

# Challenging HIV Criminalisation at the 21st International AIDS Conference, Durban, South Africa, July 2016

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## The Issue

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We cannot end the HIV pandemic without ending the epidemic of criminalisation of people living with HIV.<sup>1</sup>

HIV criminalisation is a growing, global phenomenon with profound negative effects on public health as well as human rights. HIV criminalisation represents a serious barrier to scaling up the HIV response; and yet the practice is rarely given the attention and scrutiny it deserves in HIV policy, clinical, or civil society circles.

HIV criminalisation describes the inappropriate use of the criminal law to punish and control the consensual behaviour of people living with HIV based on their HIV status - either via HIV-specific criminal statutes, or by applying general criminal laws that allow for prosecution of potential or perceived exposure to HIV,

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*"[A] negative trend has taken hold ... [T]he perception remains that criminalisation of HIV will help in our fight against the HIV epidemic. But what a fallacy; this is dangerous, as is dangerous any rhetoric that is not based on evidence."*

*- Hon. Dr Patrick Herminie, Speaker of Parliament (Seychelles), opening address*

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<sup>1</sup> HIV Justice Worldwide. Beyond Blame @ AIDS 2016 Communiqué. Durban, 17 July 2016. Available at: <http://www.hivjustice.net/news/beyond-blame-aids-2016-communique/>

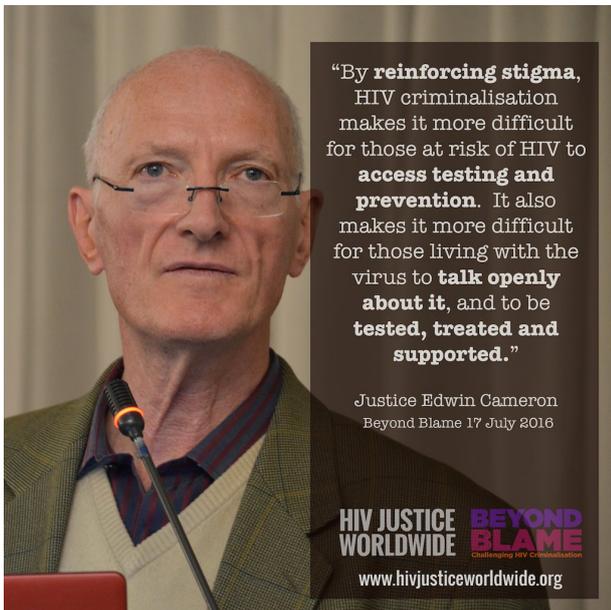
alleged non-disclosure of known HIV-positive status, and/or unintentional HIV transmission.

As of April 2016, there are 72 countries with HIV-specific criminal laws. Including individual states in the United States with such laws brings the total to 101 jurisdictions.<sup>2</sup>

Such unjust application of the criminal law in relation to HIV:

- Ignores robust available scientific and medical evidence relating to HIV;
- Fails to uphold the principles of legal and judicial fairness (including key criminal law principles of legality, foreseeability, intent, causality, proportionality, and proof); and
- Infringes upon the human rights of those affected by these cases.

In many instances, HIV criminalisation laws are exceedingly broad in their wording, interpretation, and/or application, leaving people living with HIV (and those perceived by authorities to be vulnerable to becoming HIV positive) open to a wide range of human rights violations. Some of these laws allow prosecution for acts that constitute no, or a vanishingly low, risk of HIV transmission: spitting, biting, scratching, oral sex, sex with condoms or a low viral load. The enactment and application of these laws is often based on myths and misconceptions about HIV transmission - as well as stigma against communities living with or affected by HIV.<sup>3</sup>



In August 2008, as the 17<sup>th</sup> International AIDS Conference in Mexico City drew to a close, Justice Edwin Cameron, then of the Supreme Court of Appeal of South Africa (and currently of the Constitutional Court of South Africa), gave a powerful speech entitled 'HIV is a virus not a crime'. In it, he issued a call to action for civil society activists: "Let one of the conference outcomes be a major international pushback against misguided criminal laws and prosecutions."<sup>4</sup> Eight years later, Justice Cameron was present in Durban to witness how far the movement he inspired from that stage has come.

<sup>2</sup> Edwin J Bernard and Sally Cameron. Advancing HIV Justice 2: Building momentum in global advocacy against HIV criminalisation. HIV Justice Network and GNP+. Brighton/Amsterdam, April 2016. Available at: <http://www.hivjustice.net/advancing2/>

<sup>3</sup> *Ibid.*

<sup>4</sup> Edwin Cameron. Criminal statutes and criminal prosecutions in the epidemic: help or hindrance? Abstract FRPL0103. 17th International AIDS Conference, Mexico City, 2008. Available at: [http://www.afao.org.au/library/topic/government/Cameron\\_speech\\_Mexico\\_International\\_AIDS\\_Conference\\_2008.pdf](http://www.afao.org.au/library/topic/government/Cameron_speech_Mexico_International_AIDS_Conference_2008.pdf)

## The Event

On 17 July 2016, approximately 150 advocates, activists, researchers, and community leaders met in Durban, South Africa, for Beyond Blame: Challenging HIV Criminalisation - a full-day pre-conference meeting preceding the 21<sup>st</sup> International AIDS Conference (AIDS 2016) to discuss progress on the global effort to combat the unjust use of the criminal law against people living with HIV. Attendees at the convening hailed from at least 36 countries on six continents (Africa, Asia, Europe, North America, Oceania, and South America).

The Durban meeting expanded upon similar successful 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](#)). The purpose of the meeting was to provide practical opportunities for advocates working in different jurisdictions to share knowledge, collaborate, and energise

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*"It is really great to see so many people here; but also a bit saddening that, after all these years, we still have to have these meetings while all the evidence should be a clear, loud statement that **all these laws should be repealed immediately.**"*

*- Johanna Kehler, AIDS Legal Network (South Africa), opening session*

the global fight against HIV criminalisation. Of those attendees who responded to a pre-meeting assessment survey (n=83), 93% described themselves as having advanced or moderate proficiency on the topic of HIV criminalisation before they arrived at Beyond Blame.

Beyond Blame was convened by [HIV Justice Worldwide](#), an initiative made up of global, regional, and national civil society organisations – most of them led by people living with HIV – who are

working together to build a worldwide movement to end HIV criminalisation. The founding partners are: AIDS and Rights Alliance for Southern Africa (ARASA); Canadian HIV/AIDS Legal Network; Global Network of People Living with HIV (GNP+); HIV Justice Network; International Community of Women Living with HIV (ICW); Positive Women's Network – USA (PWN-USA); and the Sero Project (SERO).

The meeting was opened by the Honourable Dr Patrick Herminie, Speaker of Parliament of the Seychelles, and closed by Justice Edwin Cameron, both of whom gave powerful, inspiring speeches.<sup>5</sup> Dr Herminie is a passionate public health physician and HIV criminalisation opponent. In 2015, he and his peers in the Southern African Development Community (SADC) Parliamentary Forum, in partnership with ARASA, held a symposium at which SADC adopted a motion to uphold human rights in HIV treatment, care, and prevention, which included a call to review and consider rescinding HIV-specific criminal laws in the region.<sup>6</sup> Justice

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<sup>5</sup> The full text of both speeches can be found in the Appendix; Justice Cameron's entire speech is also available to watch at: <https://www.youtube.com/watch?v=RAT6d4bLo24>

<sup>6</sup> Chaby Barasa. Southern Africa: SADC PF decries criminalisation in public health response. AllAfrica, 19 May 2016. Available at: <http://www.hivjustice.net/storify/southern-africa-sadc-pf-decries-criminalisation-in-public-health-response/>

Cameron, a long-time human rights champion, was diagnosed with HIV in 1986 and became the first senior South African official to publicly disclose that he is living with HIV.

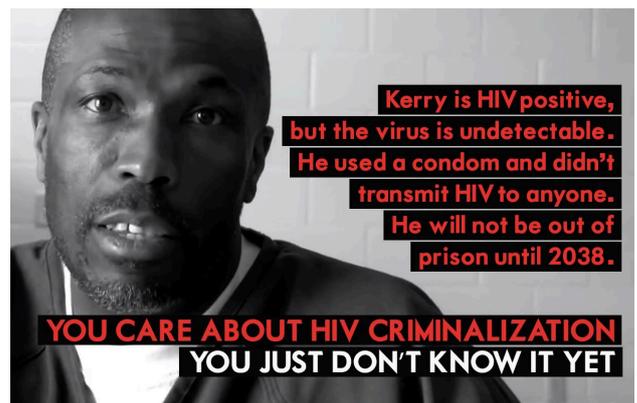
In between the two addresses, moderated panels and more intimate, focused breakout sessions catalysed passionate and illuminating conversations amongst dedicated, knowledgeable advocates. The text of this report represents an overview of key highlights and takeaways from the convening as a whole, grouped by the following recurring themes:

- Key Strategies
- Advocacy Tools
- Partnerships and Collaborations
- Adopting an Intersectional Approach
- Avoiding Pitfalls and Unintended Consequences

Please see the Supplemental Materials section of this document for the full day's agenda; transcripts of the opening and closing addresses; summaries of relevant sessions at the main conference, AIDS 2016; and complete data from the post-meeting evaluation survey.

A tremendous energising force at the meeting was the presence, voices, and stories of individuals who have experienced HIV criminalisation first-hand. "[They are the] folks who are at the frontlines and are really the heart of this movement," said Naina Khanna, Executive Director of PWN-USA, from her position as moderator of the panel of HIV criminalisation survivors; "and who I think our work should be most accountable to, and who we should be led by."

Three survivors - Kerry Thomas and Lieutenant Colonel Ken Pinkela, from the United States; and Rosemary Namubiru, of Uganda - recounted their harrowing experiences during the morning session. Thomas joined the gathering via phone, giving his remarks from behind the walls of the Idaho prison where he is serving two consecutive 15-year sentences for having consensual sex, with condoms and an undetectable viral load, with a female partner. Namubiru, a nurse for more than 30 years, was arrested, jailed, called a monster and a killer in an egregious media circus in her country, following unfounded allegations that she exposed a young patient to HIV as the result of a needlestick injury. Lt. Col. Pinkela's decades of service in the United States Army have effectively been erased after his prosecution in a case in which there was "no means likely whatsoever to expose a person to any disease, [and definitely not] HIV."



Kerry Thomas. Credit: Flash Collective, HIV Is Not a Crime 2014

At the end of the brief question-and-answer period following the often-times emotional panel, Lilian Mworeko of ICW East Africa, in Uganda, took to the microphone with distress in her voice that echoed what most people in the room were likely feeling.

"Whom can we reach out to to change this situation?" she asked. "Because we cannot allow people to go through what they are going through. We cannot allow this to happen. It's not fair. ... And I'm imagining that in two years' time we are going to be in the Netherlands [at the next International AIDS Conference] and hear the same stories. It's not right. ... We are talking about 90-90-90: How are we going to achieve that, for example, when health care providers [living with HIV] are being stigmatised, are being criminalised? ...

"We are being so polite. I wish we could carry what we are saying here [into] the plenary session of the main conference."

With that, a call was put to the floor that would reverberate throughout the day, and carry through the week of advocacy and action in Durban.

## The Takeaways

What follows is a summary of repeating themes discussed and reported from moderated panels, plenary sessions, and report-back sessions at the Beyond Blame convening. The text includes recommendations for various stakeholders.

### Key Strategies

**Judicial education and strategic litigation.** Attendees at the meeting heard examples of successes as well as failures with challenging laws through strategic litigation. A key factor for their success appears to be judicial education.

