

GLOBAL TRENDS IN HIV CRIMINALISATION (2022-2024)

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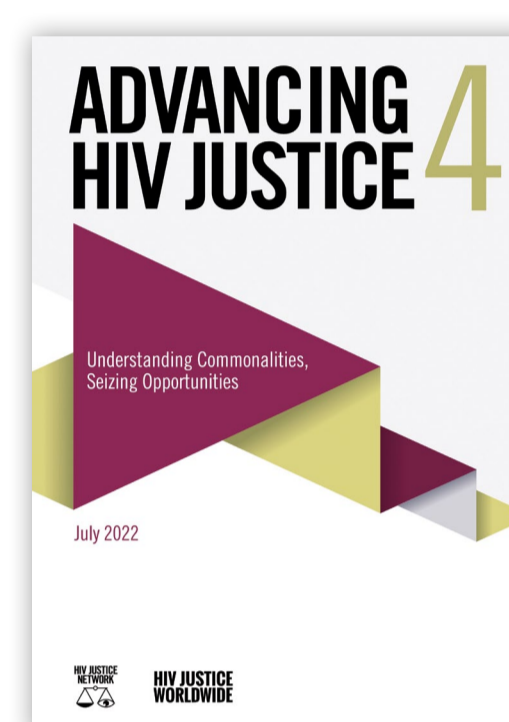
BACKGROUND

The HIV Justice Network (HJN) routinely monitors punitive laws and prosecutions of people living with HIV following an allegation of HIV non-disclosure, perceived 'exposure', or transmission. It is well established that this state-sponsored stigma and discrimination within the criminal legal system is a barrier to universal access to HIV prevention, testing, treatment and care, and a human rights issue of global concern.¹

METHODS

GLOBAL HIV CRIMINALISATION DATABASE

Laws & Analyses | Cases | Organisations



An audit of laws and cases included in HJN's *Global HIV Criminalisation Database*² between 1 January 2022 to 30 June 2024. This covers the period since the publication of our most recent *Advancing HIV Justice* report, which assessed the years 2019-2021 (AHJ4, 2022).³

Laws recorded in the Database may be HIV-specific, i.e. they single out people living with HIV and/or treat HIV as a separate element, or non-HIV-specific, for example criminal provisions which apply to spreading contagious diseases without singling out HIV, or general laws criminalising injury, such as assault, bodily harm, or even sexual assault.

Terminology

We refer to both 'countries' and 'jurisdictions' to account for the fact that in some countries there are parallel criminal legal systems at the subnational level, meaning that different jurisdictions have different laws relevant to HIV criminalisation. The Database includes a total of 320 jurisdictions in 203 countries.

We define 'active enforcement' as reported cases of the application of HIV-specific or non-HIV-specific criminal laws since 1 January 2019. Where we refer to 'modernisations' of HIV laws, this means updating laws to better reflect latest HIV science including routes of transmission and methods of prevention.

RESULTS

TRENDS

Headline trends

- The prevalence of HIV-specific laws has decreased in recent years due to sustained advocacy achieving legislative reform.
- Despite a reduction in reported cases since COVID-19, more than half of jurisdictions actively enforce their HIV laws.
- Despite increasing law modernisations and repeals, much work remains to be done to tackle the global threat of HIV criminalisation.

Laws

As of 30 June 2024, 105 jurisdictions in 79 countries have punitive HIV-specific law(s) in place. This is fewer than we reported in AHJ4, where 111 jurisdictions in 82 countries had HIV-specific law(s).

Of those with HIV-specific criminal law(s), 46 jurisdictions (44%) in 41 countries (52%) have ever enforced them. This represents an increase in countries but a decrease in jurisdictions compared with AHJ4, which is due to a significant number of jurisdictions no longer having HIV-specific law(s) in place.

Cases

164 jurisdictions in 92 countries have ever reported HIV criminalisation cases. This is more than the 81 countries recorded in AHJ4, which is attributable to first ever cases in Latvia and Thailand, as well as historic cases being uncovered.

Of those which have ever had HIV cases, 91 jurisdictions (55%) in 53 countries (58%) have enforced their laws since 2019. This demonstrates that HIV criminalisation remains a significant issue.

Of those with active enforcement, 41 jurisdictions (45%) did so through HIV-specific criminal laws, while 50 (55%) used general laws. This illustrates that the issue of criminalisation goes beyond HIV-specific criminal laws.

What is HIV criminalisation?

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

Law reform

There have been at least 15 modernisations of HIV-specific criminal laws in nine countries. In five jurisdictions, this resulted in a full repeal of HIV-specific criminal laws. This is an increase from the nine jurisdictions in four countries in the period 2019-2021.

