Guidance on Good Practices in HIV Decriminalisation

JULY 2026

HIV JUSTICE NETWORK
HIV JUSTICE WORLDWIDE
GLOBAL PARTNERSHIP FOR ACTION TO ELIMINATE ALL FORMS OF HIV-RELATED STIGMA AND DISCRIMINATION

ACKNOWLEDGEMENTS

This guidance was produced by the HIV Justice Network on behalf of the HIV JUSTICE WORLDWIDE coalition and the Global Partnership for Action to Eliminate All Forms of Stigma and Discrimination. Edwin J Bernard was lead author, with technical input from Alison Symington and research support from Sylvie Beaumont.

Additional input was provided by: Miguel Angel Ramiro Avilés (Universidad de Alcalá - Clínica Legal), André Capretti (HIV Legal Network / Canadian Coalition to Reform HIV Criminalization), Juana Cooke (UNDP), Todd Fuqua (HIV Modernization Movement – Indiana), Kitty Grant (UNDP), Brooke Hollingshead (Toitū te Ao / Positive Women Inc.), Cécile Kazatchkine (HIV Legal Network), Medea Khmelidze (Eurasian Women's Network on AIDS), Boyan Konstantinov (UNDP), Paddy Lawrance (Frontline AIDS), Svitlana Moroz (Eurasian Women's Network on AIDS), Mianko Ramoroson (UNAIDS), and Isis Tapia (Sero Project).

Special thanks to: Umunyana Rugege and Simone Salem (UNAIDS).

Unless otherwise cited, the information in this guidance was derived from the HIV Justice Network's ongoing global monitoring, documentation and stakeholder engagement.

We would especially like to acknowledge the courage and commitment of the growing number of people living with HIV and allies around the world who are challenging laws, policies and practices that inappropriately regulate and punish people living with HIV. Without them, this guidance and the good practice examples highlighted throughout would not have been possible.

Published by: HIV Justice Network (registered as Stichting HIV Justice),
Korte Lijnbaanssteeg 1, Kamer 4007, 1012 SL Amsterdam, The Netherlands

www.hivjustice.net

Enquiries should be addressed to: info@hivjustice.net

Layout and design: Nicholas Feustel

We gratefully acknowledge the financial contribution of UNAIDS to this guidance.

Suggested citation:
HIV Justice Network, *Guidance on Good Practices in HIV Decriminalisation*, 2026.

TABLE OF CONTENTS

DEFINITIONS AND SCOPE

For the purposes of this guidance, the following terms are used with the meanings set out below. Unless otherwise indicated, these definitions apply throughout the document.

Actual transmission
Scientifically and legally established transmission of HIV from one person to another. Allegations of transmission must not rely solely on timing of diagnosis, relationship status, or phylogenetic similarity.

Community-led monitoring
Systematic documentation and analysis of laws, prosecutions, enforcement practices, and impacts by people living with HIV and affected communities to promote accountability and prevent misuse of law.

Criminal liability
Legal responsibility for a criminal offence under applicable law. In the context of HIV, criminal liability should not arise in the absence of intent, scientifically established causation where required, and conduct posing a significant risk of transmission.

Displacement of criminalisation
The re-emergence of punitive HIV-related enforcement through general criminal, public health, or administrative laws following repeal or reform of HIV-specific offences.

General criminal law (as applied to HIV)
Criminal offences of general application (e.g. endangerment, assault, bodily harm, sexual assault, attempted murder) that are used in HIV-related cases involving allegations of non-disclosure, exposure or transmission.

HIV criminalisation
The unjust or inappropriate use of criminal, public health, or administrative laws to regulate, control, or punish people living with HIV on the basis of actual or perceived HIV status, including through allegations of non-disclosure, exposure or transmission, or through sentence enhancements based solely on HIV status.

HIV-specific criminal law
Any law that explicitly criminalises HIV non-disclosure, exposure or transmission, or creates HIV-specific offences or penalties distinct from general criminal law.

Intentional transmission
Deliberate transmission of HIV, requiring proof that a person knew their HIV-positive status, acted with the purpose of transmitting HIV, and actually transmitted HIV. Intent must not be inferred from knowledge of status, non-disclosure, unprotected sex, pregnancy, or sharing drug consumption equipment.

Intersectional discrimination / intersecting criminalisation
Overlapping and mutually reinforcing forms of discrimination, stigma, criminalisation, and social exclusion experienced by individuals or communities on multiple grounds, including gender, race, sexuality, migration status, disability, poverty, drug use, or engagement in sex work.

Key populations
Populations identified by UNAIDS as being at increased risk of HIV and disproportionately affected by punitive laws, including sex workers, gay men and other men who have sex with men, transgender people, people who use drugs, people in prisons and other closed settings, and migrants.

LGBTIQ+
An umbrella term referring to people who are lesbian, gay, bisexual, transgender, intersex, or queer, with the "+" recognising other diverse sexual orientations, gender identities, and sex characteristics, including non-binary and other gender-diverse people. The term is used inclusively, while recognising that terminology and self-identification vary across contexts.

Molecular HIV surveillance
Use of molecular data to monitor HIV transmission patterns for public health purposes. Without safeguards, such data may be misinterpreted or misused in criminal investigations.

Non-disclosure
Not revealing one's HIV-positive status to another person. Non-disclosure alone does not establish intent to transmit, deception, or harm.

Overly broad criminalisation
The application of criminal, public health, or administrative laws to HIV non-disclosure, exposure or transmission in circumstances that are inconsistent with contemporary HIV science, human rights obligations, or principles of criminal law.

Perceived or potential exposure
Allegations of HIV exposure where no transmission has occurred, regardless of whether any significant risk of transmission existed.

Phylogenetic analysis
A scientific method comparing HIV genetic sequences to identify similarities. Phylogenetic analysis can sometimes exclude an alleged transmission linkage between individuals where viral sequences are inconsistent. However, it cannot establish direction of transmission, timing of infection, or exclusive transmission between specific individuals, and must not be treated as determinative proof of criminal liability.

Pre-exposure prophylaxis (PrEP)
Antiretroviral medication used by HIV-negative individuals to prevent HIV acquisition. In legal contexts, PrEP is relevant to assessing whether a significant risk of transmission existed.

Public health or administrative powers
Non-criminal legal measures, including detention, isolation, mandatory testing or treatment orders, or profession bans, imposed on HIV-related grounds in a coercive or punitive manner rather than as evidence-based public health interventions.

Public interest test
The assessment by prosecutors – or other competent authorities, depending on the legal system – of whether a case should proceed, taking into account alternatives to prosecution, legal sufficiency, proportionality, human rights obligations, and likely public health impacts.

Scientific evidence
The best available, peer-reviewed, and internationally accepted medical and scientific evidence relating to HIV transmission, treatment, prevention, and forensic analysis.

Significant risk
A scientifically plausible and legally relevant risk of HIV transmission assessed in light of contemporary HIV science. Conduct posing no possibility, or only a negligible possibility, of transmission does not meet this threshold.

"U=U" (Undetectable = Untransmittable)
The community slogan "U=U" reflects the scientifically established principle that a person living with HIV who is on effective treatment and has an undetectable viral load cannot transmit HIV sexually. In legal contexts, this is relevant to assessments of risk, harm, causation, and proportionality.

Vertical transmission
Transmission of HIV during pregnancy, childbirth, or breastfeeding. For the purposes of this guidance, pregnancy, childbirth, and breastfeeding must never give rise to criminal liability.

Zero-risk conduct
Conduct that poses no significant risk of HIV transmission, including spitting, biting, scratching, kissing, or contact with bodily fluids in ways that cannot transmit HIV.

EXECUTIVE SUMMARY

This guidance sets out good practices for ending overly broad criminalisation of HIV non-disclosure, potential or perceived exposure, and transmission. It reflects contemporary HIV science, public health evidence, human rights standards, and fundamental criminal law principles.

The overarching standard is clear: HIV non-disclosure, exposure and transmission should not be criminalised except in the rare cases of intentional and actual transmission. Criminal law should never be applied where there is no significant risk of transmission, where a person did not know their HIV status, where precautions were taken, or where there was no intent to cause harm.

Despite major scientific and medical advances, HIV criminalisation remains widespread. Across many jurisdictions, HIV-specific criminal laws continue to punish people living with HIV solely on the basis of their status. In others, general criminal laws, public health legislation, or administrative measures are used in ways that are inconsistent with contemporary scientific evidence and human rights obligations.

These approaches undermine public health goals, reinforce stigma and discrimination, increase social and gender inequalities, and expose people living with HIV and affected communities to prosecution, surveillance, and other harms.

Current scientific evidence fundamentally changes the basis on which HIV-related criminal liability has historically been justified. HIV is now a manageable chronic health condition for people with access to treatment. Effective HIV treatment prevents sexual transmission of HIV, and many acts historically associated with HIV criminalisation – including spitting and biting – present no possibility, or only negligible possibility, of transmission. Advances in understanding of vertical transmission, including during pregnancy, childbirth, and breastfeeding, also support rights-based, non-punitive approaches grounded in voluntary healthcare and social support. Contemporary science further establishes important limits on the use of phylogenetic analysis and other forensic evidence in criminal proceedings.

This guidance affirms that HIV-related laws and policies must be grounded in:

- contemporary HIV science;
- human rights, including equality and non-discrimination, privacy, bodily autonomy, due process, and access to justice; and
- fundamental criminal law principles, including legality, foreseeability, intent, causation, proportionality, and evidentiary fairness.

The guidance recognises that HIV criminalisation has disproportionate impacts across communities and often reinforces existing inequalities. Women, migrants, sex workers, gay and bisexual men, transgender people, people who use drugs, prisoners, and people living in poverty are frequently subject to discriminatory policing, prosecution, punishment, and other harms. Women are particularly affected through laws and prosecutions related to vertical transmission. HIV criminalisation is also closely connected to broader systems of stigma, discrimination, and the criminalisation of key populations.

The guidance therefore emphasises that legal reform alone is insufficient. Effective decriminalisation requires broader institutional and structural change, including:

- repeal or narrowing of HIV-specific criminal laws;
- limits on the misuse of general criminal law;
- reform of coercive public health powers;
- science-based prosecutorial and judicial guidance;
- police and judicial education;
- safeguards protecting privacy and confidentiality;
- mechanisms to monitor enforcement practices and prevent regression; and
- meaningful involvement of people living with HIV and affected communities in reform, implementation, and oversight.

The guidance also highlights the growing problem of displacement of criminalisation, where prosecutions continue under general criminal or public health laws following repeal or reform of HIV-specific offences. Monitoring how laws are applied in practice is therefore as important as formal legal reform itself.

Throughout the document, examples from different regions illustrate how governments, courts, prosecutors, civil society organisations, and community-led networks have successfully challenged overly broad HIV criminalisation through legislative reform, strategic litigation, prosecutorial guidance, community mobilisation, and public accountability.

The guidance is intended to support governments, lawmakers, prosecutors, judges, police, national human rights institutions, public health authorities, civil society organisations, donors, UN agencies, and community-led networks in reviewing and reforming laws, policies, and practices affecting people living with HIV.

It should be used alongside existing international guidance, scientific consensus statements, prosecutorial guidance, monitoring and accountability tools such as the HIV Justice Network's *Global HIV Criminalisation Database*, and learning and advocacy resources including the *HIV Justice Academy*.

By implementing the approaches set out in this guidance, countries can strengthen public health systems, reduce stigma and discrimination, uphold human rights, and accelerate progress towards global commitments to end AIDS as a public health threat by 2030.

KEY RECOMMENDATIONS ON HIV DECRIMINALISATION

1. LIMIT HIV-RELATED CRIMINAL LIABILITY TO INTENTIONAL AND ACTUAL TRANSMISSION

- Repeal HIV-specific criminal offences.
- Do not criminalise non-disclosure, perceived or potential exposure, or unintentional transmission.
- Limit any criminal liability to rare cases involving intentional and actual transmission.

2. ENSURE ALL HIV-RELATED LAWS AND PROSECUTIONS ARE GROUNDED IN SCIENCE

- Recognise that effective HIV treatment prevents sexual transmission of HIV.
- Exclude prosecutions where there is no significant risk of transmission.
- Prohibit misuse of phylogenetic analysis and other forensic evidence.
- Ensure courts, prosecutors, and investigators rely on current scientific evidence.

3. PREVENT MISUSE OF GENERAL CRIMINAL, PUBLIC HEALTH, AND ADMINISTRATIVE LAWS

- Prevent substitution of HIV-specific offences with overly broad use of general criminal law.
- Reform coercive public health and administrative measures that punish or control people living with HIV without public health justification.
- Prohibit criminalisation in relation to vertical transmission, including during pregnancy, childbirth, or breastfeeding.

4. APPLY HUMAN RIGHTS AND FUNDAMENTAL CRIMINAL LAW PRINCIPLES

- Require proof of intent, causation, and actual transmission before criminal liability may arise.
- Ensure legality, foreseeability, proportionality, and evidentiary fairness in all HIV-related proceedings.
- Protect privacy, confidentiality, equality and non-discrimination, due process, bodily autonomy, and sexual and reproductive rights.

5. ESTABLISH INSTITUTIONAL SAFEGUARDS

- Develop and implement science-based prosecutorial and judicial guidance.
- Train police, prosecutors, judges, public health authorities, and other relevant officials on contemporary HIV science and human rights standards.
- Create safeguards against arbitrary, discriminatory, or stigma-driven enforcement.

6. ENSURE EQUITY AND COMMUNITY LEADERSHIP

- Address disproportionate impacts and intersecting inequalities affecting women and key populations.
- Meaningfully involve people living with HIV and affected communities in legal reform, implementation, monitoring, and oversight.
- Support community-led monitoring, advocacy, legal support, and accountability mechanisms.

7. PREVENT REGRESSION AND PROVIDE REDRESS

- Monitor enforcement practices following legal and policy reform.
- Prevent displacement of criminalisation into general criminal, public health, or administrative law.
- Establish mechanisms for appeal, expungement, rehabilitation, and, where appropriate, compensation for wrongful or disproportionate prosecutions.

1. Introduction

This guidance is issued at a critical moment in the global HIV response. Over the past 25 years, successive *Political Declarations on HIV and AIDS* and *Global AIDS Strategies* have recognised that punitive and discriminatory laws undermine effective HIV responses. Countries have repeatedly committed to creating legal and policy environments that enable rather than obstruct HIV prevention, testing, treatment, care, and support.

Central among these commitments are the societal enabler targets of the *Global AIDS Strategy 2026-2031*, including the reduction of punitive laws and policy environments that restrict access to services for key populations and people living with HIV to fewer than ten per cent of countries by 2030. These targets recognise that human rights, legal certainty, and access to justice are essential components of an effective and sustainable HIV response.

Despite major scientific and medical advances, the criminalisation of HIV non-disclosure, exposure and transmission remains widespread. Criminalisation occurs through HIV-specific offences, the expansive application of general criminal offences, and public health or administrative provisions resulting in punitive outcomes. (UNAIDS, *Ending overly broad criminalisation of HIV non-disclosure, exposure and transmission* Guidance Note, 2013)

These laws and practices continue to undermine public health and human rights. They reinforce stigma and discrimination and, in some contexts, may deter HIV testing and engagement with care. HIV criminalisation is also shaped by structural inequalities, including gender inequality, racism, poverty, migration status, homophobia, transphobia, and the criminalisation of key populations. An intersectional approach is therefore applied throughout this guidance.

This guidance supports governments, lawmakers, criminal legal system actors, civil society organisations, community-led networks, and other relevant stakeholders to review, reform, and implement laws and policies that support the global HIV response. It is grounded in principles of fairness, justice, and equality, informed by contemporary HIV science and international human rights standards.

This guidance is based on three interrelated dimensions:

- **Public health**
  Criminalisation does not reduce HIV transmission and may deter testing, delay treatment initiation, and undermine trust in health systems. (UNAIDS / UNDP, *Criminalization of HIV Transmission* Policy Brief, 2008)

- **Human rights**
  Punitive laws and practices infringe rights to privacy, equality and non-discrimination, bodily autonomy, liberty, security of the person, due process, and sexual and reproductive health and rights. (Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, 2012; and its 2018 supplement)

- **Criminal law principles**
  Many HIV-related offences fail to meet the standards of legality, foreseeability, intent, causation, and proportionality central to fair and rational criminal law. (UNAIDS Guidance Note, 2013)

Accordingly, this guidance examines the forms, drivers, and impacts of HIV criminalisation; outlines relevant scientific, human rights, and legal considerations; presents examples of reform; and concludes with practical recommendations to support implementation in diverse legal contexts.

It also cautions against reforms that may inadvertently exacerbate inequities – for example, approaches that rely on repeated viral load testing or consistent access to treatment, which may benefit people in well-resourced settings while disadvantaging those facing structural barriers.

Developed by the HIV Justice Network on behalf of the HIV JUSTICE WORLDWIDE coalition, as part of the *Global Partnership for Action to Eliminate All Forms of HIV-Related Stigma and Discrimination*, and with support from UNAIDS, this publication is intended for actors involved in legal and policy reform. These include ministries responsible for justice, health, gender, and social affairs; lawmakers and parliamentary committees; national human rights institutions; prosecutors, judges, and law enforcement officials; community-led organisations; regional bodies; UN agencies; and academic and legal practitioners.

The guidance addresses both HIV-specific provisions and the misuse of general criminal offences, including assault, grievous bodily harm, endangerment, and public health or administrative offences.

It is informed by review of national legislation, case law, epidemiological evidence, policy documents, and community-led research, and by consultations with people living with HIV, legal and human rights experts, community networks, UN partners, and government representatives.

This guidance is informed by the extensive body of international guidance, scientific consensus, legal principles, and human rights standards that has evolved over the past two decades. Chapter 3 provides an overview of this framework and explains how it underpins the good practices described throughout the guidance.

While the overarching principle is clear – HIV non-disclosure, potential or perceived exposure, and transmission should not be criminalised except in rare cases of intentional and actual transmission – pathways to reform vary across jurisdictions. Progress often requires incremental change, sustained advocacy, institutional sensitisation, and capacity-building.

2. Understanding HIV criminalisation: forms, drivers, and impacts

HIV criminalisation
is the unjust or inappropriate use of criminal,
public health, or administrative laws to regulate, control, or punish
people living with HIV on the basis of actual or perceived HIV status,
including through allegations of non-disclosure, exposure or transmission,
or through sentence enhancements based solely on HIV status.

The application of criminal law to HIV non-disclosure, exposure and transmission continues to raise significant public health, human rights, and legal concerns. Despite major advances in HIV science and treatment, criminal legal system practices in many jurisdictions remain rooted in outdated concepts of risk and harm in relation to HIV.

These practices frequently ignore established criminal law principles – foreseeability, intent, causality, proportionality, and proof – and undermine evidence-informed HIV responses. (UNAIDS, *Ending overly broad criminalisation of HIV non-disclosure, exposure and transmission* Guidance Note, 2013)

HIV decriminalisation should therefore be assessed within a framework that reflects the best available scientific, medical, and legal evidence. Such a framework requires careful analysis of the forms criminalisation takes, the drivers of these approaches, and the impacts that result. (UNAIDS Guidance Note, 2013)

2.1. Forms of HIV criminalisation

2.1.1. HIV-specific criminal laws

According to the HIV Justice Network's continuously updated *Global HIV Criminalisation Database*, more than 80 countries have HIV-specific criminal statutes that define non-disclosure, exposure or unintentional transmission as criminal offences.