In Kenya, the AIDS Law Project (ALP) led a ground-breaking, successful challenge to one of the nation's two problematic HIV criminalisation laws. ALP issued a constitutional petition in December 2010, challenging Section 24 of the HIV and AIDS Prevention and Control Act on the grounds that it would likely infringe on the rights of people living with HIV should it be implemented. In March 2015, a three-judge bench held that Section

#### A NASCENT MOVEMENT TO CHALLENGE UGANDAN LAW

*"[T]he argument that we are making is that three provisions [of Uganda's HIV/AIDS Prevention and Control Act] are in contravention of specific human rights. But we have taken it beyond and said that these human rights issues create a social impact which cannot be ignored ... and that's how we've alluded to issues of vulnerability and marginalisation, specifically for women and people living with HIV and other key populations. The third argument we've made is that the law is out of tune with science ... It is really three arguments being made, all in the spectrum of human rights."*

*- Dora Kiconco Musinguzi,  
UGANET (Uganda), opening  
session*

24 of the act was overly broad, and vague in its lack of definition of terms like 'sexual contact'; violated the right to privacy of people living with HIV; and discriminated against those it was charged with protecting.

Key contributors to this success included: partnerships across constituencies; *amicus curiae* arguments submitted in 2011 to strengthen the petitioner's position; and the convening of Judicial Dialogues on HIV, Human Rights and the Law in Nairobi in [2013](#) and [2014](#).<sup>7</sup>

According to Allan Maleche, Executive Director of the Kenya Legal & Ethical Issues Network on HIV and AIDS (KELIN), who was interviewed at length by HIV Justice Network's Global Co-ordinator, Edwin Bernard, following Beyond Blame, judges who were involved in the dialogues became more enlightened about the issue of HIV criminalisation. "[T]his was consequently seen in the case that was brought by AIDS Law Project and others," said Maleche. "[T]he fact that they made reference to some of the material [from the judicial dialogue] in their judgement was an indicator that they actually looked at it and found to use it where appropriate."

Tinashe Mundawara of Zimbabwe Lawyers for Human Rights described an unsuccessful challenge to Zimbabwe's HIV criminalisation statute, Section 79 of the Zimbabwe Criminal Law (Codification and Reform) Act 23 of 2004. He noted that part of the reason for the lack of success was a lack of understanding of HIV-related issues by the judge that dismissed the challenge, strongly suggesting a need for more judicial training in Zimbabwe. In another Beyond Blame session, Patrick Eba of UNAIDS noted that educating members of the judiciary is of critical importance in countries where there may be a low likelihood of modernising or repealing laws.

Not all strategic litigation necessarily involves individual clients. "We did not have a client who was directly affected but we thought, let's do this as public interest [litigation]," explained Jacinta Nyachae of ALP, "because if we don't do it, then the next thing we'll be hearing is people are being arrested and taken in under this section." Mundawara noted that where the challenge does involve defendants who have already been prosecuted and found guilty in a lower court (as was the case in Zimbabwe), it was important to ensure that clients involved in strategic litigation have access to appropriate psychological support.

In undertaking either law reform or strategic litigation, panellists discussed the vital importance of taking a long view: thinking through what case to bring forward (recognising that some cases may be harder for the general public and the media to understand than others); whether it is good for the client and/or the cause to attract media coverage; what argument and key messages to push in the media; who the spokespeople will be

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<sup>7</sup> Following up the work of the Global Commission on HIV and the Law (report available at: <http://www.hivlawcommission.org/index.php/report>), the judicial dialogues were undertaken by UNAIDS, the United Nations Development Programme (UNDP), Kenya's Judiciary Training Institute (JTI), and the Kenya Legal & Ethical Issues Network on HIV and AIDS (KELIN). The dialogues provided crucial opportunities for Kenyan judiciary members and other stakeholders to share experiences and strategies with counterparts from across the Eastern and Southern African regions (including Justice Edwin Cameron, a speaker at the first judicial dialogue) for addressing complex legal and human rights concerns posed by the HIV epidemic.

from amongst those who are being affected; and how allies will be equipped to relay the messages of the campaign. A misguided decision can present serious obstacles to future advocacy.

### **Advance education - and an open mind - in securing support from unlikely allies.**

The collaboration between Colorado state senator Pat Steadman and the Colorado Mod Squad in the United States exemplifies partnership between legislators, and advocates living with HIV. In the process of modernising the state's HIV-specific statute, Senator Steadman was surprised to handily secure support for his bill from state public health officials. Barb Cardell, a Mod Squad leader, was not. "Part of the reason why the public health organisations were on board is that we had started three years ahead of time, organising and educating them," Cardell explained.

Serge Tamundele, of the Congolese National Association of People Living with HIV (UCOP+) in the Democratic Republic of Congo (DRC), also cited education of unlikely but essential allies as part of the ongoing, long-term process of HIV law reform. That process in DRC has included securing and educating parliamentary champions and involving them in a law-reform working group.

Florida Republican senator Rene Garcia from the United States also encouraged those gathered not to push away potential allies with whom they may differ on many other issues. Senator Garcia referenced efforts to build coalitions of business, agricultural, and other leaders as part of the mounting HIV modernisation effort in the state. He related his surprise at the favourable response he received from ultra-conservative Florida governor Rick Scott when Senator Garcia went to him seeking HIV cure research funding, saying that the governor agreed it was "the right thing to do."

**Re-framing the discussion around HIV risk and harm.** The continued use of the criminal law to prosecute people living with HIV for alleged exposure belies current, robust knowledge about the nature of HIV risk and harm in the modern era of the epidemic. Dr Benjamin Young made this point as a panellist at Beyond Blame, and has done so in numerous [interviews](#), speaking engagements, and his work with HIV professionals worldwide as Chief Medical Officer of the International Association of Providers of AIDS Care (IAPAC). In late 2015, IAPAC published the world's first [evidence-based guidelines for improving the care continuum](#) for people living with HIV. Of 36 recommendations, the first three directly address the issues of stigma, discrimination, criminalisation, and the legal environments in which HIV care is practiced, thereby intertwining human rights and public health evidence bases.

"In 2016, doctors and scientists can really re-frame and re-calibrate the discussion around HIV criminalisation and justice," said Dr Young in an interview following Beyond Blame. "[W]hile we now know that transmission is extraordinarily unlikely to occur, if not impossible to occur [in numerous instances], we also know that ... even if HIV transmission occurs, this is no longer that attempted-murder event. ... [B]oth the risk of transmission ... [and] the harm of transmission ... [have] been similarly dramatically decreased.

"Together, it means that we need to be thinking about evidence-based science applied to evidence-based policy, and evidence-based law ... [W]e need to be much more targeted in the way we speak and the language around these risks and harms. And there's space to move this into an updated consensus statement around risk, around harm, that can be applied in the judicial and legislative environment."

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## Advocacy Tools

*"[I]n 2011, the law in Denmark - the only HIV-specific criminal law in Western Europe - was suspended through advocacy that highlighted that this wasn't about the science of risk, this was about the science of harm - and showed that the life expectancy of people with HIV in Denmark was exactly the same as those without. In fact, it was slightly better. The law itself, which referred to a life-threatening illness ... could not be used anymore."*

*- Edwin J Bernard, HIV Justice Network, opening session*

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### Language, messaging, and media.

Many societies around the globe have a penchant for assigning blame and vilifying one side in alleged conflicts, rather than taking a nuanced view of events. Media outlets often take advantage of this tendency to present embellished, stigmatising interpretations of legal cases and other news stories. However, it is certainly possible and strategically beneficial to build relationships with members of media, guide the language and

messaging around a campaign, and achieve success with a thoughtful media strategy.

Key takeaway points related to language and media that were addressed during the Beyond Blame gathering included:

- *Stand up to HIV stigma in media:* In the case of Rosemary Namubiru, the nurse living with HIV in Uganda who was arrested and maligned by her nation's media, partner organisations mounted a

successful campaign to hold media outlets accountable for their erroneous, sensationalised reporting of her story, which so greatly contributed to the devastating impact her case has had on her life.<sup>8</sup>

- *Be wary of adopting language and/or issue frames that are counterproductive to advocacy goals:* Terms like 'over-criminalisation of people living with HIV' (which suggests that there is an appropriate level at which people living with HIV ought to be criminalised) and 'HIV transmission law' (when it's really more 'perceived or potential exposure' or simply 'alleged non-disclosure', rather than actual transmission, that is criminalised or prosecuted) are misleading. Further, the notion of 'recklessly infecting others' is born of stigmatising stereotypes of people living with HIV as dangerous, and a lack of nuanced thinking about the complexities of HIV disclosure. It is imperative for advocates to point out and address uses of stigmatising language, particularly in the context of a social justice movement challenging HIV criminalisation, and to model language and issue framing that upholds the dignity and agency of people living with HIV.
- *Tailor messages based on intended audience.* In practice, there is no separation between public health and human rights: Good public health is impossible without human rights for all. However, a given audience may be more easily convinced by messages emphasising one over the other. In the opening session, Barb Cardell shared a familiar anecdote regarding this 'division': "I talk about stigma and human rights for people living with HIV. What our legislators wanted to hear was about science, and about how these laws didn't actually reflect science anymore, and that having these laws on the books was keeping people from testing and accessing care - which are things that we know, but often-times we don't lead with. Sometimes that's what legislators need to hear."

**Scientific consensus statements.** As was discussed in the session 'Bringing Science to Justice', as well as the section above on reframing HIV-related risk and harm, it is critical to engage scientists and medical experts as key stakeholders not only in sensitisation, but also in individual court cases to provide evidence on risk, harm, and proof of HIV transmission. In Canada, for example, a defendant with an undetectable viral load was acquitted of aggravated sexual assault in a youth court for having consensual sex without disclosure, after an infectious disease expert attested to the fact that it was virtually impossible for the young man to transmit HIV.<sup>9</sup> Police and prosecutors must also be on the receiving end of this kind of sensitisation around science and evidence relating to HIV.

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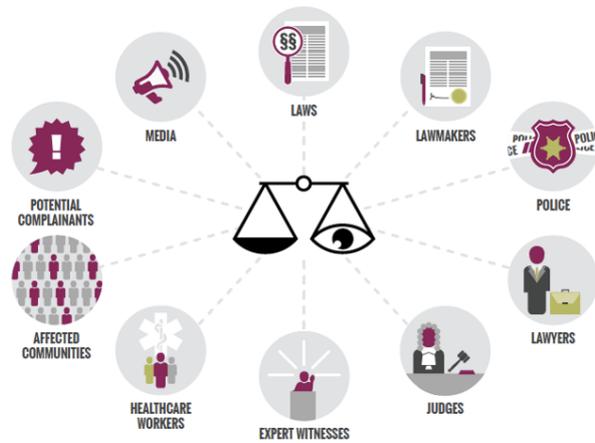
<sup>8</sup> Edwin J Bernard. Uganda: 'Trial by media' of nurse accused of exposing a child to HIV via injection sets a 'dangerous precedent'. HIV Justice Network, 12 February 2014. Available at: <http://www.hivjustice.net/news/uganda-trial-by-media-of-nurse-accused-of-exposing-a-child-to-hiv-via-injection-sets-a-dangerous-precedent/>

<sup>9</sup> Edwin J Bernard. Canada: Nova Scotia court acquits young man with undetectable viral load of aggravated sexual assault for HIV non-disclosure despite no condom use. HIV Justice Network, 19 November 2013. Available at:

The 'Swiss statement', issued in January 2008 by the Swiss National AIDS Commission, which stated for the first time that someone on effective antiretroviral therapy was unlikely to transmit HIV, was a turning point for HIV criminalisation as well as for HIV prevention. Since then, a number of country-specific scientific consensus statements have been created, calling for re-characterisation of the risk and harm of HIV based on the best available scientific evidence.