In at least a further 13 jurisdictions in four countries, HIV-specific criminal laws are currently under review or court challenge.

New laws

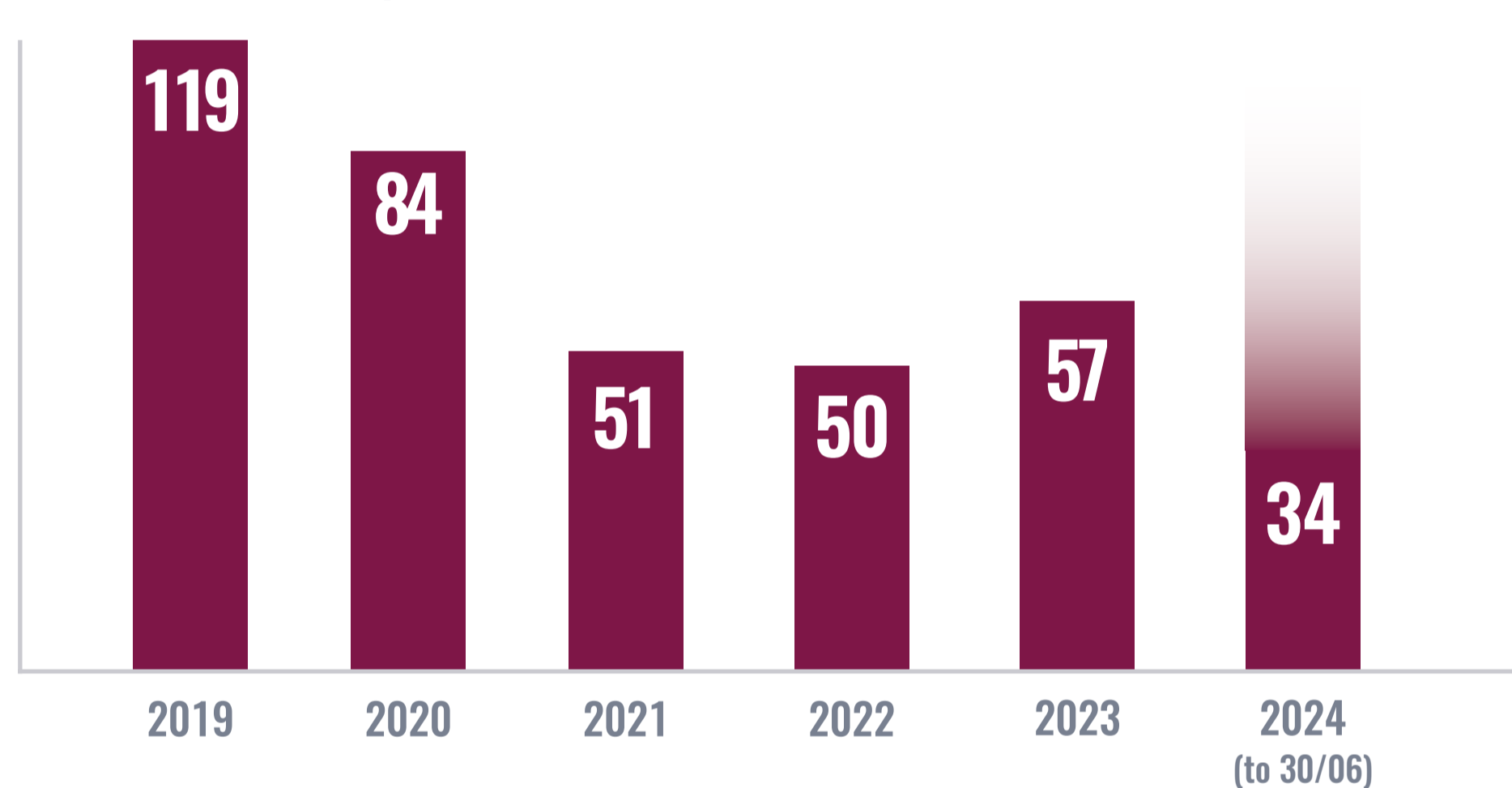
Four jurisdictions in four countries introduced HIV-specific criminal laws between 2022-24.

CASE TRENDS

We have seen significant changes in the number of case reports since the beginning of the COVID-19 pandemic.

In pre-pandemic years, we routinely discovered 120 or more individual HIV case reports per year through our monitoring. Chart 1 demonstrates that this number fell significantly during the height of the pandemic and remains consistently around half of the annual cases previously seen.