These offences are often drafted broadly, sometimes using open-ended formulations (such as provisions criminalising anyone who "does anything" capable of transmitting HIV), permitting prosecution for conduct that carries no or negligible risk of transmission. In some countries, prosecutable acts can include condom-protected sex, sex where a person has an undetectable viral load, oral sex, and other acts with no biological possibility of transmission, such as biting or spitting, as well as conduct related to conception, pregnancy, childbirth, or breastfeeding. Such provisions fail to reflect contemporary scientific knowledge and often result in unjust and inappropriate criminal liability. (UNAIDS Guidance Note, 2013)

2.1.2. Application of general criminal laws

In some of these same countries, and also in many other jurisdictions around the world, HIV criminalisation can occur through the application of general offences such as assault, grievous bodily harm, reckless endangerment, criminal negligence, disease transmission offences, sexual assault, or attempted murder. These offences can be interpreted in ways that overstate the risks of HIV acquisition and the potential harm of living with HIV. Prosecutions may proceed even when there is no intent to transmit, no transmission has occurred, or the conduct poses no significant risk of HIV transmission. (UNAIDS Guidance Note, 2013)

2.1.3. Public health and administrative provisions

Some jurisdictions use public health measures and administrative law to impose restrictions on people living with HIV, including movement controls or restrictions, reporting obligations, surveillance of parents and families, involuntary isolation, or prohibitions on certain occupations. Although framed as regulatory or preventive rather than punitive, these measures often function as a displacement of criminalisation and raise similar human rights concerns. (Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, 2012; and its 2018 supplement)

2.2. Drivers of HIV criminalisation

2.2.1. Historical fear, stigma and moral judgement

Many HIV criminalisation provisions were drafted in the early decades of the epidemic, when limited scientific knowledge and intense social fear shaped policy responses. HIV was widely perceived as fatal, exceptional, and morally charged. Consequently, laws emerged that equated HIV with criminal danger, rather than reflecting evidence-based public health principles. (Csete, Elliott & Bernard, *So many harms, so little benefit: a global review of the history and harms of HIV criminalisation*, Lancet HIV, 2022)

2.2.2. Misunderstanding or misuse of HIV science

HIV criminalisation is frequently driven by misconceptions about HIV transmission risk and harm. The *Expert Consensus Statement* clarifies that transmission risk in many acts is extremely low or zero; that for most people with access to treatment HIV is a manageable chronic condition; and that scientific tests, such as phylogenetic analysis, cannot definitively establish transmission between two individuals. (Barré-Sinoussi et al., *Expert consensus statement on the science of HIV in the context of criminal law*, Journal of the International AIDS Society, 2018)

2.2.3. Structural inequalities and discrimination

HIV criminalisation disproportionately affects people already experiencing discrimination and heightened surveillance, including women, sex workers, migrants, gay and bisexual men, transgender people, Indigenous people, and people who use drugs. Gendered inequalities are particularly pronounced. Women and other people who can become pregnant, including some

transgender men, are often diagnosed earlier than their partners through antenatal or other reproductive health services, increasing vulnerability to accusation, prosecution, violence, or coercion within intimate relationships. (Csete, Elliott & Bernard, Lancet HIV, 2022)

2.2.4. Political incentives and punitive legal cultures

Criminalisation may be used as a symbolic response to public concern, creating the appearance of action without actually reducing HIV transmission. Legislators and prosecutors may frame punitive approaches as necessary for public safety, despite evidence that they undermine effective HIV responses. (Csete, Elliott & Bernard, Lancet HIV, 2022)

2.2.5. Limited access to justice and legal literacy

People living with HIV may lack access to legal representation, rights information, or accessible complaint and redress mechanisms. Justice system actors may also lack adequate training on contemporary HIV science and human rights standards, resulting in decisions inconsistent with criminal law principles, scientific evidence, and international guidance. (Csete, Elliott & Bernard, Lancet HIV, 2022; HIV Justice Network, *Advancing HIV Justice* series, 2013 - 2023)

2.3. Impacts of HIV criminalisation

2.3.1. Public health consequences

There is no evidence that criminalisation reduces HIV transmission. Rather, the use of criminal law undermines public health and, in some settings, has been shown to discourage HIV testing (because knowledge of one's status can trigger criminal liability), and to create disincentives to disclosure, particularly in contexts where disclosure may lead to violence. Criminalisation also fosters misconceptions that only people living with HIV are responsible for preventing transmission, contradicting shared responsibility approaches endorsed by public health authorities. (UNAIDS / UNDP, *Criminalization of HIV Transmission* Policy Brief, 2008; Csete, Elliott & Bernard, Lancet HIV, 2022)

2.3.2. Human rights violations

Criminalisation interferes with rights to privacy, bodily autonomy, equality before the law, liberty and security of the person, freedom from discrimination, and sexual and reproductive health and rights. Criminal investigations often involve intrusive inquiries into intimate relationships, medical records, and sexual histories. Many cases involve individuals who neither intended harm nor posed a significant risk of transmission, raising serious concerns regarding due process, fairness, and proportionality in the application of criminal law. (UNAIDS Guidance Note, 2013)

2.3.3. Increased stigma and discrimination

Criminalisation reinforces stigma by portraying people living with HIV as threats to public safety. Media coverage of HIV-related cases is often sensationalist, naming or clearly identifying individuals, and framing allegations as established facts. While arrests and charges receive prominent coverage, acquittals, dismissals or dropped cases rarely receive follow-up reporting. As a result, inaccurate and discriminatory articles remain online indefinitely, creating lasting reputational harm, exposure to harassment or violence, loss of employment, and social exclusion for people who were never found guilty. This enduring public stigmatisation undermines trust, discourages disclosure, and further deters engagement with HIV testing, treatment, and care. (Hastings C, *Digital News and HIV Criminalization: The Social Organization of Convergence Journalism*, University of Toronto Press, 2025; Csete, Elliott & Bernard, Lancet HIV, 2022)

2.3.4. Disproportionate impact on marginalised populations

Criminalisation compounds existing inequalities and forms of social exclusion. For example, sex workers may face harsher penalties solely due to HIV status; LGBTIQ+ people may face dual prosecution under HIV-related offences as well as laws criminalising same-sex sexual conduct, gender expression, or so-called "morality" offences; and migrants may face detention, deportation or exclusion following charges or convictions. These overlapping forms of criminalisation heighten vulnerability to both HIV and human rights violations. (Csete, Elliott & Bernard, Lancet HIV, 2022)

2.3.5. Gendered impact

HIV criminalisation has disproportionate and distinct impacts on women, girls, transgender people, and gender-diverse populations. Women are often the first within a couple to learn their HIV-positive status through antenatal care, increasing their visibility to authorities and their risk of prosecution. Criminalisation ignores power imbalances, economic dependency, and the risk of violence following disclosure. Evidence shows women are frequently prosecuted or surveilled because of pregnancy, breastfeeding, or inability to negotiate disclosure or protection, undermining their rights and access to care. Transgender and gender-diverse people may also face heightened surveillance, discriminatory policing, and compounded criminalisation linked to both HIV status and gender identity. (International Community of Women Living with HIV, *Updated position paper on the criminalization of HIV non-disclosure, exposure and transmission*, 2015; Csete, Elliott & Bernard, Lancet HIV, 2022)

2.3.6. Risks associated with surveillance and forensic technologies

The expansion of molecular HIV surveillance and digital data systems creates additional risks. Without safeguards, these tools and datasets may be accessed by law enforcement through legal or administrative processes (such as subpoenas, court orders, or data-sharing arrangements), or otherwise used in criminal investigations, despite scientific limitations on establishing transmission directionality. (HIV JUSTICE WORLDWIDE, *Molecular HIV surveillance: A global review of human rights implications*, 2021; Csete, Elliott & Bernard, Lancet HIV, 2022)

2.4. The need for reform

International guidance consistently recommends that criminal law should be limited to rare cases of intentional transmission, which are defined as including:

1. the accused having knowledge of their HIV-positive status;
2. the accused intends to transmit HIV to another person; and
3. actual transmission of HIV occurs.

Even in such rare cases, general criminal law – rather than HIV-specific offences – should apply. (UNAIDS / UNDP Policy Brief, 2008; UNAIDS Guidance Note, 2013; Global Commission on HIV and the Law, 2012 and its 2018 supplement)

All other applications – including non-disclosure, perceived or potential exposure, and unintentional transmission – are overly broad and inconsistent with human rights obligations, contemporary science, and principles of criminal justice.

Reforming punitive legal environments is essential to realising the objectives of the *Global AIDS Strategy 2026 - 2031*, including the commitment that fewer than 10 % of countries maintain punitive laws by 2030.

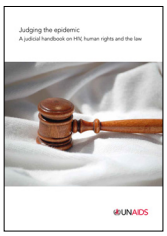
3. Scientific, Legal, and Human Rights Foundations

A fair, rational, and proportionate application of the criminal law in the context of HIV requires alignment with contemporary scientific evidence, established principles of criminal law, and international human rights standards.

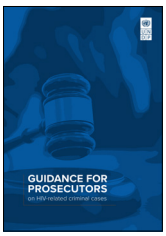
These foundations have been articulated consistently across key global normative guidance, including:

UNAIDS / UNDP:
Criminalization of HIV Transmission
Policy Brief (2008)

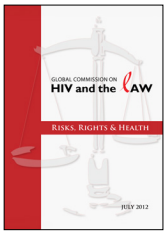
UNAIDS:
Ending overly broad criminalisation of HIV non-disclosure, exposure and transmission
Guidance Note (2013)



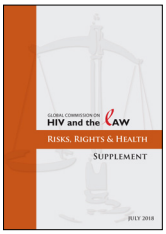
UNAIDS:
Judging the epidemic: A judicial handbook on HIV, human rights and the law
(2013)



UNDP:
Guidance for prosecutors on HIV-related criminal cases
(2021)



Global Commission on HIV and the Law:
HIV and the Law: Risks, Rights & Health
(2012)



Global Commission on HIV and the Law:
HIV and the Law: Risk, Rights & Health – 2018 supplement

Barré-Sinoussi et al.:
Expert consensus statement on the science of HIV in the context of criminal law
(2018)

Taken together, these documents establish a coherent normative framework, confirming that overly broad criminalisation is incompatible with effective public health responses and inconsistent with fundamental legal principles and human rights obligations.

Normative foundations of global guidance

Global guidance has developed a coherent body of legal, scientific, and human rights standards that shape how HIV-related criminal law should be understood and applied. Across instruments, several consistent normative contributions emerge.

1. **Defining the limits of criminal law:** consistently establishes that criminal law should be used only in exceptional circumstances and must not extend to non-disclosure, exposure without risk, or unintentional transmission; clarifies that criminalisation should not be a routine public health tool. (UNAIDS/UNDP 2008; UNAIDS 2013; Global Commission 2012/2018; UNDP 2021)

2. **Establishing scientific parameters for legal interpretation:** clarifies how HIV science should inform legal assessments of risk, harm, and causation. It defines "no significant risk," incorporates the implications of treatment and prevention (including "U=U" and PrEP), and sets limits on the use of scientific evidence such as phylogenetics. (*Expert Consensus Statement* 2018; UNAIDS 2013; UNDP 2021; *Judicial Handbook* 2013)

3. **Articulating legal thresholds and safeguards:** defines key criminal law concepts – including intent, causation, and proportionality – and emphasises the need for clear evidentiary standards, appropriate defences, and safeguards against overly broad or unjust prosecutions. (UNAIDS 2013; *Judicial Handbook* 2013; UNDP 2021)

4. **Preventing misuse and displacement of law:** highlights the risks of HIV being criminalised through general criminal offences, public health laws, or administrative measures, particularly following repeal of HIV-specific laws; calls for safeguards against such displacement.
(Global Commission 2012/2018; UNAIDS 2013; UNDP 2021)

5. **Embedding human rights protections:** integrates human rights standards – including privacy, equality, non-discrimination, due process, and sexual and reproductive health and rights – into all aspects of legal response.
(UNAIDS 2013; Global Commission 2012/2018; *Judicial Handbook* 2013)

6. **Recognising structural inequality and gendered impacts:** highlights how criminalisation disproportionately affects women, transgender and gender-diverse people, and key populations, and emphasises the need to account for power imbalances, violence, and social vulnerability in legal responses.
(Global Commission 2012/2018; UNAIDS 2013)

7. **Shaping prosecutorial and judicial practice:** translates principles into operational standards, particularly for prosecutors and judges, including public interest considerations, evidentiary caution, and proportional sentencing. (UNDP 2021; *Judicial Handbook* 2013)

8. **Addressing past harms and ongoing consequences:** goes beyond prospective reform to call for review of past convictions, removal of unjust records, and accountability for discriminatory enforcement. (Global Commission 2012/2018)

3.1. Human rights foundations

3.1.1. Rights affected by overly broad criminalisation

HIV criminalisation can violate rights to:

- privacy;
- bodily autonomy;
- equality and non-discrimination;
- dignity;
- liberty and security of the person;
- due process;
- sexual and reproductive health and rights; and
- the highest attainable standard of health.

3.1.2. Disproportionate impact and structural inequalities

HIV criminalisation disproportionately affects women, sex workers, migrants, transgender and gender-diverse people, gay and bisexual men, people who use drugs, and people affected by poverty, racism, and other forms of structural inequality. Women and gender-diverse people may face heightened vulnerability due to gender inequality, antenatal HIV testing practices, unequal power dynamics in relationships, and the risk of intimate partner violence, coercion, or retaliation following disclosure of HIV status. Criminalisation reinforces existing social and structural inequities, exacerbates stigma and discrimination, and can deter access to HIV testing, treatment, and support services. (Global Commission on HIV and the Law, 2012; Csete, Elliott & Bernard, *So many harms, so little benefit: a global review of the history and harms of HIV criminalisation*, Lancet HIV, 2022)

3.1.3. What this means for reform

Because HIV criminalisation can result in these diverse human rights violations, criminal law should be applied to HIV only in the rarest circumstances and in strict conformity with principles of legality, intent, causation, proportionality, and proof. Laws that criminalise non-disclosure, perceived or potential exposure, or unintentional transmission fail these tests and should be repealed or rendered inoperative through binding guidance. Where criminal law remains, human rights safeguards must be enforced at every stage to prevent arbitrary, discriminatory, or abusive investigations and/or prosecutions.

3.2. Criminal law principles

The 2013 UNAIDS Guidance Note emphasises that criminal law in HIV-related cases should be guided by core criminal law principles, including legality, foreseeability, intent, causation, proportionality, and proof. UNAIDS' *Judging the epidemic: A judicial handbook on HIV, human rights and the law* further highlights the importance of these principles in judicial decision-making, particularly in relation to scientific evidence, culpability, consent, and standards of proof. These principles are further operationalised in the UNDP *Guidance for prosecutors on HIV-related criminal cases* which outlines how how evidentiary standards, intent, causation, and public interest considerations should inform prosecutorial decision-making.

3.2.1. Legality and foreseeability

Criminal offences must be clearly defined, predictable, and non-retroactive. In the context of HIV, overly broad offences often rely on vague and scientifically imprecise terms such as "exposure", "endangerment", or "risk" without clearly defining the threshold of harm or likelihood of transmission required for criminal liability. Such vagueness undermines legal certainty, weakens foreseeability, and enables arbitrary or discriminatory enforcement. (UNAIDS & OHCHR, *International Guidelines on HIV/AIDS and Human Rights*, 2006; UNAIDS Guidance Note, 2013).

3.2.2. Intent and mental culpability

UNAIDS, UNDP and the Global Commission on HIV and the Law all affirm that the criminal law should be limited to rate cares of intentional transmission, where the accused:

1. knew their HIV-positive status;
2. acted with the intention to transmit HIV; and
3. actually transmitted HIV.

Knowledge of HIV-positive status, non-disclosure, or engagement in sexual activity should not, by themselves, be treated as proof of intent to transmit HIV. Courts should also avoid inferring criminal intent solely from a person's treatment status, including decisions not to initiate or continue HIV treatment. Access to and uptake of HIV treatment are public health goals and should not be transformed into coercive legal obligations through criminal law. As *Judging the epidemic* emphases, courts should avoid inferring intent solely from non-disclosure or from circumstances shaped by fear of violence, coercion, abandonment, or stigma.

3.2.3. Causation and evidentiary standards

Causation requires proof, to the applicable criminal standard, that the accused's conduct resulted in HIV transmission. Courts must carefully assess scientific and medical evidence, including alternative sources of HIV acquisition, the timing of testing and diagnosis, and the limitations of phylogenetic analysis, which cannot conclusively determine who transmitted HIV to whom. Public health experts, scientists, and human rights advocates have also raised concerns regarding the potential misuse of molecular HIV surveillance and related genetic

data in criminal investigations and prosecutions. *Judging the Epidemic* emphasises that judges should scrutinise expert evidence carefully and avoid reversing the burden of proof onto the accused. In many alleged HIV transmission cases, establishing causation to the required criminal standard is scientifically difficult and, in some cases, impossible.

3.2.4. Proportionality of penalties

Sentences for HIV-related offences frequently include long terms of imprisonment, mandatory sex offender registration, deportation, and other severe penalties. These outcomes are often disproportionate, particularly where no transmission occurred or where the conduct posed little or no possibility of transmission. The 2013 UNAIDS Guidance Note emphasises that HIV is a chronic, manageable health condition and that prosecutions for HIV non-disclosure, exposure or transmission should not involve charges such as attempted murder, aggravated assault, or similar serious violent offences.

3.3. Scientific foundations

3.3.1. Transmission dynamics and significant risk

Scientific evidence demonstrates that HIV transmission requires specific biological conditions and occurs through limited and well-defined routes. International guidance consistently emphasises that criminal law should not be applied in the absence of a significant risk of transmission.

The *Expert Consensus Statement* notes that a wide range of acts historically prosecuted – such as spitting, biting, oral sex, sex with a condom, or sex when the person living with HIV has an undetectable viral load – carry negligible or no possibility of HIV transmission. Scientific evidence further shows that the likelihood of transmission varies substantially according to the type of exposure, viral load, stage of infection, and the presence or absence of other factors affecting transmission. Many acts prosecuted, therefore, do not constitute a meaningful possibility of transmission. Criminalising conduct lacking biological plausibility is scientifically unsound and legally unjustifiable.

3.3.2. Treatment, viral suppression and "U=U"

The goal of antiretroviral therapy (ART) is to suppress viral load to undetectable levels, which protects the health of the person living with HIV and also prevents the sexual transmission of HIV. This scientific consensus is reflected in the global "undetectable = untransmittable" ("U=U") campaign and has been endorsed by UNAIDS and leading international scientific bodies. (UNAIDS, *Undetectable = Untransmittable: Public Health and Human Rights Implications*, 2018)

The *Expert Consensus Statement* stresses that a person living with HIV who has sustained an undetectable viral load has no possibility of sexually transmitting HIV. Criminal laws or prosecutions that disregard treatment effectiveness, or that assume HIV remains invariably dangerous, contradict established evidence and misrepresent the nature of HIV as a chronic, manageable condition.

3.3.3. HIV as a chronic, manageable health condition

Advances in antiretroviral therapy have transformed HIV from a life-threatening illness into a chronic, manageable health condition for people with access to treatment. People living with HIV who are diagnosed early and receive effective treatment can expect long, healthy lives comparable to those of the general population. International guidance therefore recognises that legal approaches based on outdated assumptions that HIV inevitably causes serious bodily harm or death are no longer scientifically justified.

The 2013 UNAIDS Guidance Note emphasises that the current reality of living with HIV should be reflected in criminal law and that prosecutions should not involve charges such as attempted murder, aggravated assault, or other serious violent offences based solely on HIV status or the possibility of transmission. Criminal law should take account of contemporary scientific evidence regarding both the likelihood and consequences of HIV transmission.

3.3.4. Scientific limits of phylogenetic and forensic evidence

Scientific experts recognise that phylogenetic analysis may help exclude alleged transmission links where viral sequences are not sufficiently related. However, even closely related viral sequences cannot establish direct transmission between two individuals, determine the direction of transmission, or exclude the possibility of intermediary sources of infection. The *Expert Consensus Statement* confirms that phylogenetic evidence cannot determine the direction, timing, or exclusivity of HIV transmission. Misinterpretation or overstatement of such evidence may contribute to unjust prosecutions or convictions and undermine scientific integrity.

3.3.5. What this means for reform

These scientific developments demonstrate that overly broad HIV criminalisation lacks a sound evidentiary basis and should not be maintained. While societies determine the scope of criminal law, HIV-related offences have historically been justified by assumptions about transmission possibility and harm that are not supported by current scientific evidence.

Law and policy should therefore be informed by contemporary HIV science and reflect current understanding of transmission dynamics and treatment effectiveness. Legislators, prosecutors, and judges should exclude criminal liability for conduct that poses no significant risk of transmission and recognise that effective treatment eliminates the possibility of sexual transmission. Scientific evidence should be integrated into statutory drafting, prosecutorial decision-making, and judicial reasoning, and allegations regarding transmission possibility that are inconsistent with established science should not satisfy criminal evidentiary standards.

3.4. Prosecutorial and judicial guidance

3.4.1. Prosecutorial standards

UNDP's *Guidance for prosecutors on HIV-related criminal cases* advises prosecutors to:

- avoid proceeding where scientific evidence does not support a significant possibility of transmission;
- require proof of intent to transmit and actual transmission;
- avoid reliance on stigma, stereotypes, or discriminatory assumptions;
- refrain from overstating or misusing phylogenetic evidence; and
- consider non-criminal, public health–based responses where appropriate.

This guidance reflects the international consensus that HIV-related prosecutions should be limited to exceptional circumstances.

3.4.2. Judicial responsibilities

UNAIDS' *Judging the epidemic* provides a detailed framework for judges and magistrates adjudicating HIV-related cases. It emphasises the importance of:

- relying on accurate, up-to-date scientific evidence;
- assessing intent and transmission possibility based on objective criteria;
- ensuring proportionality in sentencing;
- safeguarding confidentiality and privacy;
- avoiding misinterpretation of scientific evidence, especially phylogenetic evidence; and
- considering the broader human rights implications of criminalisation.

Judges and magistrates are encouraged to recognise HIV as a chronic, manageable health condition and to reject outdated assumptions that treat HIV infection as inherently life-threatening or equivalent to serious violent offending.