Such statements have been produced in Sweden and Canada, with science also influencing policy in England and Wales, Scotland, and France. Australian experts will publish their own statement, with additional sections on the impact of pre-exposure prophylaxis (PrEP) on HIV acquisition risk, and the limitations of phylogenetic analysis as forensic 'proof' of timing and direction of transmission, in November 2016.

Participants at the Beyond Blame meeting heard about how, where they exist, these statements are influencing courts and producing encouraging outcomes. Andreas Berglöf of RFSU (the Swedish Association for Sexuality Education) shared an example: In Sweden, which once led the globe in per-capita HIV-related prosecutions and convictions, such prosecutions have dropped significantly since the 'Swedish statement' was adopted in 2013.<sup>10</sup>



Advocacy targets. Credit: HIV Justice Worldwide.

**UNAIDS Political Declaration on HIV and AIDS: On the Fast-Track to Accelerate the Fight Against HIV and to End the AIDS Epidemic by 2030.** Although the June 2016 UN General Assembly High-Level Meeting on Ending AIDS (HLM) and the [adoption of a new UNAIDS political declaration](#) resulting in a number of disappointing outcomes to [key population advocates and stakeholders](#), there were some favourable outcomes.

The declaration includes stronger, more specific language than previous versions of the document, referring specifically to the empowerment and agency of people living with HIV in knowing their rights and accessing justice, and to the prevention of gender-based violence. Crucially, for the first time, the declaration also calls

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<http://www.hivjustice.net/news/canada-nova-scotia-court-acquits-young-man-with-undetectable-viral-load-of-aggravated-sexual-assault-for-hiv-non-disclosure-despite-no-condom-use/>

<sup>10</sup> Edwin J Bernard. Sweden: Supreme Court refuses to rule on treatment's impact on HIV risk even as a second Court of Appeal judgement recognises latest science. HIV Justice Network, 25 September 2014. Available at: <http://www.hivjustice.net/news/sweden-supreme-court-refuses-to-rule-on-treatments-impact-on-hiv-risk-even-as-a-second-court-of-appeal-judgement-recognises-latest-science/>

for an end to unjust applications of the criminal law to discriminate against people living with HIV. "This is a critical message that we should all use in our efforts to challenge criminalisation," remarked Patrick Eba of UNAIDS.

HIV Justice Network's Global Research Fellow on HIV, Gender, and Justice, Laurel Sprague, has also contributed a [valuable resource for reading, interpreting, and effectively using the declaration](#) as a tool for advocacy.

## Partnerships and Collaborations

Throughout Beyond Blame, the overwhelming sentiment from speakers, expressed in a variety of ways across a multitude of topics, was the vital need to avoid silos and build intersectional, diverse, resourceful strategic partnerships to advance HIV justice.

**Persuading opponents to become allies.** In an example from Kenya, according to Jacinta Nyachae of ALP, one NGO had initially opposed their constitutional challenge of Section 24, on the grounds that they represented the rights of unborn children that might acquire HIV from mothers, and that the law was needed to protect these children. They eventually withdrew their opposition, once clear evidence was shown to them that HIV criminalisation does not advance public health goals or protect children, much less women, in the fight against HIV. This example shows not only how opponents can become allies, but how lack of information often drives reactionary positions regarding the nature of HIV criminalisation.

**Leaving no one behind.** Law reform efforts often involve difficult decisions regarding what compromises are acceptable in the process. When leadership comes from people living with HIV who are representative of the people most likely to be affected by HIV criminalisation, these decisions may be easier to make.

For example, the Colorado Mod Squad ensured that no specific marginalised population was explicitly left out of, or harmed by, the law reform process. "There was an early effort to remove sex workers from [the bill] and to say, 'Well, it'd be really

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*"[We need] to start special advocacy activities to engage and build linkages with decision-makers, opinion leaders, religious leaders, influential people, scientists, anyone that we can bring on board ... [If each one could] be ready to influence 100 people, or even 50, that will be a good starting point."  
- Happy Assan, Tanzanian Network of People Who Use Drugs (TaNPUD), closing session*

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easy if we just modernise the language around HIV and then come back next year,'" Cardell explained. "Nobody was willing to do that. There was no one who was an acceptable loss ... [W]e make sure that our population, and our partners who would need to be part of this movement, are at the table. That is how we accomplished victory."

**Broadening the base and range of support for an issue.** One benefit of partnering with a variety of organisations in decriminalisation efforts is to support those who would be criminalised in opposing their own potential criminalisation. As Lilian Mworeko explained, to secure justice for Rosemary Namubiru, part of the reason why ICW East Africa engaged [AIDS-Free World](#), which was not based in Uganda or run by people living with HIV, as well as UGANET, a human-rights network, was to indicate that Ugandan women living with HIV were not alone or 'selfish' in fighting for their own rights. For any criminalised group, Mworeko explained, this perception is unfortunately a central challenge to advocacy. A network of support and partnerships provides multiple entry points for potential supporters to engage with the issue, and expands it from an assumed 'special-interest concern' to a broader public health issue.

**Engaging potential complainants - and opponents among people living with HIV.** As Sean Strub and others noted in the session on 'Getting the Message Right', it is sometimes the case that people living with, or most affected by, HIV are the hardest to convince of the fallacies of HIV criminalisation. One study showed that a high percentage of gay men in the United States advocated criminalising people living with HIV for having condomless sex without disclosing their status.<sup>11</sup>

In several sessions, the necessity of engaging potential complainants and other supporters of HIV criminalisation through, for example, restorative justice approaches was broached, and deserves further exploration. "I'd like to engage those people in our community who may be the most dangerous to us," noted Waheedah Shabazz-El, a Beyond Blame rapporteur and Positive Women's Network-USA leader; "People living with HIV, who will stand up against us ... to give them space, to validate the feelings that they have, and to be able to have them understand how they can support our movement, and still have a restorative process for them."

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<sup>11</sup> K. J. Horvath, R. M. Weinmeyer, and B. R. S. Rosser (2010). Should it be illegal for HIV-positive persons to have unprotected sex without disclosure?: An examination of attitudes among US men who have sex with men and the impact of state law. *AIDS Care*, 22(10), 1221–1228. Available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3423319/>

## Adopting an Intersectional Approach

The use of the criminal law to control and punish the behaviour of people living with HIV is anchored in broader efforts to use punitive laws and policies to regulate reproduction, sexuality, gender, and the bodily autonomy of individuals who do not appear to conform to dominant-culture notions of sexuality and gender, or those that are perceived as threatening to social order and public health. There is recognition amongst a steadily widening circle of HIV advocates that the root causes behind these assaults on bodily autonomy are intersectional, and that criminalised groups face multiple layers of social, legal, economic, and political oppression. Repressive conditions can compel groups to work together.

The concept of intersectionality, rooted in Black feminist activism and scholarship, has for several decades informed the work of many organisations, including some within the HIV community, that represent groups at the intersections of multiple marginalised identities. The term was coined by legal scholar Kimberlé Crenshaw in 1989, and has experienced a resurgence of attention among activists in recent years.<sup>12</sup> The [second HIV Is Not a Crime Training Academy](#), held in May 2016 in the United States, was the first time many HIV criminalisation activists considered addressing HIV criminalisation in this broader, more inclusive, intersectional context. Many advocates at Beyond Blame and beyond have expressed enthusiasm, balanced with trepidation, at applying this approach in other countries and regions.

Identifying the commonalities and intersections of individual and community identity can strengthen partnerships; engagement with some of the key points detailed below can aid in managing disagreements and misunderstandings, and even help begin to heal historic wounds of exclusion, amongst different stakeholders.

**Be informed by other debates and discourses.** Advocates focused on working to end HIV criminalisation can learn from the ways other advocates have grappled with issues that intersect with HIV in key ways. For example, what often drives punitive laws relating to behaviours rooted in moral and cultural beliefs - such as adultery, sex work, abortion, 'regulating' the behaviour of women in pregnancy, sexual orientation and gender identity - may all be different manifestations of the same issue, springing from similar

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<sup>12</sup> Sharon Smith. Black feminism and intersectionality. *International Socialist Review*, Winter 2013-14. Available at: <http://isreview.org/issue/91/black-feminism-and-intersectionality>. See also: Cecilia Chung et al. Intersectionality, HIV Justice, and the Future of Our Movement. Joint statement by PWN-USA, Transgender Law Center, Women With a Vision, HIV Prevention Justice Alliance, and CounterNarrative Project, 1 December 2014. Available at: <https://pwnusa.wordpress.com/2014/12/01/intersectionality-wad-statement/>

'moral' discourses, having common threads in the ways that states regulate and legislate, and based on similar public justifications of a 'need to act'.

**Challenge 'good' versus 'bad' frames that set intersectional, oppressed communities against one another.**

For example, a number of speakers highlighted that 'protection of women' has historically been used to justify the enactment of HIV criminalisation statutes. In reality, criminalisation does not protect women from transmission or uphold their sexual and reproductive health and rights, but instead exacerbates existing stigma and discrimination against women and exposes them to risk of prosecution. Similarly, other speakers noted that the issues facing gay men and other men who have

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*"How do we get the public to appreciate that people have the right to bodily autonomy?"  
- Felicita Hikuam, ARASA (Namibia),  
'Intersections' session*

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sex with men (MSM) have been pitted against those facing women and girls when allocating resources in the HIV response.

**Be aware of the criminalisation of other health conditions.**

Discussing the criminalisation of other diseases is extremely important to ensure that HIV criminalisation work is put into perspective. Another successful litigation effort in Kenya challenged the imprisonment of people with tuberculosis (TB) who are not adherent to their treatment.<sup>13</sup>

**Be mindful of how partnerships are affected by funding priorities.** Speakers also highlighted the importance of exploring and addressing concerns around the impact of partnerships on funding: There is an understandable fear that 'coalitions' will be seen as 'amalgamations', or one issue being 'folded' into another and no longer needing separate support. The example of collaboration around the UN General Assembly High-Level Meeting on Ending AIDS (HLM) was offered as an indicator of how alliances could be formed without compromising autonomy.

**Form alliances for working in countries with repressive social and political climates.** Another beneficial outcome for advocates involved in the HLM was the opportunity to form

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<sup>13</sup> Allan Maleche and Timothy Wafula. Imprisonment of TB patients declared unconstitutional in Kenya. Open Society Foundations, 20 May 2016. Available at: <https://www.opensocietyfoundations.org/voices/imprisonment-tb-patients-declared-unconstitutional-kenya>

partnerships around a common goal amongst groups representing key populations who experience criminalisation and other forms of repression in many countries.

These partnerships provide many examples of the crucial nature of alliances of this kind in advancing conversations at the community and societal levels around government regulation of bodily autonomy. Further, session speakers asserted that it was often essential to address HIV criminalisation through a broader agenda, and to find another, intersectional entry point to an advocacy strategy around preserving bodily autonomy.

**Identify challenges of allyship and partnership, and develop strategies to address them.** What is expected of allies or partners must be guided by pragmatism and local realities. As with changing laws and policies, cultivating partnerships across intersectional movements promises to be a 'long game', not a quick win. The initial step may be a conversation and learning exchange, recognising and mapping similarities between issues, rather than an immediate agreement to work together. Safe spaces for collaboration must be created, and respect paid to the deliberate pace of such processes.

