

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

**FIVE-YEAR IMPACT REPORT:  
BRINGING SCIENCE TO JUSTICE**

JULY 2023





# ACKNOWLEDGEMENTS

This report was written by Alison Symington and edited by Edwin J Bernard, with additional research by Sofía Vázquez and Sylvie Beaumont.

We sincerely thank the twenty co-authors of the 'Expert Consensus Statement on the Science of HIV in the Context of Criminal Law', the HIV Justice Network team and HIV JUSTICE WORLDWIDE coalition partners, as well as colleagues at the International AIDS Society (IAS), International Association of Providers of AIDS Care (IAPAC), the Journal of the International AIDS Society (JIAS), and the Joint United Nations Programme on AIDS (UNAIDS).

We also acknowledge the courage and commitment of scientists, healthcare providers, lawyers, advocates and activists who are bringing science to justice and challenging laws, policies and practices that inappropriately regulate and punish people living with HIV. Without them, progressive change would not be possible.

## **PUBLISHED BY:**

HIV Justice Network, on behalf of HIV JUSTICE WORLDWIDE  
Eerste Helmersstraat 17 B3, 1054 CX Amsterdam, The Netherlands

[www.hivjustice.net](http://www.hivjustice.net)

[www.HIVJUSTICEWORLDWIDE.org](http://www.HIVJUSTICEWORLDWIDE.org)

Production co-ordination: Nicholas Feustel

Layout and design: Raffaele Teo

Some rights reserved: This document may be freely shared, copied, translated, reviewed and distributed, in part or in whole, but may not be offered for sale or used in conjunction with commercial purposes.

Only authorised translations, adaptations and reprints may bear the emblems of the HIV Justice Network.

Enquiries should be addressed to:

[ecs@hivjustice.net](mailto:ecs@hivjustice.net)

© July 2023 HIV Justice Network

We gratefully acknowledge the financial contribution of the Robert Carr Fund to the development of this report.



Suggested citation: A Symington. *The Expert Consensus Statement on the Science of HIV in the Context of Criminal Law – Five-year Impact Report: Bringing Science to Justice*. HIV Justice Network, Amsterdam, July 2023.





# CONTENTS

- 4     Executive Summary**
  
- 6     Background to the Expert Consensus Statement: the divergence of HIV-related law from science**
  
- 8     The ‘Expert Consensus Statement on the Science of HIV in the Context of Criminal Law’**
  
- 12    Impact of the Expert Consensus Statement**
- 13**            1. The Expert Consensus Statement has been instrumental to successful defences in court
- 17**            2. The Expert Consensus Statement has been an effective tool in successful advocacy campaigns
- 20**            3. The Expert Consensus Statement has supported education and awareness-raising initiatives
  
- 23    Continuing relevance of the Expert Consensus Statement**





# EXECUTIVE SUMMARY

In 2018, twenty leading HIV scientists published the ‘Expert Consensus Statement on the Science of HIV in the Context of Criminal Law’ (Expert Consensus Statement) to address the misuse of HIV science in punitive laws and prosecutions against people living with HIV for acts related to sexual activity, biting or spitting.<sup>1</sup> The Expert Consensus Statement was the result of a partnership comprising the International AIDS Society (IAS), International Association of Providers of AIDS Care (IAPAC), the Joint United Nations Programme on AIDS (UNAIDS) and the HIV JUSTICE WORLDWIDE (HJWW) coalition. The process involved undertaking detailed analysis of the best available scientific and medical research data on HIV transmission, treatment effectiveness and forensics.

The Expert Consensus Statement expressed consensus on three themes:

- 01 the possibility of HIV transmission in a variety of individual acts;**
- 02 the harm of HIV infection;**
- 03 and the ability to scientifically prove HIV transmission.**



More than 70 scientists from 46 countries endorsed the statement prior to its publication in the *Journal of the International AIDS Society* (JIAS). The statement was launched at an AIDS 2018 press conference and generated global media coverage. It was immediately made available in French, Russian, and Spanish with subsequent translations into Czech, German, and Mandarin.

Building on an initial scoping report published in 2020,<sup>2</sup> the HIV Justice Network (HJN) undertook further research between April and July 2023 examining the impact of the Expert Consensus Statement in cases and advocacy in the five years since its publication.

We found that the Expert Consensus Statement fulfilled three functions:

## **1 The Expert Consensus Statement has been instrumental to successful defences in court (the project’s primary aim)**

It has been used to support defence arguments in many cases, in strategic litigation testing the constitutionality of highly problematic laws, and as evidence in court cases challenging sodomy laws. Charges have also been dropped before proceeding to court in

1 F Barré-Sinoussi, SSA Karim, Jan Albert, LG Bekker, C Beyrer, P Cahn, A Calmy, B Grinsztejn, A Grulich, A Kamarulzaman, N Kumarasamy, MR Loutfy, KM El Filali, S Mboup, JSG Montaner, P Munderi, V Pokrovsky, AM Vandamme, B Young, P Godfrey-Faussett. ‘Expert consensus statement on the science of HIV in the context of criminal law’. *Journal of the International AIDS Society* (JIAS), 25 July 2018. Available at: <https://onlinelibrary.wiley.com/doi/10.1002/jia2.25161>

2 S Cameron. *Use of the Expert Consensus Statement on the Science of HIV in the Context of Criminal Law. Interim Scoping Report: July 2018-June 2020*. (HIV Justice Network, 2020).

some cases where the statement was used to show prosecutors that there was no risk of HIV transmission and therefore no reason to proceed to trial. The statement was pivotal in acquitting people living with HIV and/or constitutionally challenging HIV-related laws in Taiwan, Canada, Colombia, Lesotho, Kenya and Uganda.

## 2

### **The Expert Consensus Statement has been an effective tool in successful advocacy campaigns (the project's secondary aim)**

It provides accessible and authoritative information about HIV that counteracts the widespread stigma, discrimination and misinformation about HIV that fuels criminalisation. The statement has been significant to law reform efforts in Canada, Morocco, Czechia, Belarus, Zimbabwe, and Burkina Faso.