3.5. Conclusion

Across international and expert guidance the conclusion is consistent: overly broad criminalisation of HIV non-disclosure, exposure and unintentional transmission often lacks scientific, legal and human rights justification. Contemporary HIV science demonstrates that many acts prosecuted under HIV-related criminal laws pose little or no possibility of transmission, while legal and human rights principles require clear limits on criminal liability, proof of intent and causation, and proportionate responses. Aligning criminal law with scientific evidence and human rights standards is essential to ensuring justice, strengthening public health outcomes, and supporting the global goal of ending AIDS as a public health threat.

Core principles for HIV decriminalisation

The following principles are consistently reflected across international scientific, legal, public health, and human rights guidance and underpin the recommendations in this document. They should guide law reform, policy development, prosecutorial decision-making, and judicial interpretation. These principles are applied throughout this guidance and should inform the interpretation of reform pathways, case studies, and policy recommendations.

1. **Criminal law must be limited to intentional transmission only**
   Criminal liability should be limited to exceptional cases where a person knows their HIV-positive status, acts with the intention of transmitting HIV, and HIV is in fact transmitted. Non-disclosure, perceived or potential exposure, and unintentional transmission should never be criminalised.

2. **HIV science must inform interpretations of risk, harm, and liability**
   Laws and prosecutions must reflect current scientific evidence, including that effective antiretroviral treatment eliminates the possibility of sexual transmission risk ("U=U"); PrEP prevents HIV acquisition; and many acts historically criminalised pose no significant risk of transmission. Conduct involving no or negligible possibility – including spitting, biting, scratching, oral sex, condom-protected sex, or sex involving viral suppression or PrEP – should not give rise to criminal liability.

3. **HIV is a chronic, manageable health condition**
   Criminal law must must not rely on outdated assumptions that HIV is inevitably fatal, exceptional, or equivalent to serious violent harm. Charges, sentencing, and aggravating factors must reflect contemporary medical realities.

4. **General criminal and public health laws must not be misused**
   Repeal of HIV-specific offences must not result in people living with HIV being punished through the inappropriate use of sexual assault laws, general assault or "endangerment" offences lacking a scientific basis; or coercive public health or administrative powers. Any application of general law must remain strictly limited to intentional transmission and meet all criminal law safeguards.

5. **Human rights safeguards apply at every stage**
   All HIV-related legal processes must protect privacy and confidentiality, equality and non-discrimination, bodily autonomy and personal security, due process and fair trial rights, and meaningful access to justice. Fear of violence, coercion, stigma, or other serious harm must be recognised as legally relevant factors.

6. **Pregnancy, childbirth, and breastfeeding must never be criminalised**
   Criminalisation in these contexts is scientifically unjustified, discriminatory, and harmful to women, gender-diverse people, children and public health. Supportive, evidence-based healthcare approaches – not punishment – are the most appropriate response.

4. Ensuring equity in HIV decriminalisation

Legal systems are typically grounded in principles of equality before the law. However, in the context of HIV criminalisation, formal equality is insufficient. Because laws are applied within unequal social conditions, identical legal standards can produce unequal and discriminatory outcomes. An equity-based approach – recognising and addressing structural inequalities – is therefore required to ensure that decriminalisation achieves its intended human rights and public health outcomes.

The purpose of reform is not only to remove unjust laws, but to prevent the criminal law from reinforcing patterns of disadvantage that drive HIV vulnerability, limit access to services, and undermine public health. If legal reform does not reduce these inequities in practice, it fails both its human rights and its public health objectives. (Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, 2012; and its 2018 supplement)

A wide body of evidence from international agencies, as well as social and health scientists, demonstrates that HIV criminalisation does not operate neutrally. It is disproportionately enforced against people already marginalised by gender, race, sexuality, class, social status, disability, age, migration status, and incarceration. These structural inequalities shape who is policed, prosecuted, and convicted, and also who is able to access testing, treatment, legal support, and justice. (Csete, Elliott & Bernard, *So many harms, so little benefit: a global review of the history and harms of HIV criminalisation*, Lancet HIV, 2022)

Social science research shows that criminalisation interacts with stigma, poverty, and power imbalances, including gender-based violence and unequal negotiating power in relationships, making it harder for individuals – especially women and key populations – to safely disclose HIV status or access care. Health science evidence further demonstrates that punitive legal environments discourage testing and treatment uptake, thereby worsening health outcomes and increasing, rather than reducing, the risk of transmission. (Csete, Elliott & Bernard, Lancet HIV, 2022)

For these reasons, equity is the benchmark against which decriminalisation efforts should be assessed: laws and their implementation must actively reduce, rather than reproduce, structural inequalities and their harmful effects on both individual rights and public health.

This chapter sets out equity as a core principle for law reform, translating the scientific, legal, and human-rights foundations covered in Chapters 2 and 3 into concrete policy implications. It examines how HIV criminalisation affects different groups and proposes legal reforms that truly support health, dignity, and justice.

4.1. Equity as a core principle of legal reform

Global guidance

The 2008 UNAIDS / UNDP Policy Brief and the 2013 UNAIDS Guidance Note warn that criminalisation exacerbates inequality and recommend limiting to criminal law to rare cases of intentional transmission, consistent with human rights principles and best available scientific evidence. The Global Commission on HIV and the Law similarly stresses that punitive legal environments deepen disparities in access to health, justice, and dignity.

Policy implications

Reforms must:

- ensure protections and benefits extend beyond people with stable access to HIV testing, treatment, and care;
- avoid legal standards or defences that depend on forms of "responsible behaviour" only realistically available to people with secure housing, income, legal status, or safe relationships; and
- reflect the lived realities of people and communities disproportionately targeted by policing, prosecution, and incarceration.

4.2. Gender justice and the rights of women

Global guidance

The Global Commission on HIV and the Law highlights the gendered impacts of criminalisation, including heightened risks for women who discover their HIV status through antenatal testing and are subsequently blamed for transmission to partners. UNAIDS and UNDP guidance further emphasises that expectations of disclosure often fail to account for risks of violence, abandonment, stigma, and economic dependency.

Evidence and human rights standards further indicate that gender norms, gender identity, and gender expression shape vulnerability to criminalisation, including through discriminatory policing, and unequal application of the law. (UNDP et al., *Implementing comprehensive HIV and STI programmes with transgender people*, 2016)

Policy implications

Reforms must ensure:

- legal protections for people who cannot safely disclose due to risks of violence, coercion, or abandonment;
- strong confidentiality and privacy protections;

- meaningful participation of women's networks and organisations representing transgender and gender-diverse people in law reform processes; and
- alignment with CEDAW obligations related to equality, bodily autonomy, access to justice, and freedom from violence. [1]

4.2.1. Sexual violence and HIV: limits on the use of criminal law

International guidance distinguishes clearly between consensual sexual activity involving a person living with HIV and acts of sexual violence. HIV criminalisation should not regulate consensual sex, except in the extremely rare case of intentional HIV transmission. In cases of rape or other sexual violence, the offence is the violence itself. HIV status should never redefine the offence, create a separate HIV-related crime, or justify disproportionate punishment.

International standards

Global guidance consistently distinguishes consensual sexual activity from sexual violence and affirms that existing sexual offence laws are sufficient to address rape and other forms of sexual assault involving HIV.

The 2008 UNAIDS / UNDP Policy Brief states that where a violent offence such as rape or sexual assault results in HIV transmission, or creates a significant risk of transmission, the accused's HIV-positive status may be considered an aggravating factor in sentencing only if the person knew their HIV-positive status at the time of the offence. It further states that HIV-specific offences should be avoided and that general criminal law should apply only in exceptional cases.

The 2013 UNAIDS Guidance Note further clarifies that:

- HIV-specific charges are inappropriate;
- HIV exposure alone should not be criminalised;
- HIV should not be treated as a "deadly weapon"; and
- prosecutions must reflect contemporary scientific evidence and established criminal law principles, including legality, intent, causality, proportionality, and proof.

The Global Commission on HIV and the Law affirmed that survivors of sexual violence are entitled to justice and effective remedies, while cautioning against punitive HIV-related approaches that undermine human rights and public health.

Judging the epidemic similarly advises that prosecutions involving HIV should rely on established sexual violence standards and safeguard privacy.

---

[1] CEDAW affirms States' obligations to ensure women's equality, bodily autonomy, access to justice, and freedom from gender-based violence, as elaborated in the Committee's General Recommendations. General Recommendation No. 19 recognised gender-based violence as a form of discrimination; No. 24 affirmed women's autonomy in health and reproductive decision-making; No. 33 emphasised equal access to justice; and No. 35 reaffirmed States' due diligence obligations to prevent, investigate, punish, and remedy gender-based violence, including structural inequalities that undermine women's autonomy.

When criminal law may be appropriate

Criminal prosecution related to HIV in the context of sexual violence may be appropriate only where all of the following elements are present:

1. A sexual offence recognised in national law and consistent with international human rights standards has occurred.
2. HIV transmission resulted from the assault, with:
    - HIV acquisition in the complainant; and
    - causation supported by appropriate evidence.
3. The accused knew their HIV-positive status at the time of the offence.
4. The required mental element is established in relation to transmission, such as intent to transmit HIV or, where recognised in domestic law, a clearly established and unjustifiable risk-taking standard interpreted consistently with current scientific evidence.
5. Charges address the underlying violence, such as rape or aggravated sexual assault, rather than HIV status itself.
6. HIV-specific offences, exposure-only offences, or offences such as attempted murder are not used.

Practices to avoid

Some legal systems have improperly conflated HIV non-disclosure with sexual violence, treating consensual sex as rape solely because HIV status was not disclosed. Such approaches are inconsistent with human rights, contemporary scientific evidence, and principles of proportionality. States should therefore avoid:

- creating HIV-specific sexual offences;
- treating HIV as a "deadly weapon";
- presuming intent from HIV status, non-disclosure, condomless sex, or pregnancy;
- prosecuting conduct posing no possibility or negligible possibility of HIV acquisition;
- conflating HIV non-disclosure with rape or absence of consent; and
- increasing penalties solely because a person is living with HIV.

Key principle

Sexual violence must be addressed through effective, survivor-centred criminal justice responses. However, HIV acquisition itself should never become an independent basis for criminalisation or enhanced punishment. The offence is the violence. Any relevance of HIV must remain limited, proportionate, evidence-based, and consistent with human rights and contemporary science.

4.3. Vertical transmission

Global guidance

Criminalisation of vertical (parent-to-child) transmission – including during pregnancy, childbirth or breastfeeding – is inconsistent with scientific evidence, public health guidance, and human rights standards.

WHO recommendations on the prevention of vertical transmission and infant feeding confirm that transmission can effectively be prevented through access to antenatal care, sustained antiretroviral treatment, and appropriate infant feeding support. (WHO, *Consolidated guidelines on HIV prevention, testing, treatment, service delivery and monitoring: recommendations for a public health approach*, 2021)

UNAIDS guidance related to HIV and the criminal law, as well as the Global Commission on HIV and the Law, have consistently affirmed that the application of criminal law in this context is inappropriate and harmful.

Criminalising people living with HIV for pregnancy, childbirth, or breastfeeding disregards the structural realities that shape reproductive decision-making and access to care, including late diagnosis, unequal access to treatment and healthcare, poverty, stigma, gender inequality, and violence. Such laws and prosecutions disproportionately affect women and can deter engagement with antenatal and postnatal services.

International standards are clear that pregnancy, childbirth, and breastfeeding by a person living with HIV should never, in themselves, give rise to criminal liability.

Policy implications

Reforms should:

- Explicitly exclude vertical transmission, including breastfeeding, from criminal liability;
- Prevent the use of HIV-specific, communicable disease, child protection, or other laws to punish pregnancy, childbirth, or infant feeding by people living with HIV; and
- Ensure voluntary, non-coercive, rights-based access to antenatal and postnatal testing, treatment, care, and infant feeding support.

4.4. Refugees, asylum seekers, migrants, and displaced people

Global guidance

The Global Commission on HIV and the Law, UNAIDS, and other international bodies have recognised that refugees, asylum seekers, migrants, displaced people, and other mobile populations may face heightened vulnerability to HIV criminalisation due to discrimination, precarious immigration status, language barriers, restricted access to healthcare and legal services, and fear of detention, deportation, or loss of residency status.

The use of HIV status in immigration, asylum, detention, or deportation processes undermines public health, violates rights to privacy and non-discrimination, and may deter people from accessing HIV testing, treatment, and care. International standards affirm that access to HIV services and equal protection under the law should not depend on citizenship, residency, or migration status.

Policy implications

Reform should:

- Guarantee equal protection under criminal and public health laws regardless of citizenship, residency, or migration status, including equal access to legal representation, interpretation, and due process safeguards;
- Prohibit the use of HIV status to justify immigration detention, deportation, exclusion, inadmissibility, or other punitive immigration measures;
- Prohibit the sharing or use of HIV-related information between healthcare providers and immigration or border authorities without informed consent or a clear legal basis consistent with human rights standards;
- Ensure confidential, voluntary, free or affordable access to HIV prevention, testing, treatment, care, and support services irrespective of legal or migration status; and
- Support and meaningfully engage migrant-led, refugee-led, displaced people-led, and community-led organisations in law, policy, and service reforms.

4.5. Key populations facing intersecting criminalisation

Global guidance

UNAIDS, the Global Commission on HIV and the Law, and human rights bodies have consistently recognised that HIV criminalisation disproportionately impacts communities already targeted by punitive laws and discriminatory enforcement, particularly sex workers, LGBTIQ+ people, people who use drugs, migrants, prisoners, and other marginalised populations.

These populations often experience intersecting forms of criminalisation, stigma, surveillance, violence, and social exclusion that increase vulnerability to HIV acquisition, reduce access to prevention and treatment services, and heighten exposure to arrest, prosecution, detention, and abuse. HIV criminalisation frequently compounds these harms by reinforcing discriminatory stereotypes and legitimising over-policing and coercive public health practices.

International guidance emphasises that punitive legal environments undermine public health goals and violate human rights, including rights to privacy, equality, bodily autonomy, health, and freedom from arbitrary detention and discrimination. Effective HIV responses require supportive legal and social environments grounded in evidence, dignity, and community leadership. (UNDP, *Lessons from the Evaluation of the Global Commission on HIV and the Law: Issue Brief #1 – Enabling Legal Environments, Including Decriminalization for HIV Responses*, 2022)

Policy implications

Effective reform should include:

- Repeal of HIV-specific criminal laws and sentence enhancements, as well as laws criminalising consensual same-sex sexual conduct, gender expression, sex work, drug use, and other conduct associated with key populations;
- Protection against discriminatory policing, arbitrary arrest, entrapment, violence, extortion, and other abusive law enforcement practices;
- Elimination of mandatory HIV testing, registration, disclosure, or surveillance measures targeting key populations;
- Guaranteed access to voluntary, confidential, affordable, and culturally safe HIV prevention, testing, treatment, care, and support services, including harm reduction services;
- Protection of community-led organisations, human rights defenders, and peer workers from criminalisation or harassment; and
- Meaningful leadership and participation of key population networks in the development, implementation, monitoring, and evaluation of laws, policies, and programmes.

4.6. Economic inequality and access to justice

Global guidance

International guidance recognises that poverty, homelessness, insecure immigration status, racism, gender inequality, disability, and other forms of social exclusion can increase vulnerability to HIV criminalisation and limit access to healthcare, treatment, legal representation, and supportive services. Punitive legal responses often disproportionately affect people already facing structural disadvantage and unequal access to justice.

UNAIDS guidance and scientific consensus also caution against legal approaches that rely narrowly on biomedical indicators, such as viral suppression, without recognising unequal access to testing, treatment, monitoring, and continuity of care. Reforms based solely on clinical status risk reinforcing existing inequalities and creating unequal protection under the law.

Policy implications

When legal protections or exemptions are available only to people who can demonstrate viral suppression or other clinical benchmarks, criminal law may operate as a two-tier system shaped by unequal access to healthcare and resources. Reforms should therefore:

- Avoid exemptions or defences based solely on viral suppression or other biomedical markers;
- Ensure access to publicly funded legal aid and effective legal representation;

- Reduce structural barriers to healthcare, housing, social protection, and HIV-related services, and ensure such access is non-discriminatory;
- Ensure that courts consider the social and structural conditions affecting disclosure, treatment access, adherence, and healthcare engagement; and
- Provide prosecutors, judges, defence lawyers, and law enforcement officials with training on contemporary HIV science, human rights, stigma, and structural inequalities.

4.7. People living with HIV in prisons and other closed settings

Global guidance

The Global Commission on HIV and the Law, UNAIDS, and other international bodies have documented the heightened vulnerability of people living with HIV in prisons and other closed settings, including immigration detention, police custody, compulsory drug detention centres, and juvenile institutions. Reported harms include discrimination, violence, segregation, coerced or involuntary HIV testing and disclosure, denial or interruption of treatment, and inadequate access to prevention and healthcare services.

Punitive detention environments can increase HIV-related risks and undermine continuity of care, dignity, privacy, and access to justice. International standards emphasise that people deprived of liberty retain the right to the highest attainable standard of health and should receive healthcare equivalent to that available in the community.

Policy implications

Reforms should:

- Guarantee uninterrupted, voluntary, and confidential access to HIV prevention, testing, treatment, care, and support services in all places of detention;
- Prohibit segregation, isolation, denial of programmes or services, or other punitive measures based on actual or perceived HIV status;
- Protect the confidentiality and privacy of medical information, including protection against coerced disclosure;
- Ensure continuity of care and access to housing, social protection, legal support, and healthcare following release or transfer; and
- Promote the use of non-custodial and community-based alternatives to detention wherever possible, recognising the heightened health risks, overcrowding, stigma, and structural vulnerabilities associated with detention settings.

4.8. Cross-cutting safeguards to prevent new harms and inequalities

Global guidance

International guidance emphasises that HIV law reform must be grounded in human rights, equity, and current scientific evidence. Reforms that rely narrowly on biomedical criteria, fail to address structural inequalities, or lack implementation safeguards may reproduce discrimination, exclude marginalised communities from legal protections, or shift criminalisation into general criminal, public health, immigration, or child protection laws. (UNDP, *Issue Brief #1*, 2022; Bernard EJ, Symington A, Beaumont S, *Punishing Vulnerability Through HIV Criminalization*, Am J Public Health, 2022)

Policy implications

To avoid creating new harms or reinforcing existing inequalities, reforms should:

- Ensure that repeal or modernisation of HIV-specific laws does not result in expanded use of general criminal, public health, immigration, or child protection laws against people living with HIV;
- Embed current HIV science and human rights standards in binding legislation, prosecutorial guidance, judicial guidance, and law enforcement policies;
- Avoid conditioning protections, defences, diversion, or reduced penalties on factors such as viral suppression, treatment adherence, or disclosure where these are shaped by unequal access to healthcare, safety, or social support;
- Protect privacy, confidentiality, and data protection rights, particularly where disclosure may expose individuals to violence, stigma, discrimination, detention, or deportation;
- Establish independent monitoring, oversight, and accountability mechanisms to identify discriminatory enforcement patterns and disproportionate impacts on affected communities; and
- Ensure meaningful participation of people living with HIV and affected communities in the design, implementation, monitoring, and evaluation of reforms.

4.9. Ensuring equity within reform processes

Global guidance

UNAIDS, UNDP, and other international bodies emphasise that HIV-related law and policy reform should be participatory, transparent, and grounded in the meaningful involvement of people living with HIV and affected communities at all stages of development, implementation, monitoring, and evaluation. The *Judicial Handbook* further underscores the importance of informed, rights-based engagement with affected communities and attention to the lived realities of stigma, discrimination, and unequal access to justice.

Policy implications

Reform processes should:

- Include people living with HIV, women, young people, key populations, migrants, displaced people, people with lived experience of imprisonment or detention, and people with disabilities in leadership, advisory, and decision-making roles;
- Ensure participation is safe, accessible, inclusive, adequately resourced, and not limited to tokenistic or symbolic engagement;
- Provide financial, technical, linguistic, and accessibility support to enable meaningful participation by affected communities;
- Meaningfully incorporate community expertise and recommendations into legislation, policies, implementation frameworks, and prosecutorial or judicial guidance; and
- Include safeguards to protect participants from retaliation, criminalisation, discrimination, violence, stigma, or breaches of confidentiality arising from their participation.

4.10. Measuring equitable outcomes and accountability

Global guidance

UNAIDS, UNDP, and the Global Commission on HIV and the Law emphasise that the effectiveness of HIV-related legal reform should be assessed not only by whether laws are amended or repealed, but by whether reforms reduce harm, improve access to justice and healthcare, and change how laws are interpreted, enforced, and experienced in practice. Evaluation should therefore examine impacts on stigma, discrimination, criminalisation, health outcomes, and trust in public institutions, particularly among communities most affected by HIV and punitive laws. (UNDP, *Spectrum: A Tool for Key Population-Led Law and Policy Reform*, 2024)

Key indicators of equitable reform

Effective reform should contribute to:

- Reduced arrests, investigations, prosecutions, convictions, and incarceration related to HIV non-disclosure, exposure, or transmission;
- Reduced stigma, discrimination, violence, and rights violations experienced by people living with HIV and affected communities;
- Expanded, equitable, voluntary, and confidential access to HIV prevention, testing, treatment, care, and support services;
- Increased trust in healthcare, legal, and public institutions among affected communities;
- Elimination of discriminatory policing, prosecutorial, sentencing, detention, and surveillance practices; and

- Improved autonomy, safety, dignity, health, and social inclusion for women, key populations, migrants, displaced people, people in detention, and people experiencing poverty or other forms of marginalisation.

