limited the application of the law through the recognition of up-to-date science on HIV-related risk.

[\(Click here to download the poster containing all the maps and analysis presented at AIDS 2018 by HJN\)](#)

**The movement against HIV criminalisation** has grown dramatically over the last decade, following a call to action by Justice Edwin Cameron at AIDS 2008 in Mexico City. The first international meeting aiming to co-ordinate the work of activists was held in Vienna 2010, followed by a 2012 meeting in Norway which produced the [Oslo Declaration](#): the founding document for HIV Justice Network. The first *Beyond Blame* meeting was held prior to the International AIDS Conference in Melbourne in 2014, followed by a second larger meeting in Durban 2016. The third *Beyond Blame* in Amsterdam attracted more than 170 registrations. Throughout this history, HIV Justice Network has aimed to capture some of the energy and dynamism of the movement against HIV criminalisation on its website and through the use of social media and other technologies, including film and video.

Funding by the Robert Carr Civil Society Networks Fund has been invaluable to the work of HIV JUSTICE WORLDWIDE over the last three years (see 'About HIV JUSTICE WORLDWIDE', p.4):

Some of HIV JUSTICE WORLDWIDE's [many important milestones](#) include delivery of:

- The [HIV Justice Toolkit](#), which pulls together all known HIV resources addressing HIV criminalisation, allowing researchers and advocates to pick key documents and pull them into a personalised reading list.
- A Media Toolkit, [Making Media Work for HIV Justice](#), which outlines how to work more effectively with media
- Regional HIV Criminalisation Reports for Eastern Europe and Central Asia, and Francophone Africa.

## Learning more about Latin America and the Caribbean: Diego Grajalez (CNET+ Belize)



Diego attended the first Spanish-language HIV is Not a Crime Training Academy (HINAC) in Mexico City with the goal of building CNET+’s capacity to become an HIV criminalisation advocacy hub for Latin America and the Caribbean (LAC). He described HINAC as inspiring, also increasing his awareness that many networks are not prioritising the issue of HIV possibly because many people think that it isn’t a problem because laws haven’t been used. Diego’s participation in HINAC made it clear that having HIV-specific laws, whether frequently used or not, is a major issue. He became infuriated by the notion that Belize

has laws that could be used to prosecute people living with HIV and, although they have not been used, that puts all the burden of HIV prevention on people living with HIV.

Diego noted his appreciation of HIV JUSTICE WORLDWIDE’s confidence in CNET+’s capacity to work across the region. During the process of pulling together the Latin America and Caribbean regional report on HIV criminalisation, CNET+ identified that all but seven of the 22 countries in the region criminalise HIV: five countries have HIV-specific laws and 21 others criminalise HIV under non-specific laws. Since 2002, there have been at least 53 known cases criminalising HIV non-disclosure, exposure or transmission. Thirty-nine of those cases came from Mexico, suggesting the importance of the community advocacy work in Veracruz, where advocates successfully lobbied for the removal of an HIV-specific criminalisation statute, and also had the law declared unconstitutional by the Supreme Court. That work may now serve as a precedent for others in Mexico and the region.

HIV criminalisation is also an emerging issue in the Caribbean. Recently, in February 2018, Suriname became the first Caribbean country known to have used their laws, in this case to prosecute a 38-year-old woman for allegedly transmitting HIV to her partner. This is alarming as this case could set a precedent for other countries in the region. Diego noted that although there is no documentation of other countries in the Caribbean using their HIV criminalisation statutes, when reaching out to activists in the region, many reported they had heard of cases but did not know details about them. This suggests that some other prosecutions may have occurred in the Caribbean but have not been documented.

## An Emerging Network in Francophone Africa: Cécile Kazatchkine (Canadian HIV/AIDS Legal Network)

Cecile described the background to the emerging Francophone Network against HIV Criminalisation, speaking on behalf of Ibrahim Kassoum (Niger) who was unable to attend the conference at the last minute.

In 2017, the Canadian HIV/AIDS Legal Network (on behalf of HIV JUSTICE WORLDWIDE) undertook a **mapping of HIV criminalisation laws and prosecutions in Francophone Africa**. That process identified that at least 18 countries have HIV specific laws, with 16 of those including criminal provisions. The mapping also revealed prosecutions in the region that had not previously been identified through English-based scans. In at least 11 countries there have been prosecutions or threat of prosecutions, with five court decisions identified. In some countries general laws have been used, e.g. Morocco.

Mapping also identified organisations working on, or interested in, HIV criminalisation, and highlighted some early successes. In the Democratic Republic of Congo (DRC), the second largest country in Africa, colleagues have been working to change the law, and the provision criminalising HIV in their HIV-specific law has just been repealed! Serge Temundele, who spoke about law reform efforts two years ago at *Beyond Blame* 2016, has been leading these efforts in the DRC. The dynamic group of Francophone African community activists are developing stronger regional coordination to increase their capacity to advocate against HIV criminalisation.



Francophone meeting at ICASA, Abidjan, December 2017

## Uncovering Hotspots in Eastern Europe and Central Asia: Svitlana Moroz (Eurasian Women's Network on AIDS)

Recent efforts in Eastern Europe and Central Asia have uncovered just how enormous the issue of HIV criminalisation is in the region. **The Eastern Europe and Central Asia scan** of 20 countries found that 15 have HIV-specific laws. The number of prosecutions is particularly high in the Russian Federation and Belarus.

In Russia, Kazakhstan and Moldova, there is a defence clause which can be applied if a person living with HIV discloses their status and the person voluntarily performs an action which includes a risk of HIV transmission. Several countries have similar clauses, however, in other countries, such as Belarus and Uzbekistan, there is no disclosure

defence so a person living with HIV can be convicted of a crime for having sex even when their partner knows their HIV status and has agreed to have sex. Notably, since 2015 there has been a drastic increase in criminalisation cases in Belarus, with at least 50 cases in the Belarus region of Hormel (Gomel Oblast) in the first half of 2017, including many where the person had disclosed their HIV-positive status and their partner had agreed to the risk.

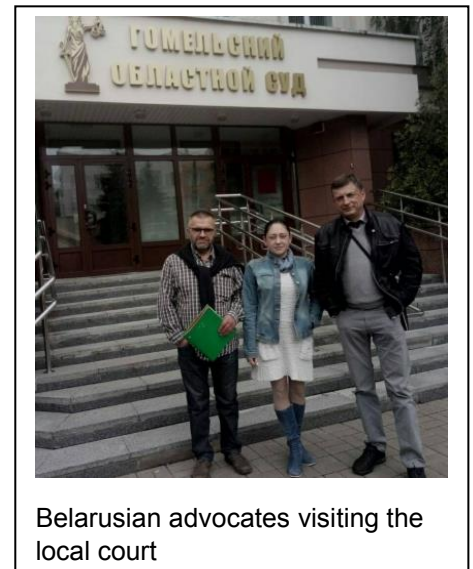


HIV Justice Network @HIVJusticeNet Jul 23  
"About 20 countries in Eastern Europe and Central Asia have HIV-specific laws. The worst situation is in Russia and Belarus ... there has been a dramatic escalation in cases in Belarus." Svitlana Moroz, Eurasian Women's Network on AIDS  
#BeyondBlame2018 #AIDS2018

**Belarus' People Plus Network and others** have undertaken some strong advocacy initiatives, including going to the court to speak with the Justice about what can be done. They are continuing monitoring the number of prosecutions and are carrying out a media campaign urging a change of focus from punishment to human rights and tolerance towards people living with HIV. People Plus Network is also working with prosecution officers and politicians to improve their understanding of the harms of criminalisation. Their work with police officers has revealed that police can receive more money (bonuses) for more prosecutions so the system's 'incentives' make prosecutions for HIV non-disclosure a lucrative business for them.

Work to date has uncovered many hidden cases, with an impressive methodology that has successfully engaged with women living with HIV on the ground. Svitlana described the importance of advocates' involvement in the criminalisation scan as it not only revealed the existence and use of HIV criminalisation laws, but also furthered advocates' understanding of the problematic legislation and how community can be united to work on the issue. The 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, it will be important to facilitate discussion within community to build a harmonised movement to advocate for an enabling environment and increased human rights.

The next phase will include work with local advocates in Russia and other countries, including Armenia and Tajikistan, and a focus on the provision of direct help to people living with HIV, providing resources to protect them from or during prosecutions.



### **Malawian Activists Create a Precedent in Africa: Annabel Raw (Southern Africa Litigation Centre)**

The Southern Africa Litigation Centre (SALC) began focusing on HIV criminalisation in 2016, following the prosecution of a Malawi woman on treatment for breastfeeding a child: a prosecution that occurred contrary to international and domestic guidelines on breastfeeding. With ARASA's collaboration, and community support from local women living with HIV, SALC supported the woman's case to appeal her conviction, including by soliciting expert evidence. The appeal process relied on women living with HIV to guide the response, a process that created a group of local activists who understood what the law would mean to them, particularly how its use would disproportionately target women. Ultimately the appeal was successful.

Shortly afterwards, the Ministry of Health proposed a new bill that would more specifically criminalise HIV non-disclosure, exposure and transmission but when parliamentarians described the bill as protecting women, women activists called them out. In addition to making technical submissions to parliament, SALC, in collaboration with ARASA and GNP+, provided modest funding (via HIV JUSTICE WORLDWIDE) and legal expertise to support the women activists, based on the understanding that it was their role to legally empower activists to speak to the law in their own voices. The women protested, attending parliament and disrupting the session considering the bill. Finally, Parliament voted to remove every single criminalisation provision that had been proposed.



Women protesting in Malawi Parliament

While pressure against the law through technical submissions and consultations were vitally important, it was ultimately the ability of women living with HIV to translate the law's impact through their lived realities that led to successful reform. That law had been discussed since 2008 and it is the norm in the region to have an HIV omnibus law with HIV criminalisation provisions. Malawi's bucking the trend may influence advocacy in the region to remove those provisions from the other 30 countries in sub-Saharan Africa with those provisions.

## Progress in Canada: Cécile Kazatchkine (Canadian HIV/AIDS Legal Network)

The Canadian HIV/AIDS Legal Network has been working on HIV criminalisation for more than 20 years, and while they have had both significant victories and losses over that time, the Network has recently seen some positive changes.

At community level there have been some great achievements, including the establishment of the national Canadian Coalition to Reform Criminalisation, which comprises a group of impressive activists from around the country. There has also been a joint campaign, with more than 150 organisations calling for law reform and prosecutorial guidelines.

Following the unfortunate *Mabior* Supreme Court decision in 2012 which underestimated the protective benefits of both the use of a condom and undetectable viral load (suggesting both must apply to preclude the necessity for HIV-positive status disclosure), advocates have been pushing to get more science into the courtroom. Despite HIV criminalisation often being a difficult and controversial issue even within the HIV community, Canadian scientists mobilized to develop the [Canadian Consensus Statement on HIV and its](#)



[Transmission in the Context of Criminal Law](#). Advocates are continuing work to promote the Statement, particularly to defence lawyers, and are also working with politicians and judges to increase understanding of HIV science. Recently, there have been several court decisions, at trial and appeal levels, suggesting prosecutions may not be warranted when a person has an undetectable viral load (even when a condom is not used).



Canadian Coalition to Reform Criminalisation

There has also been some positive change at government level. On 1 December 2017, the Federal government of Canada released a report denouncing the ‘over-criminalisation’ (their term) of non-disclosure. The report makes some useful recommendations, although advocates are waiting to see action and concrete measures arising from the report. At Provincial level, both Ontario and British Columbia recently

developed prosecutorial guidelines. The guidelines in British Columbia are problematic because they do not specify circumstances where prosecutions should not proceed. The very short guidelines developed in Ontario do, at least, explicitly preclude prosecutions in case of undetectable viral load.

In the meantime, even if the number of prosecutions has decreased, people continue to be charged. Members of the Canadian Coalition to Reform Criminalisation will continue to push to end unfair prosecutions building on the Federal government’s support and a unified community response.

## Modernisation in the U.S.: Sean Strub (Sero Project)

Four U.S. states have modernised their laws in recent years and all in different ways: Illinois, Iowa, Colorado and California. Each has provided learning experiences for community advocates. Modernisation bills are pending in some other states including Florida, where the Florida Justice Coalition is building up for another advocacy effort. In Missouri, Empower Missouri is leading advocacy for reform. In Michigan, a modernised bill appears to have been delayed in part by an advisor/physician who, once knowledgeable about the HIV epidemic, has not kept up to date with scientific and medical evidence advances. In North Carolina, there was reluctance to go to the legislature given its current composition, so advocacy efforts focused on changing that state’s Department of Health regulations. That advocacy has proven interesting but challenging. The regulations have now been changed to say that a person living with HIV who is on treatment and virally suppressed is no longer required to disclose their HIV status prior to sexual contact, but those with a detectable viral load, remain subject to the disclosure provisions: an



important issue for further discussion. In Arkansas, Idaho, Indiana, Ohio and Virginia, there are also law reform efforts underway.

As advocates have become more involved in anti-criminalisation efforts, new challenges have emerged about how to deal with new issues. For example, in Florida, advocates are questioning whether to accept current proposed changes related to HIV non-disclosure, or to hold out for a more comprehensive measure that includes better provisions around sex work. Each jurisdiction has its own political and cultural reality, and the Sero Project is working to support local people living with HIV to ensure they are at the centre of advocacy efforts and that strategies and decisions are chosen and led by those on the ground.