Chart 1: HIV cases reported by year



While there may have been fewer HIV criminalisation cases during the first few waves of the COVID pandemic, it is also possible that media attention was simply shifted away from HIV, resulting in fewer media reports. Official records and civil society reporting uncover many more cases than are reported by the media. For instance, the Williams Institute and the Eurasian Women's Network on AIDS (EWNA) have uncovered several hundreds of previously unreported cases in the US and EECA.⁴

When factoring in these data in AHJ4, the true number of cases was at least 2.5 times the 275 media reports we received during the review period. As such, we should similarly expect true case numbers in 2022-2024 to be much higher.

ENFORCEMENT HOTSPOTS

During the review period, Russia had the highest number of individual case reports (46), consistent with historic trends.

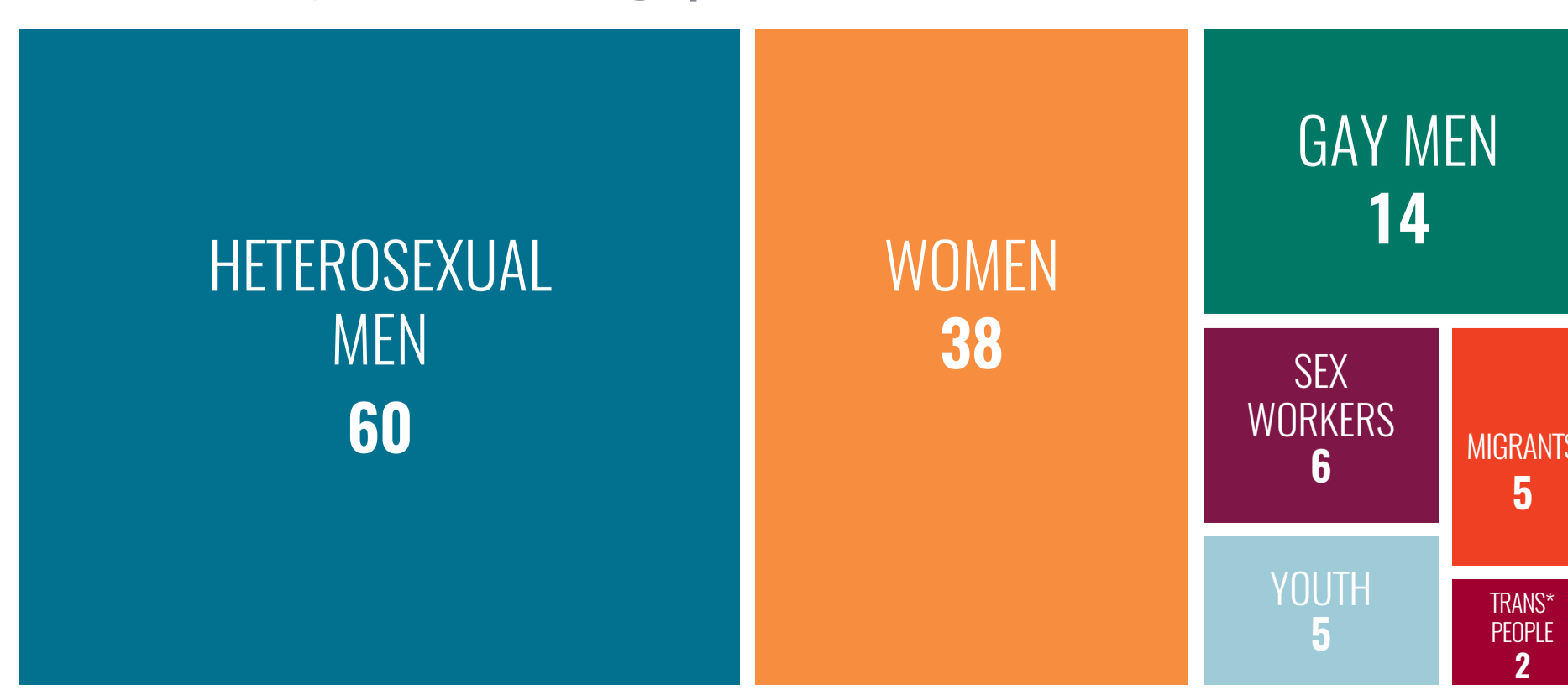
The USA (22) saw a slowdown of cases, but remains amongst the countries with the highest active enforcement. Canada (3), meanwhile, saw a dramatic reduction in reported cases during the review period, due to significant legal and policy changes in recent years. Belarus (1), historically one of the most active enforcers of HIV laws, also saw a dramatic reduction in reported cases during the review period. This should be treated with caution, however, as official data and civil society research suggest that this is a result of media underreporting.

