

THE “ABCs” OF HIV LAW REFORM IN LATIN AMERICA AND THE CARIBBEAN: Case studies on HIV (de)criminalisation in **A**rgentina, **B**elize and **C**olombia

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BACKGROUND

In the past five years, Argentina, Belize and Colombia made changes to their HIV laws. Due to the diversity of their motivations for reform and advocacy strategies, analysing the processes in these three countries together provides a broad perspective on the realities, challenges and opportunities to repeal punitive laws in Latin America and the Caribbean.

METHODS

We conducted in-depth interviews with key stakeholders in each country to understand the legislative and political landscapes, reform drivers, repeal processes, and the impacts of legislative changes. We undertook additional research into the history of HIV criminalisation in each country, and analysed the impact of these reforms on the respective criminalisation landscapes. We also noted possible follow-up activities, including training and awareness raising, to ensure the potential of these reforms are maximised.

What is HIV criminalisation?

HIV criminalisation describes the unjust application of criminal law to people living with HIV based solely on their HIV status. In many instances, HIV criminalisation laws are exceedingly broad – either in their explicit wording, or in the way they have been interpreted and applied – making people living with HIV (and those perceived by authorities to be at risk of HIV) extremely vulnerable to a wide range of human rights violations.

RESULTS

ARGENTINA

Replaced its HIV-specific omnibus statute in July 2022 after a decade-long advocacy process led by a wide coalition of HIV groups and activists.

Argentina introduced its first HIV-specific statute in 1990, Law 23,798, 'Declaration of the National Interest to Fight Against AIDS'. Although the law did not establish any HIV-specific offences, prosecutors began to apply existing general criminal laws in HIV cases from 2003.

Recognising its failures to enshrine comprehensive and specific human rights, activists formed a broad coalition of more than 40 organisations to advocate for replacing the law. This coalition used a diverse range of tactics including direct advocacy, public campaigning and awareness-raising, and leveraging scientific data and human stories to highlight the need for reform.

Timeline to reform in Argentina

1990:	Law 23,798 is introduced
2003:	First known prosecution for alleged HIV transmission
2013:	Initial drafting of a new HIV law begins
2016:	First bill for new HIV law presented to the Chamber of Deputies
2017:	Health Commission approves the bill, but it is not adopted
2018:	Second attempt to pass the bill fails
2020:	Third attempt to pass the bill fails
May 2022:	Chamber of Deputies approves the bill, after passing Health and Budget Commissions
June 2022:	Senate approves the bill
July 2022:	The new law, Law 27,675, is enacted

Following an arduous decade-long campaign, Law 27,675 'on the Comprehensive Response to HIV, Viral Hepatitis, Sexually Transmitted Infections and Tuberculosis' was enacted in July 2022. This new law received praise both by domestic and international civil society for favouring an approach based on science and human rights. While it did not introduce any criminalising provisions, it failed to address HIV criminalisation under general laws, leaving scope for further reform.

“This law is a historical reparation to all the people who suffered and continue to suffer discrimination, stigma, fear and ignorance about HIV. It is a law that will dignify and save lives to have a fairer and more supportive Argentina.”

Senator Sandra Mendoza
Frente de Todos coalition



BELIZE

Repealed the HIV-specific criminal provision in its Criminal Code in July 2023 after a short process of legislative reform initiated inside government.

In 2001, Belize added sections 46A and 73A to its Criminal Code, explicitly criminalising HIV 'exposure'/non-disclosure for the first time. Despite being titled 'Deliberate or reckless spreading of HIV/AIDS', transmission was not a required element. These laws were never enforced.

More than two decades after their introduction, key ministers moved to repeal these provisions. The main champion of repeal was Dolores Balderamos García, Minister of Human Development, Women and Civil Society, who was also the Chairperson of the National AIDS Commission. The Ministry of Health and Wellness also supported the reform effort.

Timeline to reform in Belize

2001:	Criminal Code amended to explicitly criminalise HIV 'exposure'/non-disclosure
2001-2023:	The laws are unused, with no charges brought
June 2023:	Two Ministries champion repeal and Cabinet authorises repeal in principle
June 2023:	House of Representatives approves Government's repeal bill
July 2023:	Senate approves repeal bill. Ministers Balderamos García and Kevin Bernard speak in favour
17 July 2023:	Minister Balderamos García gives TV interview outlining reasons for reform
27 July 2023:	The Criminal Code (Amendment) Act 2023 is signed into law
28 July 2023:	The law is published in the gazette, repealing the HIV-specific criminal laws in Belize

The Criminal Code (Amendment) Act 2023 was signed into law on 27 July 2023, repealing sections 46A and 73A in full. Ministers based their arguments on human rights and public health grounds, demonstrating an awareness of established arguments for the repeal of HIV-specific criminal laws. This high-level championing of repeal provided legitimacy to reform which enabled it to move swiftly and without significant resistance.