### Avoiding Pitfalls and Unintended Consequences

**Interrogate focus on viral load and treatment success.** Arguments based on undetectable viral load may not be particularly effective in the context of the global South - where universal access to effective and uninterrupted treatment is unlikely, and where very few people have access to viral load measurement. A similar point was raised in relation to the impact of anti-criminalisation strategies for people in any setting who are not yet on treatment, or who are unable to achieve an undetectable viral load. Therefore, approaches to ending HIV criminalisation must take into consideration different realities at regional and country levels and be adapted to local contexts. Otherwise, as is already the case in many settings, those who are likely to be most marginalised in a given community would again be the most vulnerable to criminalisation.

**Beware of 'shifting of the goal post'.** Paul Kidd related the experience of successfully repealing Section 19A of the criminal law in Victoria state – Australia's only HIV-specific criminal statute – only to find that "[y]ou defeat one law and another one suddenly becomes very popular with the police" - in Victoria's case, a statute on '[procuring sexual penetration by threats or fraud](#)' that could be applied to alleged non-disclosure of HIV status and carry a sentence of up to five years in prison. Since 19A was repealed last year, Victoria has seen a very small increase in the application of this statute. "It is a consequence of what we've done," Kidd concluded; "but it's part of that long process of pushing back against criminalisation generally."

Expressing a related concern at the closing session, Cécile Kazatchkine of the Canadian HIV/AIDS Legal Network, who was the rapporteur for the 'Law Reform and Strategic Litigation' session, called for strengthening human rights arguments against HIV criminalisation, in part as a bulwark against the creativity of prosecutors in finding other avenues for prosecuting people living with HIV under the law in the wake of a successful legislative repeal. Rehearsing the many human rights arguments against HIV criminalisation made over the years, such as those by the UN Special Rapporteur on the Human Right to Health<sup>14</sup> as well as partnership with human rights organisations such as Amnesty International and Human Rights Watch, can support the goal of advancing such arguments.

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*"[W]e found that most people really knew very little about [HIV criminalisation], had given it very little thought, and when presented with the evidence and persuasion, they quickly agreed that these laws are anachronistic ... It is possible to change these laws; in many cases it's overdue, and your constituencies are ready."*

*- Colorado Senator Pat Steadman (United States), opening session*

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**No such thing as 'good criminalisation' in public health and HIV.** Panellists at the 'Intersections' session cited examples such as the '[N'Djamena' model law](#) (which led to the rapid spread of HIV-specific laws, including the criminalisation of HIV transmission, across at least 15 countries in West and Central Africa between 2005 and 2010); and the 'Swedish' or 'Nordic' model, which criminalises the buying, rather than the selling, of sexual services. Neither worked; both only succeeded in fuelling a hierarchy of oppression.

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<sup>14</sup> Anand Grover. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, April 2010. Available at:

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

On a related note, Susana Fried, currently a Global Health Justice Partnership Fellow at Yale University, offered an interesting assessment: human rights developed as a check against criminal law. However, advocates in the human rights movement have in many ways become advocates for the use of the criminal law: calling for laws around gender-based violence, yet decrying laws criminalising sex work, without being able to coherently say why one form of criminalisation is acceptable and another is not. Some barriers, she said, we create because we react from a place of wanting some form of protection, without acknowledging whether it will actually work.

These complicated dynamics also have bearing on partnerships with women's anti-violence organisations, a commenter at another session pointed out, where advocates may be quite supportive of HIV criminalisation, and encourage women to use criminalisation as a tool to seek redress from a partner.

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*"[W]e need to discuss the question of criminalisation of transmission (where it really happened) and strengthen our arguments - why this is also harmful. It is indeed more complicated and implies other moralistic aspects, but we need to go there."  
- Post-event survey respondent comment*

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**Social justice suffers when laws are used by politicians to score political points.**

This is not an advocacy pitfall so much as a consequence of leaders playing politics with the lives of vulnerable members of their constituency. For instance, in Greece, in the midst of financial ruin and implementation of brutal

austerity policies, a legal provision was enacted in 2012 that led to the forced HIV testing and victimisation of numerous members of vulnerable communities in the country, including LGBT individuals, people who use drugs, sex workers, and undocumented migrants.<sup>15</sup> Based on anecdotal evidence, the practice of using HIV criminalisation as a political tool of distraction appears not to be uncommon, and must be monitored.

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<sup>15</sup> Production team of *Ruins: Chronicle of an HIV Witch-Hunt*. Greece: Repeal of Health Decree 39A must be followed by further initiatives to protect human rights and to reverse the HIV stigma left on Greek society and political life. HIV Justice Network, 21 April 2015. Available at: <http://www.hivjustice.net/greece-repeal-of-health-decree-39a-must-be-followed-by-further-initiatives-to-protect-human-rights-and-to-reverse-the-hiv-stigma-left-on-greek-society-and-political-life/>

## The Main Conference

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"Whatever we do in terms of going forward, let it trickle through the next five days, somehow."

These words came from Dora Kiconco Musinguzi of UGANET, in Uganda, near the end of the day, reminding Beyond Blame attendees of Lilian Mworeko's morning call to action. Within moments, Justice Edwin Cameron reinforced the call in his closing keynote speech:

*[O]ur administrators and officials and politicians arrive at this conference ... with delegations. And they go back to their countries, 30 of them in Africa, with criminal laws that target us irrationally, unscientifically, stigma enhancingly, stigma magnifyingly. We must not allow them that peace and comfort.*

*We must challenge them. We must take the message of this conference out of your meeting today into the halls, into the podiums, and into the individual meetings with those people. Find the ministers and the officials from the African countries that target.*

*We have suffered no harm in [South Africa], because we didn't stigmatise [by using the criminal law]. We did the right thing. Those countries must do the right thing. They must repeal those laws. And your energy today, your vision and your activism, will make sure that that happens.*

That opportunity presented itself on the first morning of the conference, with support from Justice Cameron. Through brisk organising via email, WhatsApp, and meetings and sign-making gatherings in the Human Rights Networking Zone, activists seized that opportunity. That Tuesday morning, after delivering the Jonathan Mann Memorial Lecture in the conference centre's largest plenary hall, Justice Cameron asked those vulnerable to being criminalised to join him. More than 100 activists took to the stage - many wearing HIV JUSTICE WORLDWIDE or 'HIV is not a crime' T-shirts, some with handmade signs, others carrying the classic red umbrellas of the global sex worker justice movement, and all with strong voices calling for an end to criminalisation *now*.



Decriminalisation activists take the plenary stage at Durban ICC. Photo © International AIDS Society/Abhi Indrarajan.

The message reached the eyes and ears of thousands in the main conference; the event was recounted in [videos](#) and striking photos, as well as print, [broadcast](#), and social media. And the activist action was just an aspect of the HIV decriminalisation advocacy presence at AIDS 2016. Several sessions and posters addressing HIV criminalisation from a

number of angles, and bringing information and tools from Beyond Blame into venues in the main conference, were presented throughout the week - in Global Village networking zones as well as session rooms and poster exhibits in the conference centre. (See the Appendix for a complete list of Beyond Blame-related sessions and other criminalisation-focused conference presentations)

Armed with information, advocacy tools and new potential allies, jurisdiction by jurisdiction, work challenging HIV criminalisation continues beyond Durban with renewed passion and energy.

## Supplemental Materials

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### **APPENDIX A: TRANSCRIPT: OPENING ADDRESS BY HON. DR PATRICK HERMINIE, THE SPEAKER OF THE NATIONAL ASSEMBLY OF SEYCHELLES**

#### **INTRODUCTION**

I am very pleased to be here with you today, and indeed honoured to address you at the start of this very important pre-conference – Beyond Blame: Challenging HIV Criminalisation.

Allow me to, first of all, express my gratitude to all the men and women who worked so hard to make this meeting possible. Co-ordinating so many people from so many different countries and backgrounds requires meticulous planning and organisation. Congratulations for a job well done.

This meeting provides a rare opportunity for those of us here - activists, advocates, health care professionals, philanthropic funders, members of the media, lawyers, judges, policymakers and parliamentarians like myself – to share experiences and knowledge, and to consider strategies on how to work towards ending HIV criminalisation.

In November 2015, the Southern African Development Community Parliamentary Forum unanimously adopted a motion that reaffirmed the obligation of SADC member states to respect, fulfil and promote human rights in all endeavours undertaken for the prevention and treatment of HIV.

The motion called on SADC member states to consider rescinding and reviewing punitive laws specific to the prosecution of HIV transmission, exposure and non-disclosure. It also reaffirmed the responsibility of parliamentarians to enact laws that support HIV prevention and treatment interventions that are evidence-based and that conform with regional and international human rights frameworks.

Earlier this year, in May, in co-operation with one of the HIV JUSTICE WORLDWIDE hosts, ARASA, we met again in Johannesburg to examine ways that parliamentarians can begin to articulate and take concrete action regarding the promotion and protection of human rights, as advocates of HIV decriminalisation in the public health response.

The fact that many of us met to discuss criminalisation and stigmatisation, which are hindrances in the realisation of fundamental human rights and public health, is testimony to the commitment of many SADC parliamentarians to our people as their representatives and advocates for their rights.

#### **A GROWING CONCERN**

Nevertheless, in spite of the remarkable progress that our different countries have registered in public health, in some countries criminal laws are limiting the exercise of people's rights including sexual and reproductive rights and having a negative impact on public health.

The task before us is enormous. It is clear that a negative trend has taken hold, and that the perception remains that criminalisation of HIV will aid in our fight against the HIV epidemic. But what a fallacy. This is dangerous, as is dangerous any rhetoric that is not based in evidence.

HIV criminalisation ignores the medical facts about the roots, risks, and current realities of HIV transmission and care. It ignores the fact that with today's antiretroviral treatment, condom use, and pre-exposure prophylaxis, the rate of transmission is almost zero. HIV/AIDS is no longer a death sentence. Can we believe

that in this day and age, people living with HIV are spending decades in prison for biting and spitting? Yeah, shame.

HIV criminalisation is also discriminatory in that it ignores the world-recognised principles of criminal justice and goes against the principle of presumption of innocence. HIV criminalisation is a product of a rudimentary mind-set, an attitude born out of the stigma initially with HIV, a stigma born out of ignorance.

For instance, it is a well-established fact that human papillomavirus (HPV) can cause cancer of the cervix and the throat, and yet there has not been a single reported case of someone with HPV being criminally prosecuted. Why should HIV/AIDS therefore be singled out despite its lower rate of transmission? Why specific HIV laws, when in most jurisdictions there exist general criminal laws that can deal with the above-mentioned behaviours?

Globally, prosecutions and arrests for alleged HIV non-disclosure, exposure or transmission have been reported in 61 countries. Where there was no HIV criminalisation at the start of the 21st century, 30 sub-Saharan African countries have now enacted overly broad or vague HIV-specific criminal statutes. Most of these statutes are part of omnibus HIV-specific laws that also include protective provisions, such as those relating to non-discrimination in employment, health, and housing. However, they include a number of problematic provisions such as compulsory HIV testing and involuntary partner notification, as well as HIV criminalisation.

Prosecutions under these laws are becoming increasingly commonplace even in our region, and are especially impacting women, who are usually the first in a relationship to know their HIV status, often through accessing antenatal care.