## 3

### **The Expert Consensus Statement has supported education and awareness-raising initiatives**

The “continuum of risk” described in the statement is accessible and clear, and therefore useful in a variety of contexts. For example, it is often cited as an authoritative source on HIV transmission risk in academic papers and research reports, it is distributed in training sessions and courses, and used to inform discussions with policymakers, public health authorities and media.

Five years after its publication, the Expert Consensus Statement remains relevant, accurate and extremely useful. Newer studies bolster its conclusions, reinforcing the overarching message that science does not support HIV criminalisation. The statement has elevated the global conversation about HIV criminalisation and the importance of science- and evidence-informed laws and policies.

Ending HIV criminalisation cannot rely on science alone. Nevertheless, the Expert Consensus Statement can help limit unjust prosecutions while we work to end the HIV-related stigma, discrimination and structural inequalities that drive criminalisation.



# BACKGROUND TO THE EXPERT CONSENSUS STATEMENT: THE DIVERGENCE OF HIV-RELATED LAW FROM SCIENCE

Despite remarkable progress in HIV treatment and prevention science throughout the late 20th and early 21st centuries, in many countries people living with HIV are singled out and discriminated against based on punitive laws and law enforcement rooted in an outdated notion of HIV-related risk and harm.

Circumstances leading to HIV-related prosecution vary enormously but usually involve a person with HIV who is alleged to have not disclosed their HIV-positive status before sex. People with HIV are also prosecuted for biting, spitting, scratching, and for breastfeeding. Convictions usually result in custodial sentencing, including where no harm was intended, where HIV exposure was not possible, and/or where transmission was neither alleged nor proven beyond reasonable doubt. This phenomenon is known as HIV criminalisation — the unjust application of criminal law to people living with HIV based solely on their HIV status.

Scientific progress bolstered advocacy against HIV criminalisation that resulted in a number of jurisdictions revising their criminal laws or prosecutorial policies. The Netherlands led the way as the first country to consider low viral load as a factor in HIV risk with respect to prosecution (in 2005), resulting in essential decriminalisation — with only intentional exposure or transmission remaining a crime.<sup>3</sup>

Following the influential ‘Swiss Statement’ (published in January 2008), a growing number of courts, government ministries and prosecutorial authorities accepted antiretroviral therapy’s impact on reducing the risk of both HIV exposure and transmission, including the Geneva Court of Justice, Switzerland (2009); Austrian Ministry of Justice (2010); Manitoba Court of Appeal, Canada (2010); Denmark Ministry of Justice (2011); Crown Prosecution Guidance for England and Wales (2011); Crown Office and Procurator Fiscal Service Guidance for Scotland (2012); the Court of Appeal for Skåne and Blekinge, Sweden and Swedish Ministry of Health and Social Affairs (2013); and the Supreme Court of Iowa (2014).<sup>4</sup>

In 2013, UNAIDS issued a detailed [guidance note](#) advising that criminal prosecutions in the absence of transmission should be exceptional. Such a prosecution should require proof of an appropriate culpable mental state and be limited to circumstances where there is a significant risk of HIV infection. In particular, it recommended against prosecution in cases of low viral load and/or effective HIV treatment.<sup>5</sup>

---

<sup>3</sup> EJ Bernard & S Cameron, *Advancing HIV Justice 2: Building momentum in global advocacy against HIV criminalisation* (HIV Justice Network & the Global Network of People Living with HIV (GNP+), 2016), p. 16. [*Advancing HIV Justice 2*]

<sup>4</sup> *Ibid.*

<sup>5</sup> UNAIDS, *Guidance Note 2013: Ending Overly Broad Criminalisation Of HIV Non-Disclosure, Exposure and Transmission*.

---

**Scientists and doctors in Australia, Canada, Switzerland, and Sweden have also produced national consensus statements regarding HIV for use in legal contexts within those countries.**



Despite this progress, prosecutions for HIV non-disclosure, potential or perceived exposure, and/or unintentional transmission continued and by 2016, such prosecutions had been reported in 61 countries.<sup>6</sup> It was evident that many criminal legal system actors – judges, prosecutors, and police officers – as well as policy- and lawmakers did not appreciate the significance of the newer HIV science. Science and law were speaking different languages, and it was clear that much was being lost in translation. Moreover, law – based on legal precedent and statutes – tended to look backwards whereas HIV science was moving forward rapidly. The relevant science needed to be explained clearly, accurately and authoritatively to the criminal legal system to prevent further miscarriages of justice.

From these injustices, the idea of an expert consensus statement was born. The 2018 ‘Expert Consensus Statement on the Science of HIV in the Context of Criminal Law’ was created to assist scientific experts providing evidence in criminal cases, and to encourage governments and those working in the criminal justice system to ensure correct and complete scientific knowledge informs any application of the criminal law in cases related to HIV.

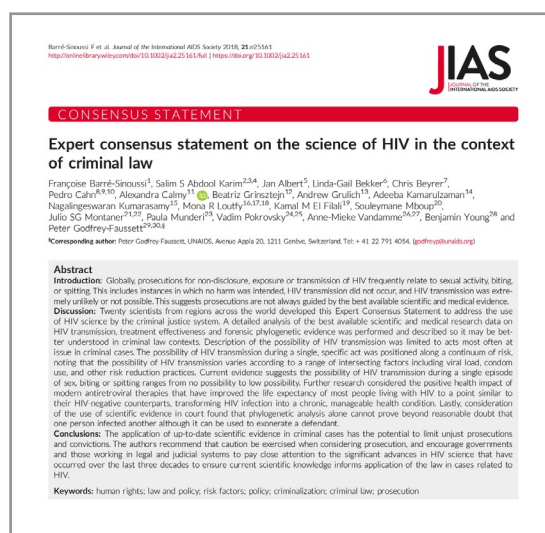
---

<sup>6</sup> *Advancing HIV Justice 2.*, p. 11. For the latest data, visit [HJN's Global Criminalisation Database](#).

---

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

The ‘Expert Consensus Statement on the Science of HIV in the Context of Criminal Law’ (Expert Consensus Statement) was co-authored by twenty of the world’s leading HIV scientists to describe current evidence so that it would be better understood in criminal law contexts. It was originally published in the *Journal of the International AIDS Society* (JIAS), a peer-reviewed scientific journal, in July 2018. The co-authors include Nobel-prize winning virologist Françoise Barré-Sinoussi, current and past presidents of the International AIDS Society, award-winning infectious disease specialists and epidemiologists, and eminent clinician scientists.