4.11. Equity indicators and monitoring

To support comparability across countries while remaining feasible in diverse legal and resource settings, this guidance proposes a minimum indicator set focused on criminal legal system practices, differential impacts, and public narratives, rather than individual health status or treatment-related criteria.

4.11.1. Core indicators

Countries should monitor and periodically review, at a minimum:

Criminal legal system practices

- Numbers of HIV-related arrests, investigations, prosecutions, convictions, and incarcerations;
- The legal basis relied upon, including HIV-specific laws, general criminal laws, public health legislation, immigration laws, or administrative powers; and
- Case outcomes, including dismissals, withdrawals, acquittals, convictions, diversion measures, and sentencing outcomes.

Nature of alleged conduct

The proportion of cases involving:

- Non-disclosure without alleged transmission;
- Perceived, hypothetical, or potential exposure;
- Conduct posing no or negligible possibility of HIV transmission (e.g. spitting, biting); and
- Alleged vertical transmission, including during pregnancy, childbirth, or breastfeeding.

Equity and differential impact

- Evidence of disproportionate enforcement prosecution, sentencing, detention, or other adverse impacts affecting women, migrants, displaced people, sex workers, LGBTIQ+ people, people who use drugs, people in detention, or people experiencing poverty or homelessness; and
- Disaggregated data, where lawful, ethical, voluntary, and safe to collect and publish.

Public narratives and accountability

- Instances of scientifically inaccurate, sensationalist, discriminatory, or stigmatising public or media reporting of HIV-related cases; and
- Corrective regulatory, disciplinary, or educational actions taken by public authorities, professional bodies, media regulators, or oversight mechanisms in response to such reporting.

4.11.2. Use of monitoring and evaluation data

These indicators should be used to:

- Detect shifts in criminalisation from HIV-specific laws into general criminal, public health, immigration, or administrative laws;
- Assess whether prosecutorial, judicial, and law enforcement guidance is being applied consistently and in line with current scientific and human rights standards;
- Identify early warning signs of regression, discriminatory enforcement, or unintended harms following reform;
- Inform parliamentary oversight, judicial and prosecutorial training, policy development, and public communication strategies;
- Identify areas requiring further legal, regulatory, institutional, or programmatic reform to achieve the objectives of decriminalisation; and
- Support community-led monitoring, transparency, and accountability mechanisms.

Monitoring systems should prioritise privacy, confidentiality, informed consent, data protection, and participant safety, and should focus on systemic patterns and institutional practices rather than identifying or tracking individuals.

5. Country progress

Throughout the HIV response, networks of people living with HIV, civil society organisations, clinicians, researchers, lawyers, judges, parliamentarians, and public health officials have worked – often together, and sometimes in opposition – to narrow, repeal, prevent, or mitigate HIV-related criminalisation. While reform processes are often complex, uneven, and incremental, the past two decades have seen a growing global shift towards approaches grounded in contemporary HIV science, public health evidence, and human rights.

This chapter documents examples of reform, resistance, and harm reduction efforts from around the world. It is intended both as guidance and as a historical record of the diverse strategies through which advocates, communities, institutions, and governments have pursued change in different legal and political contexts. The examples are illustrative rather than exhaustive and do not represent a complete account of all HIV law reform efforts globally.

The chapter is organised around three broad and often overlapping reform pathways:

- **Legislative and policy engagement:** direct engagement with lawmakers, parliamentary committees, ministries and policymakers to draft, amend, modernise, repeal or prevent punitive laws and policies, support evidence-informed debate, and strengthen understanding of contemporary HIV science and human rights;
- **Strategic litigation and judicial review:** the use of courts, constitutional challenges, appeals, prosecutorial decision-making and judicial interpretation to challenge overly broad, discriminatory, or unscientific laws and practices; and
- **Community-led advocacy and accountability:** mobilisation by people living with HIV and civil society to document harms, shift public narratives, build political pressure, support affected individuals, and hold institutions accountable where reform processes are stalled, resisted or incomplete.

Country examples are presented under each pathway and grouped by region. Some entries describe major legislative or judicial reforms, while others highlight incremental progress, defensive advocacy to prevent new criminalisation measures, or efforts to reduce harm under existing legal frameworks. Together, they demonstrate that HIV decriminalisation is rarely a single event, but an ongoing process shaped by political context, scientific developments, sustained advocacy, and continued vigilance.

Each country example features a link to the corresponding entry in the HIV Justice Network's *Global HIV Criminalisation Database* featuring all relevant laws and their analyses, reported HIV criminalisation cases, and organisations actively working against HIV criminalisation in-country.

5.1. Legislative and policy engagement

Legislative and policy engagement has played a central role in narrowing, repealing, modernising, or preventing HIV criminalisation laws and policies. Reforms have emerged through a wide range of processes, including parliamentary advocacy, ministry-led reviews, technical consultations, public health policy reform, and sustained engagement by civil society and networks of people living with HIV. The examples below illustrate both the possibilities and limitations of legislative reform, including partial modernisation, repeal accompanied by safeguards, and efforts to prevent the adoption of new punitive measures.

5.1.1. Africa

BENIN:

Aligning HIV law with science and human rights

What changed?

In 2026, Benin adopted revised HIV legislation that significantly narrowed the use of criminal law in relation to HIV. Earlier provisions, shaped by the 2004 *N'Djamena Model Law on HIV*, allowed broad criminalisation of HIV non-disclosure, exposure and transmission. The new law limits criminal liability only to cases of intentional HIV transmission and explicitly precludes prosecution where there is no significant risk (e.g. condom use), where a person has an undetectable viral load or is on effective treatment, where the person was unaware of their status, where precautions were taken, or where HIV status was disclosed. This aligns the legal framework more closely with current scientific evidence on HIV transmission and treatment, as well as with international human rights standards.

Who and how?

The reform followed a sustained, multi-year advocacy process involving parliamentarians, government institutions, civil society organisations, and international partners, including UNAIDS. Civil society, with support from the HIV JUSTICE WORLDWIDE coalition, played a key role in pushing back against overly broad and punitive provisions and in promoting evidence- and rights-based approaches. Workshops and consultations with members of Benin's National Assembly helped build understanding of current HIV science and the public health harms of criminalisation, drawing on the *Expert consensus statement on the science of HIV in the context of criminal Law* and facilitating dialogue between legal experts, policymakers and community advocates.

Ongoing challenges

While the reform represents significant progress – including the removal of any legal requirement to disclose HIV status – the law is not without concern. In particular, provisions requiring health professionals to report patients to judicial authorities contradict the public health and human rights principles underpinning the reform.

Continued training, monitoring and community engagement will be needed to prevent misuse. Ensuring the new law is correctly interpreted and implemented by police, prosecutors and courts is another important priority. Developing or strengthening prosecutorial guidelines could further support consistent, evidence-based application of the law in practice.

CENTRAL AFRICAN REPUBLIC:
Narrowing criminal liability

What changed?

In 2022, the Central African Republic adopted a revised HIV law that significantly narrows the scope of criminalisation compared with its 2006 law. The previous framework imposed restrictive obligations on people living with HIV, including mandatory condom use, disclosure requirements, and broad prohibitions on conduct that could theoretically result in transmission.

The 2022 law limits criminal liability to intentional ("voluntary") transmission and, in cases of unprotected sex without disclosure, requires both intent and actual transmission. It also introduces explicit protections, excluding liability for vertical transmission, acts posing no significant risk, and situations involving disclosure, condom use, or safer-sex practices.

Who and how?

The Ministry of Health led a multi-year reform process involving Parliament's Health and Justice Committees, networks of people living with HIV, women's rights organisations, and legal experts. UNAIDS provided technical assistance to ensure alignment with human rights standards and current HIV science.

Ongoing challenges

Another HIV-specific criminal law, Article 249 of the *Penal Code*, remains in force alongside the 2022 law. Its broad and vague wording – particularly "in any way whatsoever" and references to "attempted contamination" – continues to allow for exposure-based prosecutions where no transmission occurs. In addition, ambiguously drafted provisions in the 2022 law relating to the sharing of objects or substances, and to transfusions or transplantations, leave scope for criminalisation in the absence of transmission.

DEMOCRATIC REPUBLIC OF CONGO:
Repeal and revised scope

What changed?

In 2018, the Democratic Republic of Congo amended its 2008 HIV law to remove and narrow key criminalisation provisions. Article 45, which had explicitly criminalised "deliberate" HIV transmission, was repealed. Article 41, which addressed HIV non-disclosure, was revised, reducing the scope of criminal liability. These changes followed years of concern that the original law – although intended to protect rights – enabled punitive responses, including in cases where no transmission occurred.

Who and how?

People living with HIV networks, women's groups, and human rights organisations challenged the 2008 HIV law from its inception. Parliamentary reform was supported by evidence of its disproportionate impact on women and by submissions from civil society, lawyers, and UN agencies, highlighting inconsistencies with constitutional protections.

Ongoing challenges

Article 41 continues to require disclosure of HIV status to sexual partners and permits healthcare providers to inform partners in certain circumstances, raising concerns about privacy and autonomy. In addition, although HIV-specific criminalisation was narrowed, general criminal law provisions remain applicable. Articles 174i and 177 of the *Penal Code* allow for prosecution of the "deliberate" transmission of sexually transmitted infections, including HIV, with severe penalties, including life imprisonment, creating ongoing risk of punitive enforcement.

NIGER:
Partial modernisation

What changed?

In 2015, Niger revised its 2007 HIV law following a multi-year reform process. The updated law removed the obligation to disclose HIV status prior to sex, eliminated criminal liability for vertical transmission (including during pregnancy and breastfeeding), and recognised condom use and disclosure as legal defences. It also introduced narrower criminal provisions, limiting liability to cases of "wilful" exposure or transmission. These changes marked a shift away from overly broad criminalisation in the earlier law.

Who and how?

The reform followed a five-year process (2010 - 2015) co-led by UNAIDS, civil society organisations, and the national intersectoral body (CISL), with support from the Parliamentary Network on AIDS, TB and Malaria. Networks of people living with HIV and women's rights advocates contributed case analyses demonstrating the harmful impact of the previous law.

Ongoing challenges

The law continues to criminalise "wilful" exposure, with penalties of 5-10 years' imprisonment. This retains criminal liability for potential or perceived exposure, leaving scope for broad and potentially unjust application. A 2016 case, in which a woman was convicted of passing on HIV to her husband despite being unaware of her status until her pregnancy, highlights how these provisions can be misapplied –particularly against women diagnosed during antenatal care. Efforts are ongoing to repeal or further reform the law.

Case Study

ZIMBABWE:
Full repeal of HIV-specific offence

Background

Zimbabwe's former Section 79 of the *Criminal Law (Codification and Reform) Act* criminalised "deliberate transmission of HIV" from 2001 until its repeal in 2022. In practice, however, the law was applied far more broadly, including to alleged HIV exposure without transmission and to situations where a person merely "realised" they might be living with HIV. Penalties of up to 20 years' imprisonment were available, and at least 30 prosecutions were documented. Women were disproportionately affected, particularly after learning their HIV status during antenatal care or breastfeeding.

Advocates and public health experts argued that the law undermined Zimbabwe's HIV response by discouraging HIV testing and treatment engagement, while relying on outdated understandings of HIV science and transmission.

Reform process

Efforts to repeal Section 79 followed years of advocacy, coalition-building, and strategic engagement. Although constitutional litigation challenging the provision was unsuccessful in the mid-2010s, it helped catalyse broader reform efforts. National networks of people living with HIV, feminist legal organisations, human rights groups, and regional partners worked closely with the National AIDS Council and UNDP to build a coordinated reform strategy.

Community-led advocacy was combined with sustained engagement of parliamentarians, judges, lawyers, journalists, and activists through sensitisation workshops and legal

literacy initiatives focused on human rights, public health, and contemporary HIV science. Parliamentary leadership, particularly from Dr Ruth Labode and the Health Portfolio Committee, played an important role in reframing the issue as inconsistent with effective HIV policy and constitutional rights protections.

Strategically, advocates secured repeal by incorporating a simple provision – "Section 79 … is repealed" – into the wider *Marriages Act*, which entered into force in September 2022. Zimbabwe thereby became only the second African country, after the Democratic Republic of the Congo, to fully repeal an HIV-specific criminal offence.

Results and impact

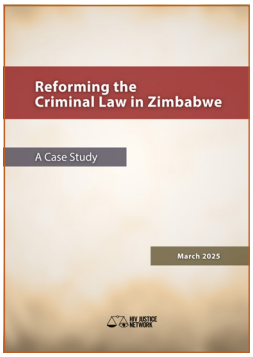
The repeal ended Zimbabwe's HIV-specific criminal offence and removed a law widely criticised as overly broad, scientifically unsupported, and counterproductive to public health goals. The reform was internationally recognised as an important example of rights-based HIV law reform in Africa.

The process also strengthened collaboration between community advocates, legal experts, parliamentarians, and public health institutions, demonstrating the value of combining scientific evidence, strategic advocacy, and community leadership in achieving reform.

Ongoing challenges and lessons learned

Zimbabwe's experience also demonstrates that legal reform is not necessarily permanent. In 2024, proposed amendments threatened to reintroduce HIV criminalisation through a revised Section 78. Rapid mobilisation by advocates and civil society organisations successfully prevented HIV transmission from being reinserted into the criminal code.

The case highlights several lessons for other jurisdictions: sustained coalition-building across sectors is essential; community-led advocacy and leadership by people living with HIV are critical; engagement with parliamentarians and justice actors can shift political understanding; scientific evidence and public health arguments are effective tools against overly broad criminalisation; and vigilance remains necessary even after reform has been achieved.



For further details see: HIV Justice Network, *Reforming the Criminal Law in Zimbabwe – A Case Study*, 2025; and the accompanying video documentry, *"It is Time!" – How Zimbabwe Decriminalised HIV*

5.1.2. Eastern Europe and Central Asia

ARMENIA:

Removal of HIV exposure liability

What changed?

Armenia's 2021 *Criminal Code* narrowed but did not eliminate HIV criminalisation. The previous Code penalised both transmission and perceived "danger of infection." Following civil society advocacy, the exposure offence was removed when the Code was reformed in 2021, and intentional and "careless" transmission were separated into distinct provisions. A proposed disclosure exemption did not survive into the final law.

Who and how?

Reform resulted from sustained efforts by Armenian women living with HIV networks, legal advocates, and regional and international partners, who provided scientific evidence and comparative examples to push for removal of the most harmful elements. A submission of a Shadow Report to the CEDAW Committee also prompted the Committee to question Armenia directly about HIV criminalisation.

Ongoing challenges

Articles 177 and 178 of the *Criminal Code* continue to criminalise HIV transmission with penalties far higher than for other STIs and without a disclosure defence. Although no cases have been reported under the new Code, previous practice – 13 prosecutions and seven convictions between 2009 and 2021 – suggests continuing risk of prosecution.

BELARUS:

Amendment of Article 157

What changed?

In 2018 - 2019, Belarus amended Article 157 of the *Criminal Code*, which criminalises HIV exposure and transmission, including in cases where no transmission occurs. The amendment reduced available sentences and introduced a defence where a person living with HIV had disclosed their status and obtained a partner's consent to acts carrying a perceived risk of transmission. It also created a mechanism allowing individuals previously convicted in such circumstances to apply for review of their convictions, although this does not automatically result in records being cleared or convictions being overturned.

Who and how?

Domestic NGOs working with people living with HIV collaborated with regional and international partners to present contemporary scientific evidence to legislators. Government institutions, including the Ministry of Health, contributed epidemiological data to support the case for reform, with technical input from international agencies.

Ongoing challenges

Article 157 remains broad, criminalising perceived exposure, non-disclosure, and transmission, including in the absence of intent or actual harm. Prosecutions can proceed without a complaint from the partner and are often initiated by authorities. The burden remains on the accused to prove disclosure and consent. Women are disproportionately affected, reflecting gendered patterns of testing and diagnosis. Although convictions can be reviewed, outcomes are inconsistent and not guaranteed, and prosecutions continue under the amended law.

UKRAINE:
Parliamentary consideration of Article 130

Current status

Proposals to repeal or substantially amend Article 130, one of the region's broadest HIV-specific criminal provisions, have been under parliamentary review since 2024.

Who and how?

Ukrainian networks of people living with HIV, legal NGOs, and HIV advocates presented contemporary scientific evidence from the *Expert Consensus Statement* in various dialogues with parliamentarians and health officials. Capacity-building programmes across the region strengthened political understanding of the need for reform.

Ongoing challenges

Article 130 remains unchanged. Wartime pressures have reduced capacity for social policy reform, and currently no prosecutorial guidance exists to limit overbroad charging practices.

UZBEKISTAN:
Reform of discriminatory occupational restrictions

What changed?

Uzbekistan revised regulations that previously barred people living with HIV from holding certain categories of employment, including professions such as hairdressing. The reform removed some of the country's most discriminatory occupational bans.

Who and how?

Civil society organisations produced legal analyses demonstrating the lack of scientific justification for the restrictions. UN agencies worked with parliamentary committees and health authorities, emphasising WHO guidance on non-discrimination and HIV science showing that casual contact cannot transmit HIV.

Ongoing challenges

Despite occupational reforms, Uzbekistan continues to enforce Article 113, which criminalises HIV exposure through an overly broad offence that provides no defence based on condom use, an undetectable viral load, or informed consent following disclosure. The law is applied extensively, with more documented HIV-related prosecutions than in any other country in recent years. Many cases are initiated by health-care workers or other state authorities rather than sexual partners, illustrating the routine use of criminal law rather than its application in exceptional circumstances.

5.1.3. Western Europe

BELGIUM:
Proposed HIV criminalisation avoided through legislative reform

What changed?

Belgium considered introducing a new offence criminalising the intentional spread of pathogens as part of wider 2019 *Penal Code* reform. Following sustained advocacy, Parliament removed broad language that could have expanded HIV criminalisation and limited liability to malicious, intentional acts, avoiding the creation of a new offence that could have been used to prosecute HIV exposure or transmission.

Who and how?

Civil society organisations, HIV advocates, legal experts, and public health specialists engaged legislators throughout the reform process, demonstrating that HIV-specific criminal provisions and overly broad exposure offences are inconsistent with current scientific evidence and international guidance. Their advocacy helped secure amendments that substantially narrowed the proposed offence before the legislation was adopted.

Ongoing challenges

Belgium continues to prosecute HIV-related cases under general criminal law, including for alleged exposure as well as transmission, despite the absence of an HIV-specific offence. Although prosecutions are relatively uncommon, there is no prosecutorial guidance limiting the use of criminal law in line with current HIV science, leaving scope for inconsistent application.

DENMARK:
Suspension of HIV-specific criminal law

What changed?

In 2011, Denmark suspended Section 252 of the *Criminal Code*, which had criminalised exposure to a "life-threatening or incurable disease" and had been applied exclusively to HIV. The suspension followed recognition that, with effective treatment, HIV is no longer considered a life-threatening condition. As a result, prosecutions ceased, and past cases were reviewed, leading to at least one conviction being overturned on this basis.

Who and how?

The suspension followed sustained engagement by civil society organisations and clinicians, who presented evidence on the effectiveness of HIV treatment and its impact on transmission and life expectancy. Policymakers accepted that the scientific rationale underpinning the offence was no longer valid, leading the Ministry of Justice to suspend the provision and initiate a review process.

Ongoing challenges

The provision remains suspended rather than formally repealed, meaning it could be reinstated in the future.

MONTENEGRO:
Repeal of HIV-specific law

What changed?

In 2018, Article 289 of the *Criminal Code of Montenegro* – the provision that criminalised HIV "exposure," negligent and intentional transmission – was repealed. As a result, there are no longer HIV-specific provisions in Montenegrin criminal law.

Who and how?

Civil society organisations provided evidence during the 2018 *Criminal Code* reform process showing that HIV-specific offences undermined public health and were unnecessary alongside general criminal law. The revision shifted the legal framework away from singling out HIV, aligning with broader moves to avoid HIV-specific criminal penalties.

Ongoing challenges

While HIV-specific criminal offences no longer exist, the Code still criminalises breaches of general public health regulations under Article 287 and Article 288 – failure to comply with orders for containment of "dangerous communicable diseases." As a result, people living with HIV could still face prosecution under general provisions if authorities treat HIV as a dangerous communicable disease. However, to our knowledge, there were no prosecutions under Article 289 while it was in force, and there have been no prosecutions under other provisions.

NORWAY:
Reform limits HIV criminalisation

What changed?