Similarly, drug use, sex work, and same-sex relationships are crimes in many countries, thus greatly discouraging those who use drugs, sex workers, and LGBT people from seeking health care. It has been shown, time and again, that criminalisation only pushes people away from services, care, and treatment.

As a medical practitioner who has specialised in public health, I know from training and experience that criminalisation has no place in public health; if anything it is counterproductive in that it drives people underground, far from public health care and other services.

The evidence that criminalisation as a public health strategy does not work is too plain to contest. We know that criminalisation will discourage people from accessing HIV testing, we know that women will be the first to be affected by laws that criminalise HIV. To use antenatal services as an example, criminalisation can discourage pregnant women from seeking skilled health care providers for fear of facing legal charges. This can further reduce gains that have been made in reducing vertical, or mother-to child, transmission of HIV. The snowball effect that this would have cannot be underestimated. We need to take bold steps to protect human rights and public health.

## **POSITIVE DEVELOPMENTS IN THE REGION**

In my country, the Seychelles, all people, including key populations, are accorded human rights. However, HIV is not listed as a protected ground for non-discrimination in the Constitution. I am glad to report that despite attempts to the contrary, there is also no specific HIV legislation in the Seychelles. While this means that there is no overt criminalisation of HIV, there do remain challenges. Some of these challenges include the lack of anti-discrimination laws specifically protecting people living with HIV and key populations as well as the existence of legislation that criminalises populations who are at higher risk of HIV infection. Such legislation further marginalises people and only contributes to their vulnerability. In May this year, our Parliament voted to decriminalise same-sex conduct, which is a significant step in the right direction, given the relatively high incidence of HIV in that population group. Such a move will definitely encourage those people to come forward,

for care and proper counselling. However, in order to continue to move forward we need to understand that criminalisation can never be a solution to the HIV epidemic. Criminalisation can never be a solution to any public health problems, no matter whether it is same-sex practices, HIV transmission or non-disclosure, or drug use and sex work.

I am proud that my country has decriminalised consensual same-sex practices between adults, and I hope that this is part of a positive trend following a similar move by the government of Mozambique. But we need to not forget that there are many places where same-sex practices are criminalised, that there are struggles for legal recognition of gender identity for transgender people, and that there are places where sex workers can lose custody of their children and face daily harassment by the police, the very people who should be protecting them. It is obvious that the fight against the criminalisation of HIV also means that we must address the criminalisation of vulnerable, marginalised populations. Advocacy against criminalisation of HIV transmission or non-disclosure cannot be done in a silo; we need to strive for an enabling environment that is comprehensive.

There have been positive developments elsewhere in the region, too. Our host country, South Africa, thoroughly examined and rejected the idea of passing an HIV-specific criminal law in 2001. In 2008, our regional parliamentary body, SADC PF adopted a model legislation on HIV that recommended against HIV criminalisation. Two countries in the region have also strongly rejected HIV criminalisation: Mauritius in 2007 and Comoros in 2014. A third country, Mozambique, revised its HIV law in 2014 to remove HIV criminalisation.

Also, in Kenya, the High Court has ruled that section 24 of HIV Prevention and Control Act [of] 2006, which forced people with HIV to disclose their status to any 'sexual contacts', was found to contravene the Kenyan constitution that guarantees the right to privacy.

Elsewhere, in the United States, where the Ryan White Comprehensive AIDS Resources Emergency Care Act [of] 1990 required every state to certify that its criminal laws were adequate to prosecute any HIV-infected individual who exposed another person to HIV before opening funding to fight HIV/AIDS, a recent study by the CDC and the Department of Justice researchers strongly recommended that states with HIV-specific criminal laws revisit these laws, in line with the current evidence regarding HIV transmission risk, and assess whether these laws are the best vehicle by which to achieve their intended purposes. I look forward to hearing more about these developments later this morning.

### **RELYING ON SOUND EVIDENCE**

The evidence, ladies and gentlemen, is clear, and it is our responsibility, as government leaders, as members of Parliament, as civil society, as activists, doctors, nurses, researchers, and so forth to ensure that the work we do is rooted in both evidence and in human rights. Criminalisation leads only to violations of human rights, and will only provide further setbacks in the fight against HIV. Our efforts must take place on all levels: nationally, regionally, and globally, and it must be multi-sectoral; we can only address this issue together.

And so I call upon all of us here to take advantage of the presence of advocates and lawyers from countries around the world, all of them experts, not only on the problems of HIV criminalisation but also on the solutions, to learn and be empowered.

It is my hope that today will be fruitful and will strengthen existing partnerships and see the birth of new initiatives. And as we move into the AIDS conference tomorrow, I hope that we carry our commitment to stop criminalisation of HIV with us there, and beyond the conference to our countries and communities.

The time to act is now. And believe you me that it will succeed, because we are on the right side of history.

I wish you a productive day and thank you for your kind attention.

It is now my honour and privilege to declare the Beyond Blame pre-conference officially open. Thank you very much.

**APPENDIX B: TRANSCRIPT: CLOSING KEYNOTE ADDRESS BY HON. JUSTICE EDWIN CAMERON, CONSTITUTIONAL COURT OF SOUTH AFRICA**

I'm really very, very pleased to be here today and I'm very, very pleased that this has taken place. This is an issue which should have a greater prominence in this conference.

We know that the central issue in this epidemic - we know medically and socially, what to do. We know what to do. We know that HIV can be medically managed. I've been on antiretrovirals for almost 19 years. I'm fitter and healthier than I was in 1997. We've got the world's biggest antiretroviral treatment program publicly provided in South Africa. We know that if we can get to enough people, the algorithm showed, if we can get everyone tested and everyone treated, in South Africa, we've committed from September to two important things: Which is to treat everyone with HIV and secondly, as importantly, to give sex workers pre-exposure prophylaxis. Are there any sex workers here?

[Audience member: Yes!]

Well done, ma'am! I'm so proud of you. And I'm proud of our country. I'm proud of our country, that we're going to be providing people whose work is one of the most difficult and dangerous, and despised occupations, and one that deserves our support and our respect and our love, with pre-exposure prophylaxis.

All of that we know. We even know how we can try to persuade people. Prevention is more difficult. We don't know what to do about prevention, ladies and gentlemen. I always refer to the fact that by 1961 - 10 years after Sir Richard Doll published his ground-breaking articles in *The Lancet* and the *British Journal of Medicine* about the link between cancer and cardiopulmonary disease and smoking - by the end of that decade, the governments of North America and Western Europe had accepted that smoking causes cancer. Smoking in the United States: 44%. Where is smoking in the United States now, anyone tell me? Eighteen percent.

So don't tell me ... Don't come to Africa and say, "Why don't those girls in the townships just use condoms?" 'Cause we're talking about health-seeking behaviour, we're talking about health-seeking choices. So, I accept prevention from the broad mind that we know how to manage it, but medically and otherwise, physiologically, virologically, we know exactly what to do.

The biggest problem is stigma. Stigma, stigma, stigma, stigma. Stigma remains a barrier to prevention, it remains a barrier to behaviour change, it remains a barrier to people accessing treatment. Stigma is causing deaths, we know that. Because people are too scared to test. We, in this country, still have between 150,000 and 180,000 deaths from HIV every year, linked often with TB, also an intractably hard disease, much more

medically difficult to deal with than HIV. But the cause of the undiagnosed cases of HIV, the cause of the untreated cases of AIDS is stigma.

Beyond Blame has offered today a rare and a crucial opportunity to build the movement that tackles that stigma frontally. Back in 2008, on the final day of the International AIDS Conference in Mexico, I called for a sustained and vocal campaign against HIV criminalisation. Along with many other activists, I hoped that that conference eight years ago would result in a major international resistance movement to misguided criminal laws and prosecution. And I want to credit Edwin J. Bernard - have you got credit today, Edwin? Come and stand in the front. Have you got credit?

[Edwin Bernard: Thank you.]

The difference between me and activists like Edwin is that they don't get the judicial salary and the free car. So you take all the credit, Edwin. I really, really honestly mean that. And you working with us, you, ladies and gentlemen, are working with us 24 hours a day, 7 days a week. I bring honour and credit to you for doing that in difficult circumstances.

The work of HIV Justice Worldwide, who put together this conference, shows how far we've come. The fact that you had such a successful meeting is itself, a signal of our success.

The movement against these laws and prosecutions, which started a decade ago, is really gaining strength and some heartening outcomes. As you've heard today, laws are being repealed, they've been modernised, they've been struck down. From Kenya to Switzerland, from the state of Victoria in Australia, to the state of Colorado in the United States.

I've been living with HIV for over 30 years, ladies and gentlemen. It is especially fitting for me to be able to note that much of the necessary advocacy for this, has been undertaken by civil society. Can I ask, how many government officials are there in the room today? Put up your hands. There, we've outed you, sir! We're very proud of you. One government official; we pay honour to you. Thank you for coming. And you too, ma'am. Three. Yep, three government officials.

The fact is, ladies and gentlemen, you are civil society activists ... every single major breakthrough for treatment, for governmental action against criminal laws, against stigma, has been driven by civil society activists.

Since the beginning of the HIV epidemic 35 long years ago, policymakers and politicians had been under sore temptation to punish us for the fact that we have HIV. Sometimes they have been propelled by public opinion. Sometimes they themselves have not justly propelled public opinion. But they've tried to find, in punitive approaches, a quick solution. There's no quick solution, ladies and gentlemen. And one way has been this particularly hyper-stigmatising way of HIV criminalisation: criminal laws against people living with HIV who

don't declare that they have HIV, or to make potential or perceived exposure or transmission that occurs, when it is not deliberate, criminal offences.

Most of these laws are appallingly broad. I've been working this week with Section 79 of the Zimbabwe Criminal Code. Where are our Zimbabwean brothers and sisters? Is there anyone here who was involved in the case of Pitty Mpofu? I'll come to it in a moment.

But appallingly broad. If you do anything that puts anyone at risk of HIV exposure, you are guilty of deliberate transmission of HIV. We've heard today on the panel, I believe, very moving accounts, deeply moving accounts about people who have survived the hyper-stigmatising assault of these laws. We also know a very helpful fact, ladies and gentlemen, that scientific evidence about how HIV is transmitted and how low the risk of transmitting the virus is, is the key way.

People come to South Africa and they speak about President Mbeki, who disregarded evidence, who would not accept the overwhelming scientific proof that HIV caused AIDS, and much more importantly, that if AIDS was virally caused, if its aetiology was viral, that you could treat it. And they look condescendingly at President Mbeki - but Western governments all over, Australia, North America and the rest of Africa, African governments, in equal measure to President Mbeki, are ignoring scientific evidence.

The last 20 years has seen a massive shift in the management of HIV. It is now completely medically manageable, as I've said. I was dying of AIDS 19 years ago in November 1997. I had access to antiretroviral treatment. Nineteen years later, as I've said, I'm stronger than I was as a younger man then. Despite this progress, despite the progress in prevention, treatment, and care, that overwhelming issue remains, which is stigma. And I want to mention a difficult issue and an important issue, which is the internalised form of stigma. I'm glad that there is going to be quite a lot of attention here.

Ladies and gentlemen, internalised stigma is when we as people with HIV or at risk of it, take deeply within, to the recesses of our own consciousness and sub-consciousness, the hatred, the ostracism, the fear, the rejection, the prejudice, the discrimination of the external world, and that often is a causative effect when people don't get treatment, when they don't get testing. It's a hard phenomenon to describe. It's hard to act against but its powerful effect on our epidemic must be recognised.