“We should focus our efforts on education, prevention, care, and support rather than punishment. We should aim to reduce the stigma and discrimination that surrounds this disease to encourage more people to get tested, to know their status, and to seek treatment.”

Kevin Bernard
Minister of Health and Wellness



COLOMBIA

HIV-specific criminal provision in the Penal Code was invalidated by the Constitutional Court in June 2019 following a case brought by a university student.

In 2000, Colombia introduced a provision in its new Penal Code which explicitly criminalised HIV transmission for the first time. Article 370, 'Propagation of HIV or hepatitis B', criminalised alleged HIV 'exposure' through sex or medical donations. At least three cases of prosecution under this law were reported, however official data suggests this likely represents a significant underreporting of enforcement.

Less than two decades after its introduction, Article 370 would come under challenge. Unlike in other countries where reform was initiated by government, in Colombia, the route taken was through the courts. The action was brought by a young university student, Felipe Chica Duque, who was encouraged to file a challenge against Article 370 after a professor discussed the issue of HIV criminalisation in class.

Timeline to reform in Colombia

2000:	New Penal Code criminalises 'Propagation of HIV or hepatitis B' under Article 370
2004 & 2008:	Penalties under Article 370 are increased
2014:	First case under Article 370 for alleged sexual transmission of HIV reported
September 2018:	Felipe Chica Duque, a university student, files a challenge against Article 370
October 2018:	Challenge declared admissible and public consultations start
5 June 2019:	The Court issues judgement, declaring Article 370 unconstitutional

The Constitutional Court issued its judgement on 5 June 2019, finding that Article 370 violated both Articles 13 and 16 of the Constitution, and was therefore unenforceable. Importantly, the Court considered scientific data on HIV transmission and prevention, citing the *Expert Consensus Statement on the Science of HIV in the Context of Criminal Law* among its sources, and relevant international judgements on HIV criminalisation, resulting in an evidence-based ruling which should substantially limit criminalisation.

“When I learned about the crimes of endangerment and that Article 370 was part of the Colombian Penal Code, I knew that I wanted to and could do something to change things. It was very important that the Minister of the Court in charge of the case was in the best disposition to study and listen to different voices through the consultation process.”

Felipe Chica Duque
Law student and activist

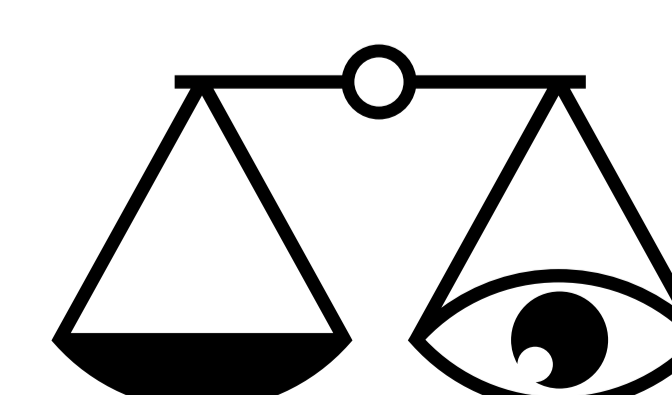
CONCLUSIONS

Collectively, these studies provide a snapshot of how reform of HIV laws can be achieved. While the motivation and process in each country was, and always is, a product of factors unique to the local context, these case studies demonstrate that reform of HIV laws can be accomplished, whether through the legislature or the courts, when the power of advocates including activists, lawyers, and politicians is effectively leveraged, and where latest scientific evidence and human rights protections are utilised.

Key lessons

- Civil society strength, and arguments and advocacy tactics employed, are key to successful legislative reform.
- The importance of high-level champions for the success of reform cannot be overstated.
- Support from and dialogue with international civil society can also be influential, helping to add weight to arguments for reform, and enabling cross-learning about successful advocacy strategies.
- Human rights-based litigation can be a legitimate and successful route to reform especially if strong rights protections exist in national constitutions.
- Regardless of domestic constitutional protections, introducing scientific evidence and relevant international jurisprudence to legal arguments adds authority and increases the likelihood of success.
- Public awareness of law reform is often limited, hence the need for effective awareness-raising campaigns to maximise the positive impacts of reform.

READ THE FULL ANALYSIS OF THESE LAW REFORMS IN THE HIV JUSTICE ACADEMY'S RESOURCE LIBRARY (ACADEMY.HIVJUSTICE.NET)



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