Other countries with significant enforcement during the review period include Singapore (7), France (5), Kazakhstan (5), Spain (5), Uzbekistan (5), and the UK (5).

DEMOGRAPHICS

The impact of HIV criminalisation is not felt equally. Different communities experience different burdens from the presence of punitive HIV laws. In AHJ4, we reported that around half of defendants were women or minorities who often face discriminatory policing, which is heightened for those with multiple intersecting stigmatised identities. These data have remained largely consistent during this review period.

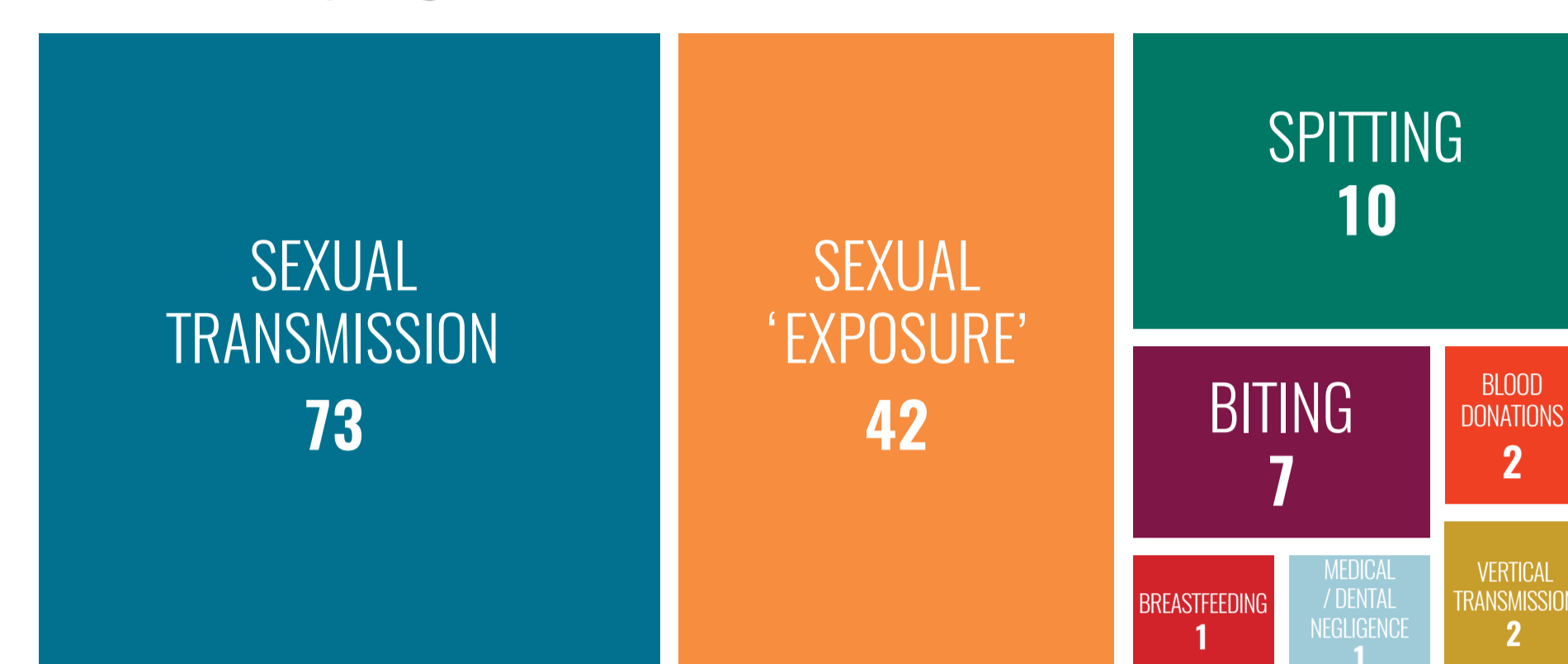
Chart 2: Cases by defendant demographics 2022 - 2024



CASE TYPES

The vast majority of HIV case reports we receive concern alleged sexual transmission or 'exposure' usually based on allegations of HIV non-disclosure. A smaller number relate to non-sexual acts, such as spitting, biting, breastfeeding or blood donations. There have not been any substantial changes to the long-term trends in the review period.

Chart 3: Cases by alleged conduct 2022 - 2024



LAW REFORM

A highly positive trend in recent years has been the accelerated pace of modernisations and repeals of HIV-specific criminal laws resulting from concerted advocacy by civil society.

The majority of modernisations and repeals noted in the key trends section occurred through legislative reform (12), while a small number were achieved through litigation (3).

The Americas have been the leaders in reform during the review period, with nine modernisations (four in North America, five in Latin America and Caribbean). A further four occurred in Sub-Saharan Africa, while one each occurred in Eastern Europe and Central Asia and Asia Pacific.