Norway removed its HIV-specific offence (Section 155 of the 1902 *Penal Code*) when a new *Penal Code* came into force in 2015 with any remaining liability now falling under general criminal provisions, applied in much narrower circumstances. Amendments in 2017 further clarified that acts such as sex with effective treatment, condom use, and oral sex do not constitute an HIV exposure possibility and therefore cannot be prosecuted. These reforms significantly limited the scope of criminalisation.

Who and how?

Reform resulted from sustained civil society advocacy, supported by clinicians and legal experts. A widely publicised 2011 arrest for consensual oral sex catalysed public debate and highlighted the gap between criminal law and contemporary HIV science. The 2012 *Oslo Declaration on HIV Criminalisation* reinforced these efforts by setting out internationally recognised scientific and human rights principles that helped shape the subsequent reform process.

Ongoing challenges

General criminal provisions can still be applied in rare circumstances. Norway lacks formal prosecutorial guidance, leaving open the possibility of inconsistent or inappropriate prosecution.

SWEDEN:
Narrowing criminalisation and mandatory disclosure

What changed?

Since 2013, Sweden has progressively narrowed the use of criminal and public health laws in relation to HIV. Public health authorities were the first to recognise that effective treatment eliminates the possibility of sexual transmission, leading courts to overturn convictions. In 2018, the Supreme Court confirmed that a person on effective treatment does not pose a "concrete danger" of transmission, further limiting the basis for prosecution. In 2026, the government announced plans to remove the long-standing legal requirement to disclose HIV-positive status prior to sex, with legislative change expected to enter into force in 2027.

Who and how?

Reform has followed sustained engagement between public health authorities, legal experts, and policymakers, supported by evolving scientific evidence on HIV treatment and transmission. Government-commissioned review processes played a key role in translating this evidence into legal and policy change, alongside long-term advocacy highlighting the lack of public health benefit and disproportionate impact of existing measures.

Ongoing challenges?

Until legislative reform takes effect, the disclosure requirement remains in force. Public health authorities also retain discretionary powers under communicable disease law, which may result in uneven implementation.

SWITZERLAND:

Reform limits criminal liability

What changed?

Revisions to the *Epidemics Act* (adopted in 2012 and in force from 2016) amended Article 231 of the *Criminal Code*, limiting its application to cases of intentional transmission. As a result, prosecutions for HIV exposure or "negligent" transmission under this provision were no longer possible, narrowing the overall scope of criminal liability.

Who and how?

The reform was shaped through collaboration between civil society, clinicians, and national public health authorities, who provided evidence on HIV transmission and treatment. Parliamentary support was secured through legislative amendments, and the revised *Epidemics Act* was subsequently endorsed through a national referendum in 2013.

Ongoing challenges

Exposure without transmission may still be prosecuted as an attempted offence under general criminal law. Although the Swiss Federal Supreme Court held in 2013 that HIV transmission need not automatically constitute serious assault, subsequent convictions continued to be treated as serious assault.

5.1.4. North America

CANADA:

Prosecutorial guidance limits HIV criminalisation

What changed?

From 2016 onwards, guidance for prosecutors has narrowed the scope of HIV criminalisation, albeit unevenly across the country. Federal prosecutorial guidance clarified that HIV non-disclosure should not be prosecuted where there is no "realistic possibility of transmission", explicitly including cases where a person has a suppressed viral load. The guidance further indicated that prosecutions should "generally" not proceed when condoms are used or where only oral sex occurred, recognising the negligible or no risk in these circumstances, although this language is less definitive than for viral suppression. However, this guidance is currently limited to the Northwest Territories, Nunavut and Yukon. At the provincial level, approaches vary: some jurisdictions, such as British Columbia, have adopted similar guidance that also references condom use and oral sex as factors weighing against prosecution, while others (including Alberta, Ontario and Quebec) limit their guidance primarily to

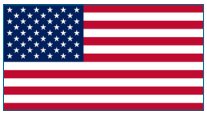
suppressed viral load. Taken together, these developments have narrowed the scope of criminalisation in many parts of Canada and contributed to a significant decline in prosecutions in recent years.

Who and how?

Reform was driven by sustained advocacy from civil society and people living with HIV networks combining legal analysis, community testimony, public education, and engagement with policymakers. Contemporary HIV science, was central to demonstrating that many prosecutions were not aligned with public health.

Ongoing challenges

Despite a 2019 recommendation by the House of Commons' Standing Committee on Justice and Human Rights to amend the *Criminal Code* including by ending the use of sexual assault law in HIV non-disclosure cases, Canada has not yet implemented these reforms. Although prosecutorial guidance has made prosecutions rare, the underlying legal framework remains unchanged. Women, Indigenous people, and members of other marginalised communities continue to be disproportionately affected by HIV criminalisation.



UNITED STATES:
Multiple states repeal or modernise HIV laws

What changed?

Since 2021, nine U.S. states have fully repealed their HIV-specific criminal statutes:

- Illinois (2021)
- New Jersey (2022)
- Maryland (2025)

Nine states have substantially modernised their laws to narrow liability, reduce penalties, and remove provisions treating people living with HIV more harshly than others:

- Iowa (2014)
- Colorado (2016)
- California (2018)
- North Carolina (2018)
- Michigan (2019)
- Washington State (2020)
- Nevada (2021)
- Virginia (2021)
- Tennessee (2022)

These reforms have limited felony charges, removed sex-offender registration requirements, and aligned statutory language with contemporary HIV science.

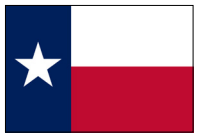
Who and how?

Reform resulted from sustained advocacy by civil society, networks of people living with HIV, and state-level coalitions. Evidence was gathered on the impact of existing laws, including case documentation, sentencing patterns, and their effects on public health outcomes, stigma, and access to testing and treatment. This was combined with media engagement and legislative testimony to demonstrate the human rights and public health implications of overly broad criminalisation. Bipartisan legislative support was built by framing reform in terms of evidence, proportionality, and fairness.

Ongoing challenges

Reform remains patchy. Some states still use outdated "HIV exposure" laws or general criminal statutes to prosecute behaviour posing little or no risk. Racial and gender disparities persist. Federal level reform efforts, such as the *REPEAL Act* – first introduced in 2011 by Congresswoman Barbara Lee – have not yet passed.

Case Study



CALIFORNIA & TEXAS (United States):

Repeal with and without safeguards

Two approaches to reform

Texas and California illustrate contrasting approaches to HIV criminal law reform – and markedly different outcomes. Texas repealed its HIV-specific criminal law in 1994, becoming the first U.S. state to do so. California reformed its law more than two decades later, in 2017, through *Senate Bill 239 (SB 239)*, which replaced HIV-specific offences with a carefully defined, disease-neutral framework grounded in contemporary science.

TEXAS: Repeal without safeguards

Following repeal, Texas introduced no prosecutorial guidance, judicial training or statutory clarification. As a result, prosecutions of people living with HIV have continued under general criminal laws, primarily aggravated assault and attempted murder provisions. Courts repeatedly held that the bodily fluids of a person living with HIV constitute a "deadly weapon," enabling convictions and lengthy prison sentences for conduct posing little or no possibility of HIV transmission, including spitting, biting, and sexual contact without ejaculation. Significant transmission risk is not a required element for conviction and HIV status may aggravate sentencing. Repeal, in practice, displaced HIV criminalisation into broader and more punitive legal frameworks.

CALIFORNIA: Reform with safeguards

California paired reform with explicit statutory safeguards. SB 239 limits criminal liability to cases involving specific intent to transmit, conduct posing a substantial risk of transmission, failure to take reasonable prevention measures, and actual transmission. It excludes acts such as spitting and biting, and applies a disease-neutral framework covering all serious communicable diseases. The law translated contemporary scientific consensus into clear legal standards for police, prosecutors, and courts, reducing reliance on expansive interpretations of general criminal law.

Strategic lesson

Together, Texas and California demonstrate that repeal alone may not end HIV criminalisation. Without explicit safeguards – whether through narrowly-framed legislation, prosecutorial guidance, judicial interpretation, or police training – prosecutions may continue or intensify under general criminal law. By contract, reforms grounded in contemporary science and accompanied by clear legal limits can substantially constrain criminalisation. The California-Texas comparison highlights the importance of pairing repeal with implementation safeguards that prevent displacement into broader criminal frameworks.

5.1.5. Latin America and the Caribbean

BELIZE:

Repeal of HIV-specific criminal offences

What changed?

Belize fully repealed its two HIV-specific criminal offences through the *Criminal Code (Amendment) Act*, 2023, representing one of the region's most rapid and decisive decriminalisation processes. The repealed provisions criminalised "deliberate or reckless" HIV exposure, non-disclosure, and certain acts involving bodily fluids, although to our knowledge these had never been used in prosecutions. Their repeal removed laws that were outdated, stigmatising, and inconsistent with contemporary HIV science.

Who and how?

Reform was led within government and informed by human rights principles, contemporary HIV science, and evidence that HIV-specific criminal laws can deter access to testing, treatment and care. Policymakers also considered evidence that HIV criminalisation disproportionately harms women, particularly in the context of pregnancy and reproduction. A key catalyst was Belize's effort to meet WHO validation requirements for the elimination of mother-to-child transmission (EMTCT), which assess not only transmission outcomes but also the extent to which legal and policy environments support access to HIV services and protect human rights.

Ongoing challenges

Although the repeal removed HIV-specific offences, broader criminal laws could still potentially be used in HIV-related cases in the absence of clear prosecutorial and judicial guidance. The repeal process also exposed persistent HIV-related stigma and misinformation within public debate, underscoring the need for continued public education, legal literacy, and monitoring to ensure that repeal translates into meaningful reductions in discrimination and criminalisation in practice.

MEXICO:
State-level repeal of "danger of contagion" provisions

What changed?

To date, five Mexican jurisdictions – Nayarit (2023), Baja California Sur (2023), Mexico City (2024), Colima (2024), and Baja California (2025) – have repealed, struck down or substantially modernised "peligro de contagio" ("danger of contagion") provisions historically used to criminalise people living with HIV. Civil society advocacy has also helped prevent the adoption of new punitive proposals in San Luis Potosí, Quintana Roo, and Puebla.

Who and how?

Networks of people living with HIV, feminist organisations, legal NGOs, and public health experts documented discriminatory enforcement and presented evidence demonstrating that these provisions criminalised conduct posing negligible or no possibility of HIV transmission. Advocacy combined litigation, legislative engagement, media campaigning, and public education, with particular emphasis on constitutional rights, and contemporary HIV science. Reform efforts also framed repeal as consistent with Mexico's broader public health and HIV policy commitments.

Ongoing challenges

"Danger of contagion" provisions and other broadly framed communicable disease offences remain in force in several Mexican states, resulting in uneven legal protections across the country. This fragmented landscape means that exposure to criminalisation still depends heavily on geography, while repeal in some jurisdictions has not always been accompanied by clear guidance limiting the use of general criminal laws in HIV-related cases. Continued state-level advocacy, monitoring, and legal reform efforts therefore remain necessary.

5.1.6. Asia-Pacific

SINGAPORE:
Recognition of "U=U" in HIV disclosure law

What changed?

In March 2024, Singapore amended section 23 of the *Infectious Diseases Act* to exempt people living with HIV who maintain an undetectable viral load from the legal duty to disclose their HIV status before sex. Under the amended law, non-disclosure is no longer an offence where a person has maintained a durably suppressed viral load over a prescribed period and adhered to treatment. The reform explicitly recognises that a person living with HIV who is undetectable cannot sexually transmit HIV ("U=U").

Who and how?

The amendment followed a Ministry of Health review announced in late 2023, which committed to reconsidering HIV-related provisions in light of "the latest scientific evidence". HIV clinicians, researchers, and community advocates had long criticised section 23 for failing to reflect contemporary HIV science and for criminalising people even where there was no possibility of transmission. Advocacy highlighted both the scientific consensus supporting "U=U" and the harmful impact of HIV non-disclosure criminalisation on stigma and engagement with HIV services.

Ongoing challenges

Despite the reform, section 23 remains an HIV-specific criminal offence punishable by up to 10 years' imprisonment and/or a substantial fine. The "U=U" exemption applies only where strict evidentiary requirements are satisfied and does not recognise condom use or other risk-reduction measures as defences.

Broad criminal liability also remains for people who have been diagnosed but are not yet undetectable, as well as for individuals who merely have "reason to believe" they may have been exposed to HIV. In addition, Singapore continues to criminalise blood donation by people living with HIV and to prosecute alleged HIV exposure under other provisions of the *Infectious Diseases Act*.

Case Study

VICTORIA (Australia):
Repeal of Section 19A through strategic, community-led advocacy

Background

In 2015, the Australian state of Victoria repealed Section 19A of the *Crimes Act* – the country's only HIV-specific criminal offence. Introduced in 1993 during a period of heightened public fear following several highly publicised "syringe bandit" incidents, the law singled out HIV as a "very serious disease" and imposed penalties of up to 25 years' imprisonment. Although ostensibly enacted in response to violent assaults, in practice the provision was used exclusively in cases involving alleged sexual HIV transmission. Prosecutions were rare and none resulted in successful convictions, but the law reinforced stigma by portraying people living with HIV as a threat to public safety. By the 2010s, Section 19A was increasingly viewed as inconsistent with contemporary HIV science, human rights principles, and evidence-based public health approaches.

Advocacy and political strategy

Repeal followed years of sustained advocacy led by Living Positive Victoria and the Victorian AIDS Council (now Thorne Harbour Health). Initially influenced by growing international HIV justice advocacy and increasing global criticism of HIV criminalisation, advocates first focused on securing prosecutorial guidance to limit the use of the law. Strategy shifted, however, when Melbourne was selected to host the 20th International AIDS Conference (AIDS 2014). Advocates recognised the conference created a rare political opportunity to draw international attention to Victoria's HIV-specific law and increase pressure on political leaders ahead of a state election.

AIDS 2014 as catalyst

A broad coalition was assembled that included HIV organisations, legal experts, human rights advocates, and influential figures associated with AIDS 2014. The coalition produced policy briefings drawing on international scientific and legal consensus, including UNAIDS guidance and findings from the Global Commission on HIV and the Law, both of which had criticised HIV-specific criminal laws as ineffective and harmful. Political engagement began well before the conference itself, ensuring that key decision-makers from both major political parties were familiar with the scientific, public health and human rights arguments for repeal.

During AIDS 2014, advocates implemented a highly visible public campaign combining media engagement, political lobbying, and community mobilisation. The *#REPEAL19A* campaign became a prominent feature of conference-related advocacy in Melbourne. Activists organised public events, coordinated messaging, and responded rapidly to ambiguous or misleading public statements. Although the sitting government initially resisted repeal, momentum shifted significantly during the conference.

Midway through the *Beyond Blame: Challenging HIV Criminalisation* pre-conference, Victoria's health minister unexpectedly announced support for reform. Shortly afterwards, the opposition Labor Party committed to repealing Section 19A within one year if elected.

Still taken from the HIV Justice Network's video documentary on the Beyond Blame 2014 pre-conference in Melbourne, Australia

Outcome and impact

Once both major political parties publicly supported reform, repeal became politically unavoidable. Following the election of the Labor government later that year, the commitment was fulfilled and Section 19A was repealed in 2015.

Ongoing challenges and strategic significance

The repeal represented a major milestone for HIV justice advocacy in Australia and demonstrated the effectiveness of combining community leadership, scientific evidence, strategic communications, coalition building, and political timing. It also illustrated how international events can be leveraged to accelerate domestic legal reform. However, repeal did not end HIV criminalisation in Victoria entirely. General criminal laws continue to be used in some cases involving alleged HIV exposure or transmission, leading advocates to subsequently focus on prosecutorial guidance and broader criminal legal system reform. Nevertheless, the campaign established an enduring foundation for continued reform efforts and reinforced the principle that HIV should be addressed through public health and human rights frameworks rather than punitive criminal law.

5.2. Strategic litigation and judicial review

This section presents examples of how courts, constitutional challenges, appeals, and prosecutorial decision-making have been used to advance HIV decriminalisation through strategic litigation and judicial review. It includes challenges to unconstitutional, overly broad, or unscientific laws and practices; cases that clarify legal standards relating to intent, transmission risk, causation, and harm; and judicial decisions that have limited or prevented misuse of criminal law in the context of HIV. It also highlights the role of civil society in supporting litigation, including through *amicus curiae* ("friend of the court") interventions providing courts with expert evidence on HIV science, public health, and human rights.

5.2.1. Africa

KENYA:

Constitutional invalidation of Section 24

What changed?

In 2015, the High Court of Kenya declared Section 24 of the *HIV & AIDS Prevention and Control Act* unconstitutional. The HIV-specific provision criminalised "intentional" HIV transmission but failed to clearly define intent, causation, transmission risk, or available defences. The Court found the law vague, overly broad, disproportionate, and inconsistent with contemporary scientific evidence.

Who and how?

The litigation was led by the AIDS Law Project, with support from public interest lawyers, clinicians, and networks of people living with HIV. Expert evidence demonstrated that the provision could criminalise behaviour posing no or negligible possibility of HIV transmission. The Centre for Reproductive Rights also supported the case through an *amicus curiae*, which highlighted the disproportionate impact of the law on women, including increased risks of stigma, coercion, involuntary disclosure, and violations of privacy.

Ongoing challenges

Despite the constitutional ruling, HIV-related prosecutions and investigations continue under general criminal laws, particularly provisions of the *Sexual Offences Act*. Concerns also remain regarding inconsistent understanding of contemporary HIV science within the criminal justice system and the continuing use of criminal law in cases involving alleged HIV exposure or non-disclosure.

Case Study


LESOTHO & UGANDA:

Judicial removal of the death penalty for HIV-related offences

Background

Lesotho and Uganda have both faced significant scrutiny for laws allowing the death penalty in connection with HIV-related offences.

In Lesotho, the *Sexual Offences Act* treats HIV non-disclosure as a "coercive circumstance", meaning that otherwise consensual sex may be deemed an unlawful sexual offence where a person does not disclose their HIV-positive status before sex. The offence carries a minimum sentence of ten years' imprisonment. Where a person is found to have known or suspected their HIV-positive status and did not disclose it, the law had been interpreted to permit the death penalty. The Act also requires compulsory HIV testing of accused persons in cases involving penetrative sexual acts, with test results admissible during sentencing. These provisions made Lesotho one of the very few documented examples where HIV non-disclosure itself could expose a person to capital punishment.

In Uganda, the 2023 *Anti-Homosexuality Act* introduced similarly severe provisions. The law imposed life imprisonment for same-sex sexual activity and the death penalty for "aggravated homosexuality", which included same-sex sexual acts resulting in transmission of a "terminal illness" defined as a disease "without scientific cure". The language raised serious concerns that HIV transmission through consensual same-sex activity – regardless of intent, treatment status, or transmission risk – could result in execution. The law also criminalised "attempted aggravated homosexuality", raising fears that alleged HIV "exposure" could become grounds for prosecution.

LESOTHO: Constitutional challenge

A constitutional challenge decided in October 2022 marked a significant development in Lesotho. The case involved a man living with HIV who had been convicted of a sexual offence and was awaiting sentencing. Supported by regional and international partners, and with the Lesotho Network of People Living with HIV and AIDS admitted as *amicus curiae*, the case presented expert evidence on HIV science, human rights, and the discriminatory impact of the law.

The High Court held that imposing the death penalty solely on the basis of HIV-positive status is unconstitutional, as it violates rights to equality and freedom from inhuman treatment. The Court emphasised that HIV is a chronic, manageable health condition and clarified that sentencing cannot be determined solely by HIV status. Although the underlying law itself remains in force – including provisions criminalising HIV non-disclosure regardless of transmission risk, intent, or viral suppression – the most extreme punishment can no longer be imposed on this basis.

UGANDA: Constitutional review of the Anti-Homosexuality Act

The *Anti-Homosexuality Act* was enacted in May 2023 despite strong opposition from human rights organisations, HIV advocates, and public health experts. Immediate reports indicated that fear of arrest and prosecution was already affecting access to HIV-related services.

Ugandan civil society organisations filed a constitutional challenge on the day the law was enacted. The Constitutional Court heard the case in December 2023 and issued its judgment in April 2024. Although the Court largely upheld the legislation, it struck down several provisions that "did not pass constitutional muster", including the clause permitting the death penalty for same-sex sexual activity resulting in transmission of a "terminal illness". The Court found that the provision criminalised unintentional HIV transmission and violated the constitutional right to health.

Strategic significance and ongoing challenges

Together, the Lesotho and Uganda decisions demonstrate the important role courts can play in limiting the most extreme forms of HIV-related criminalisation, even where broader punitive legal frameworks remain intact. In both cases, strategic litigation supported by civil society, community organisations, and expert scientific evidence prevented HIV-related conduct from being punishable by death.

At the same time, both countries continue to retain punitive laws relating to HIV, sexuality, and disclosure. The judgments therefore represent significant but incomplete victories, illustrating how constitutional litigation can reduce immediate harms while broader decriminalisation and legal reform efforts continue.