Sero has also enjoyed working with advocates in Mexico, supported by HIV JUSTICE WORLDWIDE (HJWW). Two years ago, the HIV is Not a Crime Training Academy received a little funding from HJWW to bring a small delegation of activists from Mexico,



The new Mexican Network of Organisations against the Criminalisation of HIV

particularly those from Veracruz who were challenging their state's criminalisation statute. Those advocates returned to Mexico and advocated strongly against HIV criminalisation, including delivering a letter to the Supreme Court challenging the Veracruz law's constitutionality. The Sero Project helped organise a press conference in Mexico City which attracted great speakers and strong media coverage. Then in 2017, HJWW supported those core advocates to organise the first national Mexican meeting: also the first Spanish language HIV is Not a Crime (*VIH No Es Un Crimen*) meeting, held in Mexico City. That event included approximately 30

activists from around the country. They developed a strategic plan and formed a national network: The Mexican Network of Organisations against the Criminalisation of HIV. In the weeks that followed, those advocates worked to change legislators' minds, successfully arguing for the bill to be withdrawn. In another victory, in February this year, the Supreme Court ruled that the statute in the state of Veracruz was unconstitutional: a useful precedent for similar statutes not only in other Mexican states but across the LAC region.

### New data from Asia: Omar Syarif (GNP+)

GNP+ recently undertook a rapid assessment scan of HIV criminalisation laws and prosecutions in 10 Asian countries. The scan found that most of those countries 'criminalise' HIV but do so under public health laws that criminalise risk related to infectious disease.



The scan also found that current legal frameworks do not preclude 'criminalisation creep'. For example, the Nepalese Parliament has only recently passed two new provisions under their Criminal Code, the first criminalising transmission of infectious disease, and the



second criminalising transmission of HIV and hepatitis B, stating that a person who 'intentionally' transmits HIV or hepatitis B can be jailed for 10 years or be fined 100,000 rupees (with Omar noting 'intentionally' is likely to be interpreted far more broadly than its lay meaning).

The study found that the PLHIV community have very limited understanding around legal language/laws, with education and mobilisation work required. The scan also revealed the problematic way HIV criminalisation has been used for political gain. For example, in Indonesia, politicians

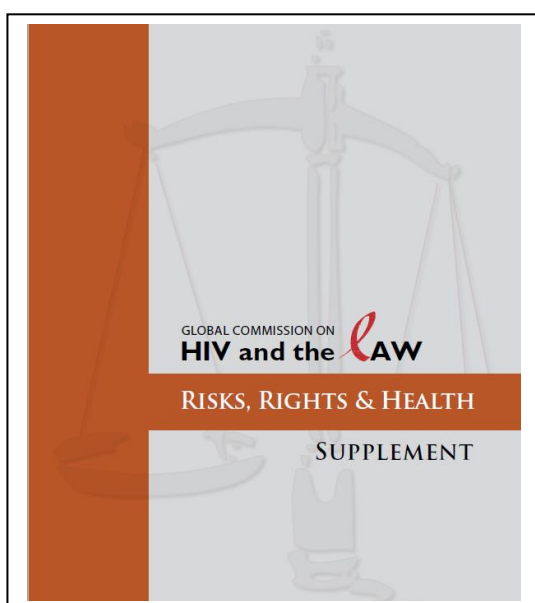
have been exploiting the general population's fear of HIV, working with 'supportive' media to publicise raids and vilify key populations and people living with HIV. More work is required to address this trend and to address it as a systemic issue.

## Leveraging the work of the Global Commission on HIV and the Law: Kené Esom (UNDP)

Six years ago, the Global Commission on HIV and the Law delivered its **landmark report** which has proven a powerful tool for advocacy against HIV criminalisation and other discriminatory and punitive laws, policies and practices that impede the HIV response. The review found that the 2012 **Global Commission on HIV and the Law report** has been used by numerous governments to improve legal and human rights environments. UNDP identified 89 countries where UN agencies have directly supported governments to advance the recommendations in the first report. Since then, a lot has changed in the HIV context, particularly developments in HIV science, and SDG targets for ending the epidemics of HIV, TB and viral hepatitis. Also, global politics is changing and repressive laws and policies are on the rise with dire impact on civic space and access to sexual and reproductive health and right. Punitive laws against people living with and vulnerable to HIV continue to hold back progress on HIV and the overlapping epidemics of tuberculosis and hepatitis. These factors created an impetus to publish a Supplement to the original report.



The Supplement, **Risks, Rights and Health: Supplement**, validates the original report and also speaks in very specific terms about new and emerging issues and changes since 2012, including evidence of the efficacy of PrEP and the impact of effective ART on prevention. Some laws are clearly more absurd than when the first report was released. In the Supplement, the Commission speaks about the need for the best available scientific evidence to inform the criminal law or any interactions with the law where HIV status is an issue, and that HIV status should not be used discriminatorily to impact pre-trial detention, parole conditions or the sentences of people who have been prosecuted.



The supplement also addresses other changes, for example, weakened political leadership, changes in sexual and reproductive health access, and attacks on the rights of women. It addresses shrinking civil society space and argues that civil society is critical to a successful HIV response. The supplement addresses other issues including funding for new health technologies especially for HIV coinfections, the right to benefit from scientific progress and access to HIV services for migrants, among others. The supplement makes 30 urgent recommendations to ensure effective, sustainable health responses consistent with universal human rights obligations.

## Speakers from the Floor

A number of speakers spoke from the floor, updating the meeting on developments in:

**Sweden** Andreas Berglöf spoke about progress in Sweden, where the Communicable Diseases Act has previously forced people into isolation in 80 cases. When combined with the use of criminal law, there have been at least 140 instances where people have now been incarcerated after allegations of HIV non-disclosure.



Andreas Berglöf, RFSU, Sweden

The Swedish Association for Sexuality Education (RFSU) has been working on HIV criminalisation since 2001 alongside HIV Sweden and the LGBTI charity, RFSL. In 2004, the Swedish Supreme Court acknowledged that HIV treatment reduced risk of HIV transmission but found the evidence was not conclusive. In 2013, a **position statement** from the Public Health Agency of Sweden and the Swedish Reference Group for Antiviral Therapy outlined the science showing effective HIV treatment precludes

transmission. Now, under the Communicable Diseases Act, if a person is well treated, they no longer have to disclose their HIV status if they use a condom.

Earlier this year, the Swedish Supreme Court finally made a **precedent-setting decision** stating that a person on effective treatment cannot transmit HIV. In Sweden, which is the first country to fulfil the 90-90-90 treatment targets, this case should greatly reduce, and hopefully prevent, unjust prosecutions for HIV 'exposure'. The next focus for advocacy will be the use of the law against migrants and others not linked into care and a reduction in stigma and discrimination towards people living with HIV.

**Norway** has also been undertaking a long, drawn out process from a number of HIV organisations and individual advocates, with some very positive changes recognising the prevention benefit of ART in the application of the general law.

**Australia** Vikas Parwani from the HIV/AIDS Legal Centre in Sydney outlined some positive changes to the public health law in New South Wales (the most populous Australian state) that previously required that a person disclose their HIV status to a sexual partner. The new law includes a defence if a person has taken 'reasonable precautions' to prevent transmission.

**United Kingdom** NAT's Kat Smithson outlined that they have been considering the fallout from the first English case in which a man was found guilty of both attempted and actual intentional HIV transmission to a number of other men (all previous English cases have used a charge related to recklessness). That case involved many complainants and attracted a lot of media coverage, and it has been very difficult for agencies to talk against criminalisation in that context. That experience suggests a need to restart the conversation within the HIV community around HIV criminalisation with a goal to re-establishing a shared position. Smithson suggested that the difficult case in question would be more effectively framed around abusive relationships, and that HIV was not the right 'hook' on which to hang the prosecution/dialogue.



Kat Smithson, National AIDS Trust

Edwin Bernard responded by saying it is important to note that HIV Justice Network's recent audit found that cases involving an intention to transmit HIV are exceedingly rare and are really 'red herrings' as the focus of community discussion around unjust HIV criminalisation. In that context, it is important to note the although many laws refer to 'intention' or 'knowing', those terms do not reflect their lay meanings.

**Russia** Russia now has more than 1 million people living with HIV. Natalia Sidorenko from the Eurasian Women's Network on AIDS (EWNA) outlined that their recent work has uncovered that since 1997 there have been approximately 900 people living with HIV prosecuted in relation to HIV, and half of those were prosecuted only 'for putting people at risk' of HIV. Every month, there is a new article in the mass media about HIV transmission causing great alarm and discomfort for people living with HIV. Advocates are planning to submit a report to the UN Convention Against Torture, the first time people living with HIV have submitted under this convention. That report will include

data from the recent HIV criminalisation scan produced by EWNA for HIV JUSTICE WORLDWIDE on Eastern Europe and Central Asia. It is hoped the Committee will re-characterise HIV criminalisation as ‘cruel and unusual punishment’, and will provide clear recommendations to government arguing HIV criminalisation is a threat to a successful HIV response.

**Belarus** Anatoliy Lashenok from People Plus in Belarus outlined that they are working to address the enormous problem of HIV criminalisation. Although the population is small (8 million people), there have been 130 prosecutions in the past couple of years. In most cases, those people were in a sero-discordant partnership. More support is needed to help local advocates lobby Parliament to change laws. Anatoliy stressed the importance of advocates linking together to support each other.

**USA** Lakeesha Harris from Women With a Vision spoke of the heightened police presence for African Americans in the U.S., which is murderous at its worst: an important human rights issue. The intersection of criminalisation of HIV and criminalisation based on race plays out very clearly in the U.S., particularly in Louisiana where Women with a Vision is based. Lakeesha asked what investigations have been undertaken at international level on the heightened criminalisation of HIV based on race.



Lakeesha Harris, Women With A Vision

Edwin recognised some of the work done on the racialisation of HIV criminalisation in the US and Canada and noted there has also been work on the intersection of HIV criminalisation and immigration in Europe, Australia and New Zealand, where prosecutions have targeted black men from Africa. Edwin noted the issue remains very important, particularly given current political considerations, suggesting more work needs to be done.

## 4. What About Human Rights? The Benefits and Pitfalls of Using Science in our Advocacy to End HIV Criminalisation



### Key points

- It is critical to frame advocacy against HIV criminalisation around justice, effective public health strategy *and* science rather than relying on science alone, as this more comprehensive framing is both more strategic and will help prevent injustices that may result from a reliance on science alone.
- There have been lengthy delays between scientific and medical understanding of HIV being substantiated in large scale, authoritative trials, and that knowledge being accepted by courts.
- Improving courts' understanding that effective treatment radically reduces HIV transmission risk (galvanised in the grassroots 'U=U' movement) has the potential to dramatically decrease the number of prosecutions and convictions associated with HIV criminalisation and could lead to a modernisation of HIV-related laws.
- Great care must be exercised when advocating a 'U=U' position at policy/law reform level, as doing so has the potential to deflect attention from issues of justice, particularly the need to repeal HIV-specific laws, stop the overly broad application of laws, and ensure that people who are not on treatment, cannot access viral load testing and/or who have a detectable viral load are not left behind.
- Courts' poor understanding of the effectiveness of modern antiretroviral therapies contributes to laws being inappropriately applied and people being convicted and sentenced to lengthy jail terms because of an exaggerated perception of 'the harms' caused by HIV.
- HIV-related stigma remains a major impediment to the application of modern science into the courtroom, and a major issue undermining justice for people living with HIV throughout all legal systems.
- HIV prevention, including individuals living with HIV accessing and remaining on treatment, is as much the responsibility of governments as individuals, and governments should ensure accessible, affordable and supportive health systems to enable everyone to access HIV prevention and treatment.
- New education campaigns are required, bringing modern scientific understanding into community health education.
- Continuing to work in silos is slowing our response to the HIV epidemic.

### Laurel Sprague (UNAIDS)

Facilitating the session, Dr Sprague outlined the challenging relationship between HIV science and advocacy against HIV criminalisation. Challenges have included concerns that a focus on science is deprioritising arguments about justice. Further, specific arguments have been devalued when rigorous evidence has not (yet) been available, for example, observations that HIV criminalisation doesn't decrease new infections were often countered by requests for evidence that HIV criminalisation directly harmed testing: research which had not been done and would be very difficult to prove as a direct relationship. Now that there is a significant body of behavioural, sociological, and scientific research to support many of the observations made by advocates working in the field, it is timely to consider possible benefits and pitfalls of relying primarily on science in our advocacy. Dr Sprague suggested that this is an important time to reiterate that arguments based on justice, public health and science are all important frames to shape advocacy.



### Chris Beyrer (John Hopkins Bloomberg School of Public Health)

Professor Beyrer spoke from his perspective as an infectious disease epidemiologist and as past president of the IAS, noting that when the IAS was considering whether or not to sign on to the community U=U statement, it was vital that the science supported the supposition that undetectable means untransmissible. Professor Beyrer noted that until recently, although there was compelling evidence that treatment reduced the likelihood of transmission, scientists required large scale, rigorous studies to feel confident to endorse that position. The results of the PARTNER and Opposites Attract studies, which found no linked infections among study participants, led IAS to get on board with the U=U movement and more recently, to communicate the science in relation to HIV criminalisation. 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 – that protected sex means sex protected by a condom, antiretroviral treatment or PrEP. Prof Beyrer noted the importance of the forthcoming Expert Consensus Statement (of which he is a co-author) in these education efforts.



Professor Beyrer pointed out that one of the pitfalls of the push to get science on effective treatment into the courtroom is that even if that advocacy is successful, someone who is not virally suppressed can be prosecuted. There has already been some legislative tussling about that issue in North Carolina and California. Chris argued that our advocacy focus should now be to put the issue of treatment access back on governments, policy makers, and on the medical profession. There has long been a compelling reason why people living with HIV should be treated, and that is that antiretroviral therapy is fantastic therapy. It prolongs life and it returns people to health, work and social function. It also has an enormous prevention benefit. Arguments now need to be reframed so that responsibility for individuals not being on treatment lies with governments (not individuals) for not setting up supportive systems to enable everyone access to treatment.