The enactment and enforcement of laws that criminalise HIV, even the threat of their enforcement, fuels the fires of stigma. It fuels the fires of internalised stigma. It reinforces the idea, both externally and internally of those with HIV and at risk of it, that HIV is shameful, that it is a contamination, that it is disgraceful, that those who have it are criminals, that they're vectors for passing on the disease. And by reinforcing stigma, HIV criminalisation makes it much more difficult for those at risk of HIV to access testing and prevention. It makes it more difficult for them to talk openly about living with the virus and to be tested and to be treated and to be counselled to behavioural change. I know that I'm preaching to the converted here, but HIV criminalisation is

profoundly bad policy. There is no evidence that it works. Instead, it sends out misleading and stigmatising messages. It undermines the remarkable scientific advances and proven public health strategies that we know are effective in dealing with this epidemic.

In 1997, the Chair of the Justice Portfolio Committee in South Africa's Parliament, Mr. Johnny de Lange, called for laws to criminalise HIV. Our epidemic was burgeoning. Treatment was not yet available except to the privileged few like me, who fell severely ill at the end of that year. And of course, you take the easy fix. You pass a law. You pass a law that targets those with HIV. Mr. De Lange was a powerful man. He steered a lot of laws through Parliament at that time, including our version of minimum sentencing laws, which are now being reconsidered in America but not yet reconsidered here. He steered unbailable offences laws through Parliament. He did a lot of legislative steering.

But very fortunately, the matter was referred to a committee of the South African Law Reform Commission, which was chaired at the time by Justice Ismail Mahomed. He asked me to chair the committee, and one of our projects was a project on the criminalisation of HIV. It's worth getting the report, ladies and gentlemen. I don't say this in vanity, because most of the work was done by a superb lawyer and researcher at the Law Reform Commission called Anna-Marie Havenga, so I claim no credit for the report. I claim credit for editing it and for steering it. But that report is worth downloading. It's a 200-page report that exhaustively looks at all the options. It's 20 years old now, 18 years old, but we decided against criminalisation.

You know what was the pivotal breakthrough? We had a two-day conference where we called all the civil society organisations together in Pretoria to debate this issue. We called especially the organisations dealing with women and with children's rights. We called those who sought protection for women, who sought the prevention of paediatric HIV, and we realised by the end of the second day, we had a unanimous consensus that these laws were bad for women. They were bad for children. That those targeted by these laws are the women themselves, and it's been borne out. Many of the first prosecutions in Africa had been prosecutions of women. The first prosecution under Section 79 of the Zimbabwe Criminal Law Amendment Act, which I've mentioned before, was of a woman, when her partner went and laid a charge against her.

So we decided against it.

Ladies and gentlemen, I just want to be rude about Canada. Let me summarise. Where's Richard? It's so nice to be rude about Canada. Even though Richard [Elliot, Executive Director of the Canadian HIV/AIDS Legal Network] tried to make Canada sensible.

There's been a decision recently of the Zimbabwe Constitutional Court, a full panel of seven judges where they refused to declare this appalling law. ... It's an appallingly broad and vague law. They said they're not going to rule it unconstitutional. And the premise is that everyone with HIV has got to disclose. I want to give you the quote. Paragraph 12 of the judgement: "Public policy requires of a person with HIV that he make full disclosure

to his intended partner, in order to afford that partner the opportunity to make an informed decision." Ladies and gentleman, I ask why? Why? Why does someone with HIV, either who's on treatment or who's going to take appropriate prevention measures, have to disclose? That's the premise. And that - Richard Elliott, I won't make you stand - is the premise of [\[the\] Mabior \[decision\]](#). Obviously it's shameful. Did I say shameful? A bad, bad, bad, bad, bad unanimous decision of the Canadian Supreme Court, which I equate with the judgement and the reasoning in State vs Pitty Mporu. Pitty Mporu's challenge failed. And Mabior ... Mr. Mabior did not transmit HIV. He was on successful antiretroviral therapy. He did not disclose his HIV. He was found, in effect, guilty of rape, because he didn't disclose.

Richard, you argued the case; I honour you and the Canadian HIV/AIDS Legal Network for your valiant attempts. I was in Canada just before the case was argued. Was it 2012? And you were full of hope. You were full of hope. We now know there's been a study released last week, which shows that 58,000 instances of serodiscordant intercourse have not led to a single transmission of HIV. That was known to the nine justices of the Supreme Court of Canada at the time, but the evidence has been mounting up even more incontrovertibly, since then.

Ladies and gentlemen, let me wrap up. I want to congratulate you for being at this conference today. I want you to feel energised. I want you to feel informed and empowered and energised to take out into this conference today the message of today's meeting. And when Edwin and I were debating what I should say, I wanted to add something to his suggestions for my speech. And what I wanted to add was the fact that we must not let our administrators and officials and politicians arrive at this conference. They arrive, ladies and gentleman, with cars. And they arrive with delegations. And they go back to their countries, 30 of them in Africa, with criminal laws that target us irrationally, unscientifically, stigma enhancingly, stigma magnifyingly. We must not allow them that peace and comfort. We must challenge them.

We must take the message of this conference out of your meeting today into the halls, into the podiums, and into the individual meetings with those people. Find the ministers and the officials from the African countries that target. We have suffered no harm in this country, because we didn't stigmatise. We did the right thing. Those countries must do the right thing. They must repeal those laws. And your energy today, your vision, and your activism, will make sure that that happens. Thank you.

To watch Justice Cameron's full speech, [follow this link](https://www.youtube.com/watch?v=RAT6d4bLo24) or copy this URL into your browser:  
<https://www.youtube.com/watch?v=RAT6d4bLo24>

## **APPENDIX C: HIV CRIMINALISATION-RELATED SESSIONS PRESENTED BY HIV JUSTICE WORLDWIDE PARTNERS AT AIDS 2016**

*Tuesday 19 July*

### **Beyond Blame: A Feminist Dialogue on Criminalisation of HIV Transmission, Exposure and Non-disclosure**

#### *CO-FACILITATORS:*

Naina Khanna, Positive Women's Network, United States

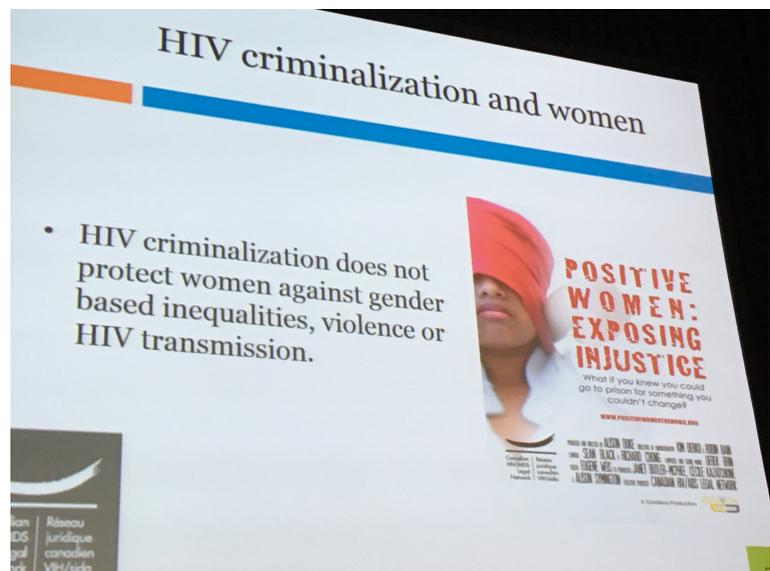
Jacinta Nyachae, AIDS Law Project, Kenya

Cecile Kazatchkine, Canadian HIV/AIDS Legal Network, France

#### *AIDS 2016 Official Rapporteur Report:*

##### SUMMARY

Pervasive gender inequality, power dynamics, and 'victim-status' were identified as the root causes, preventing women from equally accessing justice. The use of a feminist framework is a strategy to address the criminalisation of HIV - a costly exercise to the State and an access to health care barrier.



##### HIGHLIGHTS

The current global situation, according to the 2nd Advancing HIV Justice Network Report launched in May 2016 indicates that there is at least one prosecution case per month worldwide based on HIV-status. While some countries do not have HIV-specific laws, they continue to prosecute people using general laws. Female and transgender sex workers, migrants, indigenous and black women suffer most from these HIV-specific laws. Australia is an example where Sharleen's law is used to prosecute sex workers on the basis of their sex work status, after having exchanged money with a client; but with no actual proof of HIV transmission.

##### CRITICAL ASSESSMENT

In exploring the intersectionality theory, the Beyond Blame session narrowed down this issue as inequality, and showed how this was being recreated and reproduced by HIV Criminalisation, while women are being used to push this agenda, at national, regional and global levels. Increasing investments in women living with HIV (including sex workers, transgender men etc.) to lead the legal review and reform agenda; while building anti-mass incarceration, radical and reproductive justice and other feminists movements were identified as key strategies to move this cross-cutting, cross-sectional issue forward. Women's rights groups working on this agenda, need to broaden the discourse and to talk to intersectionalities. It is critical to ensure that the communities in which these situations are occurring are not left behind. Closing the gap between communities and advocates is also key in these discussions.

To read the abstract and agenda for this session, [follow this link](http://programme.aids2016.org/Programme/Session/93) or copy this URL into your browser:  
<http://programme.aids2016.org/Programme/Session/93>

To view a summary of this session in Twitter posts, created by Nic Holas via Storify, [follow this link](https://storify.com/nicheholas/beyond-blame-a-feminist-dialogue-on-criminalisatio) or copy this URL into your browser: <https://storify.com/nicheholas/beyond-blame-a-feminist-dialogue-on-criminalisatio>

### Wednesday 20 July

**HIV Criminalisation: Exposing Injustice.** Co-hosted on behalf of HIV JUSTICE WORLDWIDE by ARASA and the Canadian HIV/AIDS Legal Network. *Global Village Human Rights Networking Zone.*

**Beyond Blame: Challenging HIV Criminalisation in Europe and beyond.** Organised by HIV Justice Network on behalf of HIV JUSTICE WORLDWIDE. *Global Village European Networking Zone.*

**We are not criminals: The impact of HIV criminalisation on women and girls.** Organised by all HIV JUSTICE WORLDWIDE partners. *Global Village Women's Networking Zone.*

### Friday, July 22

#### ***Policies, Policing and Public Morality - Oral Abstract Session***

**"One shouldn't convict people for hypothetical risks": frustratingly slow incorporation of the prevention impact of antiretroviral therapy into criminal law and policy**

#### ***PRESENTER***

Edwin Jeremy Bernard

*AIDS 2016 Official Rapporteur Reports (refer to content of full Oral Abstract Session):*

#### **SUMMARY #1**

Speakers from Ghana, Southern Africa, the U.S., and Ethiopia shared research and program interventions around inconsistent knowledge of HIV and SRH law; inconsistent laws and HIV policies; misunderstanding of obligations to report; and law enforcement based on discriminatory beliefs and harmful norms instead of the law or protecting people's rights.

#### **HIGHLIGHTS #1**

The inconsistencies in legal frameworks on adolescent HIV and sexual and reproductive health in several Southern African countries are alarming - adolescents need comprehensive HIV and SRH services and information more than any other age group, yet they are prevented from accessing them because of harmful/inconsistent laws or health service providers' lack of knowledge on them (for example age of

consent for sex is higher than age of access for SRH services so those seeking services are forced to disclose illegal activity). *The reform of HIV transmission/disclosure laws shared by another presenter were encouraging but further reform is still needed.*

### CRITICAL ASSESSMENT #1

Each presenter spoke to the need for not only policy reform that protects the rights of people from key affected groups (trans women, sex workers, young people, people living with HIV) -- but for stopping unequal enforcement of the law and enforcement based on morality rather than the actual law. The Global Commission on HIV and the Law recommended addressing the following issues, all of which were also prioritized by speakers in this session: reforming laws criminalizing transmission, exposure, and non-disclosure; rights of key populations; GBV; young people and adolescents; and intellectual property and access to medicines. If we are going to effectively stop AIDS, we must start by changing minds and stopping discrimination that leads to unequal policing, unequal access to services and information, and violence and discrimination against people from key populations (particularly trans women, sex workers, women of colour, young people, and people living with HIV).