5.2.2. Eastern Europe and Central Asia

TAJIKISTAN:

Supreme Court guidance narrowing HIV criminal liability

What changed?

On 26 December 2023, the Supreme Court of Tajikistan issued a resolution directing judges to decide HIV-related cases on current scientific evidence and international standards. The resolution clarified that "transmission risk" alone is insufficient grounds for criminal liability and that prosecutions should be limited to conscious, deliberate conduct that creates a real and demonstrable possibility of HIV transmission. In doing so, the Court significantly narrowed the potential scope of its HIV-specific criminal law, Article 125, and excluded prosecutions based solely on alleged HIV exposure.

Who and how?

The resolution followed several years of sustained engagement by networks of people living with HIV, legal aid organisations, community advocates, public health experts, and UN partners. Advocates provided scientific evidence, comparative legal analysis, documented case examples, and international standards – including the *Expert consensus statement on the science of HIV in the context of criminal law* – while building relationships and trust with members of the judiciary over time.

Ongoing challenges

Despite the resolution, Article 125 remains in force and HIV-related prosecutions continue to be facilitated by broader punitive legal and policing practices, particularly affecting marginalised communities. The Supreme Court's guidance is directed at judges and does not formally bind prosecutors or police investigators. In addition, 2019 amendments to Article 142 introducing enhanced penalties remain in effect, and a draft criminal code published in 2022 reportedly retains HIV-specific offences. Ensuring meaningful implementation of the Court's guidance will therefore likely require legislative reform, prosecutorial guidance, continued judicial training, and ongoing monitoring by civil society.

5.2.3. Western Europe

FINLAND:

Supreme Court recognises treatment effectiveness

What changed?

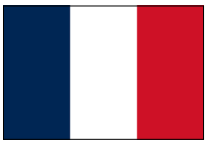
In a landmark 2015 ruling, Finland's Supreme Court significantly narrowed the scope of HIV criminalisation by recognising the impact of effective HIV treatment on transmission possibility. In one case, the Court held that a person with a sustained undetectable viral load did not meet the threshold for aggravated assault because transmission was not "quite probable". A further 2021 Supreme Court ruling strengthened this approach, confirming that where a person is on effective treatment and HIV is not transmitted, the legal threshold for criminal liability may not be met.

Who and how?

Defence lawyers relied on contemporary scientific evidence regarding HIV transmission risks and the preventive effect of antiretroviral treatment, including evidence reflected in the 2008 *Swiss Statement* and the subsequent *Expert consensus statement on the science of HIV in the context of criminal law*. The cases prompted the Supreme Court to move away from assumptions based on fear and stigma towards a more evidence-based assessment of actual transmission risk.

Ongoing challenges

Finland continues to prosecute HIV non-disclosure, exposure, and transmission under general criminal laws. Although Supreme Court jurisprudence has narrowed liability, uncertainty remains regarding lower court practice, and the legal significance of condom use without disclosure. Continued judicial education and clearer prosecutorial guidance remain necessary.



FRANCE:
Court recognition of viral suppression

What changed?

France's highest court ruled that a sustained undetectable viral load eliminates criminal liability for HIV exposure or transmission because there is effectively no risk of transmission. The Court found that a person's bodily fluids could not be considered harmful where viral suppression had been maintained.

Who and how?

HIV clinicians, legal experts, and advocates presented contemporary scientific evidence on viral suppression, treatment effectiveness, and proportionality. The case helped align judicial reasoning with up-to-date science.

Ongoing challenges

France continues to prosecute HIV transmission under general criminal laws relating to the "administration of harmful substances". Although courts increasingly recognise the preventive effect of treatment, prosecutions may still proceed where viral load history is uncertain or treatment adherence is disputed.

GERMANY:
Courts narrow interpretation of HIV transmission risk

What changed?

Since 2016, German courts have increasingly rejected or downgraded HIV-related charges where condom use or effective treatment reduced transmission risk to negligible levels. Courts acquitted defendants in cases involving sustained viral suppression, recognising that HIV could not be transmitted where a person had an undetectable viral load. Other rulings also moved away from assumptions that non-disclosure alone proves intent to harm.

Who and how?

Defence teams used expert medical evidence to challenge assumptions about HIV-related harm and intent to transmit. Courts adopted more evidence-based assessments of actual risk and culpability, including recognising distinctions between intentional harm and negligence.

Ongoing challenges

Germany continues to prosecute HIV non-disclosure, exposure, and transmission under general bodily harm laws, including "attempted" offences where no transmission occurred. No national prosecutorial guidance exists, resulting in inconsistent application across different courts and regions.

NETHERLANDS:
Appellate rulings restrict HIV criminalisation

What changed?

Dutch Supreme Court rulings in 2005 significantly narrowed the circumstances in which HIV exposure or transmission could trigger criminal liability. The Court held that charges involving "serious bodily injury" required proof of a "considerable chance" of transmission, assessed using current scientific evidence on actual risk. The rulings helped establish that HIV transmission should not automatically be treated as grievous bodily harm.

Who and how?

Defence lawyers and clinicians introduced scientific evidence to distinguish realistic from theoretical transmission risk, including the impact of sexual practices, other sexually transmitted infections, and viral load. During this period, the Dutch Executive Committee on AIDS Policy & Criminal Law published a groundbreaking report, *Detention or Prevention?*, which examined the public health and human rights impact of HIV criminalisation. The Dutch Government concluded that an HIV-specific criminal law was neither necessary nor useful.

Ongoing challenges

These limits were established through case law rather than legislation, meaning future shifts in judicial interpretation remain possible. Since 2005, only one known case has resulted in criminal and subsequent civil proceedings. It involved allegations of deliberate harm and did not alter the legal principles established by the Supreme Court.

SPAIN:
Supreme Court ruling limits presumptions of non-disclosure

What changed?

Spain's Supreme Court clarified in 2017 that defendants are not required to prove they disclosed their HIV status. Courts must instead assess all contextual evidence rather than presume non-disclosure. Spanish courts have also increasingly recognised condom use, viral suppression, and informed consent as relevant defences in HIV-related cases.

Who and how?

Appeal lawyers and HIV advocates challenged unfair evidentiary burdens and relied on scientific evidence, comparative jurisprudence, and principles of proportionality. Courts increasingly considered virological and phylogenetic evidence when assessing causation and transmission claims.

Ongoing challenges

Spain continues to prosecute HIV exposure and transmission under general criminal laws relating to bodily harm. Although courts have increasingly recognised the preventive effect of condoms, effective treatment, and scientific evidence on HIV transmission, outcomes continue to depend on judicial interpretation rather than clear legislative or prosecutorial guidance.

5.2.4. North America

IOWA (United States):
Supreme Court rejects "theoretical risk" prosecutions

What changed?

In 2014, the Iowa Supreme Court overturned a conviction under the state's HIV-specific exposure law, ruling that a theoretical or negligible possibility of transmission could not satisfy the legal threshold for criminal harm. The Court recognised the relevance of condom use and viral suppression in assessing actual risk. The decision weakened the basis of Iowa's HIV-specific felony statute and helped pave the way for legislative reform.

Who and how?

The case was supported by coordinated advocacy from people living with HIV, community organisations, defence lawyers, and national legal advocates, who presented contemporary scientific evidence challenging outdated assumptions about HIV transmission risk.

Ongoing challenges

Although Iowa reformed its HIV law later in 2014, prosecutions of people living with HIV have continued under the revised statute. Most cases have involved sexual activity, although at least one case involved allegations relating to biting despite the negligible risk of transmission.

Case Study

TENNESSEE (United States):
Using disability rights law to challenge HIV

Background

For decades, Tennessee imposed enhanced criminal penalties on people living with HIV engaged in sex work through its "aggravated prostitution" statute. The law elevated misdemeanour offences to felonies solely on the basis of HIV status and required mandatory lifetime sex offender registration, regardless of actual transmission risk. Advocates documented that the law disproportionately affected Black women and transgender women and relied on outdated assumptions about HIV transmission and harm.

Advocacy and legal strategy

In 2022, advocates filed a complaint with the U.S. Department of Justice (DOJ) arguing that Tennessee's aggravated prostitution law violated the *Americans with Disabilities Act (ADA)*, which recognises HIV as a disability. The complaint argued that the law discriminated against people living with HIV by imposing harsher criminal penalties and lifelong registration requirements solely because of their HIV status. Advocates combined scientific evidence, legal analysis, and documentation of discriminatory enforcement patterns to demonstrate the law's incompatibility with modern HIV science and federal civil rights protections.

Outcome

In December 2023, the DOJ concluded that enforcement of Tennessee's aggravated prostitution statute violated the ADA. The Department found that people living with HIV were treated differently from other sex workers both at charging and sentencing stages. In a subsequent settlement agreement with Shelby County, Tennessee, the County agreed to stop enforcing the law locally. The DOJ also recommended ending prosecutions under the statute, removing affected individuals from the sex offender registry, and providing compensation to people previously prosecuted.

Significance

This marked the first known U.S. federal intervention against HIV criminalisation on disability rights grounds. The case established a new pathway for challenging HIV

criminalisation laws through civil rights enforcement rather than constitutional or criminal appeals. Although the agreement applied only to Shelby County, the DOJ findings signalled that HIV-specific criminal laws elsewhere in the United States may also violate federal disability protections.

Ongoing challenges

Tennessee's aggravated prostitution law formally remains in force statewide, and implementation of the settlement requires continued monitoring. The DOJ findings were administrative rather than judicial and did not automatically invalidate the statute. Further advocacy and litigation may be needed to secure broader repeal and reform. [2]

NEW YORK (United States):
Court rejects "saliva as a dangerous instrument"

What changed?

In 2012, New York's Court of Appeals overturned an aggravated assault conviction that had been based on a police officer being exposed to saliva during an altercation with a man living with HIV. Prosecutors had argued that the defendant's saliva constituted a "dangerous instrument" because of his HIV status. The Court rejected this argument, holding that saliva is incapable of transmitting HIV and therefore cannot be considered a dangerous or deadly weapon for the purposes of aggravated assault. The ruling clarified that HIV status alone cannot be used to elevate criminal charges in the absence of any realistic possibility of harm.

Who and how?

The case was supported by advocacy from the Center for HIV Law and Policy, legal experts, and community organisations, which helped ensure that accurate scientific evidence regarding HIV transmission was presented to the Court. The judgment subsequently informed policing guidance and training efforts aimed at addressing persistent misinformation among law enforcement officers regarding HIV transmission risks.

Ongoing challenges

Although New York does not have an HIV-specific criminal statute, people living with HIV can still face prosecution under general criminal laws, including assault-related offences. The case also highlighted the extent to which inaccurate beliefs about HIV transmission continued to influence policing and prosecutorial practices decades into the epidemic.

[2] Further information about the strategy to challenge HIV criminalisation using disability rights law can be found on the Center for HIV Law and Policy's website.

5.2.5. Latin America and the Caribbean

Case Study

COLOMBIA:

Constitutional Court invalidation of HIV-specific criminal offence

Background

In June 2019, Colombia's Constitutional Court struck down Article 370 of the *Penal Code* – the country's HIV-specific criminal offence – after finding that the provision violated constitutional rights to equality before the law and the free development of personality. Introduced in 2000, Article 370 criminalised HIV and hepatitis B transmission, as well as broadly defined "risk-creating" behaviours, with penalties of six to twelve years' imprisonment, including in circumstances posing little or no possibility of transmission.

The Court found that singling out HIV and hepatitis B for harsher criminal treatment than other comparable health conditions was discriminatory, disproportionately restricted sexual autonomy, and was neither reasonable nor effective as a public health measure. The ruling rendered Article 370 unenforceable, ending explicit HIV criminalisation in Colombia.

Strategic constitutional litigation

The reform emerged through strategic constitutional litigation initiated by a university student, Felipe Chica Duque, who filed a public action of unconstitutionality. Colombia's constitutional system allows any citizen to challenge laws believed to violate fundamental rights, while the country's strong tradition of university legal clinics helped support the case.

Once the Constitutional Court admitted the challenge, the litigation prompted broad engagement from civil society, academics, public institutions, and international experts. Eleven organisations and individuals – including domestic civil society groups, legal scholars, HIV experts, the Attorney General, and the Ministries of Health and Justice – submitted interventions to the Court.

Role of HIV science and expert evidence

The submissions presented constitutional analysis, epidemiological evidence, comparative jurisprudence, and international scientific consensus, including the *Expert Consensus Statement*. They demonstrated that Article 370 criminalised behaviour posing negligible or no possibility of HIV transmission and undermined Colombia's HIV response by reinforcing stigma and discouraging HIV testing and treatment. The Constitutional Court engaged closely with this scientific evidence in its judgment, explicitly recognising the harmful public health consequences of HIV criminalisation.

Ongoing challenges and strategic significance

Although the judgment eliminated Colombia's explicit HIV-specific criminal offence, it did not fully remove the possibility of HIV-related prosecutions under general criminal law. Article 369 ("Propagation of an epidemic") and general assault provisions remain available and have continued to be used in some cases, including at least one post-2019 prosecution involving alleged biting and spitting.

Nevertheless, the decision remains a landmark example of rights-based HIV law reform achieved through constitutional litigation. It demonstrates how strong constitutional protections, access to judicial review, coordinated civil society engagement, and the effective use of HIV science can dismantle discriminatory criminal laws. The case has become an important regional and global example of strategic litigation advancing HIV justice.

VERACRUZ (Mexico):
Supreme Court ruling overturns HIV criminalisation provision

What changed?

In 2018, Mexico's Supreme Court struck down key parts of Veracruz's "danger of contagion" law, ruling unconstitutional the provision criminalising "sexually transmitted infections." The Court found the amendment overly broad, unnecessary, and incompatible with constitutional protections of liberty and equality. It held that the law improperly singled out sexually transmitted infections despite existing provisions already covering genuinely serious harm and recognised that criminalisation was neither an effective nor necessary public health response.

Who and how?

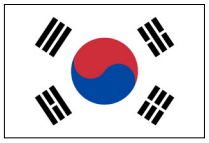
The challenge was brought by Mexico's National Human Rights Commission following sustained advocacy by networks of people living with HIV, human rights organisations, and international HIV justice advocates, including members of the HIV JUSTICE WORLDWIDE coalition. Advocates introduced scientific and public health evidence showing that the law criminalised conduct posing little or no possibility of HIV transmission and reinforced stigma. The Court engaged extensively with international HIV criminalisation debates, comparative jurisprudence, and evidence from UNAIDS and public health authorities demonstrating that overly broad criminalisation undermines HIV prevention and treatment efforts.

Ongoing challenges

Although the ruling invalidated the specific wording targeting sexually transmitted infections, Veracruz has not fully repealed or comprehensively reformed the underlying offence. Similar "danger of contagion" provisions also remain in force in several other Mexican states, leaving people living with HIV vulnerable to prosecution depending on geography and local enforcement practices.

5.2.6. Asia-Pacific

Case Study



SOUTH KOREA:
Limits of strategic litigation

Background

Article 19 of South Korea's *AIDS Prevention Act* criminalises HIV non-disclosure, exposure, and transmission. The provision had long been criticised for applying regardless of actual transmission possibility and for failing to reflect contemporary HIV science. Prior to 2023, however, several lower court decisions had progressively narrowed the law's application by requiring evidence of realistic transmission possibility and recognising the preventive effect of condom use and HIV treatment.

The litigation

In April 2023, South Korea's Constitutional Court considered a constitutional challenge to Article 19. Public health experts, legal advocates, and community organisations presented scientific evidence demonstrating that the law was overly broad, stigmatising, and inconsistent with current understanding of HIV transmission risk. In a closely divided 5-4 ruling, however, the Court upheld the provision. The majority prioritised legislative intent and public protection arguments over scientific evidence, allowing the law to remain in force despite its broad scope.

Significance

The judgment represented a major setback for HIV justice advocates because it reversed momentum created by earlier lower-court decisions that had begun aligning legal practice with scientific evidence and human rights principles. At the same time, the strong dissenting opinions acknowledged that the law was overly broad and raised serious constitutional concerns, creating an important foundation for future reform efforts.

Lessons learned

The case demonstrates both the potential and the limits of strategic litigation. Litigation can advance legal reasoning, generate authoritative scientific discussion, and narrow the application of harmful laws even when it does not achieve full repeal. However, court victories may be fragile, and higher courts may ultimately reaffirm punitive approaches. Sustainable reform may therefore also require legislative advocacy, prosecutorial guidance, judicial education, and broader public engagement alongside litigation strategies.

5.3. Community-driven advocacy

This section focuses on community-led approaches that combine advocacy, accountability, and legal empowerment to advance HIV decriminalisation. It examines how affected communities, networks of people living with HIV, civil society organisations, and professional bodies influence law and policy through public campaigns, direct engagement with legislators, expert submissions, media advocacy, and coordinated multisector action. It also explores how communities use international and regional accountability mechanisms – including human rights treaty bodies such as the CEDAW Committee and global health processes such as WHO EMTCT validation – to generate scrutiny, shape norms, and promote legal and policy change, particularly where domestic reform processes are stalled or resistant.

In addition, the section highlights community-led strategies to mitigate harm under existing legal frameworks, including know-your-rights education, community paralegal support, strategic litigation assistance, and access to competent and informed legal defence. These approaches strengthen due process protections, challenge misuse of scientific evidence, reduce the impact of unjust laws, and support longer-term reform efforts.

5.3.1. Africa

MALAWI:

Removal of HIV-criminalisation clauses before adoption

What changed?

In 2017, Malawi removed all HIV criminalisation provisions from its *HIV and AIDS (Prevention and Management) Bill* before its adoption, preventing the introduction of new punitive offences into national law.

The original Bill, which stemmed from a 2008 Law Commission process, had included provisions criminalising HIV exposure and transmission, including a specific offence relating to "deliberate infection" with HIV. It also proposed mandatory HIV testing and treatment targeting key populations on a discriminatory basis. Following parliamentary debate and amendments, these provisions were deleted before the Bill was passed.

Who and how?

Women living with HIV led a coordinated, community-driven advocacy effort throughout the legislative process. Organisations including ICW Malawi, the Coalition of Women Living with HIV/AIDS (COWLHA), women lawyers' groups, sex worker organisations, and broader civil society coalitions worked together to challenge the proposed provisions through direct engagement with parliamentary committees, lawmakers, and the Ministry of Health.

Following targeted capacity-building on HIV science, public health, human rights, and criminal law, women living with HIV provided testimony explaining how criminalisation and coercive provisions would disproportionately affect women and girls, particularly in the contexts of pregnancy, antenatal testing, disclosure, treatment access, and exposure to violence or abandonment. Advocates highlighted how the proposed provisions could deepen stigma, discourage HIV testing, and reinforce unequal power dynamics in healthcare and family settings.

Their interventions were reinforced by submissions from clinicians and public health experts, who presented evidence on transmission risk, treatment effectiveness, and the likely negative impact of criminalisation on uptake of HIV services. This combined community and expert engagement helped reframe the issue from one of punishment to one of public health and rights. The combined community and expert advocacy helped shift the parliamentary debate away from punishment and towards evidence-based public health and human rights approaches. Parliament subsequently adopted amendments removing the coercive provisions, including the proposed offence of "deliberate infection".

Significance and impact

Malawi's reform is a leading example of proactive, community-led prevention of HIV criminalisation before punitive provisions become law. Rather than needing to pursue repeal or constitutional challenge after enactment, advocates successfully intervened during the legislative process itself.

The reform demonstrated the effectiveness of centring the leadership and lived experiences of women living with HIV, supported by scientific evidence and legal expertise. It also showed how coordinated advocacy by civil society, public health experts, and affected communities can shape legislative outcomes and prevent the adoption of laws that undermine HIV prevention, testing, treatment, and human rights. Malawi's experience provides an important model for other countries considering HIV-related legislation, particularly in demonstrating the value of early engagement, coalition-building, and evidence-based advocacy in resisting punitive approaches to HIV.

5.3.2. Eastern Europe and Central Asia

CEDAW

CEDAW advocacy:

Gender-focused international pressure for reform

What changed?

Since 2018, networks of women living with HIV and women's rights advocates across Eastern Europe and Central Asia have increasingly used shadow reports to engage the Committee on the Elimination of Discrimination against Women (CEDAW) to challenge HIV criminalisation and related gender inequalities. These submissions have documented the disproportionate impact of HIV criminalisation on women and contributed to CEDAW

recommendations calling for reform or decriminalisation in countries including Belarus, Moldova, and Tajikistan.

Who and how?

Women living with HIV, feminist legal advocates, and regional civil society organisations prepared shadow reports to supplement official state reporting under the *Convention on the Elimination of All Forms of Discrimination against Women*. These reports highlighted how women are often diagnosed first through routine antenatal testing and may therefore become vulnerable to criminal liability related to HIV disclosure, exposure, transmission, or vertical transmission, including in situations where they lack the power to negotiate safer sex or disclose safely.