*"If there are untreated people who have barriers to access to treatment, testing, care that they need ... that is a problem of governments, that is the problem of ministries of health. That's where, if there is any blame, the blame ought to lie."*

### Paula Munderi (IAPAC)

Dr Munderi spoke from her perspective as a physician advocate and her background as a clinical investigator who has worked in public health. She reiterated the usefulness of the public health argument, including the historical argument that if we criminalise people living with HIV, it will limit capacity to test for HIV. Importantly, the scientific community now believes that we have the technology to end HIV. Criminalisation is contrary to that goal as it perpetuates stigma, criminalises patients, and sends them underground so they do not access care: factors that will impede us getting to the end of the epidemic.



*"We've done a poor job of informing the general public let alone the justice system about advances in science."*

Dr Munderi noted there are great benefits to using science in the justice arena, however, it has come very, very late. The Swiss Statement boldly recognised the prevention benefit of antiretroviral therapy (ART) on an individual level more than ten years ago. We had proof of concept that ART prevents HIV transmission following successful demonstration that pregnant women who take ART do not transmit HIV to their baby. There was anecdotal evidence from people desiring conception having condomless sex with no resulting transmission; but the scientific community and the global public health community waited for the more robust randomised controlled trial, HPTN052. That study and the later PARTNER and Opposite Attract studies, have finally delivered adequate confidence that undetectable means untransmissible. It's taken far too long. We now need to fight against misinformation and ignorance.

Dr Munderi reflected on a recent experience, counselling a young man living with HIV who had stopped taking ART due to internalised stigma. After falling in love with a woman who does not have HIV, his focus shifted to protecting the woman from getting HIV: an achievable goal either through her use of PrEP or his use of ART. Surprisingly, neither of the young people had known that being on treatment and having an undetectable viral load protects an HIV-negative partner from HIV transmission. Greater efforts are required to ensure that current HIV science becomes common knowledge.

## Edwin Cameron (Constitutional Court of South Africa)



Justice Cameron spoke from his perspective as a Constitutional Court Justice and also his experiences as a person living with HIV. Justice Cameron referred to an earlier comment by a *Beyond Blame* participant who had said that because of HIV criminalisation, people living with HIV are living in terror. He said the comment had unsettled him and he wanted to relate his own experience of a few years ago, when he had been threatened with extortion by an allegation that he had transmitted HIV to the would-be extortionist. Although the threat was baseless and irrational, it had led to a need to explain the situation to the

Chief Justice, Deputy Chief Justice, family and friends. Justice Cameron faced down the extortion attempt and after two months, the person withdrew the allegation and apologised, but for those two months Justice Cameron experienced that sense of terror based on the stigma associated with having HIV amid the irrationality of the allegation, and had been forced to consider how he would explain the allegation to the community and press, including how he could explain current science in his defence.

Justice Cameron also referred to the debate about how marriage equality was achieved in America. He noted that South Africa was the first country to have equality based on sexuality included in its constitution, the 'Mandela' Constitution, in 1994. That battle was won using justice arguments. In the U.S. 2015 *Obergefell v Hodges* decision on marriage equality, an intuitionist<sup>2</sup> argument was successful: an argument that said, "we are like you". Although the downsides of that

argument are now being explored by various academics and activists, the argument clearly worked. Intuitionism hasn't worked with HIV. Despite having evidence for 25 years that HIV is extremely difficult to transmit (including through insertive, ejaculative intercourse), intense stigma persists, for example, in the denial of healthcare in South Africa and elsewhere, through the continuing legacy of President Mbeki's AIDS denialism, and through the shameful Canadian Supreme Court *Mabior* decision.

Justice Cameron argued that we should use science-based arguments but we must not only use the argument that being undetectable is untransmissible as we risk creating a new elite: an 'us and them'. Great care must be taken not to create new barriers and not to deflect attention from the demand for scrapping HIV-related criminal laws and prosecutions entirely. The HIV epidemic and our response to it has been a response to stigma and to the exclusion of many: of gay men and men who have sex with men, of black people in Africa, of poor people, of marginalised inner-city communities, and of African Americans. To counteract the profound force of these stigmas, even in supposedly rational argument, we must ensure we continue to use the justice, science, and public health arguments in concert with each other.

*"As a judge, we believe we're rational and base decisions on evidence, but the persistence of these laws is rooted in stigma. We must think of ways to overcome it. We must use justice arguments."*

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<sup>2</sup> For a brief overview of 'intuitionism', see [http://www.bbc.co.uk/ethics/introduction/intuitionism\\_1.shtml](http://www.bbc.co.uk/ethics/introduction/intuitionism_1.shtml)

## Lynette Mabote (ARASA)

Lynette spoke about her experience working with community organisations in Africa, arguing that scientific arguments have not always played in our favour because science needs to be broken down into language that can be understood by the community, and science is useless in the context of people's lives unless they can access effective treatment. There is no longer adequate treatment literacy in many communities, and few organisations are currently providing treatment literacy due to the fact that access to HIV treatment is no longer driven by communities, as it was 20 years ago. Consequently, we have come to realise that one cannot teach people about the latest HIV drugs and about access to routine viral load testing in contexts where these cannot be accessed by communities because of inadequate public health systems. Treatment literacy needs to be entrenched in realistic access to HIV treatment. In addition, the new WHO Guidelines, calling for 'test and treat' policies, provide for a false narrative which assumes that people living with HIV today are doctors of their own bodies. This needs to be revisited and investments need to be made to scale-up treatment literacy.



In many countries where ARASA works, access to viral load testing remains a myth. It is referred to in the WHO guidelines and exists for those who have money to get the tests, as and when they need them. With many people having to pay for healthcare out of pocket even through the public health system, the access gap is widening. Unfortunately, 'U=U' is a very privileged argument that won't get us there. ARASA is doing a lot of work around demand creation for viral load testing because ARASA partners are desperate for it. People are asking, "Why are you selling us false hope, creating demand when there's no supply from government?". ARASA is stuck, really stuck, to the extent that it is considering working with pharmaceutical companies to get point-of-care viral load testing in place, to alleviate the load that public health systems face due to a lack of laboratory capacity. That means ARASA staff are back to being access advocates, trying to get access to medicines just to get us to the next point in addressing the HIV epidemic.

*"We need to start closing the gaps. It takes one person to convince five people to join our work to create a mass movement, including working with U=U and ensuring our policies align. Without a coordinated effort, policy makers, lawyers and judges are confused because there isn't a consistent message."*

ARASA has been working on HIV criminalisation for 15 years, with Michaela Clayton, ARASA's Director, having pioneered this work, displaying inspiring resilience as she continues to push forward. Michaela has been training lawyers and judges annually, using scientific, human rights and public health arguments. It has taken more than 15 years to secure a shift in policy makers' mind-sets. The seemingly recent advocacy successes in Malawi have taken a lot of work with Members of Parliament, over a long period of time. ARASA has been in dialogue with them since 2013, countering sometimes ludicrous arguments, to get to this point where the conversation about science can begin.

Lynette argued that the HIV movement is working in silos, and "silos kill". We're not having conversations with others, for example, the sexual and reproductive rights movement or the viral load movement. There are many parts to the HIV response that are not coming together. Importantly, 40% of people with HIV who die are dying from tuberculosis, yet few are talking about the one million people who die annually from tuberculosis who are living with HIV. TB is also becoming criminalised, especially in Africa, so people are doubly stigmatised and criminalised. We need to start closing these gaps.

### Richard Elliott (Canadian HIV/AIDS Legal Network)

Richard spoke about his experience working as a lawyer and advocate in Canada, describing the complicated relationship the courts have had with HIV science. The Supreme Court of Canada was first confronted with the prospect of using sexual assault law for not disclosing HIV status in 1998, before the issue of viral load or the preventative effect of treatment had been recognised. The primary focus of the intervening HIV organisations was to try



to outline the potential harms of overly broad criminalisation of non-disclosure, and to at least get a clear delineation in law that condom use and the corresponding reduction in risk of transmission would preclude criminal liability. Among other arguments, the Canadian HIV/AIDS Legal Network tried to advance a public health argument for limiting HIV criminalisation, arguing it would be a disincentive for testing; however, the court dismissed the argument saying there was insufficient evidence to support this concern. In the same breath, they claimed that criminal law had a role to play in discouraging people from having unsafe sex, despite there being no evidence to support that proposition. Those two factors, side-by-side, is evidence of stigma in play in the judicial mind-set. On the positive side, a majority of the Court did recognise that "careful use of condom" *may* lower the risk of transmission enough that there would no longer be a "significant risk" of transmission and therefore there would be no duty to disclose – and some judges went even further, saying definitively that only in cases of "unprotected sex" (i.e., sex without a condom) should HIV non-disclosure be criminalised as sexual assault. A number of lower courts have adopted this suggestion in subsequent cases.

However, fourteen years later, in the 2012 case of *R v. Mabior*, the issue of what constitutes sufficient risk to warrant criminalising non-disclosure was again before the Supreme Court of Canada. This time, both the question of viral load and the question of condom use were central. The court again engaged with the science, including considering the results of the HPTN052 trial and the 2002 Cochrane Review regarding the effectiveness of condoms. Unfortunately, the court engaged with science in a superficial way so that while there is a scientific gloss to the decision, stigma is still operative. On the one hand, the court said it didn't want to criminalise people when there is only a speculative possibility of transmission, and that sexual assault law should not be trivialised by overextending it, yet that is precisely what the court went on to do. The Court concluded that if there is a "realistic possibility" of HIV transmission, a duty to disclose known HIV-positive status will arise, then went on to say that a realistic possibility would not exist if

there was both condom use and the HIV-positive partner accused of not disclosing had a “low” viral load (which it defined as <1500 copies/ml).

It is important to note that although the *Mabior* decision was disappointing as it seemingly set a very stringent requirement for disproving a “realistic possibility” of HIV transmission, in fact the decision is more complicated. The Court did not rule that it is *only* in cases of both condom use and a low viral load that the realistic possibility of transmission is removed (and therefore there is no duty to disclose). Instead, the Court’s ruling left the door open a crack to acquittal in other circumstances, at least in relation to the question of viral load, saying that advances in science and treatment may lead the courts to reconsider where the line may be drawn. Since then, current science has been deployed in some cases, with recognition by some courts and prosecutors that cases involving a person with an undetectable viral load should not be subject to criminal prosecution, even if there was no condom used. In other words, an undetectable viral load has been found sufficient for an acquittal.

Even before the 'U=U' movement began promoting scientific evidence on per-act risk, some prosecutors had backed down when confronted by defence lawyers equipped with scientific evidence (often supplied by civil society). Recently, the movement around U=U has been highly useful and appears to have resulted in some improvement in lower courts' consideration of undetectable viral load.

There is an odd, paradoxical position in the way recent science has played out in the courtroom. While we are seeing some shift and the imposition of limits relating to prosecutions of people with suppressed viral load, it is becoming difficult to get prosecutors to say they won’t prosecute those using condoms, despite the effectiveness of condoms being long-known and constituting such basic, long-term safer sex advice. This is one of the more troubling aspects of the *Mabior* decision. Despite the Court’s earlier suggestion in 1998 that condom use alone might also suffice, in this more recent decision, the Court backtracked and undermined its earlier commentary on this point. Therefore, the situation remains less encouraging at the moment about whether use of a condom alone might suffice to avoid criminal liability. This is particularly troubling given that it is arguable that use of a condom is clear evidence of an intent to avoid transmission, yet these are the people who continue to face a risk of prosecution.

This issue of a “condom defence” remains a front on which evidence from scientific experts will be essential in future cases. The use of the 2002 Cochrane Review is a clear example of courts not engaging with science in a sophisticated way, instead applying a ‘scientific gloss’ which appears to support prosecution. That review concluded that condoms are 80% effective in preventing transmission of HIV. In some instances, it seems that this figure has been misinterpreted and misapplied to suggest there is a 20% residual risk of HIV transmission even when condoms are used. In other cases, courts have failed to register that that figure needs to be understood more carefully: it is a *population-level* estimate reflecting the reality that condoms will sometimes break or not be used properly. The risk of HIV transmission through sex with a properly-used, unbroken condom is zero, and it is the risk in a *specific individual case* regarding a specific sexual encounter that is at issue in a criminal proceeding, not a population-level average. As there is no “realistic possibility” of HIV transmission through an unbroken condom, there should be no criminal conviction. This has yet to properly register with some courts, who have continued to convict people who have used condoms if their viral load is above “low”.

## 5. Women and HIV Criminalisation: Feminist Perspectives



### Key Themes

- HIV criminalisation plays out in social contexts, with patriarchal social structures and gender discrimination intersecting with race, class, sexuality and other factors to exacerbate existing social inequalities.
- Women's efforts to seek protections from the criminal justice system are not always feminist; they often further the carceral state and promote criminalisation.
- Interventions by some purporting to speak on behalf of women's safety or HIV prevention efforts have delivered limited successes because social power, the structuring of laws and the ways laws are administered remain rooted in patriarchal power and structural violence.
- Feminist approaches must recognise that women's experiences differ according to a range of factors including race, class, types of work, immigration status, the experience of colonisation, and others.
- For many women, HIV disclosure is not a safe option.
- More work is needed to increase legal literacy and support for local women to develop and lead HIV criminalisation advocacy based on their local context.
- When women affected by HIV have had the opportunity to consider the way that 'protective' HIV laws are likely to be applied, they have often concluded that those laws will be used against them and have taken action to advocate against the use of those laws.