**The Expert Consensus Statement was authored by twenty eminent HIV scientists from around the world:** Françoise Barré-Sinoussi (France), Salim S. Abdool Karim (South Africa), Jan Albert (Sweden), Linda-Gail Bekker (South Africa), Chris Beyrer (USA), Pedro Cahn (Argentina), Alexandra Calmy (Switzerland), Beatriz Grinsztejn (Brazil), Peter Godfrey-Faussett (United Kingdom), Andrew Grulich (Australia), Adeeba Kamarulzaman (Malaysia), Nagalingeswaran Kumarasamy (India), Mona Rafik Loutfy (Canada), Kamal Marhoum El Filali (Morocco), Souleymane Mboup (Senegal), Julio S.G Montaner (Canada), Paula Munderi (Uganda), Vadim Pokrovsky (Russian Federation), Anne-Mieke Vandamme (Belgium), and Benjamin Young (USA).

The co-authors undertook a detailed analysis of the scientific data on HIV transmission, treatment effectiveness and forensic evidence, prioritising the highest quality research data from randomised clinical trials and comparative studies (i.e., cohort studies, case-control studies, and historical control studies). They engaged in numerous rounds of discussion to reach agreement on how to best summarise and describe that evidence.



The statement expressed consensus on three themes:

- the possibility of HIV transmission in a variety of individual acts;
- the harm of HIV infection; and
- the ability to scientifically prove HIV transmission.

The authors positioned the possibility of HIV transmission during a single act of sexual activity, biting or spitting along a continuum of risk – noting that the possibility of HIV transmission varies with a range of intersecting factors including viral load, condom use, and other risk reduction practices.

The authors also reviewed the positive health impacts of antiretroviral therapies which improve the life expectancy of most people living with HIV, transforming HIV infection into a chronic, manageable health condition.

Finally, they explained that phylogenetic analysis alone cannot prove beyond reasonable doubt that one person infected another, although it can be used to exonerate a defendant.

**The Expert Consensus Statement was immediately made available in French, Russian and Spanish with subsequent translations into Czech, German, and Mandarin.**

Expertní prohlášení k vědeckým poznatkům o HIV v kontextu trestního práva

Заявление об экспертном консенсусе в отношении научных данных о ВИЧ-инфекции в контексте уголовного права

專家共識聲明：刑法脈絡下的愛滋相關科學

Déclaration de consensus d'experts sur la connaissance scientifique relative au VIH dans le contexte du droit pénal

DECLARACIÓN DE CONSENSO DE EXPERTOS SOBRE LA CIENCIA RELATIVA AL VIH EN EL CONTEXTO DEL DERECHO PENAL

HIV-Wissenschaft

Expertenkonsens zur Strafrechts

im Kontext des

The International Association of Providers of AIDS Care (IAPAC), the International AIDS Society (IAS), the Joint United Nations Programme on AIDS (UNAIDS) and the [HIV JUSTICE WORLDWIDE](#) (HJWW) coalition supported the development of the Expert Consensus Statement. The final statement was [endorsed](#) by more than 70 additional expert scientists from 46 countries, as well as by IAPAC, the IAS and UNAIDS, and received endorsement from both *The Lancet*<sup>7</sup> and the *British Medical Journal*.<sup>8</sup>

## EXPERT CONSENSUS STATEMENT – CONCLUSIONS

“Given the evidence presented in this document, we strongly recommend that more caution be exercised when considering criminal prosecution, including careful appraisal of current scientific evidence on HIV-related risks and harms. This is instrumental to reduce stigma and discrimination and to avoid miscarriages of justice.

In this context, we hope this Consensus Statement will encourage governments and those working in the legal and judicial system to pay close attention to the significant advances in HIV science that have occurred over the last three decades, and make all efforts to ensure that a correct and complete understanding of current scientific knowledge informs any application of the criminal law in cases related to HIV.”



The Expert Consensus Statement was officially launched on July 25, 2018, at the 22nd International AIDS Conference (AIDS 2018). The issue of HIV criminalisation was front and centre at AIDS 2018, garnering considerably more attention than at previous conferences.

In the opening plenary session, HIV criminalisation survivor, Robert Suttle (Sero Project), and Allan Maleche (KELIN) spoke about HIV criminalisation. The press conference announcing the Expert Consensus Statement generated significant interest. Importantly, mainstream media, social media, and community media coverage of the issue and the statement was predominantly supportive and constructive. The statement helped transform the narrative about HIV criminalisation into a more sensitive and informed conversation.



7 'HIV criminalisation is bad policy based on bad science'. *The Lancet HIV*, September 2018.

8 R Hurley. 'Criminalising HIV transmission is counterproductive and should stop, experts say'. *BMJ*, July 2018.



The AIDS 2018 Expert Consensus Statement Press Conference. Photo: UNAIDS

The Expert Consensus Statement was possible because of effective collaboration across science, medicine, law, and community. Collaborations developed between many of the original project partners. Moreover, through a series of strategy and drafting meetings, long-lasting relationships of solidarity and support were established amongst many of the authors and others involved.



Members of HIV JUSTICE WORLDWIDE celebrate the launch of the Expert Consensus Statement at AIDS2018. Photo: HJWW



# IMPACT OF THE EXPERT CONSENSUS STATEMENT

Building on an initial scoping report published in 2020,<sup>9</sup> the HIV Justice Network (HJN) undertook further research between April and July 2023 examining the impact of the Expert Consensus Statement in cases and advocacy in the five years since its publication.

The research included a questionnaire to the authors; a survey in distributed through our networks in English, French, Spanish and Russian; and desk-based research utilising various databases including HJN's [Global HIV Criminalisation Database](#), Google Scholar, Dimensions, Altmetric, PlumbX and Mendeley. Follow-up interviews with several authors, human rights defenders and other advocates took place in June and July 2023.

