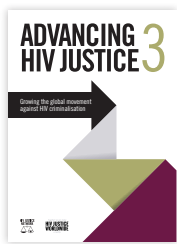


ADVANCING HIV JUSTICE 3

Growing the global movement against HIV criminalisation



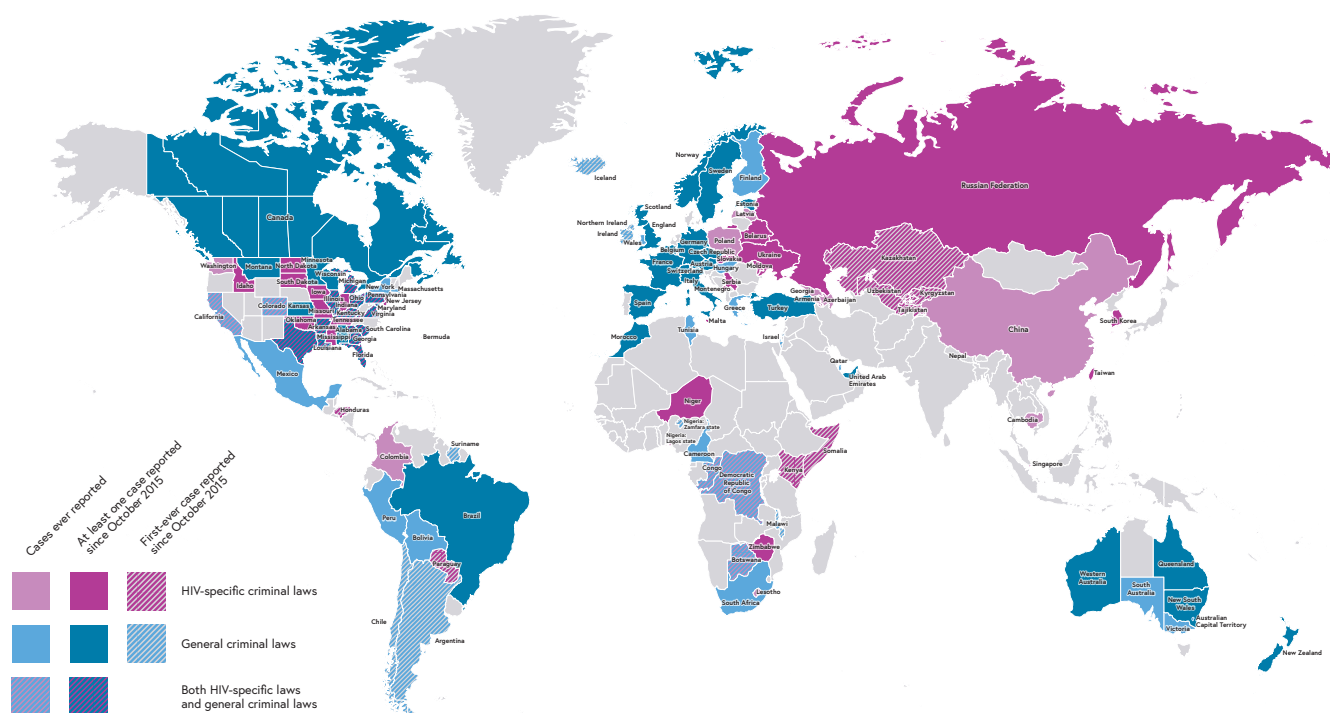
Advancing HIV Justice 3: Growing the global movement against HIV criminalisation provides a progress report of achievements and challenges in global advocacy against HIV criminalisation between 1st October 2015 to 31st December 2018. This is a summary of the report's highlights. To read the full report, including detailed case studies describing how this advocacy was undertaken, visit hivjustice.net/advancing3.

Global overview HIV criminalisation undermines the HIV response by ignoring the human rights of people living with HIV: exacerbating stigma and discrimination, and impeding HIV prevention, testing, treatment, care and support. Across the globe, laws used for HIV criminalisation are often written or applied based on myths and misconceptions about HIV and its modes of transmission, with a significant proportion of prosecutions for acts that constitute no or very little risk of HIV transmission, including: vaginal and anal sex when condoms had been used or the person with HIV had a low viral load; oral sex; and single acts of breastfeeding, biting, scratching or spitting.

Our global audit of HIV-related laws found that a total of 75 countries (103 jurisdictions) have laws that are HIV-specific or specify HIV as a disease covered by the law. As of 31st December 2018, 29 countries had ever applied HIV-specific laws, 37 countries had ever applied general criminal or similar laws, and six countries had ever applied both types of laws.

During our audit period, there were at least 913 arrests, prosecutions, appeals and/or acquittals in 49 countries. The highest number of cases were reported in:





Analyses suggest HIV criminalisation cases do not reflect the demographics of local epidemics, with the likelihood of prosecution exacerbated by discrimination against marginalised populations on the basis of drug use, ethnicity, gender, gender identity, immigration status, imprisonment, poverty (including homelessness), sex work and/or sexuality. Rather than protecting women, HIV criminalisation laws are being used against women, including those experiencing gender-based violence.

Promising and exciting developments in case law, law reform and policy took place in many jurisdictions: two HIV criminalisation laws were repealed; two HIV criminalisation laws were found to be unconstitutional; seven laws were modernised; and at least four proposed laws were withdrawn. In addition, six countries saw precedent-setting cases limiting the overly broad application of the law through the use of up-to-date science.