Advocates also documented links between HIV criminalisation, gender-based violence, reproductive health stigma, healthcare discrimination, and avoidance of HIV and antenatal services. By framing HIV criminalisation as both a public health and gender equality issue, civil society organisations successfully brought these concerns before an international human rights monitoring mechanism with recognised authority on women's rights.

Significance and impact

Although CEDAW recommendations are not legally binding, they carry significant normative and political weight as authoritative interpretations of states' human rights obligations. In several countries, these recommendations have strengthened domestic advocacy, informed parliamentary and policy discussions, supported judicial and law enforcement training, and provided advocates with an important external mechanism for advancing HIV law and policy reform through a gender and human rights lens.

World Health Organization

EMTCT validation process : Integrating legal environments into public health assessment

What changed?

Since 2018, the WHO Global Validation Advisory Committee (GVAC), which assesses countries' progress towards elimination of mother-to-child transmission (EMTCT) of HIV, syphilis, and hepatitis B, has increasingly recognised HIV criminalisation and other punitive legal frameworks as barriers to achieving and sustaining EMTCT goals. In country assessments across Eastern Europe and Central Asia and other regions, concerns relating to HIV criminalisation have been reflected in validation findings, recommendations, and follow-up discussions.

Who and how?

As part of the EMTCT assessment framework, multidisciplinary review teams examine not only epidemiological indicators but also human rights, gender equality, and community engagement measures. Assessment processes include consultations with government officials,

healthcare providers, independent experts, civil society organisations, and women living with HIV.

Community input has highlighted how HIV criminalisation may discourage women from accessing antenatal and HIV services, create fear around disclosure and partner testing, undermine trust in healthcare systems, and increase vulnerability to stigma, violence, and legal consequences. These experiences and concerns are incorporated into country evaluations and help inform GVAC findings and recommendations.

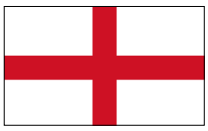
Significance and impact

EMTCT validation is internationally recognised as a major public health achievement, giving GVAC findings significant technical and political influence. The process has created an important institutional mechanism for recognising that punitive legal and policy environments can undermine HIV prevention, testing, treatment, and maternal health outcomes.

By explicitly linking enabling legal environments with EMTCT success, the framework reinforces broader evidence that HIV criminalisation is incompatible with effective, rights-based HIV responses. Civil society advocates have also used these findings to strengthen national policy dialogue, and support calls for legal and policy reform.

5.3.3. Western Europe

Case Study




ENGLAND & WALES (UK):

Community-led advocacy for prosecutorial and police guidance

Background

Following the 2003 Court of Appeal decision in *R v Dica*, people living with HIV in England and Wales became vulnerable to prosecution for reckless HIV transmission under general criminal law. Between 2004 and 2010, a growing number of allegations and inconsistent police investigations exposed significant problems in how HIV-related cases were being handled. Investigations often relied on poor scientific understanding, intrusive police practices, and inconsistent approaches to evidence, disclosure, consent, and causation. Concerns also grew that political pressure could lead to the introduction of HIV-specific criminal offences.

Reform process

In response, NGOs, clinicians, lawyers, prosecutors, and police representatives worked together to develop authoritative national guidance aimed at limiting misuse of the criminal law and improving scientific accuracy.

In 2008, the Crown Prosecution Service (CPS) issued the world's first detailed prosecutorial guidance on intentional or reckless sexual transmission of infection. The guidance established clear evidentiary and legal thresholds for prosecution, emphasising that prosecutions should generally be limited to cases involving actual HIV transmission. It clarified the importance of proving causation and intent, required prosecutors to consider disclosure, consent, and risk-reduction measures, and cautioned that phylogenetic analysis cannot determine who infected whom or establish the direction or timing of transmission.

Subsequently, the Association of Chief Police Officers (ACPO) developed investigational guidance for police officers, including practical decision-making tools and evidentiary flowcharts. The guidance advised police to focus on allegations involving actual transmission, avoid speculative or unnecessarily intrusive investigations, seek expert advice before arrest or charge, and consider scientific evidence relating to HIV transmission risk, condom use, and treatment or viral load.

Terrence Higgins Trust (THT) and the National AIDS Trust (NAT) played central convening and advocacy roles throughout the process. THT documented cases, supported defendants, challenged flawed scientific evidence, and developed constructive engagement with prosecutors.

NAT led strategic engagement with ACPO to ensure that police guidance reflected both scientific evidence and human rights principles.

Still taken from the HIV Justice Network's video documentary on the process, *Doing HIV Justice*. From left to right: Yusef Azad (then NAT), Lisa Power (then THT), Arwel Jones (then CPS), Edwin J Bernard (HJN)

The British HIV Association (BHIVA) contributed scientific expertise and later developed clinical and ethical guidance for healthcare professionals involved in criminal investigations. Specialist defence lawyers also played an important role in exposing unreliable expert evidence and highlighting the need for more rigorous prosecutorial standards.

Results and impact

The CPS and ACPO guidance transformed HIV-related criminal practice in England and Wales. Together, they improved consistency across the criminal legal system, strengthened the use of scientific evidence, reduced inappropriate investigations, and narrowed the circumstances in which prosecutions proceeded.

The guidance also provided greater clarity for people living with HIV regarding their legal position and helped reduce political momentum towards creating HIV-specific criminal offences. Police and prosecutors gained clearer frameworks for decision-making, while courts increasingly relied on more accurate scientific and medical evidence.

Internationally, the CPS guidance became an influential model for later prosecutorial and police guidance in other jurisdictions and demonstrated how collaboration between civil society, clinicians, legal experts, and justice actors could reduce harms associated with HIV criminalisation even where underlying criminal laws remained unchanged.

Ongoing challenges and lessons learned

Because the underlying law permitting prosecution for reckless transmission was not repealed, the guidance has required ongoing revision as HIV science evolved. Developments relating to effective treatment, undetectable viral load, and PrEP have required continued updating of prosecutorial and investigational approaches.

Challenges also remain regarding inconsistent local police practice, delays in decision-making, and broader legal developments relating to consent, deception, and sexual offences that may indirectly affect HIV-related prosecutions. The experience in England and Wales therefore highlights the continuing need for regular scientific updating, training for police and prosecutors, community engagement, and independent monitoring to prevent regression and ensure that criminal law is applied consistently and proportionately.

More details and analysis on how to apply the England and Wales example to advocate for prosecutorial guidance can be found on the HIV Justice Network's website.

You can also watch an episode of *HIV Justice Live!* on HJN's YouTube channel that further explores the process for other jurisdictions following the publication of UNDP's *Guidance for prosecutors on HIV-related criminal cases*.

SCOTLAND (UK):
Public prosecutorial policy limiting HIV-related prosecutions

What changed?

Scotland introduced prosecutorial guidance on HIV and other sexually transmitted infections in 2012, with a substantive update in 2014. *The Crown Office and Procurator Fiscal Service (COPFS) Prosecution Policy on the Sexual Transmission of Infection* confirms that both actual transmission and exposure may fall within scope under Scottish law. However, it emphasises that prosecutions should be tightly circumscribed. The policy requires a clear evidential basis demonstrating intention or recklessness, and stresses that factors such as condom use, disclosure, effective treatment, and other risk-reduction measures weigh strongly against proceeding. It also notes that exposure-only cases demand particular caution and should only be pursued where the overall circumstances justify criminal action.

Who and how?

The policy emerged following sustained engagement from Scottish HIV organisations, people living with HIV, clinicians, and legal experts. Their submissions helped ensure that the guidance reflected contemporary HIV science and addressed concerns that broad criminalisation undermines public health. In June 2020, Police Scotland also ended the longstanding practice of labelling people living with HIV as "contagious" in its intelligence database. This change – prompted by advocacy from a community organisation representing people living with HIV, which raised the issue with senior police leadership – resulted in removal of existing entries and alignment with modern policing standards.

Ongoing challenges

Unlike in England and Wales, Scottish law does not recognise disclosure or consent as a defence, even where a complainant knew the person's HIV status or initiated the sexual activity. The COPFS policy has not been updated since 2014 and, therefore, does not formally incorporate the most current scientific understanding of viral suppression and transmission.

5.3.4. North America

CANADA:

Community mobilisation driving prosecutorial change

What changed?

Since the mid-2010s, people living with HIV, community organisations, legal advocates, and researchers in Canada have built a coordinated national movement challenging the country's highly punitive approach to HIV criminalisation. Their advocacy has helped shift legal and policy debates by centring contemporary HIV science, lived experience, public health evidence, and the disproportionate impact of criminalisation on women, migrants, Indigenous people, and Black communities.

This mobilisation contributed to several important federal policy developments aimed at narrowing the scope of HIV criminalisation, including changes to federal prosecutorial guidance and increased recognition that HIV criminalisation should be limited and exceptional.

Who and how?

The modern phase of coordinated national advocacy emerged in 2016 following participation by Canadian advocates at the *HIV Is Not A Crime Training Academy* in Alabama, United States. Inspired by people living with HIV-led organising in the United States, participants established the Canadian Coalition to Reform HIV Criminalization (CCRHC), bringing together people living with HIV, community organisations, lawyers, researchers, clinicians, and activists from across the country.

People living with HIV who had experienced criminalisation played a central role in shifting public and political understanding by sharing lived experiences of prosecution, incarceration, stigma, and media exposure. Their advocacy was reinforced by empirical legal and social science research documenting the public health harms and discriminatory impacts of criminalisation, notably the book, *Criminalized Lives: HIV and Legal Violence* by Alexander McClelland. Strategic media engagement, coalition-building, and collaboration with public health experts and legal practitioners helped reframe HIV criminalisation as a human rights and public health issue rather than solely a criminal law or "public safety" matter.

Ongoing challenges

Despite extensive advocacy, Canada has yet to reform the applicable laws. Although provincial prosecutorial guidance has reduced prosecutions, persistent stigma, the disproportionate impact on marginalised communities, and the gap between evolving scientific evidence and criminal law underscore the need for legislative reform and continued mobilisation.

UNITED STATES:

HIV Is Not a Crime Training Academies and community-led empowerment

What changed?

Since 2014, the *HIV Is Not a Crime National Training Academy (HINAC)* has become one of the most significant community-led education, mobilisation, and leadership-building initiatives addressing HIV criminalisation in the United States. Convened biennially, HINAC brings together people living with HIV, advocates, lawyers, researchers, public health experts, and policy leaders to strengthen grassroots organising and support coordinated efforts to modernise or repeal HIV criminalisation laws.

Alongside the training academies, *HIV Is Not a Crime Awareness Day* has helped increase public visibility of HIV criminalisation and created a focal point for community education, media engagement, and coordinated advocacy across multiple states.

Who and how?

HINAC was developed and led primarily by people living with HIV and community-based organisations, notably the Sero Project and Positive Women's Network – USA with support from national and regional HIV, legal, and social justice organisations.

The training academies centre the leadership and lived experiences of people living with HIV while providing practical education and strategic guidance on HIV criminalisation law and policy; grassroots organising and coalition-building; media and messaging strategies; use of contemporary HIV science in advocacy; legislative reform strategies; public health and human rights approaches; and intersectional justice issues, including racism, transphobia, sex work criminalisation, substance use criminalisation, and mass incarceration.

HINAC has intentionally prioritised participation by communities disproportionately affected by HIV criminalisation and policing, including Black and Latinx communities, transgender and non-binary people, sex workers, and people who use drugs. The academies also create opportunities for sustained relationship-building between community advocates, scientists, lawyers, policymakers, and public health professionals, helping grassroots advocacy remain grounded in the latest scientific evidence and strategic expertise.

Many participants subsequently develop state and local advocacy campaigns, know-your-rights initiatives, legislative reform efforts, defence support networks, and community education programmes informed by skills and connections built through *HINAC*.

Significance and impact

HINAC has played a transformative role in building a national, people living with HIV-led movement against HIV criminalisation in the United States. The training academies helped shift advocacy from isolated local responses towards more coordinated national organising grounded in science, human rights, racial justice, and community leadership.

The initiative has contributed to stronger and more strategic grassroots mobilisation, increased scientific literacy among advocates and affected communities, and the development of enduring national and regional advocacy networks. It has also helped centre HIV criminalisation within broader struggles against mass incarceration, discriminatory policing, and structural inequality.

HIV Is Not a Crime Awareness Day has further amplified these efforts by creating a recurring platform for public education, media engagement, and policy advocacy, helping sustain momentum between training academies and reinforcing community visibility and solidarity.

Together, these initiatives demonstrate the importance of sustained community education, leadership development, and movement-building in advancing HIV decriminalisation and broader social justice goals.

5.3.5. Latin America and the Caribbean

ARGENTINA:

National coalition mobilisation secures rights-based HIV reform

What changed?

In 2022, following almost a decade of sustained, community-led advocacy, Argentina adopted Law 27,675 replacing the country's outdated 1990 HIV law with a modern, rights-based framework.

The new law established a comprehensive public health and human rights approach to HIV, hepatitis, sexually transmitted infections, and tuberculosis centred on dignity, non-discrimination, privacy, confidentiality, gender equity, and universal access to prevention, diagnosis, treatment, and social protections.

Although not a criminal law reform *per se*, the new law embedded clear anti-criminalisation principles, rejecting punitive approaches as incompatible with evidence-based HIV responses.

Who and how?

The reform was driven by a broad national coalition of more than 40 civil society organisations, including networks of people living with HIV, feminist organisations, legal advocates, healthcare activists, researchers, and public health organisations.

Recognising the limitations of the 1990 law and the growing use of general criminal laws in HIV-related cases after 2003, advocates began drafting proposals for a new law in the early 2010s. The coalition coordinated legislative advocacy, public campaigning, media engagement, scientific and legal analysis, and sustained mobilisation over multiple legislative cycles.

Bills were introduced unsuccessfully between 2016 and 2020 before the law was finally adopted in 2022. Rather than weakening the movement, these repeated setbacks strengthened coordination among advocates and created opportunities to educate policymakers, expand alliances, and reinforce public messaging grounded in science, public health, and human rights.

Coalition members used what activists described as "data activism", combining epidemiological evidence, public health research, legal analysis, and lived experience to demonstrate how stigma, discrimination, coercion, and criminalisation undermine HIV responses. Public testimony and storytelling by people living with HIV helped humanise the impact of discrimination and build political support for reform.

The movement also maintained strong engagement with parliamentarians and government officials while sustaining visible public mobilisation and media advocacy throughout the process.

Ongoing challenges

Despite the adoption of the 2022 law, the general criminal provisions historically used in HIV-related prosecutions remain in force, and prosecutions and threats of criminalisation continue to occur.

Cases reported since adoption of the law have included threats of legal action relating to breastfeeding and vertical transmission, prosecutions involving allegations of exposure through blood or spitting, and prosecutions framed through broader assault or gender-based violence provisions. Some ongoing cases also demonstrate continuing judicial reliance on outdated assumptions about disclosure, responsibility, and HIV transmission risk.

These developments underscore the gap that can persist between progressive legislative frameworks and criminal law practice. Continued judicial education, prosecutorial guidance, community monitoring, and strategic advocacy will therefore remain essential to ensuring that the law's human rights principles are implemented consistently in practice.

5.3.6. Asia-Pacific

NEW ZEALAND (AOTEAROA):

Proactive monitoring and community engagement prevent misuse of criminal law

What changed?

New Zealand has no HIV-specific criminal offences, and courts have generally interpreted existing criminal law narrowly in HIV-related cases, requiring proof of significant transmission risk and, in practice, limiting criminal liability to exceptional circumstances. Over time, sustained community engagement and ongoing monitoring by organisations representing people living with HIV have helped reinforce a public health and science-based approach to HIV within policing, healthcare, and legal systems.

Community-led advocacy and research have also increased recognition that even limited criminalisation can create fear, stigma, and uncertainty for people living with HIV, influencing disclosure practices, relationships, healthcare engagement, and wellbeing.

Who and how?

Community organisations including Body Positive, Burnett Foundation Aotearoa, Positive Women, and Toitū te Ao have played central roles in monitoring criminal law developments, supporting people living with HIV, and engaging with police, prosecutors, healthcare professionals, and policymakers.

This work has included community education and know-your-rights initiatives; participation in police and professional training; provision of expert scientific and community input during investigations; advocacy for evidence-based investigative approaches; research documenting lived experiences of HIV criminalisation and legal uncertainty; and public education aimed at reducing stigma and improving understanding of contemporary HIV science.

Early consultation with community organisations and scientific experts has helped prevent inappropriate investigations and encouraged more consistent, evidence-informed decision-making in cases involving little or no realistic possibility of transmission.

Ongoing challenges

New Zealand still lacks formal national prosecutorial guidance relating to HIV, and police retain a duty to investigate complaints. Variability in frontline knowledge and investigative practice remains a concern, as does persistent HIV stigma within some institutional and public settings.

Community research also demonstrates that legal uncertainty itself can have significant social and psychological impacts even where prosecutions are uncommon. Continued training, public education, scientific updating, and meaningful involvement of people living with HIV in policy and legal discussions therefore remain essential.

5.4. Multiple pathways to reform

The examples presented in this chapter demonstrate that there is no single route to HIV decriminalisation. Reform has occurred through many different pathways, including legislative change, constitutional and appellate litigation, prosecutorial and judicial guidance, community mobilisation, strategic use of international accountability mechanisms, and efforts to mitigate harm under existing legal frameworks. In many settings, progress has depended on sustained collaboration between networks of people living with HIV, civil society organisations, lawyers, clinicians, researchers, public health institutions, and policymakers.

The examples also demonstrate that reform is rarely linear or complete. Legal modernisation in one area may coexist with ongoing criminalisation under general laws, inconsistent enforcement practices, or continued stigma and discrimination. In some countries, progress has involved preventing the adoption of new punitive measures rather than repealing existing laws.

Elsewhere, incremental changes – such as narrowed prosecutorial practices, judicial recognition of current HIV science, or improved access to legal defence – have reduced harms while broader reform efforts continue.

Together, these experiences highlight the importance of community leadership, scientific evidence, legal expertise, and sustained advocacy in advancing rights-based approaches to HIV. They also demonstrate that gains can remain fragile and require continued vigilance, monitoring, and accountability to ensure reforms are implemented effectively and protected from regression.

6. Pathways and strategies for reforming punitive HIV laws

This chapter translates the pathways and examples outlined in Chapter 5 into practical guidance for reform. It focuses on how different strategies can be applied, in what combinations, and under what conditions they are most effective. It also highlights common risks, including unintended consequences and regression, and identifies factors that support durable change. The aim is to assist policymakers, justice actors, civil society, and communities in selecting and sequencing approaches that are appropriate to their legal and political context.

6.1. Common reform pathways: how change happens

Experiences across jurisdictions show that reform typically follows a limited number of pathways, often used in combination. This chapter focuses on how to use these pathways effectively, the conditions that enable success, and the risks that may arise.

In practice, reform most often involves interaction between:

- legislative and policy engagement;
- strategic litigation and judicial or prosecutorial action; and
- community-led advocacy and accountability.

Durable reform rarely results from a single pathway. It typically depends on sequencing and reinforcement across these routes, with community leadership providing continuity.

6.1.1. Community leadership as the foundation of change

Reform is most effective when led by people living with HIV and affected communities. Community-led documentation, legal literacy, and advocacy translate lived experience into evidence for reform.

How this pathway works

- Documenting enforcement patterns and harms
- Framing these harms in legal and policy terms
- Targeted advocacy towards decision-makers
- Monitoring implementation after reform

Preconditions

- Capacity for safe organising and documentation
- Access to legal and scientific expertise

Risks and limitations

- Without community leadership, reforms may be symbolic or poorly implemented.
- Externally driven reforms may lack legitimacy or sustainability.

6.1.2. Strategic use of HIV science

Scientific evidence is most effective when linked directly to legal concepts such as intent, harm, causation and proportionality. [3]

Best used when

- laws or prosecutions rely on outdated assumptions about HIV;
- decision-makers are receptive to expert evidence.

Effective approaches

- Translating science into legally relevant thresholds (e.g. absence of significant risk)
- Using authoritative, consensus-based sources
- Introducing evidence early in investigations or legislative processes

Limitations

- Science alone does not drive reform without political or community engagement.
- Misinterpretation by courts or media may undermine its impact.

6.1.3. Judicial and prosecutorial leadership

Courts and prosecutors can narrow criminalisation where legislative reform is not immediately feasible. [4]

Best used when

- legislative pathways are blocked or slow;
- prosecutorial discretion is significant;
- constitutional or rights-based review is available.

[3] See, for example: HIV Justice Network, *The Expert Consensus Statement on the Science of HIV in the Context of Criminal Law Five-Year Impact Report: Bringing Science to Justice*, 2023

[4] See, for example: UNDP, *10 years of progress: Advancing rights, inclusion and health through the African Regional Judges Forum*, 2024

Advantages

- Relatively rapid impact on enforcement practices
- Ability to align application of law with current science

Risks

- Adverse rulings may entrench harmful interpretations.
- Gains may be uneven or reversible without institutionalisation and training.

6.1.4. Legislative modernisation and full repeal

Legislative reform offers the most durable protection but often requires sustained political engagement.