## **HOW HAVE YOU USED THE EXPERT CONSENSUS STATEMENT?**

Respondents to our April-May 2023 survey told us that the Expert Consensus Statement has been used:

- in educational resources about HIV transmission and HIV criminalisation;
- to inform their own understanding of HIV science;
- in presentations on HIV criminalisation at scientific or policy meetings;
- to provide advice or recommendations to governments or public health bodies on the use of the criminal law with respect to HIV non-disclosure, exposure, or transmission;
- when delivering training to criminal legal system actors, medical students, civil society organisations, and/or people living with HIV;
- to inform the development of guidance for prosecutors internationally and domestically;
- in research and advocacy on phylogenetics and molecular HIV surveillance;
- to support policy discussions with public health agencies about access to assisted reproduction and adoption for people living with HIV<sup>10</sup>; and
- when writing editorials or giving interviews to the media.



<sup>9</sup> S Cameron. *Use of the Expert Consensus Statement on the Science of HIV in the Context of Criminal Law. Interim Scoping Report: July 2018-June 2020.* (HIV Justice Network, 2020).

<sup>10</sup> Eurasian Women's Network on AIDS. *HIV Criminalisation Scan in the countries of Eastern Europe and Central Asia for 2018-22.* Available in Russian at: [https://academy.hivjustice.net/wp-content/uploads/2023/04/EWNA-HIV-Criminalization-Scan-2023\\_rus.pdf](https://academy.hivjustice.net/wp-content/uploads/2023/04/EWNA-HIV-Criminalization-Scan-2023_rus.pdf) Also in machine translated English at: [https://academy.hivjustice.net/wp-content/uploads/2023/04/EWNA-HIV-Criminalization-Scan-2023\\_eng.pdf](https://academy.hivjustice.net/wp-content/uploads/2023/04/EWNA-HIV-Criminalization-Scan-2023_eng.pdf)

## 1

**THE EXPERT CONSENSUS STATEMENT HAS BEEN INSTRUMENTAL TO SUCCESSFUL DEFENCES IN COURT**

The Expert Consensus Statement has been a useful tool in legal cases in several jurisdictions, providing important evidence regarding the transmission risks associated with HIV. It has been used to support defence arguments in many cases (the project's primary aim), in strategic litigation testing the constitutionality of highly problematic laws, and in court cases challenging sodomy laws. Charges have also been dropped before proceeding to court in some cases where the statement was used to show prosecutors that there was no risk of HIV transmission and therefore no reason to proceed to trial.

Since the statement's publication, at least nine of the authors have provided scientific or medical evidence that has led to charges being dropped, has been helpful to the defence in a criminal case, or has supported strategic litigation challenging HIV criminalisation.

Dr Benjamin Young, a co-author of the Expert Consensus Statement, has provided expert evidence in three HIV criminalisation cases in the United States. Dr Young told us that medical and/or scientific experts play an important role in defending people charged in relation to HIV non-disclosure or exposure because lawyers and judges generally have a poor understanding of HIV. Charges are laid where the facts do not justify prosecution. Expert witnesses repudiate the allegations by presenting the relevant medical and/or scientific information.

He explained that the adversarial nature of criminal proceedings, especially cross-examination, is unpleasant and unfamiliar for a doctor. In an attempt to discredit the witness, prosecutors attack the witness' expertise and credentials — which feels very personal. And this is one of the reasons he finds the Expert Consensus Statement so helpful. “Once you have the Consensus Statement, it is really the shield against any further reputational attack,” he said. He explained that this is “because you are no longer presenting only your own opinion, based on your expertise, but you are presenting the consensus opinion of leading experts from around the world. It is indisputable.”



Dr Benjamin Young, Head, Global Medical Directors, ViiV Healthcare

When preparing an affidavit (a sworn statement) for a case, Dr Young quotes directly from the Expert Consensus Statement. In this way, the statement makes the job of an expert easier, he explained. Each expert does not need to come up with their own way to explain the information and can rely on the clear and concise explanations articulated in the statement. Quoting from the statement — a peer-reviewed publication with impressive co-authors — lends additional authority and gravitas to the evidence he presents.

In addition to the court cases, Dr Young uses the Expert Consensus Statement in lectures, presentations and training. He finds that the geographic diversity of the co-authors adds value because it is not seen as “foreign” when he can point to a local co-author or endorser. He finds that the statement is a good entry point to make a call to action on HIV criminalisation. “The statement lends credibility to efforts to raise visibility of the issue.”

## TAIWAN

In 2017, a man living with HIV was accused of having oral sex without revealing his HIV-positive status to the partner. The virus was not transmitted. The prosecutor determined that he had violated the *Human Immunodeficiency Virus Infection Prevention and Protection of the Rights of Infected Persons Act* and he was charged with attempted infection of another person. The trial judge considered scientific evidence on HIV transmission risk, including evidence from the Expert Consensus Statement, and the accused's treatment records. The initial trial found that there was no risk of HIV transmission in the circumstances, and the Supreme Court upheld [the not guilty verdict in July 2022](#).

“We translated the statement into Mandarin so it would be accessible and relevant to Taiwan. Because the Expert Consensus Statement specifically aimed to address HIV in the context of criminal law, it covered specific scenarios that are commonly seen as controversial for judges and law enforcement, such as oral sex. Although the idea that this deserved prosecution might be ridiculous to us, this idea was very new to judges and law enforcement officers. Because the statement is from very well known scientists all over the world, it was considered credible evidence and gave the court a very clear idea to understand HIV science leading ultimately to the acquittal.”



Fletcher Chiu, Persons with HIV/AIDS Rights Advocacy Association of Taiwan (PRAA)

## CANADA

Canadian advocates consistently use both the ‘[Canadian Consensus Statement on HIV and its Transmission in the Context of Criminal Law](#)’ and the Expert Consensus Statement when they intervene in cases and/or support defence lawyers. They ensure the statements are included in the case record, referred to by medical experts called to testify, and/or included in their intervenor submissions.

In 2022, a [Court of Appeal](#) overturned the conviction of a person living with HIV who had been sentenced to more than three years in jail and sex offender registration in 2013 due to HIV non-disclosure.<sup>11</sup> Based on fresh expert evidence demonstrating that there was no possibility of HIV transmission through sex because she was on antiretroviral medication and had an undetectable viral load at the relevant time, she was acquitted — almost a decade after her conviction. In 2022, another conviction was overturned by a [Court of Appeal](#), acquitting a person living with HIV five years after his conviction. Based on new evidence from an HIV expert, the court accepted that his viral load was consistently so low that the possibility of transmission was negligible.<sup>12</sup>

<sup>11</sup> *R. v. Murphy*, 2022 ONCA 615 (CanLII).