### SUMMARY #2

The session had six plenary speakers who discuss the challenges with addressing needs of key populations resulting from unresponsive laws, and programmes. Presentations highlighted existing challenges, successes and best practices.

### HIGHLIGHTS #2

Speakers discussed the gaps with adolescents LGBT access to HIV programmes due to age ineligibility to services at LGBT centres, and inability to access services in public health services. There were also discussions on the successes achieved through the formation of the regional Judges forum in Africa, *highlighting how law and sciences is coming together*; best practices from the Police in Ghana and making punitive laws responsive; the success with the New York HIV response program; and the challenges transgenders face due to the intersection of multiple minorities they face.

### CRITICAL ASSESSMENT #2

While legal reforms may be tedious and a long process, it is still an essential requirement as there is a limit to what progressive policies can achieve in the face of repressive laws. Unfortunately, the interpretation of the laws by law enforcement agents is such that they do not distinguish between identify and behaviour and so punish identify also. Concerns about the use of minorities to experiments, generation of data and the poor attendance to their needs as well as inability to reap from the benefits derived from the data and the experiments, was an issue of concern raised. What should be criminalised is the action of taken advantage of minorities and receiving accolades and privileges for this process. It is also important to expand the reach of judges beyond the few who are passionate about the issues to institutionalizing a process of decriminalising HIV and HIV infection.

To see the abstract and agenda for this session, [follow this link](http://programme.aids2016.org/Abstract/Abstract/6398), or copy this URL into your browser: <http://programme.aids2016.org/Abstract/Abstract/6398>.

To view the video recording of Edwin's presentation, [follow this link](https://youtu.be/5oWhaE-pT8g?list=PLxj1Wso6S3mHpweOCY4IMqGVVLZpp9i2L), or copy this URL into your browser: <https://youtu.be/5oWhaE-pT8g?list=PLxj1Wso6S3mHpweOCY4IMqGVVLZpp9i2L>

**APPENDIX D: BEYOND BLAME II POST-CONFERENCE EVALUATION -**

***ANALYSIS BY LAUREL SPRAGUE PH.D., GLOBAL RESEARCH FELLOW ON HIV, GENDER, AND JUSTICE, HIV JUSTICE NETWORK***

After Beyond Blame II, an online survey evaluation was distributed to all participants who attended on the day of the event and who shared an email address with the conference organisers. Of the 121 attendees who signed in, 99 provided an email address. A survey link was sent to these 99 attendees, with two follow-up emails to attendees who had not filled out the survey. The survey was open from 23 July to 19 August 2016. It included six evaluation questions and five demographic questions. It took an average of 5 minutes to complete.

**Results**

**Respondent characteristics**

A total of 40 of the 99 attendees for whom we had email address completed the survey.

Respondents came from 17 countries in Eastern, Western, and Southern Africa; Southern Asia and Oceania; Western Europe; North America; and South America.

**Table A**

Country where respondents live:	
Argentina	1
Australia	2
Canada	7
France	1
Germany	1
India	1
Kenya	3
Netherlands	2
République Démocratique du Congo	1
South Africa	2
Sweden	2
Switzerland	1
Tanzania	1
Uganda	1
UK	1
US	8
Zimbabwe	3

Respondents were almost evenly divided between cisgender women and cisgender men. No one who completed the evaluation identified as a transgender person.

**Table B**

Gender Identity		
Female	46.2%	18
Male	53.8%	21
Transgender woman	0.0%	0
Transgender man	0.0%	0

Respondents to the evaluation survey were evenly split between lesbian, gay, and bisexual respondents and heterosexual respondents.

**Table C**

What is your sexual orientation?		
Gay	31.6%	12
Lesbian or two-spirited	10.5%	4
Bisexual	7.9%	3
Heterosexual	50.0%	19

Survey respondents were primarily over the age of 40 (71%). Only 8% of respondents were under 30 and 21% were between the ages of 30 and 39.

**Table D**

What is your age?		
20-29	7.9%	3
30-39	21.1%	8
40-49	36.8%	14
50 or older	34.2%	13

Of the respondents, 49% identified as people living with HIV, 46% identified as HIV-negative, and 5% indicated that they preferred not to share their HIV status.

**Table E**

What is your HIV status?		
HIV-positive	48.7%	19
HIV-negative	46.2%	18
I do not know my HIV status	0.0%	0
I would prefer not to say	5.1%	2

Those who identified as people living with HIV provided their year of diagnosis, which ranged from 1981 to 2011.

**Table F**

If you are HIV-positive, can you tell us what year you were first diagnosed with HIV?	
	Long time ago
	1981
	1990
	1990
	1992
	1993
	1996
	1998
	1998
	1998
	1999
	1999
	2002
	2003
	2006
	2006
	2007
	2011

**Respondent evaluations of Beyond Blame II**

Overall, the participants in Beyond Blame II who responded to the evaluation survey rated the pre-conference as “excellent” (70%), with another 22.5% indicating the pre-conference was “very good”. No respondents rated the pre-conference as “poor”.

**Table G**

Overall, how would you rate the Beyond Blame pre-conference?			
Poor	Good	Very good	Excellent
0 (0%)	3 (7.5%)	9 (22.5%)	28 (70.0%)

Respondents were asked about the success of Beyond Blame II in meeting three possible meeting outcomes:

- Developing stronger networks between HIV anti-criminalisation advocates **across** countries;
- Developing stronger networks between HIV anti-criminalisation advocates **within** countries; and
- Developing stronger networks amongst HIV anti-criminalisation advocates and activists fighting against other forms of criminalisation, such as criminalisation of sex work, drug use, or LGBTI identity.

More than 4 out of 5 respondents indicated that all three of these outcomes resulted from Beyond Blame II.

By a large margin, respondents indicated that the most significant outcome was the development of anti-criminalisation networks across countries (100% agreement that this was definitely or to some extent an outcome). The development of stronger networks across issues of criminalisation was seen as an outcome by 95% of respondents, and the development of anti-criminalisation networks within countries was noted as an outcome by 85% of respondents.

**Table H**

What would you say were the outcomes of the meeting?	Definitely an outcome	To some extent this happened	This did not happen	I don't know	Not applicable
Stronger networks developed between HIV anti-criminalisation activists across countries	29	11	0	0	0
Stronger networks developed between HIV and other anti-criminalisation activists (such as those challenging laws on sex work, drug use, or LGBTI identity)	20	18	0	2	0
Stronger networks developed between HIV anti-criminalisation activists within countries	18	16	3	3	0

Respondents were asked about the extent to which Beyond Blame II increased their skills and capacities to conduct a variety of different activities related to anti-criminalisation work. Their responses, which were recorded on a 4-point Likert scale ranging from “a great deal” to “none”, were weighted to identify the skills and capacities that were ranked the highest and chosen most often.<sup>16</sup> For all areas listed in the survey, respondents indicated that they had gained at least “some” skills.

In six areas, respondents indicated that, on average, their skills had increased “a great deal”. The top three areas in which respondents felt that they had most increased their skills and capacities were:

- Deepened understanding of the effects of HIV criminalisation on those who are prosecuted
- Greater ability to meaningfully engage in the global movement to fight against HIV criminalisation
- Bringing forward evidence to form arguments against HIV criminalisation

<sup>16</sup> Responses were weighted by multiplying answers of “none” and “not applicable” by zero; “a little” by one; “some” by two; and “a great deal” by three. The highest possible score is 120 points, indicating that all 40 respondents increased their skill in that area “a great deal” and the lowest possible score is 0 points, indicating that no respondents gained any skills in that area. A score of 98 or higher indicates that, on average, respondents felt they had increased their skills “a great deal” in this area. A score of 57 to 97 indicates that respondents, on average, felt that they experienced “some” increase in skills in this area.

**Table I**

For each of the statements below, please choose the answer that best describes the degree to which attending Beyond Blame increased your skills/capacities:	
	Weighted score
<b>Skills that increased “a great deal”</b>	
I have deepened my understanding of the effects of HIV criminalisation on those who are prosecuted	111
I have greater ability to meaningfully engage in the global movement to fight HIV criminalisation	106
The meeting gave me evidence to make arguments against HIV criminalisation	105
I now have greater confidence to talk about why HIV criminalisation is harmful around the world	101
The meeting gave me ideas and resources that I can use in my country or region	99
I now have greater confidence to talk about why HIV criminalisation is harmful in my country	98
<b>“Some” increase in skills</b>	
I have increased my ability to explain the links between HIV criminalisation and criminalisation of other populations	97
I have increased my ability to work collaboratively with other decriminalisation movements (sex workers, drug users, LGBTI people, or those opposing mass incarceration)	95
I have greater proficiency to engage with the science that is used in HIV criminalisation cases	90
I have increased community organising skills to support my local community response to HIV criminalisation	86
I have greater confidence in communicating effectively with legislators	86
I feel I can now more effectively engage the media to bring positive coverage	83

In response to an open-ended question asking for topics that needed more time and attention that was possible during the pre-conference, respondents provided useful suggestions. These suggestions can be grouped into requests for:

- In depth training in strategies for challenging HIV criminalisation
- Intensified focus on the intersections between HIV criminalisation and other forms of criminalisation and discrimination
- Increased time for organising and strategising.