### Naina Khanna (Positive Women's Network - USA)

As facilitator of the session, Naina introduced the importance of intersectionality theory: an analytic framework that identifies how interlocking systems of power impact those who are most marginalised in society. Naina noted the importance of thinking about the way the law is differentially applied because HIV exists among many other forms of social inequality, including ways that bodies are policed and surveilled.

The United States has a long history of surveilling and policing bodies, particularly of Black, Indigenous and immigrant people. Surveillance, policing and control, including around sexuality and reproduction, have been used in the service of capitalism: racialised capitalism as it relates to the legacy of slavery and genocide in the U.S. and how it was built. In many ways, HIV criminalisation laws, which started in the U.S. and were exported all over the world, is a continuation of that legacy: social control of queer bodies and bodies of Black, brown and Indigenous peoples.



Naina noted that although there is limited academic research, we know that people of colour have very different access to resources, that bodies are surveilled and policed even before an HIV diagnosis, and that some people are more likely to interact with the criminal justice system and more likely to have negative consequences resulting from that interaction independent of their HIV status because of who they are. In California, modernising of HIV-specific criminal laws was important in large part because 95% of HIV-related prosecutions were occurring under one felony solicitation statute, against people engaged in, or perceived to be engaged in, sex work. Women made up 43% of convictions even though only 13% of people living with HIV in California are women. About 2/3 of those prosecuted were Black or Latinx people although they comprise only half of the population of people living with HIV in California. Many people consider California a fairly progressive state, so the data are revealing.

### Michaela Clayton (ARASA, Southern Africa)

Michaela considered why it is important to take a feminist perspective on HIV criminalisation. In Southern Africa, at the beginning of the HIV epidemic, the public health messaging was, “It’s not who you are, it’s what you do”, aiming to communicate that HIV affects everybody. In fact, who you are is critical. Clearly, the experience of black women is very different from that of white, heterosexual men.



Michaela outlined that at the very first meeting on HIV criminalisation in Southern Africa in the early 2000s, it was women’s groups pushing for criminalisation legislation with a view to protecting women who were being infected by partners in situations where they had no control over their own bodies. No one was really familiar with the issues associated with HIV criminalisation, but as the women began to ask, ‘What does criminalisation of HIV mean for women?’, it was like light bulbs started turning on. People started saying, actually, women are usually the first to know their HIV status though ante-natal clinics but given

patriarchal society, women don’t have control over their bodies and aren’t valued so it’s very difficult for women to enforce safer sex practices. The women began to think through the experiences of being diagnosed HIV-positive: ‘You go to the antenatal clinic and find out you’re HIV positive. You come home but you can’t disclose your HIV status because if you do you’re likely to be kicked out of the house. You’re likely to be economically dependent on your male partner so your options are very limited. You can’t enforce safer sex decisions as your partner will want to know why. At the end of the day, it’s likely women will be blamed for bringing HIV into the home and so likely to be prosecuted.’

### Sarai Chisala-Tempelhoff (Women’s Lawyers Association, Malawi)

Sarai explained that a feminist push was behind a lot of the HIV criminalisation laws that advocates are now trying to roll back. While Naina had discussed division on criminalisation in the U.S. occurring along race lines, in Malawi, those divisions follow class lines. The issue of privilege is clear. Malawi has a great body of gender-related laws inspired by the Beijing Platform, which brought about quite radical changes, so there is strong

*“But when we looked at how laws would play out, it became apparent that a lot of the provisions they thought would protect women were actually the laws that were going to be used to prosecute women.”*



buy-in to the idea that the law is a powerful tool for changing social realities. The feminist response to HIV criminalisation in Malawi has been mixed because many women, including women living with HIV, had supported what they thought would be more protections for women. Feminist advocates and other women were actively waiting for the proposed HIV/AIDS bill (that included problematic and criminalising provisions) to pass, wanting 'the protection of the law'. So, activists sat with grassroots networks of women living with HIV, and took them through the proposed law, provision by provision,

and after that, the women themselves took up advocacy against the problematic provisions in the bill. It had become clear to them how the law in its unchanged state would play out in their lives. They are the ones who become pregnant and are then tested at the ante-natal clinic, whether they want to be tested or not. They are the first to know their status, and that knowledge can then be used as evidence of their criminal liability for alleged transmission of HIV.

It took legal empowerment to make the critical change happen: giving women living with HIV knowledge and understanding of the law in ways they could then use. Once that was done, advocates took a back seat and the rest of the conversation was between these women and parliamentarians.

Almost overnight, the situation changed. A group of women living with HIV put together posters, many of which talked about "My body. My right.", and composed a song against the 'wilful transmission' provision that remained in the bill, section 43. Whenever a parliamentarian spoke about how it was so important and so necessary, they would stand up and sing, "No to section 43".

The women spoke such truth to power, work that can only be done through collaboration across sectors, across classes, across races. When section 43 was finally deleted, it was because of these women. Success was gained as a result of reaching out in meaningful ways: not just bringing documents but explaining and working through how those documents will play out, and then allowing them to take up that fight.

*"The women were effective. For example, in Parliament there were people saying "We need to protect the unborn" but 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." And that was it."*

### Deon Haywood (Women with a Vision, USA)

Deon outlined that as a Black woman living in the US in what has recently been ranked the U.S.'s most racist state, Louisiana, it is important to speak against the practice of 'carceral feminism': the adoption of punitive approaches to humanitarian causes using the threat of incarceration as a (misguided) means to work towards gender equality. Deon noted that in her experience, carceral feminism appears to be most often practiced by white feminists who want to 'save people' instead of focussing on how to shut down oppressive systems, including the criminal justice system. When outlining Women with a Vision's campaign, it is important to talk about how punitive laws are created and how that system is steeped in white supremacy.

The campaign evolved as an unexpected aftermath of Hurricane Katrina and its impact on the gulf states, including New Orleans, where Women with a Vision is located. Although many people were not yet able to return to their homes, the Federal Government prioritised a law and order agenda, providing millions of dollars to 'combat violent criminals'.



Women with a Vision work primarily with Black people, many of whom are sex workers or trans women. Not long after returning to New Orleans (post-hurricane), large numbers of people began being charged for committing 'a crime against nature': solicitation for oral or anal sex. People were being charged under a 203 years old law, developed to lock up gay men in the French quarter. In the 1980s, it started being used against Black cis and trans sex workers. A conviction under that charge is an automatic felony conviction, which means people are required to follow all federal guidelines, including registering as a sex offender.

Having sex offender stamped on a person's ID impacts people as they go about their daily lives, and stops people from being an effective parent and from getting a job. It was being used against the same people who were accused of being lazy but was clearly limiting their capacity to fulfil their potential to be all they were striving to be. The campaign also argued that the laws were putting individuals at risk of HIV, including sex workers and other everyday people.



Deon shared an image of a woman's driver's licence marked 'sex offender', explaining that the woman is a grandmother who was convicted in the 1970s. For many, like her, judges hadn't enforced sex offender registration because many of them didn't believe it fitted the 'crime'. After Hurricane Katrina, penalties were increased to up to 20 years, and old 'sex offender' orders began to be enforced. The new law and order agenda also added a requirement to pay \$500 to register as a sex offender

within 5 days of release from jail. They didn't stop to ask, "How many people coming out of jail have \$500, and if they've been in jail for sex work, how do you think they'll get \$500?" The campaign was all about helping community see that these laws don't benefit the community.

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. Their strategy was similar to that used in Malawi. A lot of people don't know that they have the right to talk to state lawmakers, but the women involved decided that if they were going to change anything, they were going to have to see who runs what and to make their arguments for themselves. Women With a Vision brought about 100 women to the state capital and started a Black women's advocacy day. Deon outlined the importance of Black women being seen, particularly in the U.S. south, and of Black women's voices being heard. Black lives matter.

The campaign was an enormous success. Not only were the laws changed but more than 800 people with prior convictions were removed from the sex offender registry. Some in the community were critical that advocacy focussed on the experience of women, and that the experiences of gay men weren't being addressed, but placing black women at the forefront of the campaign was strategic, as they were most affected by the laws. For example, in Orleans Parish, 97% of those on the sex offender registry were Black women.

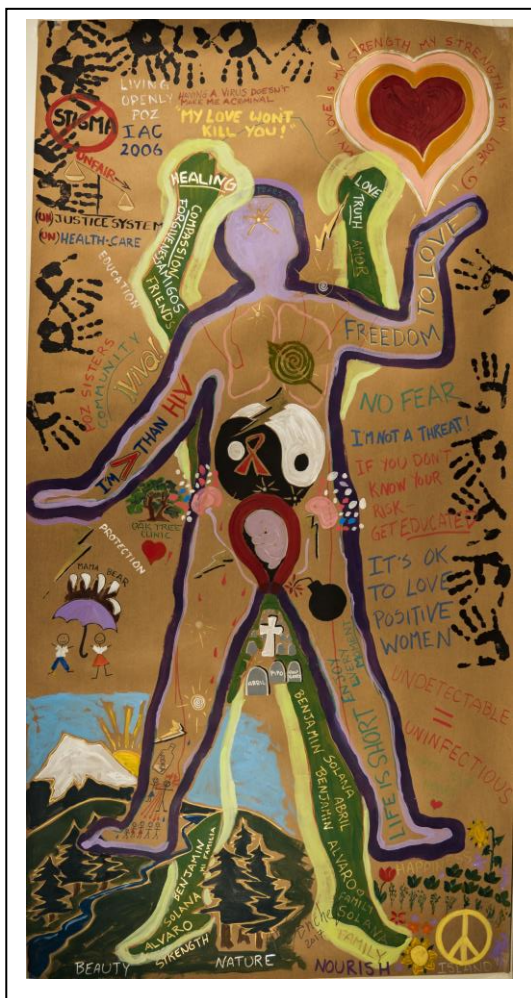
*"We decided we were going to fight. We didn't think we were going to win but we did and succeeded in removing over 800 people from the sex offender registry."*

Deon noted that it is not the role of advocates to fight for people. Instead, advocates should work to give people the tools to fight for themselves. Women with a Vision's strategy involved staff putting their energy into community involvement so that community could stand up and say, 'This is not right'. That was the win - community mobilisation - engaging community using intersectionality through a feminist lens. Deon thanked the women, saying she was very grateful to all those women who had led the campaign.

### Kristin Dunn (WATCH Study, Saskatoon, Canada)

Kristin's work is based in Saskatchewan, which has the highest rates of HIV in Canada, and the highest rates of new diagnoses. Her work included in-hospital outreach as part of a multi-disciplinary team whose mandate is to provide comprehensive wrap-around care, starting in-

hospital and extending to meet housing, treatment and advocacy needs. Most diagnoses are in the Indigenous community, and most of those are among people who inject drugs. Consequently, HIV is highly stigmatised and highly ghettoised, impacted by the process of colonisation.

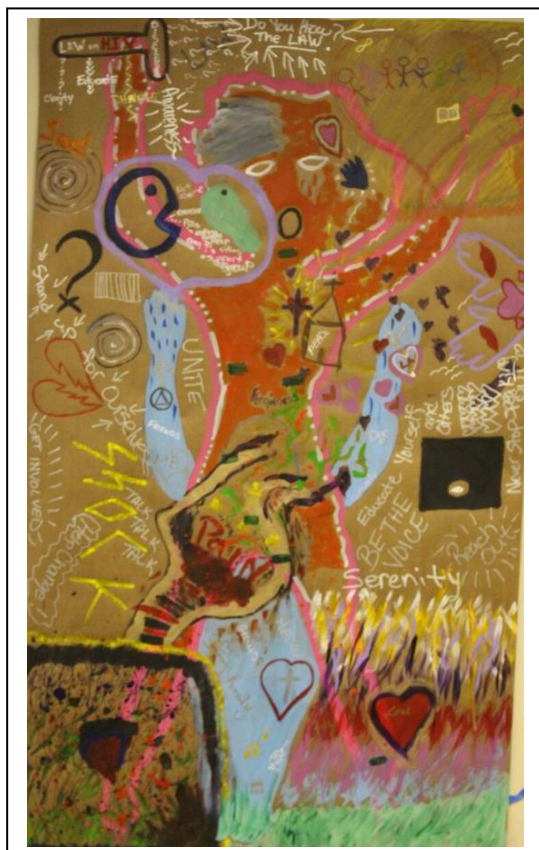


Kristin spoke about the WATCH Study (Women, Art and The Criminalisation of HIV) which uses an art therapy methodology called Body Mapping. The WATCH study is national with workshops in Ontario, British Columbia and Saskatchewan. The work took place in a retreat setting, so women were together for five days in a place where they were able to focus on themselves and their journeys, and speak, uncensored, without the commitments of life and family tugging at them.

Body mapping originated in South Africa as a collaboration between a psychologist and an artist as a means to help women with HIV who were facing death to cope and to leave a legacy for their children. Then, with the advent of treatment, body mapping shifted focus to help women cope with stigma. In

Saskatchewan, stigma remains a major impediment to advancing prevention and treatment initiatives, particularly in isolated northern communities where some people diagnosed with HIV decide, or are forced, to leave because they are ostracised, and they and their families face the threat of violence.

Body mapping involves outlining a person's body on a large piece of paper. A second person's body is also mapped, later becoming 'a support shadow'. It aims to communicate that whether we stop to think about it or not, we always have support in your lives from



which we can draw comfort and reclaim our power. The process begins with some basic, innocuous questions like, 'Where did you come from?' and 'What are your goals?', and every question is answered by way of a visual representation. During the process, the questions delve deeper, with an Elder present throughout the process so women feel protected, guided and sheltered.