<sup>12</sup> *R. v. Rubara*, 2022 ONCA 694 (CanLII).

## LESOTHO

The [High Court of Lesotho](#), sitting as a constitutional court, declared that a section of the *Sexual Offences Act* was unconstitutional. The provisions imposed mandatory HIV testing on persons accused of sexual offences and subsequently imposed a death sentence on those persons if they tested HIV-positive. The Court ruled that the provision violated the constitution to the extent that the law imposed a death sentence solely on the basis of a person's HIV status — this is discriminatory and amounts to inhumane treatment. The Court said that people convicted of sexual offences should be sentenced according to mitigating or aggravating circumstances rather than HIV status. The law should be interpreted so as not to require a mandatory death sentence for a person living with HIV.<sup>13</sup>

South African doctor/professor Linda-Gail Bekker, one of the co-authors of the Expert Consensus Statement, provided expert evidence in the case, citing the statement. Her affidavit concluded with the following powerful statements:

---

28. THAT tremendous progress has been made in preventing and treating HIV. Thanks to remarkable advances in science, HIV is no longer a death sentence. With proper access to treatment, HIV is a chronic manageable disease. People living with HIV can live long, healthy and full lives. Effective treatment can also eliminate the possibility of transmission through sex. With an undetectable viral load, HIV is untransmittable (U=U). The means a person living with HIV under effective antiretroviral therapy cannot transmit the virus through sex.

29. THAT remaining fears, stigma and discrimination related to HIV curb progress in preventing and treating HIV. Stigma and discrimination prevent people living with HIV and those at risk of HIV from seeking testing, disclosing their status and accessing care and treatment.

30. THAT laws punishing people living with HIV based on their status might not reflect recent advances in sciences.

31. THAT criminal laws are sometimes applied against people living with HIV in a manner inconsistent with available medical and scientific evidence: including overstating both the risk of HIV transmission and also the potential for harm in case of actual transmission. Such limited understanding of scientific advances in relation to HIV may lead to miscarriages of justice.

32. THAT laws or prosecutions that are inconsistent with scientific evidence can reinforce stigma and thus undermines efforts to address the HIV epidemic.

33. THAT responding to the epidemic requires evidence-based and human rights measures that both encourage and facilitate access to testing and treatment, including access to post-exposure treatment for sexual assaults.<sup>14</sup>

---

The litigation was supported by the Southern Africa Litigation Centre (SALC), AIDS and Rights Alliance for Southern Africa (ARASA), HIV Legal Network, HIV Justice Network (HJN), Kenya Legal & Ethical Issues Network on HIV and AIDS (KELIN), and Lesotho Network of People Living with HIV and AIDS (LENEPWHA).

---

<sup>13</sup> *M K v Director of Public Prosecutions and Others* (CONST 5 of 2020) [2022] LSHC 238.

<sup>14</sup> Affidavit sworn 26 February 2020.

## COLOMBIA

In 2019, the Constitutional Court of Colombia removed the section of the Criminal Code criminalising HIV and hepatitis B exposure and transmission. The Court held that the law did not pass the proportionality test because it is not a necessary or effective measure for its intended purpose, also violating principles of equality.<sup>15</sup> This constitutional challenge was supported by *amicus* briefs from Justice Edwin Cameron (supported by the HIV JUSTICE WORLDWIDE coalition) and UNAIDS, both making reference to the Expert Consensus Statement.<sup>16</sup>

## KENYA AND UGANDA

The Expert Consensus Statement was also submitted as evidence in two ongoing constitutional challenges. In Kenya, the challenge is against [section 26 of the Sexual Offences Act](#) which relates to HIV exposure or transmission, including in cases unrelated to sexual offences. In Uganda, the challenge is to sections 18(2)(e) & (h), 41, 43(1), and 44 of the [HIV and AIDS Prevention and Control Act](#). After disappointing decisions dismissing these challenges in 2022, both cases are being appealed.

## SODOMY LAWS

Beyond HIV non-disclosure and exposure cases, the statement has been used in cases challenging sodomy laws. To our knowledge, this has occurred in Jamaica, Kenya, Singapore, and St Vincent and the Grenadines. With multiple challenges against anti-LGBTQI+ laws going forward, we anticipate the statement will be introduced as evidence to support LGBTQI+ rights where “preventing the spread of HIV” is cited as a justification for the laws.



Judge Zion Ntoba, Malawi High Court

“When you talk about justice and about judges, our whole concept is to be impartial, and to ensure integrity, and not to have any other issues come into play. One of the things about scientific evidence is that science is supposed to be neutral, like the law. When you have scientific evidence that actually is reliable and is relevant and admissible in a court case, that would take out the irrationality, that would take out the bias issues, but it would also give you what you basically need in a case which is the justice of it, because people come to court seeking justice. Now, if evidence, scientific evidence is there and available and can be explained in a rational way that intersects with the law, then you will get a judgement that actually does deliver justice.”

<sup>15</sup> Judgment C-248/19, June 15, 2019.

<sup>16</sup> *Advancing HIV Justice 2*, p. 5.



## 2

## THE EXPERT CONSENSUS STATEMENT HAS BEEN AN EFFECTIVE TOOL IN SUCCESSFUL ADVOCACY CAMPAIGNS

The Expert Consensus Statement has proven to be a useful tool in advocacy against HIV criminalisation in many jurisdictions (the project’s secondary aim). It provides accessible and authoritative information about HIV that counteracts the widespread stigma, discrimination and misinformation about HIV that fuels criminalisation.