Progress against HIV criminalisation is the result of sustained advocacy using a wide range of strategies. These include:



Building the evidence base Research-based evidence has proven vital to advocacy against HIV criminalisation. In particular, social science research has been used to challenge damaging myths and to identify who is being prosecuted, in order to help build local and regional advocacy movements. Among the excellent research published during the reporting period is the influential work of The Williams Institute (UCLA), which undertook HIV criminalisation research in three US states. That research became a crucial tool for advocates who used the findings to push for reform in California (where the law was modernised in 2017), Florida and Georgia. This research allowed advocates to apply gender and racial justice analysis, and to recognise the intersection of HIV criminalisation with other areas of structural disadvantage and prejudice.



Ensuring the voices of survivors are heard HIV criminalisation advocacy means ensuring that HIV criminalisation survivors are welcomed and supported as advocates and decision-makers at all stages of the movement to end HIV criminalisation. Diverse initiatives have promoted the voices of survivors, including the outstanding work of the Sero Project, which supports and connects survivors,

and provides training for those wishing to take on an advocacy role. Survivors' panels opened two HIV is Not a Crime Training Academies (HINAC 2 and 3) in 2016 and 2018 and were featured at Beyond Blame symposia prior to AIDS 2016 and AIDS 2018. A major highlight of AIDS 2018 in Amsterdam was a powerful plenary address by Robert Suttle, Assistant Director of the Sero Project. The effect of Robert's presentation was extraordinary, visibly impacting many of those present, changing hearts and minds.



Training to build capacity Successful strategies have focused on grassroots activists, recognising that training events must be community owned and provide opportunities for diverse community members to come together, hold discussions, set agendas, and build more inclusive coalitions and communities of action. One of the great successes of recent years has been the ongoing impact of training undertaken during HINAC 2 in 2016, which saw delegates from Mexico generate an international campaign to challenge the constitutionality of the law in Veracruz State; hold the first Spanish-language HINAC (VIH No Es Un Crimen) in 2017; and develop a national network of organisations against HIV criminalisation: La Red Mexicana. Their efforts have already resulted in at least three proposed HIV criminalisation laws being withdrawn. Advocates have also worked to increase lawyers' and judges' understanding of the broad range of issues informing HIV criminalisation, notably on the African continent.



Using PLHIV-led research to build community engagement capacity Research led by people living with HIV (PLHIV) provides a mechanism to engage communities to develop in-depth understanding of issues and build relationships, mobilise and organise. An outstanding example is the work done by the Eurasian Women's Network on AIDS (EWNA) during their 2017 HIV criminalisation scan of Eastern Europe and Central Asia (EECA). The scan uncovered a large number of previously unidentified cases and alarming practices undermining medical and public health responses. It also found HIV criminalisation in the region is gendered, leaving women more vulnerable to violence and other structural inequalities. The EECA scan employed an impressive methodology, facilitating new partnerships and strengthening EWNA's and local agencies' involvement in the regional and global HIV movements to end criminalisation.



Using science for justice HIV criminalisation is often based on outdated and/or inaccurate information exaggerating potential harms of HIV infection. In addition, HIV-related prosecutions frequently involve cases where no harm was intended; where HIV transmission did not occur, was not possible or was extremely unlikely; and where transmission was neither alleged nor proven beyond a reasonable doubt. Efforts to bring up-to-date science into the courtroom were significantly boosted by the 2018 publication of the *Expert consensus statement on the science of HIV in the context of criminal law*, co-authored by 20 of the world's leading HIV scientists. Relying on science alone will not end HIV criminalisation, but science offers the opportunity to greatly reduce the number of prosecutions while further inroads are made to address HIV-related stigma, prejudice and disadvantage that drive the criminal law response.



Engaging decision-makers through formal processes Activists have worked to bring about legal and policy changes not only by lobbying local decision-makers, but also by engaging in other formal processes including using international mechanisms to bring HIV criminalisation issues to the attention of state or national decision-makers. This includes submissions from Canada and Tajikistan to the UN Committee on the Elimination of Discrimination against Women (CEDAW), a submission from Russia to the UN Committee Against Torture, and submission from Belarus to the UNAIDS Programme Coordinating Board. Activists have also used legal practice to change case law through interventions such as strategic litigation and acting as *amicus curiae* in individual cases that may serve the public interest.



Acting locally and growing capacity through networks Many community organisations working to limit HIV criminalisation are actively supporting grassroots community advocates' participation at the decision-making table. In Malawi, the Women Lawyers Association, the Southern Africa Litigation Centre (SALC) and the AIDS and Rights Alliance for Southern Africa (ARASA) supported and sensitised grassroots activists resulting in the use of innovative approaches, including songs and home-made signs, that convinced parliamentarians to withdraw Malawi's proposed problematic HIV criminalisation provisions. As engagement against HIV criminalisation has increased, so too has the development of HIV criminalisation-focused networks, including those in Canada, Mexico and Niger. At a regional level, organisations have also united, including across Francophone Africa, and in Eastern Europe and Central Asia.



Getting the word out and engaging with media Activists have employed diverse strategies to extend the reach of advocacy against HIV criminalisation including pushing the issue onto conference agendas, presenting messaging through video, working through digital media forums, using public exhibitions to push campaign messaging, and holding public demonstrations. Sensationalist headlines and misreporting of HIV-related prosecutions remain a major issue, perpetuating HIV stigma while misrepresenting the facts. Activists are endeavouring to interrupt this pattern of salacious reporting, working to improve media by pushing alternative, factual narratives and asking journalists to accurately report HIV-related cases with care. Strategy aiming to intervene at different points in the reporting process have included the development of an advocates' guide to working with media, *Making Media Work for HIV Justice: An introduction to media engagement for advocates opposing HIV criminalisation*; the inclusion of a number of journalists at the *Lawyers for HIV & TB Justice: Strategic Litigation, Legal Defence & Advocacy Training*; and the development of coalition media strategy such as that designed to launch the *Expert consensus statement on the science of HIV in the context of criminal law*.

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