Kristin stated that we can't talk about criminalisation without talking about violence against women. It's important to talk about issues surrounding disclosure because, when talking about disclosure for women, the conversation will always come to protecting oneself from harms including the threat of violence. Disclosure is not always an option. Condoms are not always an option. For women engaged in sex work, particularly if it's survival sex work, the study heard that "a customer is just going to pay you more to not use a condom". If a woman's at home with her husband or partner he may coerce her, or she may not be able to disclose for of fear of violence or for reasons surrounding

financial or housing security. Disclosure is expected within an existing power imbalance that is the result of colonisation and marginalisation. Criminalisation takes the most vulnerable people in society and adds another level of leverage and weaponisation against them. These laws are an opportunity to express discrimination; to exact colonial control; an opportunity to leverage increased violence against women and increased control over women's body.

One of the most compelling early findings from the WATCH Study was that women whose voices are effectively silenced, because nobody ever asks, got the opportunity to be heard. It was extraordinarily empowering and revelatory to them that anyone wants to listen. Women who participated in the WATCH Study have been ignited. They have gone on to seek out peer work (having previously kept their status hidden). They're networking, taking public speaking engagements and board positions, and mobilizing in their communities. To learn more about WATCH please visit <https://watchhiv.ca>.

*"The laws fail to recognise the ways in which it's unsafe for women to disclose."*

## Discussion

The panel identified recurring themes around the importance of story-telling, political education as an advocacy tool, and breaking down barriers to access to power. Discussion then focused on ways of building power among communities that historically have been disenfranchised and shut out of power systems:

**Women with a Vision** aim to create a safe healing space that allows people to be themselves. When women arrive, they are not met with a set of expectations but are asked what they need. The process aims to 'meet people where they are'.

Deon outlined that although ideally Women with a Vision would not be part of a 'diversion programme' (an alternative to incarceration), they operate in the U.S. so feel that they have to deal with the criminal justice system. They've aimed to make their diversion program different from others by not telling people exactly what they're going to do, instead asking them what's going on and how Women with a Vision can offer support.

*"It's amazing to see people make decision for themselves. That's how you build power because it's internal."*

**The Malawi Women Lawyers Association** works to create spaces where women and children can come forward for legal assistance and advice, presenting options and asking people what they want to do, then explaining how to go about it. Often people aren't aware that they can access the justice system, that they can speak to law makers, or that they can go to courts and make demands.

Assisting women is about more than dealing with the courts as women and children are impacted by the workings of many different government offices. Too often, services deal with only one issue but Malawi Women Lawyers Association is trying to deal with as many of an individual's issues as possible, taking time to ask questions like: 'Do you need information to register your land ownership?', and 'Do you need to know about systems available to you beyond traditional leadership?', as for a lot of women in Malawi, the closest justice system is not the formal justice system offered by the courts but the traditional justice system.

Although the legal process has changed a lot in Malawi so that many people can go to court, that knowledge is not in the imaginings of many women. They're thinking about their families, marriage counsellors and traditional leadership, so helping people navigate those systems and making them friendlier is important because Malawian women are living in a very dual system. A lot of work is required to build a bridge for clients between the two systems.

*"The woman who is dealing with HIV is the same woman who is dealing with sexual and reproductive health services. It's the same woman who needs access to a maintenance order or a protection order against violence to them or to their children. It's the same person."*

Sarai outlined that until recently, feminist Malawians were doing 'too much elite black women's feminism', which leaves no space at the table for grass roots activists whose feminism is based on what is current, what is urgent and what is very real in their lives. Sometimes discussion and negotiation end up being very high level and academic so one of the challenges of fighting HIV criminalisation in the Malawian bill was that activists were having the same conversation with the same people around the table, over and over again, and the conversation wasn't moving anywhere.

Breaking that cycle was vital, particularly where advocacy was stuck because the two worlds were not meeting. In closing, Sarai added a cautionary note that in many instances, the people whose lives are being affected are not being brought to the table and given the power to take on the conversation in their own terms.

**The intersection of other forms of criminalisation** was also raised, particularly the need to consider the way HIV criminalisation intersects with other forms of criminalisation, including the criminalisation of sex work, drug use, abortion and migration, and the way these issues intersect and amplify individuals' experience of criminalisation.

### **Activism to move the International AIDS Conference 2020 from the U.S.**

The proposal to move the planned AIDS2020 conference from the U.S. was raised as vital to providing a safe space for people living with HIV and key populations. Naina outlined that the U.S. is currently a hostile and dangerous place for people living with HIV and affected communities who live there. Civil spaces are being shut down.

For example, legislation targeting sex workers has meant that one of the national sex worker organisations, the Desiree Alliance, has had to ban their annual national meeting because it's not safe to publicly convene. Also, the government is currently demanding social media handles for the last five years of people wanting to enter the U.S., and things are likely to get worse. The meeting urged all people to sign on and demand that IAS announce the decision to move the conference.

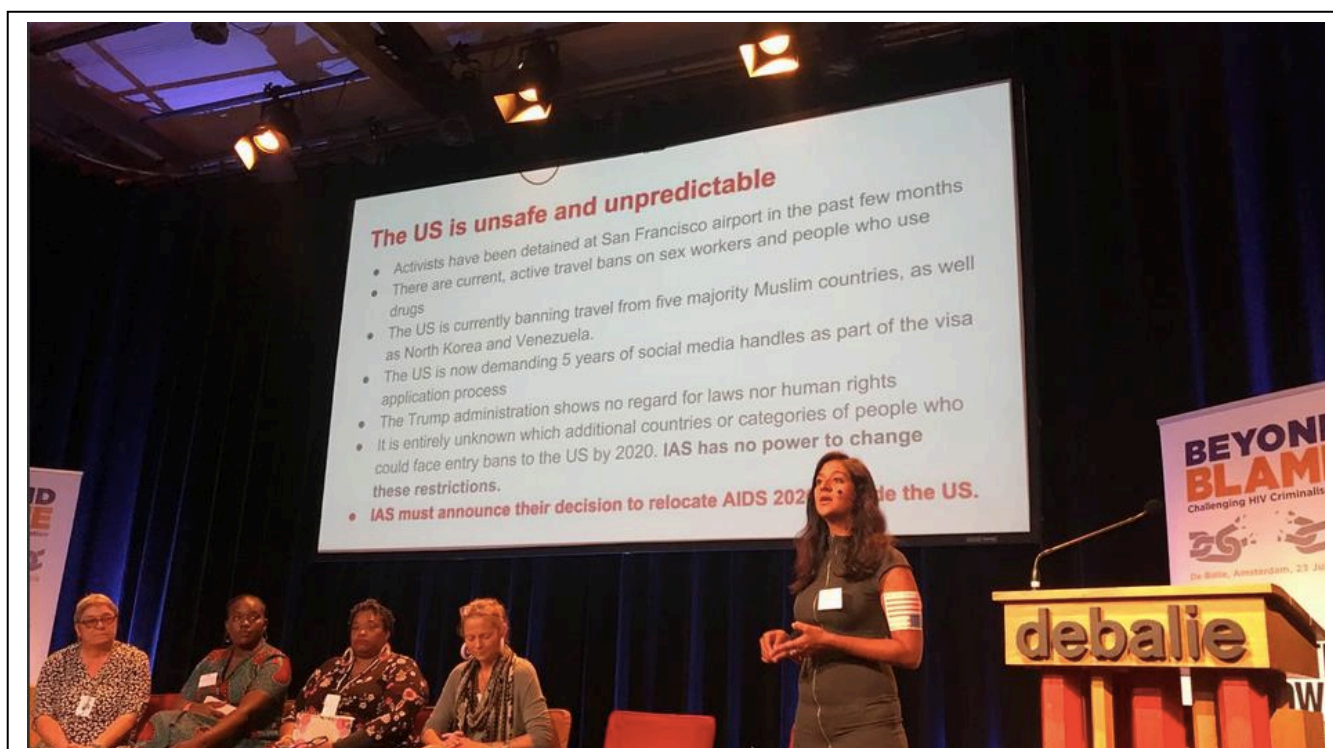
**Pledge your support: No AIDS 2020 in Trump's USA**

<http://bit.ly/AIDS2020SignOn>

**#AIDS2020ForAll**

Visit [www.AIDS2020ForAll.org](http://www.AIDS2020ForAll.org) for lots of resources

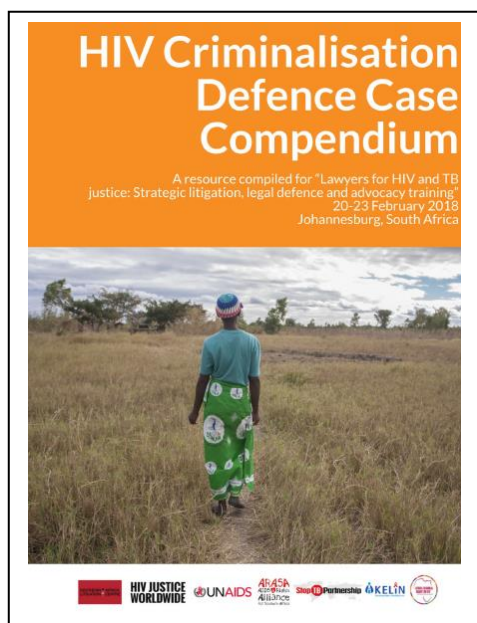
Then tweet the sign-on link using the hashtags  
**#AIDS2020ForAll** and **#AIDS2018**



## 6. Report Back from Workshop Breakout Sessions

### Workshop 1: Legal Strategies

Sally Cameron gave an overview of the HIV Criminalisation Defence Case Compendium developed by the Southern Africa Litigation Centre and other partners in early 2018.



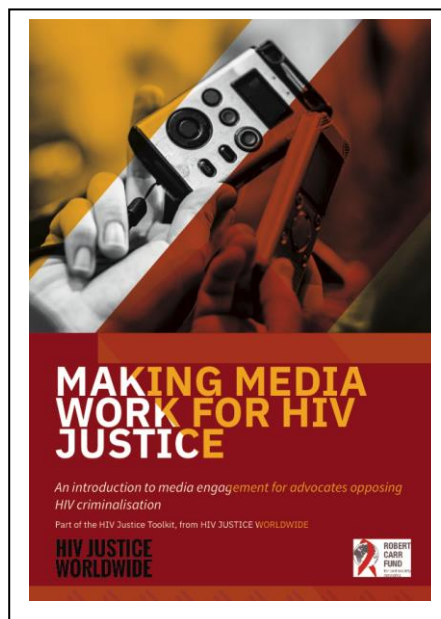
Presentations by Alain Maleche (KELIN, Kenya), Michaela Clayton (ARASA), Sarai Chisala-Tempelhof (Malawi), and Arnetta Rogers (PWN-USA) outlined legal strategies in cases from their jurisdictions and different strategies used in each. Discussion focused on ways for strategic litigation to further advocacy objectives, recognising that it is not always possible to find 'the perfect plaintiff' to suit an advocacy objective, and that litigation can be very hard on plaintiffs. Even when a case is 'won', a plaintiff may not be better off. Discussion recognised the importance of support for legal action and advocacy from civil society, which requires awareness among civil society organisations and knowledge of how and why to support. The workshop also recognised the importance of having criminal convictions expunged when laws are revoked.

It was agreed that there is a need for greater co-ordination between those working in different HIV silos and between jurisdictions, with a lot to learn from the experience of people working in different jurisdictions. Online space could be useful to better resource and coordinate actions by lawyers working on HIV and to provide better connections with other lawyers working on social justice issues.

### Workshop 2. Working with the Media

The Working with the Media workshop considered the prevalence of media which is usually inaccurate, biased and sensationalised, reinforcing stigma against people living with HIV. Such media is devastating for individuals and their families because these cases are about real people. Media work by HIV criminalisation advocate organisations must be governed by the principle to do no harm directly to an individual or to their trial, recognising that often the circumstances and context surrounding the case are not completely known, and specific, complex legal issues may apply.

It is important to have a clear media strategy that includes social media, with a designated media person. The media strategy should aim to act as an influencer, to control the message and shift discussion from the individual accused to the bigger issues – the big picture. Unfortunately, when a case has heightened media attention, e.g. it is alleged the accused's actions were deliberate, effective media strategy can be difficult but it is important to try to

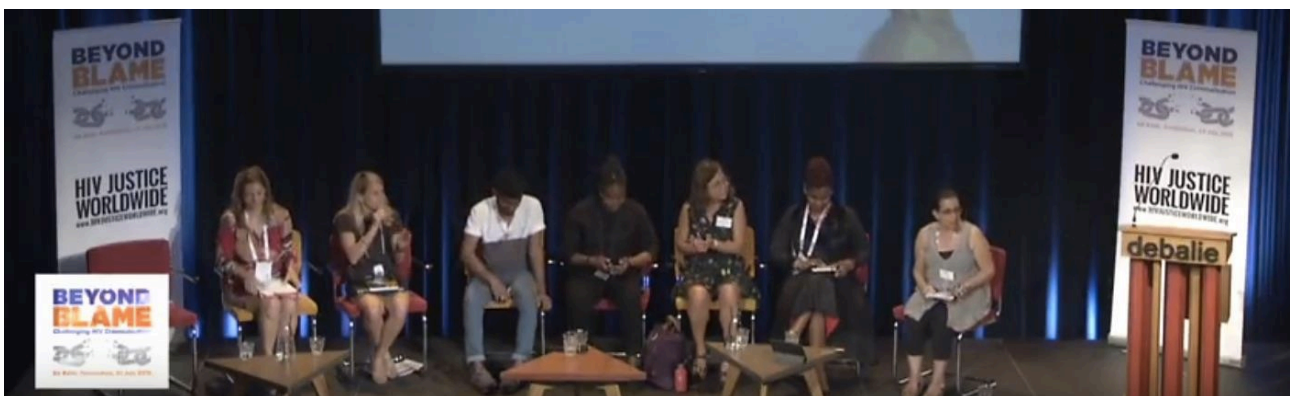


reframe the message, for example, saying the case is not really about HIV but about other key issues. Reframing must appeal to the core values of an audience to have any chance of success. For example, Canadians perceive themselves as fairly tolerant, so it may be useful to push a message that HIV prosecutions are unfair, racist, etc. This aims to make people realise they don't want to be associated with that kind of thinking. The messaging needs to be inclusive so people can apply the messaging to themselves.