### CANADA

The HIV Legal Network and the Canadian Coalition to Reform HIV Criminalization (CCRHC) have used scientific consensus statements (both the Canadian statement and the Expert Consensus Statement) in advocacy for improved legal practice and law reform. The statements were sent to every Attorney General across Canada, requesting the development of directives for prosecutors in cases involving HIV. The statements were also presented to the House of Commons Standing Committee on Justice to inform their study of HIV criminalisation. In their 2019 report, the Committee made a number of recommendations to limit HIV criminalisation, including a recommendation “to end criminal prosecutions of HIV non-disclosure, except in cases where there is actual transmission” and “to review previous convictions”.<sup>17</sup>

### MOROCCO

The Association for the Fight Against AIDS (ALCS) conducted a series of meetings with senior officials from the Office of the Public Prosecutor, the General Directorate of National Security (police), and the Higher Institute of Magistrature. The Expert Consensus Statement was presented, emphasising the importance of accurate science in HIV-related trials. The local relevance of the statement was underscored by the fact that two of the endorsers were Moroccan — Prof. Hakima Himmich (Founding President of the ALCS and president of Coalition Plus) and Prof. Mehdi Karkouri (President of the ALCS).<sup>18</sup>



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

<sup>17</sup> The Criminalization of HIV Non-Disclosure in Canada, Report of the Standing Committee on Justice and Human Rights. June 2019. 42nd Parliament, 1st Session.

<sup>18</sup> S Cameron, *Interim Scoping Report*, p. 6.

## CZECHIA

The Czech AIDS Help Society worked with a prominent local HIV clinician to translate the Expert Consensus Statement into Czech and promoted the statement among HIV specialists at several events. In 2019, the statement was endorsed by all Czech HIV Centres and the Czech Society of Infectious Diseases. The Expert Consensus Statement was sent to all district public prosecutors, criminal investigation police departments, district courts, court-appointed expert witnesses and regional public health offices. 2019 was the first year in many that no open court hearing relating to HIV exposure or transmission was registered.<sup>19</sup>

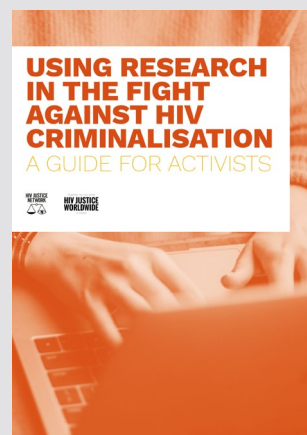
Further, the Czech Society of Infectious Diseases published the Expert Consensus Statement on its website with an explicit recommendation that it be used in any legal process. The Government Committee for Sexual Minorities adopted a resolution that the Government should ask the Minister of Justice to prepare guidelines on how to investigate and prosecute crimes related to HIV exposure and transmission based on the Expert Consensus Statement's findings.<sup>20</sup>

## BELARUS

The Expert Consensus Statement was a useful tool in [advocacy with the Health and Justice Ministries](#). Prior to 2018, many HIV-related prosecutions were initiated against the HIV-positive partner in a serodiscordant couple. In December 2018, following advocacy from local and regional organisations led by Belarusian PLHIV network, People Plus, the Criminal Code was amended to remove criminal liability if a person has previously disclosed their HIV-positive status to a partner and the partner consented to any acts that could have resulted in transmission.<sup>21</sup>

### **Using Research in the Fight against HIV Criminalisation: A Guide for Activists (HIV Justice Network, 2019)**

This guide contains basic principles and ideas about how to use scientific research for advocacy. It includes a section on how best to frame HIV-related risk and harm, as discussed in the Expert Consensus Statement.



<sup>19</sup> *Interim Scoping Report*, p. 7.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*, p. 7.

## ZIMBABWE

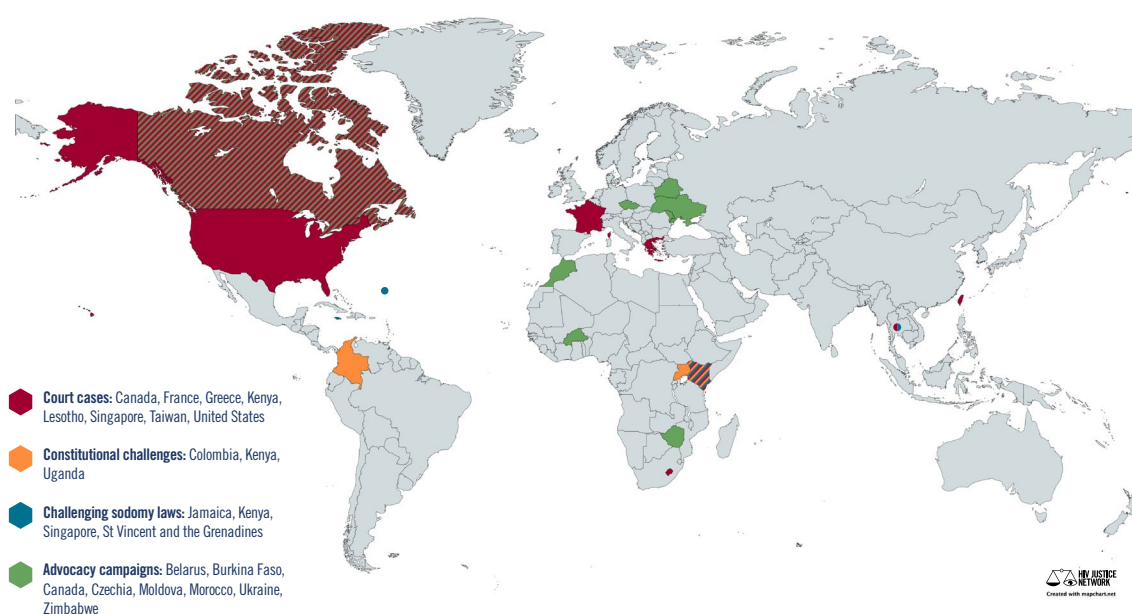
In late 2018, the Expert Consensus Statement was introduced at [Zimbabwe's 4th Symposium on HIV and the Law](#), hosted by the Zimbabwean National AIDS Council and Zimbabwe Lawyers for Human Rights with support from Southern Africa Litigation Centre (SALC), the AIDS and Rights Alliance for Southern Africa (ARASA), the HIV JUSTICE WORLDWIDE coalition, and UN Women. The Symposium was attended by representatives of the Zimbabwe executive, legislature and judiciary, as well as community-based organisations, lawyers, and survivors of HIV criminalisation. Following the symposium, advocates continued to use the statement in their law reform advocacy. In March 2022, [Parliament finally repealed the country's HIV-specific criminal law](#).