Best used when

- there is a viable political opening;
- evidence of harm and scientific consensus are established;
- coalitions can engage across political lines.

Approaches

- Full repeal of HIV-specific offences
- Incremental reform (e.g. intent requirements, removal of exposure offences)

Risks

- Partial reforms may legitimise continued criminalisation.
- Poorly drafted amendments may reproduce existing problems.

6.1.5. Preventing new criminalising provisions

Preventing harmful laws is often more efficient than reforming them.

Key elements

- Ongoing monitoring of draft legislation
- Rapid response and early engagement
- Use of evidence and international standards to inform policymakers

Lesson

- Reform is not linear; vigilance is required to prevent reintroduction. [5]

6.1.6. Regional and international influence

International and regional mechanisms are most effective when used to support domestic advocacy.

Best used for

- reinforcing rights-based arguments;
- providing normative standards;
- creating political leverage.

Limitations

- Impact depends on domestic uptake and political context.

6.2. Reform strategies where HIV-specific criminal laws exist

In more than 80 countries, HIV-specific offences supplement or override general criminal law and often create overly broad, scientifically inaccurate offences relating to non-disclosure, potential or perceived exposure, or unintentional transmission. Where such offences exist, reform typically requires a multi-stage approach combining evidence generation, coalition-building, and legal and policy change.

6.2.1. Mapping laws and documenting harms

Purpose

- To establish how laws operate in practice and who they affect

Key actions

- Analyse statutory scope and penalties
- Document enforcement patterns and case outcomes
- Identify disproportionate impacts on marginalised groups

[5] See, for example: HIV Justice Network, *Reforming the criminal law in Zimbabwe - A case study*, 2025

Why it matters

- Evidence of harm is often necessary to build political and legal momentum for reform.

Risks

- Incomplete or non-representative data may lead to inaccurate conclusions.
- Documentation activities may expose individuals to privacy risks or unintended legal consequences if safeguards are insufficient.
- Poorly framed findings may be contested or dismissed by policymakers, limiting their impact.

6.2.2. Using HIV science strategically

Purpose

- To challenge the assumptions underpinning HIV-specific offences

Effective use

- Demonstrate absence of significant transmission risk in many criminalised acts
- Show that effective treatment prevents transmission and that HIV is a manageable chronic health condition
- Link scientific evidence to legal thresholds for liability , harm, causation and sentencing

Risks

- If not clearly translated into legal reasoning, scientific evidence may be disregarded or given limited weight.
- Selective or inconsistent use of evidence may weaken credibility.
- Misinterpretation of scientific concepts by legal actors may lead to incorrect application.

6.2.3. Building multi-sector coalitions

Purpose

- To increase legitimacy and broaden political support

Effective coalitions include

- people living with HIV and other relevant disease (e.g. TB, hepatitis) networks;
- key population organisations;
- clinicians and public health experts;
- legal professionals and policymakers.

Value

- Coalitions enable reform arguments to extend beyond HIV-specific concerns. [6]

Risks

- Divergent priorities among partners may slow decision-making or dilute messaging.
- Insufficient involvement of affected communities may undermine legitimacy.
- Changes in political or funding environments may weaken coalition cohesion or sustainability.

6.2.4. Engaging government and providing model legislation

Purpose

- To move from critique to implementable reform

Effective approaches

- Provide model legal provisions aligned with current scientific evidence and human rights standards
- Demonstrate consistency with national health strategies and relevant international commitments
- Tailor proposals to existing legal frameworks to support feasibility and uptake.

Risks

- Without practical and context-specific alternatives, policymakers may default to existing or familiar models. [7]

---

[6] Broad coalitions of affected communities, civil society, legal experts, and allies are recommended by UNDP and UNAIDS as essential for successful advocacy to reform or repeal punitive HIV laws. See, for example: UNDP, *Spectrum: A Tool for Key Population-Led Law and Policy Reform*, 2024

[7] See, for example: HIV Legal Network, *A human rights analysis of the N'Djamena model legislation on AIDS and HIV-specific legislation in Benin, Guinea, Guinea-Bissau, Mali, Niger, Sierra Leone and Togo*, 2007

- Overly technical or externally driven proposals may limit political acceptance.
- Misalignment with broader legal or policy frameworks may hinder implementation.

6.2.5. Strategic litigation

Definition and purpose

Strategic litigation refers to the deliberate use of individual legal cases to achieve broader legal, policy, or social change beyond the interests of the parties involved. In this context, it is used to challenge, narrow, or reinterpret HIV-specific offences and their application.

Best used when

- constitutional or human rights review is available;
- there is strong supporting scientific and legal evidence;
- the case can establish a precedent with wider applicability.

Key considerations

- Identifying a suitable case and litigant is often challenging, particularly where stigma, privacy concerns, or risk of prosecution deter individuals from coming forward.
- Cases must be carefully selected to ensure favourable facts and minimise the risk of adverse precedent.
- Coordination with advocacy, media, and policy engagement increases the likelihood that legal outcomes translate into broader reform.

Risks

- Unfavourable decisions may entrench or expand harmful interpretations.
- Litigation outcomes may be narrow or inconsistently applied.
- Without follow-up action, court decisions may not lead to systemic change.

6.2.6. Media engagement

Purpose

- To shape public narratives and influence political and legal responses

Approaches

Media engagement typically involves a combination of reactive and proactive strategies:

- Reactive engagement, responding to ongoing cases or public events, including:
  - correcting misinformation in media coverage;
  - providing expert commentary to contextualise cases;
  - mitigating stigma arising from sensational reporting.
- Proactive engagement, shaping narratives before or beyond individual cases, including:
  - pitching in-depth or human-interest stories;
  - highlighting lived experiences and structural harms;
  - using press releases, briefings, or public actions to draw attention to reform issues.

What works

- Building relationships with informed journalists
- Framing issues in terms of fairness, public health, and human rights
- Preparing consistent, evidence-based messaging in advance of cases or legislative debates

Risks

- Reactive engagement alone may reinforce sensational narratives focused on individual cases.
- Poorly framed public campaigns or media actions may provoke backlash or calls for harsher laws. [8]

[8] See, for example: HIV JUSTICE WORLDWIDE, *Making Media Work for HIV Justice: An introduction to media engagement for advocates opposing HIV criminalisation*, 2019

6.3. Strategies where general criminal or public health laws are applied

In the absence of HIV-specific offences, reform focuses on limiting misuse of existing laws.

6.3.1. Addressing misuse of sexual assault frameworks

Application of sexual assault laws to HIV non-disclosure can produce disproportionate outcomes, particularly where there is no transmission or no significant risk of transmission.

In some legal systems, non-disclosure or concealment of HIV status may be treated as vitiating consent, on the basis that consent was obtained through fraud. In others, the presence of HIV may be used to aggravate or escalate charges in sexual offence cases, including where conduct is prosecuted as more serious offences due to perceived risk of harm.

These approaches often reflect assumptions that the presence of HIV alone is sufficient to invalidate consent or justify more severe criminal liability, even in the absence of significant risk or intent. Over-expansion of sexual assault frameworks in this context may distort consent doctrine, reinforce stigma, and result in disproportionate criminal liability.

Approach

- Clarify legal standards for consent, harm, and causation in line with current scientific evidence.
- Distinguish between cases involving no or negligible risk and those involving actual harm.
- Ensure that HIV is not treated as an aggravating factor in the absence of intent and actual transmission.

Key considerations

- Conduct involving HIV may arise in the context of gender-based or intimate partner violence, which should be addressed within appropriate legal frameworks rather than through HIV-specific criminalisation;
- Criminalisation may be misused within abusive relationships, including through threats of allegations or legal action, underscoring the need for careful assessment of context.

Risk

Advocacy in this area may be misunderstood as minimising sexual violence or undermining consent protections. Without careful framing, reform efforts may provoke backlash or reinforce demands for harsher criminal responses.

6.3.2. Zero-risk conduct: spitting, biting, and "assault on health"

Prosecutions involving spitting, biting, or contact with bodily fluids continue in some jurisdictions, including in cases framed as assaults. While such conduct may fall within general assault provisions, it does not constitute HIV exposure where there is no significant risk of transmission.

Approach

- Distinguish clearly between the underlying conduct (which may be addressed under general law) and unsupported claims of HIV-related harm.
- Ensure that HIV-specific charges, sentence enhancements, or "assault on health" provisions are not applied in the absence of transmission risk.
- Integrate current scientific evidence into early stages of investigation, charging, and judicial decision-making.

Effective measures

- Prosecutorial guidance clarifying that HIV-related liability is not appropriate for zero-risk conduct
- Training for police, prosecutors, and frontline responders on HIV transmission and evidentiary thresholds
- Incorporation of up-to-date occupational exposure and post-exposure prophylaxis (PEP) guidance, including when PEP is and is not indicated
- Early use of expert evidence to establish the absence of transmission risk

Key considerations

- Legal and institutional responses are often influenced by outdated assumptions about HIV transmission and occupational exposure.
- Current evidence establishes that spitting does not constitute an HIV exposure route and that biting presents no risk in the absence of blood exposure.
- Failure to reflect this understanding may lead to unnecessary escalation, inappropriate charges, and stigma-driven responses.

Risks

- Arguments focused on the absence of HIV transmission risk may be misinterpreted as minimising the seriousness of the underlying conduct.
- Without clear guidance, authorities may substitute alternative charges or pursue harsher penalties under general criminal law.
- Inconsistent understanding across institutions may limit the impact of reforms or guidance.

6.3.3. Correcting the misuse of public health and quarantine powers

Coercive public health measures – such as detention orders, profession bans, or deportation – have in some settings been applied to people living with HIV without evidence of public health benefit. These measures may be used in place of, or alongside, criminal law, and can replicate or reinforce punitive approaches.

Approach

- Review and amend public health laws and regulations to ensure measures are evidence-based, proportionate, and rights-compliant.
- Limit coercive measures to situations where there is a clear, demonstrable risk to public health and no less restrictive alternative.
- Strengthen procedural safeguards, including due process, time limits, and access to appeal.
- Promote voluntary, community-based interventions, including access to testing, treatment, and support.
- Use legal environment assessments and public health evidence to demonstrate the ineffectiveness and harms of coercive approaches. [9]

Key considerations

- HIV is not transmitted through casual contact, and broad restrictions on liberty or movement are rarely justified on public health grounds.
- Coercive measures may deter testing, treatment uptake, and engagement with health services.
- Public health powers may be applied in discriminatory ways, including against migrants and other marginalised groups.
- Coordination between health authorities and justice actors is necessary to avoid duplication or escalation of punitive responses.

Risks

- Reform efforts may be resisted on the basis of public safety concerns or misperceptions about transmission risk.
- Removal of coercive measures without adequate investment in voluntary services may reduce trust without improving health outcomes.
- In the absence of clear safeguards, restrictive measures may persist in practice despite legal or policy changes.

[9] See, for example: UNDP, *Evaluation of the Global Commission on HIV and the Law: Issue Brief #1 Enabling legal environments, including decriminalization for HIV responses*, 2022

6.3.4. Prosecutorial guidance as harm reduction

Where legislative reform is slow or not feasible, prosecutorial guidance can operate as an interim mechanism to limit the harmful application of criminal law.

Approach

- Develop clear policies setting thresholds for investigation and prosecution, including requirements related to intent, causation, and transmission risk.
- Incorporate current scientific evidence into prosecutorial decision-making.
- Require senior review of cases involving HIV to ensure consistency and proportionality.
- Include safeguards to protect confidentiality and prevent unnecessary disclosure of HIV status.

Key considerations

- Guidance can be implemented more rapidly than legislative reform and may have immediate impact on practice.
- Effectiveness depends on awareness, training, and consistent application by prosecutors and law enforcement.
- Guidance should be publicly accessible where possible to support transparency and accountability.

Risks

- Guidance may be unevenly applied or disregarded without monitoring and enforcement.
- It does not replace the need for legislative reform and may be reversed or weakened over time.
- Without clear communication, guidance may be misunderstood by police or the public.

6.3.5. Judicial education and strategic litigation

To improve the application of law in line with current scientific evidence and human rights standards, and to challenge harmful interpretations.

Approach

- Support the use of clear, authoritative scientific and medical evidence in judicial proceedings, including through expert testimony and agreed statements of fact.

- Ensure legal arguments explicitly connect HIV science to relevant legal tests (e.g. intent, causation, and harm).
- Pursue carefully selected cases that can clarify legal standards or correct disproportionate applications of the law.
- Facilitate judicial access to authoritative guidance and peer exchange where appropriate.

Key considerations

- Outcomes depend not only on judicial understanding, but on the quality and clarity of evidence and legal argument presented.
- Strategic litigation is most effective when cases are selected with regard to their potential to establish precedent.
- Engagement with the judiciary should respect judicial independence and focus on improving access to relevant information.

Risks

- Poorly framed cases or inadequate evidence may result in adverse precedents.
- Litigation outcomes may be narrow or inconsistently applied.
- Without follow-up, improvements in individual cases may not translate into broader changes in practice.

6.3.6. Engaging police

To ensure that decisions to investigate or refer cases involving HIV are based on evidence, appropriate thresholds, and respect for rights.

Approach

- Develop clear operational guidance on when HIV-related allegations warrant investigation, including thresholds related to intent, causation, and transmission risk.
- Integrate current scientific evidence into standard procedures and decision-making tools.
- Establish protocols to protect confidentiality and prevent unnecessary disclosure of HIV status.
- Support early access to expert input where HIV-related issues arise.

Key considerations

- Police practices often determine whether cases proceed, making early-stage decision-making critical.
- Responses may be influenced by outdated assumptions about HIV.
- Clarity and consistency in guidance are essential to avoid unnecessary escalation.

Risks

- In the absence of clear guidance, precautionary or stigma-driven responses may lead to unnecessary investigations or referrals.
- Inconsistent application across jurisdictions or units may undermine effectiveness.
- Without coordination with prosecutors, cases may proceed despite insufficient evidence.

6.4. Preventing regression after reform

Reform does not automatically change practice. Without active safeguards, criminalisation may re-emerge through general criminal law, public health powers, or discretionary decision-making. Preventing regression requires ongoing monitoring, institutional oversight, and sustained attention to how laws are applied in practice.

6.4.1. Review of enforcement practices

Purpose

- To ensure that changes in law are reflected in investigation, charging, and prosecution decisions

Measures

- Monitor arrests, investigations, charges, and case outcomes involving HIV.
- Identify use of alternative laws that replicate the effect of repealed or amended provisions.
- Establish review mechanisms for HIV-related cases, including oversight by prosecutors with relevant expertise.
- Publish anonymised data where possible to support transparency and accountability.

Risks

- Without systematic monitoring, displacement into other legal frameworks may go undetected.
- Data limitations or lack of transparency may hinder accountability.

6.4.2. Media and narrative management

Purpose

- To prevent misinformation and reactive policy responses that may undermine reform

Measures

- Promote accurate, science-based reporting on HIV and the law.
- Ensure timely correction of misinformation by public authorities.
- Avoid official statements that frame people living with HIV as threats.

Risks

- Sensational reporting of individual cases may trigger public or political pressure for renewed criminalisation.
- Reactive engagement alone may reinforce stigma rather than shift narratives.

6.4.3. Parliamentary and institutional oversight

Purpose

- To sustain reform through political and institutional accountability

Measures

- Conduct post-legislative review of amended or repealed provisions.
- Integrate monitoring of HIV-related criminalisation into national HIV and human rights reporting systems.
- Establish mechanisms (e.g. parliamentary questions, hearings, or independent review bodies) to respond to evidence of renewed misuse.

Risks

- Changes in political leadership or priorities may weaken oversight.
- Absence of formal review mechanisms may allow regression to occur without scrutiny.

6.5. Using this guidance: tools and resources for implementation

This guidance is intended to support practical action by governments, justice actors, civil society organisations, and communities. It should be used alongside existing resources that provide technical detail, training, and implementation support.

6.5.1. Complementary advocacy and implementation resources

This guidance builds on more than fifteen years of scientific, legal, public health, and community-led work on HIV criminalisation and enabling legal environments.

In addition to the normative guidance referenced in Chapter 3, users may find the following advocacy, implementation, and practice-oriented resources useful in supporting legal and policy reform:

- The *Oslo Declaration on HIV Criminalisation* (2012), a community-led statement that helped shape global advocacy for rights-based approaches to HIV non-disclosure, exposure, and transmission
- The *Advancing HIV Justice* report series, documenting global trends, prosecutions, and reform efforts related to HIV criminalisation
- Related UN guidance on enabling legal environments and the decriminalisation of behaviours associated with HIV vulnerability and marginalisation, including guidance relating to drug use, sex work, and same-sex sexual activity in the context of HIV and key populations
- Community-led case monitoring, legal analysis, and strategic litigation resources developed by national, regional, and international networks
- Scientific and legal resources supporting accurate interpretation of HIV transmission science in legal settings
- Implementation tools, prosecutorial guidance, judicial education materials, and training resources developed by civil society, UN agencies, and professional associations

Most of these documents can be found in the *HIV Justice Academy's Resource Library*, which provides a curated collection of key scientific, legal, policy, advocacy, and training materials relating to HIV criminalisation and enabling legal environments.

The library includes hundreds of resources produced by UN agencies, academic institutions, civil society organisations, and community networks, including materials in English, French, Russian, Spanish, and other languages.

6.5.2. Capacity-building and learning

The *HIV Criminalisation Online Course*, hosted on the *HIV Justice Academy* is designed to strengthen understanding of HIV criminalisation, contemporary HIV science, human rights standards, and reform strategies. It offers modular, self-paced learning for advocates, policymakers, prosecutors, judges, public health practitioners, and journalists.

The *HIV Justice Academy* also includes *Action Toolkits*, which offer specialised, practice-oriented guidance for both legal defence and policy advocacy. These include defence toolkits supporting lawyers defending cases involving alleged HIV non-disclosure, exposure, or transmission in the context of sex, as well as cases involving spitting, biting, and breastfeeding. Complementing these are advocacy toolkits designed to help advocates challenge discriminatory and punitive laws, support people living with HIV, and build evidence-informed arguments for reform.

6.5.3. Evidence, monitoring, and accountability

This guidance should be used in conjunction with documentation and monitoring tools that track how laws are applied in practice, developed with the meaningful involvement of people living with HIV and other affected communities.

These include:

- HJN's *Global HIV Criminalisation Database*, which provides the most comprehensive, publicly accessible record of HIV-related laws, prosecutions, and case outcomes worldwide, and supports comparative analysis, trend identification, and accountability;
- national and regional monitoring of HIV-related arrests, prosecutions, and judicial decisions;
- documentation of discriminatory enforcement, media reporting, and narrative harms; and
- strategic engagement with international and regional human rights mechanisms, treaty bodies, and reporting processes.

Together, these data enable governments, civil society, and communities to assess whether legal reforms are delivering equitable outcomes in practice, to identify regression or displacement of criminalisation, and to support evidence-based advocacy, litigation, and policy reform.

6.5.4. Applying the guidance in context

Users are encouraged to:

- adapt the recommendations to their legal system, institutional structures, and political context;
- combine legislative reform with prosecutorial, judicial, administrative, and institutional safeguards;
- centre the leadership and lived experience of people living with HIV and affected communities; and
- use the indicators set out in Chapter 4 to monitor implementation and impact over time.

7. Conclusion

This guidance demonstrates that HIV criminalisation is neither inevitable nor effective. Across legal systems and regions, evidence shows that laws criminalising HIV non-disclosure, perceived or potential exposure, and unintentional transmission undermine public health, violate human rights, and fail basic principles of criminal law. Where progress has occurred, it has been driven by community leadership, contemporary HIV science, and sustained engagement with legal and political institutions.

Reform is possible in diverse contexts. Countries have repealed HIV-specific offences, constrained the misuse of general criminal and public health laws, and issued binding guidance that limits prosecutions to truly blameworthy circumstances. These changes can reduce stigma, improve access to testing and treatment, and strengthen trust in health and justice systems. Conversely, poorly designed reforms risk reproducing inequality, shifting punishment elsewhere in the legal system, or creating "two-tier" frameworks that privilege those with stable access to care.

Decriminalisation must therefore be understood as an ongoing process, not a single legislative act. It requires not only the removal or reform of punitive laws but also addressing how people living with HIV and affected communities are treated in practice, including informal or systemic forms of criminalisation where individuals are perceived or treated as criminals regardless of legal charges. Durable change depends on safeguards against regression, continuous monitoring of enforcement, and meaningful participation of communities in oversight and accountability. Aligning law, policy and practice with science and human rights is essential to meeting the *2026-2031 Global AIDS Strategy*'s societal enabler targets and ending AIDS as a public health threat.

The evidence presented in this guidance leaves little doubt that punitive approaches to HIV must give way to legal and policy frameworks grounded in contemporary science, human rights and public health. The challenge now is for governments to make that transition, in partnership with people living with HIV and affected communities.

Do the best you can
until you know better.
Then when you know better,
do better.

Maya Angelou