**Table J**

<b>Was there something that you would have liked to have more time to talk about?</b>
<b>In depth training on strategies for challenge HIV-criminalisation laws</b>
<p>Lessons Learned from both successful and failed legal challenges ... a strategic discussion and sharing the way ahead legally...there are common tactics and language to be shared</p> <p>Litigation and learning from countries that have undertaken litigation</p> <p>The court process: what could have been done differently to secure the release of our Nurse sister from Uganda?</p> <p>Use of general law to prosecute people with HIV</p> <p>Specific strategies for repealing legislation.</p> <p>Connaitre exactement sur base des evidences les facteurs favorisant la criminalisation du VIH selon une étude comparée en vue d'élaborer un argumentaire auquel le monde parlera un même langage. Les solutions pratiques pour dépenalisées les législations au VIH et stratégies de plaider en la matière.</p> <p>To see regional documents and link with country documents regarding criminalization</p>
<b>Intensified focus on the intersections between HIV criminalisation and other forms of criminalisation and discrimination</b>
<p>Racial intersections of HIV criminalization</p> <p>More on the gendered impact of the law and the criminalisation of HIV intersects with other forms of criminalisation e.g. in the context of sex work</p> <p>The economic cost of homophobia was presented in the MSMGF preconference. This economics work could be a useful tool.</p> <p>Indigenous peoples and the disproportionate prosecutions</p>
<b>Increased time for organising and strategizing</b>
<p>Approaches through which the HIV Justice Worldwide movement can support anti-criminalisation efforts in different countries and regions.</p> <p>Proper structure as to how we will challenge and mobilise countries that are still criminalising people that are living with HIV.</p>

Respondents were also asked to provide recommendations that would enhance the next Beyond Blame conference. Many recommendations were shared. In addition to process recommendations (regarding the space, recording sessions, and other ideas), these recommendations can be grouped into requests for:

- Involvement of additional stakeholders
- Attention to strengthening the arguments against criminalisation
- Strategies for challenging HIV criminalisation in different legal and legislative environments
- Continued and increased attention to those people living with HIV who have been prosecuted

- Space and time for activist organising
- Continued and increased focus on intersectionalities

**Table K**

<b>What would you like to see in the next conference (include topics, speakers, structure of the program, anything)?</b>
<b>Involvement of additional stakeholders</b>
<p>I would like to see the legal and health organs of states being involved in the talks.</p> <p>Involvement of faith leaders and people who are affected by these laws.</p> <p>Youth groups to connect with our cause that we can mentor.</p> <p>The session in the main conference by law makers who have succeeded in changing laws was a great follow-up, and could be part of a future pre-conference.</p> <p>Focus on EECA countries.</p> <p>Engagement of judges that have presided over criminalisation cases.</p>
<b>Strengthening arguments</b>
<p>I think we need to discuss the question of criminalisation of transmission (where it really happened) and strengthen our arguments, why this is also harmful. It is indeed more complicated and implies other moralistic aspects, but we need to go there.</p> <p>Why laws should be challenged even where there was not a 'problem' - i.e. places where laws were in place but not used.</p> <p>More explicit discussion/debate between people of goodwill who disagree on the best approaches forward concerning related issues (sex work, decriminalisation of homosexuality, prison abolition, etc.)</p>
<b>Strategies to respond to legal and legislative environments</b>
<p>How to develop legislation to override or counteract or prevent HIV criminalisation. Something that can allow legislators to champion PLWHIV rather than try to undo existing laws.</p> <p>Presentations from countries that have gone through litigation.</p> <p>More discussion of direct judicial strategies to roll back the worst of discriminatory criminal justice decisions.</p> <p>Session that sets out laws in different countries/jurisdiction and implementation.</p> <p>A strategic plan country by country if possible...almost a triage based on potential success referencing political, medical, and social will by region and country.</p>

- les bonnes pratiques d'autres pays qui ont réussi à dépénaliser - la stratégies de plaider dans les environnement hostiles disposant des lois criminelle au VIH

**Continue and increase attention to people who have been directly affected by criminalization**

The Pre-conference was excellent is using persons directly affected by criminalisation. We should have more of such cases in the next conference.

The phone in from Kerry Thomas was excellent.

**Activist organizing**

I would like to see a brainstorming session on how as activists across the globe we can be mobilised to act when case of criminalisation are reported.

**Focus on intersectionalities**

It would be wonderful to hear on progress regarding the building of intersectionalities

Present intersectionality in plenary sessions rather than breakouts.

Greater exploration of intersectional issues and links with other justice advocacy networks

**Process recommendations**

Taping of all sessions for access to review.

More hands-on sessions, including human rights training.

The room needed to be bigger. It was difficult to follow the discussions as panellists were hidden.

More time to be allocated for discussions.

Looking to the future of the anti-criminalisation movement, respondents were asked to rank a series of activities from the most to the least important. All activities were viewed as important as evidenced by the fact that all activities received some votes for the first place position. The rankings were weighted – giving the most points for a first point ranking and the least points for a last point ranking – them summed together to get a weighted score.

The two highest ranked activities for the anti-criminalisation movement were:

- Organising and educating communities about the harms of HIV criminalisation
- Building community-level capacity to respond to unjust laws and prosecutions

A full list of activities, in ranked order, can be seen in Table L.

**Table L**

Please rank the following activities for the anti-criminalisation movement in their order of importance:		Weighted Score
1	Organising and educating communities about the harms of HIV criminalisation	128
2	Building community-level capacity to respond to unjust laws and prosecutions	114
3	Building a mass global activist movement focused on ending HIV criminalisation	92
4	Building a mass global activist movement focused on ending unjust laws related to HIV and to LGBT people, people who use drugs, sex workers, and prisoners	90
5	Fighting for legal services to be available everywhere to represent people who are prosecuted on HIV criminalisation laws	88
6*	Increasing leadership capacity, including human rights training, for people living with HIV	71
6*	Getting more high level political leaders to speak out publicly against HIV criminalisation	71
7	Ensuring a rapid media response is available to challenge stigmatising articles related to HIV criminalisation	69
8*	Working through areas of commonality and disagreement amongst anti-criminalisation activists regarding the proper use of the law in HIV cases	68
8*	Ensuring that social and emotional support systems are in place to support people facing prosecution or incarceration on HIV-related charges	68
9	Developing and promoting a global consensus statement on the need to stop criminalising people with HIV	67

**Quotes**

South African respondent	I learned with great sadness about the high level of HIV criminalisation in other countries.
Canadian respondent	Hearing the stories of how criminalisation impacted people was extremely moving.
Tanzanian respondent	More needs to be done to pursue a review of our national documents to remove the clause of criminalisation.
Argentinian respondent	[An important outcome from BBII was the] talk about the scientific improvements and the lasting effects of criminalisation.

Were there other outcomes?	
UK	I was very impressed with the real life experiences and the lessons drawn from them. Your conference set the right environment that enabled us to have richer discussions about testing, criminalisation and networking (in Eastern, Western, Central, and Southern Europe] amongst sex workers, migrants, PWIDs, trans people and MSM.
South Africa	Support of those convicted due to HIV cases.
Sweden	I was able to meet with other delegates who shared the same experience as I had regarding being discriminated against.
US	Connecting Repro Justice with sex worker rights and framing HIV as a violation of all of our human rights to live, work, food, health and social security.
Kenya	Meeting comrades who have gone through criminalisation and listening to the stories motivated me to step up my advocacy across countries and regions.
US	It was really important to me that they gathering brought together diverse constituencies, including representatives of government who have taken positive action.
Netherlands	A renewed sense of the importance of this work - and how it is a surrogate marker for so many other things - removing and eradicating criminalisation signals that governments have adopted a more rational and evidence based approach to HIV and people with HIV.
Tanzania	People had power and confidence to advocate more on criminalisation of HIV.
Argentina	Agreement for coverage by the HIV Justice Network for Spanish-speaking countries.
Uganda	Visible advocacy during the conference plenary.



# BEYOND BLAME



17 July 2016 • Durban, South Africa

## Programme

09:00–10:00 **Arrival, registration, tea/coffee and networking**

*Florida Mezzanine*

10:00–12:00 **Opening Plenary Session**

*Fontainebleau Room, 2nd floor*

**Co-Chairs:** *Edwin J Bernard, HIV Justice Network; Michaela Clayton, ARASA*

■ **Welcome to South Africa**

*Johanna Kehler, AIDS Legal Network, South Africa; Mmapaseka Steve Letsike, SANAC*

■ **Welcome and meeting overview**

*Co-chairs on behalf of HIV JUSTICE WORLDWIDE*

■ **Opening address**

*Hon Dr Patrick Herminie, Speaker of the National Assembly of Seychelles*

■ **UNAIDS message of support**

*Luiz Loures, UNAIDS Deputy Director*

■ **HIV criminalisation globally: where are we now?**

*Edwin J Bernard, HIV Justice Network*

■ **What can we learn from recent successes and challenges, and how can we move forward?**

**Moderators:** *Edwin J Bernard; Michaela Clayton.*

**Panel:** *Barb Cardell, Colorado Mod Squad, USA; Patrick Eba, UNAIDS; Paul Kidd, HIV Legal Working Group, Australia; Dora Kiconco Musunguzi, UGANET, Uganda; Jacinta Nyachae, AIDS Law Project, Kenya; Colorado Senator Pat Steadman, USA*

■ **Honouring HIV criminalisation survivors**

**Moderator:** *Naina Khanna, PWN-USA*

**Speakers:** *Lt Col Kenneth Pinkela, USA; Rosemary Namiburu, Uganda; Kerry Thomas, by phone from prison in Idaho, USA*

12:00–13:00 **Lunch and networking**

*Pool Deck, ground floor*

13:00–14:10 **Parallel Breakout Session 1**

*Choose either session 1A or 1B*

**1A: HIV criminalisation and the intersection with other criminalised and marginalised groups: How we can build a broader, inclusive movement?**

*Fontainebleau room, 2nd floor (traduction disponible en français)*

**Lead facilitator:** *Felicita Hikuam, ARASA*

**Presenters:** *Susana Fried, Yale Global Health Justice Partnership, USA; Catherine Murphy, Amnesty International, UK; Nadia Rafif, MSMGF, USA; Yves Yomb, AFRIGAY, Cameroon*

**Rapporteur:** *Julian Hows, GNP+*

**1B: Bringing science to justice: Scientists, healthcare professionals, lawyers and advocates working together to end unjust HIV-related prosecutions**

*Concorde room, 1st floor*

**Lead facilitator:** *Edwin J Bernard, HIV Justice Network*

**Presenters:** *Andreas Berglöf, RFSU, Sweden; Cynthia Fromstein, Cynthia Fromstein and Associates, Canada; Paul Kidd, HIV Legal Working Group, Australia; Ben Young, IAPAC, USA*

**Rapporteur:** *Patrick Eba, UNAIDS*

14:20–15:30

## Parallel Breakout Session 2

Choose either session 2A or 2B

### **2A: Challenging HIV criminalisation through law reform and strategic litigation**

Fontainebleau room, 2nd floor (**traduction disponible en français**)

**Lead facilitator:** Michaela Clayton, ARASA

**Presenters:** Allan Maleche, KELIN, Kenya; Tinashe Mundawara, Zimbabwe Lawyers for Human Rights; Alexandra Stategos, HIV/AIDS Legal Clinic, Australia; Serge Tamundele, UCOP+, DR Congo

**Rapporteur:** Cécile Kazatchkine, Canadian HIV/AIDS Legal Network

### **2B: Getting the messages right: working effectively within communities, with politicians and the media**

Concorde room, 1st floor

**Lead facilitator:** Sean Strub, SERO Project, USA

**Presenters:** Paula Donovan, AIDS Free World, USA; Senator Rene Garcia, USA; JP Mokgethi-Heath, INERELA+, South Africa; Lillian Mworeko, ICW East Africa, Uganda; Senator Pat Steadman, USA

**Rapporteur:** Waheedah Shabazz-EI, PWN-USA

15:30–16:00

## Tea/coffee break

16:00–17:05

## Closing Plenary Session

Fontainebleau Room, 2nd floor

Co-Chairs: Laurel Sprague, HIV Justice Network; Richard Elliott, Canadian HIV/AIDS Legal Network

### ■ Rapporteur reports

Five minute reports from each of the parallel sessions, introduced by lead rapporteur, Olivia Ford

### ■ Panel discussion

'Fishbowl-style' panel discussion with lead facilitators, rapporteurs and audience – audience members are invited to occupy one of the two spare chairs and join the panel discussion

17:05–17:25

## Keynote address

**Justice Edwin Cameron**, Judge of the Constitutional Court of South Africa

17:30

## Meeting close

Transportation provided to Global Village for opening reception

# HIV JUSTICE WORLDWIDE



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HIV JUSTICE WORLDWIDE is an international partnership of AIDS and Rights Alliance for Southern Africa (ARASA), Canadian HIV/AIDS Legal Network, Global Network of People Living with HIV (GNP+), HIV Justice Network, International Community of Women Living with HIV (ICW), Positive Women's Network – USA (PWN-USA), and Sero Project (SERO). Supported by a grant from the Robert Carr civil society Networks Fund provided to the HIV Justice Global Consortium.