The workshop considered that moving forward, U=U will lead to reduced HIV criminalisation but if prosecutions of people living with HIV on treatment decrease, then those who are not on treatment are likely to become the new target, with those who are already marginalised at increased risk. It can be very stressful for people who are already vulnerable, to be a spokesperson, and a burden when people are invited to talk about an issue over and over, so care should be taken to ensure spokespeople are aware of what they are agreeing to, with appropriate supports provided.

**Read more about the key messages from this workshop in this article by Mathew Rodriguez at [into.com](#)**

### **Workshop 3. Building Bridges across Movements: Linking HIV Criminalisation with the Criminalisation of Abortion, Drug Use, Gender Expression, Sexuality and Sex Work**



The Building Bridges across Movements workshop included wide ranging discussions about the need to address HIV criminalisation intersectionalities, and a desire to build bridges across movements. Key themes included:

- Recognition of the way many populations are marginalised and criminalised and that identities and experiences intersect.
- A willingness and interest to reach across silos, acknowledging the need to have the difficult conversations about competing priorities and conflicting issues that may progress one area but further stigmatise others. When working in intersectional coalitions it may be important to focus on work of mutual benefit.
- A need to educate funders about models that encourage work across a range of issues and how funding can benefit multiple groups. The Robert Carr Fund is a good example of a funder supporting coalitions of networks, and we should encourage others to fund like them.
- A need to address “the feminist fault line”. Earlier feminisms rushed to use criminal law to right injustices, which is understandable as criminal law is a powerful remedy but relying on the criminal justice system has caused many further harms. There is

a need to undertake community education and dialogue around the idea that 'protecting' women doesn't necessarily protect women but often rebounds to harm women. Other marginalised groups are similarly harmed by a reliance on criminal law remedies.

- Recognition that the justice system doesn't deliver justice.

## Plenary Discussion

Following the Rapporteurs' reports, participants were asked to make some closing observations. These included:

- Recognising that the event had allowed a variety of voices to be heard. In particular, autobiographical voices were the most authentic and most powerful: people speaking about their own experiences. This model which deferred to those communicating personal experiences, should be used when speaking to those in power.
- Appreciating that there was enormous value in hearing concrete examples of how people are working to address HIV criminalisation, particularly when working intersectionally. It is important to capture these practical examples and make them available (noting practical examples will form the focus of the pending *Advancing HIV Justice 3* report).
- Understanding that U=U is based on a degree of privilege that is not shared by all people living with HIV. It is vital that accurate science informs HIV criminalisation as a means to reduce the number of people being prosecuted, however, people who are not on treatment are likely to become the new 'scapegoats'. It is important that we take all opportunities to build bridges between U=U and anti-HIV criminalisation advocates, to create strong pathways to work together and support shared work.
- Noting the importance of calling out racism and colonialism and their effects.
- Observing that more effort is required to better understand and improve the role of police, health care providers and peer educators to limit HIV criminalisation.
- Exploring innovative ways to advocate against HIV criminalisation, including community education work through the use of art, theatre, dance and other mechanisms.
- Concluding that we must challenge ourselves going forward. That we must make the circle bigger. That next time we meet, we should challenge ourselves to bring someone who doesn't agree with us. That we each find five people who aren't on our side or don't believe HIV criminalisation is a problem and we find ways and means (including funding) to bring them to the next *Beyond Blame*.

## 7. *Beyond Blame* 2018: Rapporteur's Report

### 1. HIV criminalisation is traumatic for all who are caught up in prosecutions

Being involved in prosecutions as an accused, a complainant or a witness is often traumatic and life-changing. For many, it has long-term negative consequences which can include being ostracised, trauma and ongoing mental health issues, loss of social standing, financial instability and barriers to participation in society. For some accused, conviction includes the added burden of sex offender registration for life. For complainants, criminal law may not deliver 'justice'.

People living with HIV are frequently prosecuted for actions that included no or negligible risk of transmission but the consequences of conviction are enormous, including the possibility of lengthy jail sentences and/or sex offender registration. Quality of evidence used in trials varies enormously, including many instances where no scientific evidence relating to 'risk', 'harm' or 'proof of transmission' is required.

The experience of HIV-related trials has motivated some survivors of HIV criminalisation to become advocates. Survivors speaking at *Beyond Blame* were determined to use their voices to create change so that others do not have to go through similar experiences. Defendants and complainants alike shared a sense of solidarity with others who'd been through the system, stating they have found the experience of advocacy to be empowering, and it has also helped them make sense of their individual experiences caught up in the wider net of HIV criminalisation.

### 2. The effects of HIV criminalisation are pervasive

For various reasons, some people living with HIV consider that HIV criminalisation laws or prosecutions do not impact them, however, HIV criminalisation can be problematic for all people living with HIV, for key populations and affected communities. Media descriptions of cases are often sensationalist and vitriolic. Where trials have occurred, many report feeling disempowered and stigmatised as a result of media coverage. People report they are also less likely to engage with healthcare providers when they fear punitive consequences of the state's 'surveillance' of their behaviour.



Sally Cameron from HIV Justice Network delivering the Rapporteur's Report

HIV criminalisation is a weapon that could be used against any person living with HIV at any time. Many people presume that law will never be applied against them, however, it only takes one person to make a complaint, baseless or not, to commence an investigation and potential criminal proceedings. In addition, people living with HIV from marginalised communities are more likely to come to the attention of police in the first place, with their HIV status seen as an additional reason for reproach. HIV criminalisation singles out people living with HIV as different, as having greater levels of responsibility than everyone else in the community.

### 3. Contemporary science must be brought into the courtroom

The Swiss Statement, arguing that effective treatment precludes HIV transmission, was published ten years ago, however, courts continue to make decisions that are contrary to up-to-date scientific evidence relating to potential or perceived HIV exposure. Whilst hailed as a game-changing advocacy tool, it should not have taken this long to get a globally-relevant *Expert Consensus Statement on the Science of HIV in the Context of Criminal Law*, and to routinely get current scientific evidence into courts.

Science has the potential to reduce unjust prosecutions, a possibility that should be celebrated. However, many HIV analysts and advocates have a genuine fear that an over-reliance on science could further marginalise and stigmatise people who are not on effective treatment. Instead of pointing the finger at individuals who are not on treatment, advocacy should push governments to explain why they haven't got treatment to all people living with HIV and/or why they haven't created environments where people can feel safe enough to trust health services and antiretroviral treatments.

Having an *Expert Consensus Statement on the Science of HIV in the Context of Criminal Law* does not mean that courts will grasp the meaning of scientific research. Concerted efforts are required to ensure science reaches the courtroom, and to undertake judicial education to increase the likelihood of individual judges grasping the key messages of complex scientific research.

### 4. It is not always 'the letter of the law' that's the main problem

One hundred jurisdictions in 73 countries currently have HIV-specific criminal laws. Those laws should be repealed as the singling out of HIV as being somehow worse than other diseases, requiring special attention from the criminal law, is stigmatising and inaccurate.

It's not always HIV-specific laws that are the problem. Many countries have used general laws to prosecute people for alleged non-disclosure, (perceived) exposure or transmission, including in many cases where there was negligible or no possibility of transmission.

Criminal law is interpreted in specific ways. For example, people are frequently convicted of acting with 'intent' in circumstances that would not satisfy use of the word 'intent' in non-legal contexts. That is, a person may have intended to have sex but did not actually plan, hope or intend for HIV to be transmitted, and in many cases, HIV transmission was not possible or was extremely unlikely. Media tends to pick up on use of the word 'intent' in the law, and to characterise individual accused as having had a plan to transmit HIV when that was not the case. Such reporting does enormous harm.

### 5. Dialogue is vital

Dialogue is essential to our advocacy but it is also essential that we don't only preach to the converted if the movement against HIV criminalisation is to grow. Further work is needed to increase dialogue with other social justice actors so that intersectionalities may inform our work and be appropriately addressed.

Whether framing anti-HIV criminalisation arguments around justice, use of science, public health or human rights, the issues are very difficult for people to understand unless they understand where HIV criminalisation fits into their own agenda, requiring a broader context.

More effort is required to increase legal literacy among communities impacted by HIV criminalisation, to allow time and space for these communities to engage in dialogue to increase their understanding of HIV criminalisation, and to develop and lead agendas appropriate to their communities.

## **6. Different arguments work in different contexts**

We need to understand our own, unique political environment: to whom we are talking, what 'angle' interests them and their constituents, and what will get them engaged on the issue. Sophisticated communication plans are important but grassroots advocacy is powerful, particularly first-person narratives and advocacy by those most affected. Simple, grassroots advocacy should not be discounted!

Strategic litigation is important, remembering that it is 'a big ask' for a person to become 'the face' of an issue, particularly when they may not receive personal gain from 'a win'. Litigants must be fully supported.

## **7. Networks**

The international network of advocates and allies against HIV criminalisation is growing, with emerging networks in Francophone Africa, Eastern Europe and Central Asia. Concerted effort, and adequate funding, is needed to build and sustain our networks as we push for an end to HIV criminalisation.

## Appendix A: *Beyond Blame* Agenda

<b>08:30 - 09:00 REGISTRATION</b>	
<b>09:00 - 11:00 PLENARY SESSION 1 *</b>	
09:00 - 09:10	<b>Welcome to BEYOND BLAME</b>  Edwin J Bernard (HIV Justice Network) on behalf of HIV JUSTICE WORLDWIDE Followed by Laela and Naomi Wilding (The Elizabeth Taylor AIDS Foundation)
09:10 - 09:30	<b>The Lived Experience</b>  <i>What it's like to be personally impacted by HIV criminalisation and be part of the movement to end it</i>  Facilitator: Edwin J Bernard (HIV Justice Network)  With: Chad Clarke (Canada), Marama Mullen (New Zealand), Ken Pinkela (United States), Ariel Sabillon (Honduras)
09:30 - 11:00	<b>The Movement to End HIV Criminalisation Globally: Where Are We Now?</b>  Presentation by Edwin J Bernard (HIV Justice Network)  Followed by panel and Q&A  With: Kené Esom (UNDP), Diego Grajalez (CNET+ Belize), Cécile Kazatchkine (Canadian HIV/AIDS Legal Network), Svitlana Moroz (Eurasian Women's Network on AIDS), Annabel Raw (Southern Africa Litigation Centre), Sean Strub (Sero Project), Omar Syarif (GNP+)
<b>11:00 - 11:20 COFFEE BREAK</b>	
<b>11:20 - 13:00 PLENARY SESSION 2 *</b>	
11:20 - 12:10	<b>What About Human Rights? The Benefits and Pitfalls of Using Science in Our Advocacy to End HIV Criminalisation</b>  Facilitator: Laurel Sprague (UNAIDS)  With: Chris Beyrer (John Hopkins Bloomberg School of Public Health), Edwin Cameron (Constitutional Court of South Africa), Richard Elliott (Canadian HIV/AIDS Legal Network), Lynette Mabote (ARASA), Paula Munderi (IAPAC)
12:10 - 13:00	<b>Women and HIV Criminalisation: Feminist Perspectives</b>  Facilitator: Naina Khanna (Positive Women's Network - USA)  With: Sarai Chisala-Tempelhoff (Women's Lawyers Association, Malawi), Michaela Clayton (ARASA), Kristin Dunn (AIDS Saskatoon), Deon Haywood (Women With A Vision)
<b>13:00 - 14:00 LUNCH BREAK</b>	

## 14:00 - 15:30 PARALLEL BREAKOUT / WORKSHOP SESSIONS

Breakout / Workshop 1 \* **Building Bridges Across Movements: Linking HIV Criminalisation With the Criminalisation of Abortion, Drug Use, Gender Expression, Sexuality and Sex Work** (*panel*)

Welcome by Luisa Cabal (UNAIDS)

Moderator: Susana Fried (CREA and Global Health Justice Partnership)

With: Ricki Kgositau (AIDS Accountability International), Oriana López Uribe (BALANCE / RESURJ), Nthabiseng Mokoena (ARASA), Niluka Perera (Youth Voices Count), Jaime Todd-Gher (Amnesty International), Kay Thi Win (Asia Pacific Network of Sex Workers)

Breakout / Workshop 2 **Working With the Media** (*workshop*)

Co-facilitators: Janet Butler-McPhee (Canadian HIV/AIDS Legal Network) and Nic Holas (The Institute of Many)

Breakout / Workshop 3 **Legal Strategies** (*workshop*)

Co-facilitators: Seth Earn (AIDS-Free World) and Cécile Kazatchkine (Canadian HIV/AIDS Legal Network)

With: Sally Cameron (HIV Justice Network), Sarai Chisala-Tempelhoff (Women's Lawyers Association, Malawi), Michaela Clayton (ARASA), Allan Maleche (KELIN, Kenya), Armeta Rogers (Positive Women's Network - USA),