## BURKINA FASO

A coalition against HIV criminalisation found that the Expert Consensus Statement was a persuasive and valuable tool to keep discussions on track with respect to amendments to draft legislation proposed by the National Council for the Fight against HIV/AIDS and STIs (Conseil National de Lutte Contre le VIH/Sida et Les ISTs), including when participants became caught up in emotional arguments. The coalition also conducted a meeting with customary and religious leaders, who asked whether there was evidence that criminal legislation acts as a deterrent to behaviours that place people at risk of HIV transmission. Upon learning that there is no such evidence, leaders agreed that it is contradictory for a law to criminalise those it is meant to protect and that if criminalisation does not help prevent transmission, there is no reason for the law to criminalise HIV.<sup>22</sup>

## GLOBAL IMPACT OF THE EXPERT CONSENSUS STATEMENT



## 3

## THE EXPERT CONSENSUS STATEMENT HAS SUPPORTED EDUCATION AND AWARENESS-RAISING INITIATIVES

While specifically drafted to support defence arguments in HIV criminalisation cases and bolster advocacy for law and policy reform, the Expert Consensus Statement has been broadly used as a general reference on HIV science and HIV criminalisation. Users have found the “continuum of risk” used in the statement is accessible and clear, and therefore useful in a variety of contexts. For example, it is often cited as an authoritative source on HIV transmission risk in academic papers and research reports, it is distributed in training sessions and courses, and informs discussions with policy-makers, public health authorities and media.

### REGIONAL JUDGES FORUMS

UNDP has supported the establishment of regional judges forums, where judges and magistrates come together around identified areas of interest and new developments in jurisprudence relating to HIV, TB and key populations. In 2019, the African Regional Judges Forum met for the sixth time, with 54 participants from 22 countries — including thirty judges/magistrates as well as lawyers, representatives from judicial training institutes and others. The two-day forum provided a venue for senior members of the judiciary to discuss the Expert Consensus Statement and recent legal precedents.<sup>23</sup>

The Expert Consensus Statement was also a foundational document at the online Judges’ Forum on HIV, Human Rights and the Law, hosted by UNDP and the Supreme Court of Tajikistan in October 2020, which focused on the criminalisation of HIV non-disclosure, exposure and transmission.<sup>24</sup>



The Honourable Edwin Cameron  
Formerly Constitutional Court of South Africa

“It is imperative that judges, lawyers and policy-makers ensure that the rule of law — and good sense, backed by medical and scientific evidence — prevails. It is our duty, as judges, to ensure that injustice and irrationality, fear and ignorance do not triumph”.<sup>25</sup>

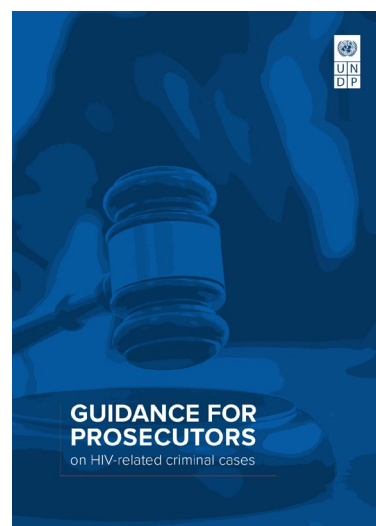
<sup>23</sup> *Interim Scoping Report*, p. 8-9.

<sup>24</sup> EJ Bernard & A Symington, *Advancing HIV Justice 4: Understanding Commonalities, Seizing Opportunities* (HIV Justice Network, 2022), p. 26.

<sup>25</sup> *Interim Scoping Report*, p. 8-9.

## GUIDANCE FOR PROSECUTORS

*Guidance for Prosecutors on HIV-related Criminal Cases*, published by UNDP in June 2021, makes numerous references to the Expert Consensus Statement and excerpts key elements and conclusions as Annex C. Principle 1 of the Guidance is “Prosecutions should be informed at all stages by the most reliable evidence.” The Guidance notes that “A correct working understanding of the relevant science is essential to ensuring that prosecutorial practice is consistent and that prosecutions (and any convictions that may result) are based on fair and objective facts” and points prosecutors to the Expert Consensus Statement for the needed scientific information.<sup>26</sup>



## HIV JUSTICE ACADEMY

The [HIV Justice Academy](#) is a free global learning and resource hub designed to support people who want to be part of the movement to end HIV criminalisation. Available in English, French, Russian, and Spanish, the HIV Justice Academy includes on-demand online learning, practical action toolkits, and an extensive resource library.

The Expert Consensus Statement is a key resource covered in the Online Course, an essential document in the Action Toolkits, and is also included in the Resource Library.



**As of August 2022, the Expert Consensus Statement was the #1 ranked JIAS article (#1 of 2,129) and was in the top 5% of all research outputs scored by Altmetric, ranking in the 99th percentile for High Attention Score.**



<sup>26</sup> UNDP, *Guidance for Prosecutors on HIV-related Criminal Cases* (2021), p. 7.

A few other notable examples of how the Expert Consensus Statement has supported education and awareness-raising include:

- The Expert Consensus Statement has been widely promoted and referred to in science and medical press (including in France, Italy, Kenya, South Africa, Spain, Switzerland, UK and the USA), mainstream media (e.g., *The New York Times*, *Jamaica Observer*, *Daily National* (Kenya), *El Pais*, etc.), social media (more than 500 tweets), and community publications (e.g., POZ Magazine, NAT Blog, Life4me+, The Body, CATIE, etc.).<sup>27</sup>
- The statement has been cited extensively in academic journals, including at least 77 published articles and at least 15 doctoral theses. Those articles have appeared in a range of journals, including: *Yale Law Journal*, *Journal of the International AIDS Society*, *British Medical Journal*, *AIDS Care*, *The Lancet HIV*, *Global Public Health*, *The American Journal of Bioethics*, *African Health Sciences*, *Critical Public Health*, *Women's Health*, *South African Medical Journal*, *Clinical Infectious Diseases*, *International Journal of Indigenous Health*, and *Canadian Journal of Law and Society*. It has been cited by authors writing in multiple languages (e.g., English, French, German, Chinese) and in a variety of disciplines (i.e., law, sociology, humanities, public policy, public administration, medicine, public health, epidemiology, nursing, psychology, and even mathematics.) In these articles, the statement is most often referenced to highlight that laws and policies are not based on current science, and also in relation to stigma, sexual and reproductive health and rights, U=U, and discrimination.