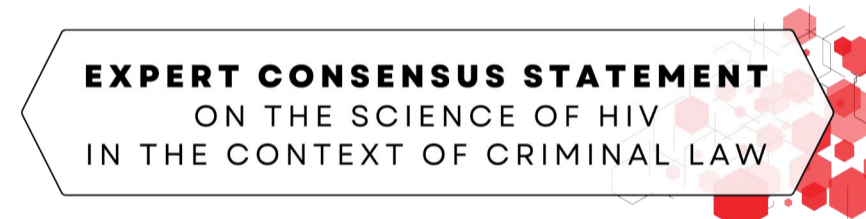
Additionally, all but one of the HIV-specific criminal laws currently under review are in the Americas.

Modernisations far outpaced the rate of HIV laws being introduced or strengthened, however the introduction of severe HIV laws, such as in Uganda,⁵ gives cause for concern.

BRINGING SCIENCE TO JUSTICE

Another positive trend observed during the review period is the increasing correct use of up-to-date HIV science in the criminal justice system.

This trend has accelerated following the publication of the *Expert Consensus Statement on the Science of HIV in the Context of Criminal Law in 2018*,⁶ which analysed best available research on HIV transmission and treatment.



A five-year review of the *Statement* we undertook in 2023 found that it has been pivotal in successful defences against prosecution in countries such as Canada and Taiwan, as well as constitutional challenges to HIV criminalisation laws in Kenya and Uganda, although only a challenge in Lesotho was successful. Similarly, the *Statement* has been used in successful advocacy resulting in repeal in Zimbabwe, and ongoing challenges in countries such as Canada.⁷

Separately, scientific evidence has informed positive legal reforms during the review period in countries including Belize, Tajikistan, and Singapore, demonstrating a global uptake of modern HIV science in criminal legal settings.

CONCLUSIONS

Despite positive trends in recent years, HIV criminalisation continues to be a major threat to public health and human rights. While the number of HIV-specific criminal laws has reduced slightly in recent years, around a third of jurisdictions still have them in place, although fewer than half seem to be actively applying them.

Reported cases have declined since the onset of the COVID-19 pandemic, but this may be attributable to under-reporting. The frequent application of general laws in HIV cases shows that the problem of HIV criminalisation extends beyond HIV-specific laws.

More positively, modernisations and repeals of HIV criminalisation laws have accelerated in recent years, while scientific evidence is increasingly being reflected in laws and cases.

These data suggest that the global movement to limit or end HIV criminalisation is succeeding, although the pace is currently too slow to achieve the UN target of fewer than 10% of countries with punitive laws and policies that negatively impact the HIV response, requiring further focus and funding.

For a full analysis of HIV laws and cases by jurisdiction, visit HJN's *Global HIV Criminalisation Database*.

1 Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights and Health*, July 2012 <https://hivlawcommission.org/>
2 *Global HIV Criminalisation Database*, HIV Justice Network. <https://www.hivjustice.net/global-hiv-criminalisation-database/>
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4 UCLA School of Law, Williams Institute. *Publications: HIV Criminalization*, available at: <https://williamsinstitute.law.ucla.edu/publications/issuues-hiv-criminalization/>. The Eurasian Women's Network on AIDS (EWNA). *The HIV Criminalisation Scan in the countries of Eastern Europe and Central Asia for 2018-22 (2023)*, available at: https://academic.oup.com/hivjustice-net/wp-content/uploads/2023/04/EWNA-HIV-Criminalization-Scan-2023_rus.pdf
5 *Global Criminalisation Database: Uganda*, HIV Justice Network. <https://www.hivjustice.net/country/ug/>
6 F Barre-Sinoussi, S S A Karim, J Albert, I G Bekker, C Beyrer, P Cahn, A Calmy, B Grunzweig, A Grulich, A Kamaruzaman, N Kumarasamy, MR Loufy, KM El Fihai, S Mounp, SG Montaner, P Manderi, V Pokrovsky, AM Vandamme, B Young, P Goffrey-Faustet. *Expert consensus statement on the science of HIV in the context of criminal law*, *Journal of the International AIDS Society*, 25 July 2018. <https://onlinelibrary.wiley.com/doi/10.1002/jia2.25161>
7 A Symington, *The Expert Consensus Statement on the Science of HIV in the Context of Criminal Law – Five Year Impact Report: Bringing Science to Justice*. HIV Justice Network, Amsterdam, July 2023. https://www.hivjustice.net/wp-content/uploads/2023/07/HJN_ECSS_Report_final.pdf