## 15:30 - 15:45 COFFEE BREAK

## 15:45 - 16:30 PLENARY SESSION 3 \*

15:45 - 16:00 **Rapporteur reports from the breakout sessions**

Lead rapporteur: Sally Cameron (HIV Justice Network)

16:00 - 16:30 **Group discussion: Next Steps**

Facilitators: Naina Khanna (Positive Women's Network - USA) and Lynette Mabote (ARASA)

## 16:30 MEETING ENDS

*You can get to the RAI conference centre within approx. 20 minutes by using the Metro 52 (see next page)*

17:00 **Opening of the Human Rights Networking Zone in the Global Village at AIDS 2018**

19:30 **Opening of AIDS 2018 at the RAI**

## Appendix B: *Beyond Blame* Post-Meeting Evaluation

*“Beyond Blame inspired me, made me feel connected to a movement, and reconnected me with some colleagues that I have been wanting to collaborate with!”*

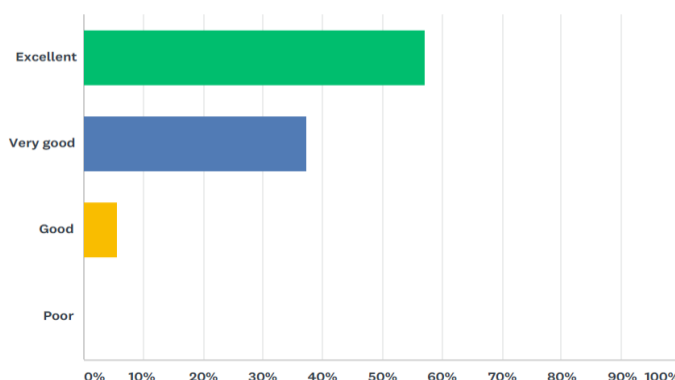
Respondent 4

After *Beyond Blame* 2018, an online evaluation survey was distributed to all who had registered. Of the 40 people who responded, 34 had attended *Beyond Blame* 2018 and six had not. Those who did not attend *Beyond Blame* 2018 despite registering gave four different reasons for not attending: not having funds to travel to Amsterdam for AIDS2018 and *Beyond Blame* (3 respondents); travel delayed (1 respondent); required to cancel travel for local work commitment (1 respondent); and conflicting events (1 respondent).

**Geographic Representation:** The 36 people who attended *Beyond Blame* came from 30 countries: Australia, Belarus, Brazil, Canada, Chile, France, Germany, Greece, India, Indonesia, Jamaica, Malawi, Mexico, Namibia, Netherlands, New Zealand, Nigeria, Poland, Russia, South Africa, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Tanzania, Thailand, Tunisia, United Kingdom, Ukraine, United States of America, Zambia and Zimbabwe. Forty percent of respondents who attended worked only in their country of residence, while others worked regionally or internationally.

**Quality of the Meeting:** All participants rated the *Beyond Blame* 2018 meeting as excellent (57%), very good (37%), or good (6%).

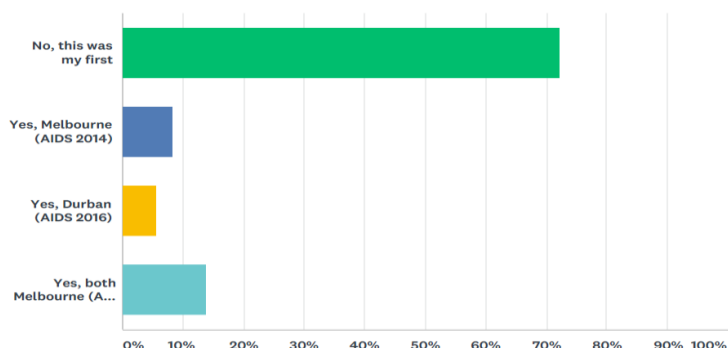
Q4 Overall, how would you rate the *Beyond Blame* 2018 meeting?



**Experience at Comparable Meetings:** For most respondents, this was the first *Beyond Blame* event they had attended (72%). Eight percent had also attended *Beyond Blame* in Melbourne in 2014, 6% had attended *Beyond Blame* in Durban in 2016, and 14% had attended *Beyond Blame* in both Melbourne and Durban. These data suggest that for almost three-quarters of respondents, *Beyond Blame* represented a unique opportunity to build an international network of contacts and to consider their own strategies and methodologies against that of experts working in diverse contexts around the globe. The high proportion of respondents attending *Beyond Blame* for the first time also reflects increasing awareness of HIV criminalisation and the growing movement to address it. The slightly higher than expected proportion of participants attending *Beyond Blame* for the first

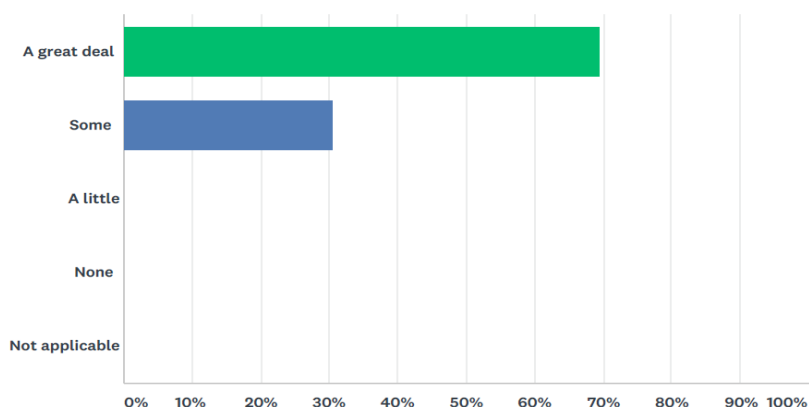
time will inform planning for the next *Beyond Blame* event, tentatively scheduled in two years' time. A question will be added to the registration process to gauge how many people are attending the next *Beyond Blame* event for the first time so that information can inform programme planning.

Q5 Did you attend previous Beyond Blame meetings?



**Information and Evidence was Useful for Advocacy:** All respondents agreed that *Beyond Blame* 2018 had provided useful information and evidence they could use to advocate against HIV criminalisation. More than two thirds of respondents (70%) stated they had been provided 'a great deal' of useful information for advocacy, while 30% responded they had been provided 'some' information and evidence useful for advocacy. This suggests the content of the meeting was well targeted, with the variation between 'a great deal' and 'some' likely the result of a range of factors including respondents' different roles in their organisations, and the level of expertise of respondents (i.e., some attendees are already highly expert) before attending the event.

Q6 Beyond Blame provided useful information and evidence that I can use to advocate against HIV criminalisation

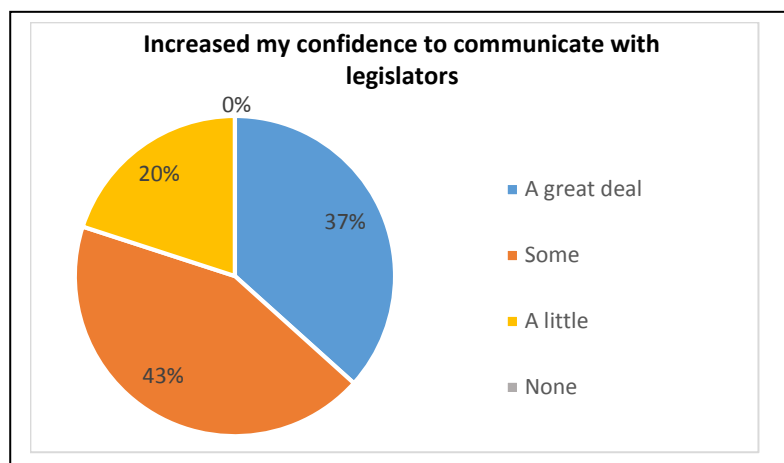


All participants agreed that *Beyond Blame* 2018 had provided ideas and resources that they could use in their country or region, including increasing their capacity to engage with the science that is used in HIV criminalisation cases.

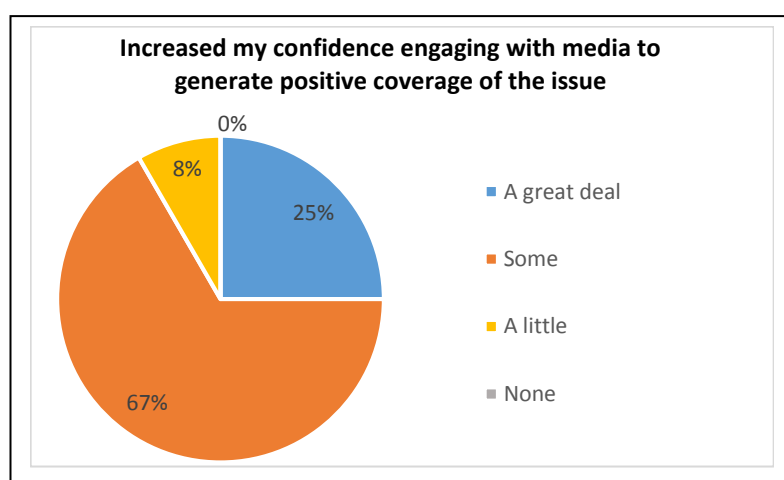
*This was a great opportunity for me to be the part of this program.*

**Respondent 19**

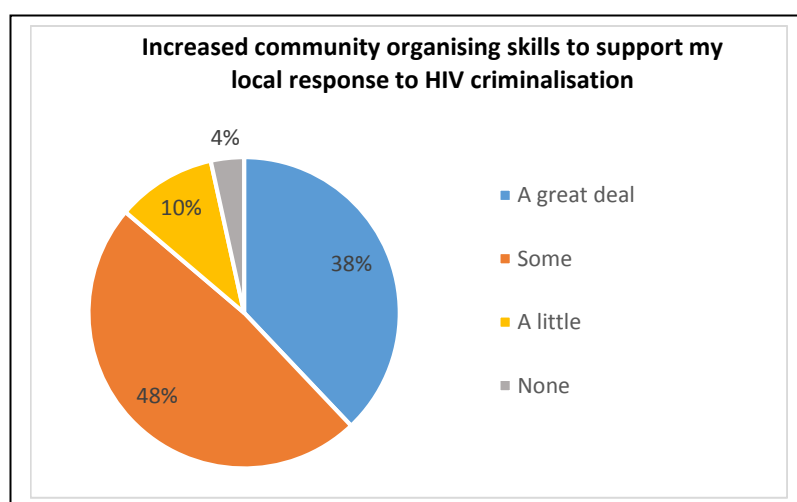
**Communicating with Legislators:** In many countries, law reform is required to address the overly broad use of laws against people living with HIV. All 30 respondents to whom the question was applicable (100%) stated that *Beyond Blame* had increased their confidence communicating with legislators: 37% a great deal, 43% some, and 20% a little.



**Engaging with media:** Sensationalist and inaccurate media reporting of HIV criminalisation trials spreads misinformation about the ways HIV is transmitted and is extremely stigmatising of people living with HIV. All 24 respondents to whom the question was applicable (100%) stated that *Beyond Blame* had increased their confidence engaging with media to 'change the narrative', generating positive coverage related to HIV criminalisation: 25% a great deal, 67% some, and 8% a little.



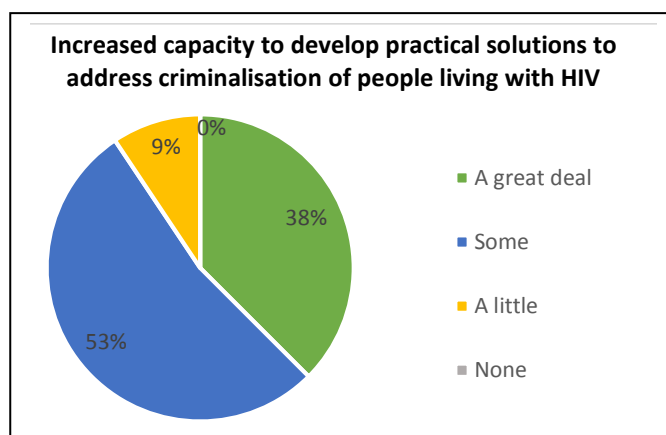
**Community Organising:** Although the development of community organising skills was not the focus of *Beyond Blame*, descriptions of methodology around community organising were embedded in many of the speaker's presentation. Twenty eight of the 29 respondents to whom the question was applicable (97%) stated that *Beyond Blame* had increased their community organising skills to support their local community response to criminalisation: 38% a great deal, 48% some, and 10% a little.



**Increasing Organisational Capacity:** Participants were asked whether *Beyond Blame* increased their or their organisation's capacity:

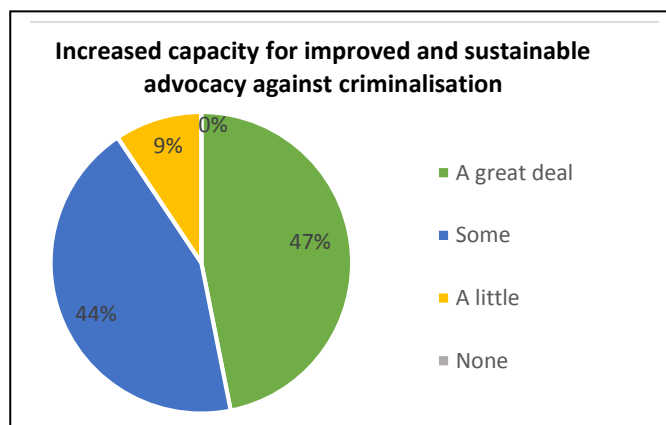
- **to develop practical solutions to address criminalisation of people living with HIV**

As well as providing current data and expert analysis on HIV criminalisation, *Beyond Blame* aimed to increase participants' capacity to develop practical solutions to address the criminalisation of people living with HIV. All 32 respondents to whom the question was applicable (100%) stated that *Beyond Blame* had increased their capacity to develop practical solutions to address criminalisation of people living with HIV: 38% a great deal, 53% some, and 9% a little.