---

27 *Interim Scoping Report*, p. 9-10.

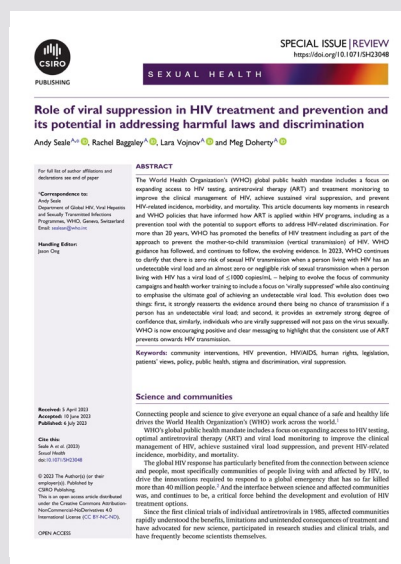
# CONTINUING RELEVANCE OF THE EXPERT CONSENSUS STATEMENT

Five years after its publication, the Expert Consensus Statement remains relevant, accurate and extremely useful. Newer studies bolster the conclusions presented in the statement, reinforcing its overarching message that science does not support HIV criminalisation.

## ‘ROLE OF VIRAL SUPPRESSION IN HIV TREATMENT AND PREVENTION AND ITS POTENTIAL IN ADDRESSING HARMFUL LAWS AND DISCRIMINATION’

In July 2023, WHO’s Department of Global HIV, Viral Hepatitis and Sexually Transmitted Infections Programmes published a scientific and policy review consistent with the Expert Consensus Statement regarding the possibility of when a person on treatment cannot transmit HIV.<sup>28</sup>

It states: “In 2023, WHO continues to clarify that there is zero risk of sexual HIV transmission when a person living with HIV has an undetectable viral load and an almost zero or negligible risk of sexual transmission when a person living with HIV has a viral load of  $\leq 1000$  copies/mL. — helping to evolve the focus of community campaigns and health worker training to include a focus on ‘virally suppressed’ while also continuing to emphasise the ultimate goal of achieving an undetectable viral load. This evolution does two things: first, it strongly reasserts the evidence around there being no chance of transmission if a person has an undetectable viral load; and second it provides an extremely strong degree of confidence that, similarly, individuals who are virally suppressed will not pass on the virus sexually. WHO is now encouraging positive and clear messaging to highlight that the consistent use of ART prevents onward HIV transmission.”



By providing accurate messaging about HIV science in the context of criminal law, the statement has elevated the global conversation about HIV criminalisation and the importance of science- and evidence-informed laws and policies. Nevertheless, too many laws and prosecutions for HIV-related offences continue to rely on incorrect and outdated interpretations of scientific evidence. Although some lawmakers and courts have acknowledged scientific advances, others remain hesitant to revisit decades-old laws or depart from previous judicial decisions.

## BREASTFEEDING AND HIV

At least fourteen women living with HIV have faced criminal charges in relation to breastfeeding, and many others have endured stigma, surveillance, public health interventions and interventions of child welfare agencies.

When the Expert Consensus Statement was published in 2018, consensus around the impact of suppressed viral load on HIV transmission through breastfeeding was not as robust as it was for sexual transmission, biting and spitting. Effective HIV treatment in pregnancy and post-partum had resulted in a marked reduction in rates of vertical (i.e. parent-to-child) transmission of HIV, but there was insufficient evidence to declare that an undetectable viral load as measured in the blood meant that HIV was “untransmittable” (the credo behind the U=U movement) for breastfeeding. Several papers have since been published documenting cases of women on HIV treatment in breastfeeding without transmitting the virus – in both low income and high income settings.<sup>29</sup>

Perhaps it is time for another expert consensus statement – this time on breastfeeding/chestfeeding. No one should be criminalised for choosing to breastfeed/chestfeed while living with HIV.

Ending HIV criminalisation cannot rely on science alone. Nevertheless, the Expert Consensus Statement can help limit unjust prosecutions while we work to end the HIV-related stigma, discrimination and the structural inequalities that drive criminalisation. Our collective work going forward is therefore to continue spreading the message, using the Expert Consensus Statement and scientific and medical experts in court and in advocacy, and ensuring the next generation of lawyers, judges and policy-makers are well informed on the injustice of HIV criminalisation.

29 See for example, J Levison, et al. ‘Breastfeeding among people with HIV in North America: a multisite study’ *Clinical Infectious Diseases* 2023; DOI: 10.1093/cid/ciad235; T Prestileo et al. ‘From Undetectable Equals Untransmittable (U=U) to Breastfeeding: Is the Jump Short?’ *Infectious Disease Reports* 2022; 14(2): 220-7. F Weis, et al. ‘Brief Report: HIV-Positive and Breastfeeding in High-Income Settings: 5-Year Experience from a Perinatal Centre in Germany’ *Journal of Acquired Immune Deficiency Syndrome* 2022; 90(4): 364-7. N Nashid, et al. ‘Breastfeeding by Women Living with Human Immunodeficiency Virus in a Resource-Rich Setting: A Case Series of Maternal and Infant Management and Outcomes’ *Journal of the Pediatric Infectious Diseases Society* 2020; 9(2): 228-31. HE Yusef, et al. ‘Experience and Outcomes of Breastfed Infants of Women Living with HIV in the United States: Findings from a Single-Center Breastfeeding Support Initiative’ *Journal of the Pediatric Infectious Diseases Society* 2022; 11(1): 24-7. WLA Koay, et al. ‘Supporting Mothers Living with HIV in the United States Who Choose to Breastfeed’ *Journal of the Pediatric Infectious Diseases Society* 2022; 11(5): 239.



**HIV JUSTICE  
NETWORK**



IF YOU HAVE USED THE EXPERT  
CONSENSUS STATEMENT IN YOUR  
WORK, PLEASE LET US KNOW!

**[ECS@HIVJUSTICE.NET](mailto:ECS@HIVJUSTICE.NET)**