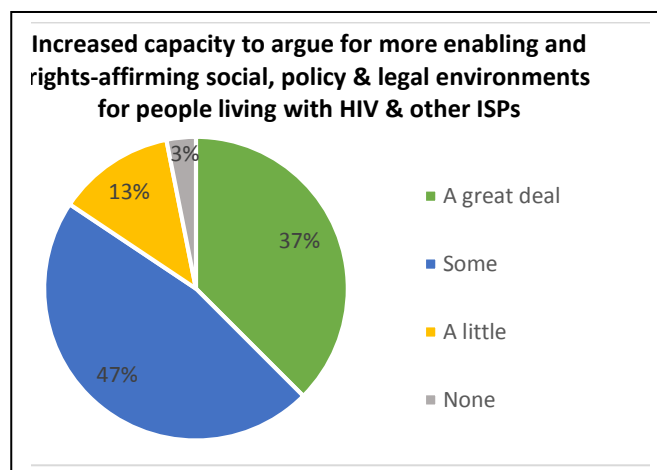
- **for improved and sustainable advocacy against HIV criminalisation**

Given the limited funding available to address HIV criminalisation, it is vital that all agencies develop strategies to increase the sustainability of advocacy efforts. All 33 respondents to whom the question was applicable (100%) stated that *Beyond Blame* had increased their capacity for improved and sustainable advocacy against HIV criminalisation: 47% a great deal, 44% some, and 9% a little.



- **to argue for more enabling and rights-affirming social, policy and legal environments for people living with HIV and other inadequately served populations (ISPs)<sup>3</sup>**

More enabling and rights-affirming social, policy and legal environments are critical to the delivery of better health, inclusion and social wellbeing of ISPs. Thirty one of the 32 respondents to whom the question was applicable (97%) stated that *Beyond Blame* had increased their capacity to argue for more enabling and rights-affirming social, policy and legal environments for people living with HIV and other inadequately served populations: 37% a great deal, 47% some, and 13% a little.



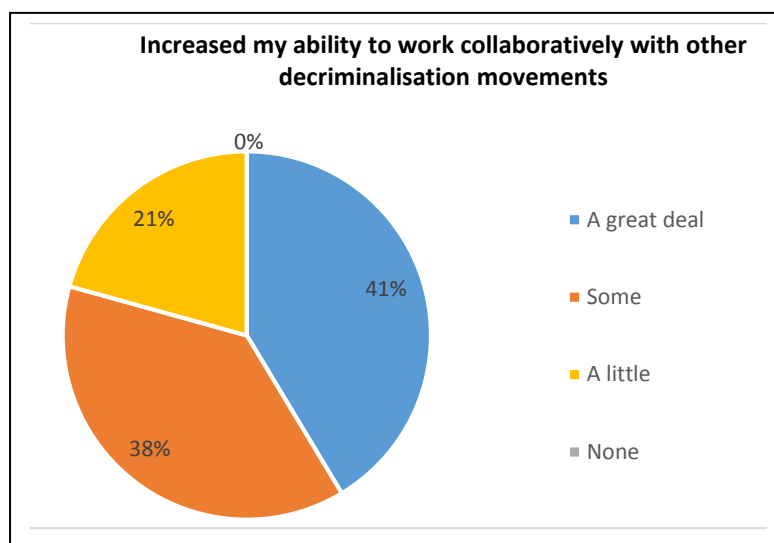
<sup>3</sup> 'Inadequately served populations' are defined by the Robert Carr Fund for civil society networks as groups or persons that face a higher HIV risk, mortality and/or morbidity when compared to the general population, and have, at the same time, less access to information and services. They include people living with HIV, gay men and other men who have sex with men, women and men who use drugs, prisoners, sex workers and transgender people, but depending on the dynamic of the epidemic may also include women and girls, youth, migrants, and people living in rural areas

*I work with an NGO 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

**Intersectionalities:** HIV criminalisation plays out in social contexts, with patriarchal social structures and gender discrimination intersecting with race, class, sexuality and other factors to exacerbate existing social inequalities. The application of intersectionality theory identifies how interlocking systems of power impact those who are most marginalised in society. Advocacy to address HIV criminalisation will be advanced

by collaboration with other decriminalisation movements such as sex workers, drug users, LGBTI people, or those opposing mass incarceration. All 29 respondents to whom the question was applicable (100%) stated that *Beyond Blame* had increased their ability to work collaboratively with other decriminalisation movements: 41% a great deal, 38% some, and 21% a little.



**Constructive criticism:** Respondents were asked whether they would have liked to cover other issues during the *Beyond Blame* meeting. Ten responses were recorded addressing:

- greater opportunity for dialogue
- evidentiary discussions on how to frame science in the court room
- evidentiary discussions of successful defences run in different countries
- discussion about the criminalisation of people who use drugs
- how research can support advocacy
- discussion of gaps in feminist analysis related to HIV criminalisation and movement building
- how to deal media and community reaction to rare, difficult cases of intentional transmission
- children's rights

These suggestions will be taken into account in the design of the next *Beyond Blame* meeting and will also inform the development of the HIV JUSTICE WORLDWIDE 2019-2021 workplan.

## Catalyst for future shared work

Respondents were asked whether they had any ideas for partnership work they would like to discuss further with members of HIV JUSTICE WORLDWIDE. Twelve respondents made specific suggestions relating to:

- consideration of comparative case-law
- cross jurisdictional dialogue between particular countries
- advocacy to reach more marginalised populations in particular countries
- strategies targeted at politicians to create political allies
- advocacy to address HIV-related spitting laws and policies
- dialogue to created current resources addressing the feminisation of HIV criminalisation, including the effects of race and colonisation
- the rights of children

HIV Justice WORLDWIDE partners will follow up with respondents in the first quarter of 2019 (pending funding).

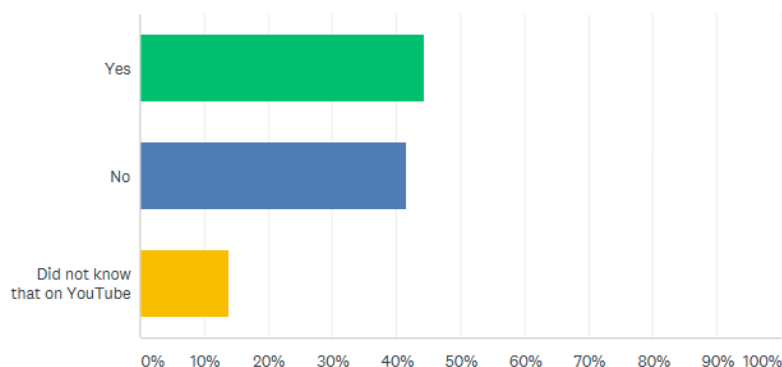
*I am interested in getting the Canadian folks to come to the U.S. to speak. It was very helpful to hear their perspective.*  
Respondent 15

**Electronic Availability:** The decision to broadcast and record Beyond Blame has proven very successful. As well as some people watching the live stream and submitting questions electronically, the recordings have been watched many times on YouTube:

Session	Views (at 21 September 2018)
Plenary 1	200 views
Plenary 2	60 views
Plenary 3	74 views

Forty four percent of respondents stated they had watched some or all of the *Beyond Blame* webcast on YouTube since the event.

Have you watched any of the Beyond Blame webcasts on YouTube?



## HIV Criminalisation Highlights at AIDS 2018

*In the PDF version of this document, clicking on the entries links you to further information online.*

### Sunday, 22 July 2018

08:30 - 17:30 **Global Dialogue: HIV, Rights and the Law in the Era of the 2030 Agenda for Sustainable Development** Official pre-conference, Hall 11A

08:30 - 17:30 **Challenging Criminalisation Globally** Nemo Science Museum, Oosterdok 2, 1011 Amsterdam

### Monday, 23 July 2018

08:30 - 16:30 **Beyond Blame 2018: Challenging HIV Criminalisation** De Balie, Kleine Gartmanplantsoen 10, 1017 Amsterdam

All week 09:00 - 17:00 Mon - Thu; 09:00 - 12:00 Fri  
**AIDS-Free World Legal Consultation Centre**  
Global Village, Booth 648

17:00 **Official Opening of Human Rights Networking Zone** Global Village, Booth 520

### Tuesday, 24 July 2018

All week 09:00 - 10:30 **Morning Movies on HIV, human rights and HIV criminalisation**  
Human Rights Networking Zone, Global Village, Booth 520

All week: **Take #endHIVcriminalisation selfies at HRNZ photo stand** Human Rights Networking Zone, Global Village, Booth 520

11:00 - 12:30 TUAD02 **The defence does not rest: Resisting the criminalization of HIV**  
Main conference, Emerald Room

*11:00 TUAD0201 The new AIDS denialism: How criminal courts' dismissal of modern science perpetuates HIV stigma, discrimination and criminalisation – Sally Cameron, HIV Justice Network*

*11:15 TUAD0202 Decriminalizing HIV: How people living with HIV translated quantitative research into community action and legislative transformation – Ayako Ochoa, UCLA*

*11:30 TUAD0203 Step by step: Ending unjust HIV criminalization in Canada through community advocacy based on science and rights – Richard Elliott, Canadian HIV/AIDS Legal Network*

*11:45 TUAD0204 Marginalized women living with HIV at increased risk of viral load suppression failure: Implications for prosecutorial guidelines regarding criminalization of HIV non-disclosure in Canada and globally – Andrea Krüsi, Gender and Sexual Health Initiative*

13:00 - 14:30 TUGS07 **Network empowerment: Creating space for us all** Global Village, Youth Pavilion, Session Room

16:30 - 18:00 TUSY10 **Realizing rights in the HIV response: Confronting new threats**  
Main conference, Hall 12

*17:12 Advocacy case study: Advancing HIV justice, resisting HIV criminalisation – Edwin J Bernard, HIV Justice Network*

## Posters

- ◇ TUPED458 **'Bringing science to justice': How advocacy in Sweden is resulting in modernising its HIV-related laws and prosecutions / sentences of people living with HIV** (Andreas Berglöf)
- ◇ TUPED463 **HIV criminalization in California: Policing sex work and women's bodies** (Amira Hasenbush)
- ◇ TUPED469 **After the repeal: Prosecution of HIV exposure after the removal of specific offences in Colorado, USA and Victoria, Australia** (John Manwaring)
- ◇ TUPED474 **Women, ART and the criminalization of HIV non-disclosure (WATCH): Mapping criminalization's creep into the health and social care of women living with HIV in Canada** (Jasmine Cotnam)
- ◇ TUPED512 **Global trends in HIV criminalisation: Overview, analysis and country ranking** (Edwin J Bernard)
- ◇ TUPED548 **Dangerous desires: The criminalisation of HIV endangerment in Victoria, Australia** (Paul Kidd)
- ◇ TUPED551 **Aristotle was right - the sum is greater than the whole of its parts: How collaboration increased capacity in the fight against HIV criminalisation** (Sally Cameron)
- ◇ TUPED555 **My body, my right! The power of women's advocacy in defeating HIV criminalisation in Malawi's HIV Bill** (Annabel Raw)
- ◇ TUPED556 **Impact of the ARASA online short courses on criminalisation of HIV transmission, exposure and non-disclosure** (Bruce Tushabe)

## Wednesday, 25 July 2018

11:00 - 12:30 WEWS01 **Challenging criminalization globally: Un-policing identity, morality, sexuality and bodily autonomy** Main conference, E102

14:30 - 15:15 **Media launch of the "Expert Consensus Statement on the Science of HIV in the Context of the Criminal Law"**  
Media / Invite only

16:30 - 18:00 **HIV Criminalization – Uniting forces to end HIV Criminalization** Human Rights Networking Zone, Global Village Booth 520

## Posters

- ◇ WEPED346 **Challenging criminalisation globally: New directions for un-policing identity, morality, sexuality and bodily autonomy** (Bob Mwiinga Munyati)
- ◇ WEPED413 **Law and practice that inhibit HIV treatment adherence for pre-trial detainees in Malawi** (Annabel Raw)

## Thursday, 26 July 2018

11:00 - 12:00 **Addressing Punitive Legal Environments – intersections with HIV Criminalisation** PLHIV Networking Zone, Global Village, Booth 501

13:00 -14:00 THGS07 **The future is female: Women's leadership in HIV criminalization research and activism** Global Village, Youth Pavilion, Session Room

14:30–16:00 **Legal Strategies What's law got to do with it? Legal strategies to uphold human rights of people living with, at risk of or affected by HIV or AIDS** Human Rights Networking Zone, Global Village, Booth 520

16:30 to 18:00 THWS12 **Who's on deck? Building the leadership bench of women living with HIV in the federal policy advocacy arena** Global Village, Session Room 1

18:00 - 19:30 MOGS04 **Fighting discriminatory HIV laws: Practical skills for documenting, monitoring, reporting and organizing to end HIV criminalization** Global Village, Session Room 2

## Poster

- ◇ THPED492 **Two steps forward, one step back? Critiquing the repeal of a mandatory disclosure law in NSW, Australia** (Paul Kidd)

## Friday, 27 July 2018

10:30 - 11:30 **Video Screening and discussion: HIV Criminalization in Canada - Where do we stand?** Canada Pavilion, Exhibition Hall 1