



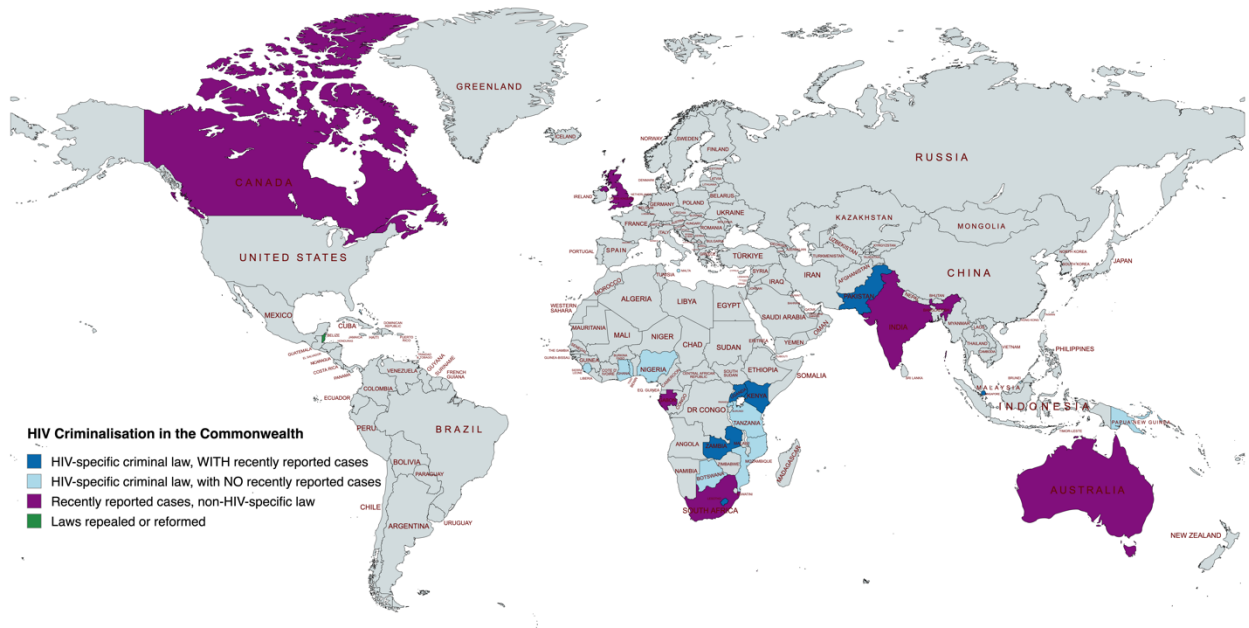
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HIV Justice Network Briefing Paper

HIV Criminalisation in the Commonwealth

February 2025



Introduction

This review analyses data collated in February 2025 on Commonwealth countries which have HIV laws in place, and those which have ever applied these laws against people living with HIV. This review also analyses the Commonwealth jurisdictions which have applied their laws to HIV cases in the previous five years (1 January 2020 – 20 February 2025).

Overview

As of 20 February 2025, **21 jurisdictions in 18 Commonwealth countries** have HIV-specific laws in place, with Nigeria having HIV-specific laws in at least three states, together with the federal law.

We have received individual case reports of HIV criminalisation in **43 jurisdictions in 25 Commonwealth countries** since we began monitoring HIV cases. These include cases in all eight Australian states, eight provinces and territories in Canada, two Nigerian states, and all four nations of the United Kingdom.

We consider **17 jurisdictions in 10 Commonwealth countries** to be ‘active’ – those which have enforced relevant laws during the review period. A total of five of these jurisdictions have HIV-specific laws in place, while 12 jurisdictions applied general criminal laws, such as communicable disease or general harm provisions, to instances of alleged HIV non-disclosure, ‘exposure’, or transmission.

While the total of 18 Commonwealth countries with HIV-specific laws in place represents a lower rate (32%) compared with the global rate (79 countries, 39%), the share of Commonwealth countries which have ever had a reported HIV case (45%) is roughly equivalent to the global rate (94 countries, 46%).

Law reform

While we are aware of 23 repeals and modernisations of HIV laws globally during the review period, only four of these occurred in Commonwealth countries (**Belize, Lesotho, Singapore, Uganda**). In only one of these countries, Belize, did a full repeal of the law occur, leaving no laws which specifically target HIV remaining. In Lesotho and Uganda, litigation resulted in mandatory death penalties for HIV ‘exposure’ being struck down. In Singapore, one of the global hotspots for HIV criminalisation *per capita*, legislative reform resulted in a defence for undetectable viral load being introduced.

HIV laws continue to be under review in **Kenya**, however in **Canada** – the Commonwealth country with the highest number of reported HIV cases – the federal review of the use of sexual assault laws in cases of alleged HIV non-disclosure was abandoned.

During the review period, we received reports of three HIV laws being adopted in the Commonwealth, either introducing new legislation or enhancing existing legislation (**Australia** – New South Wales, **Nigeria** – Jigawa, **Uganda**). Most troublingly, the legislation introduced in Nigeria and Uganda applied the death penalty for HIV transmission where it arises from rape or same-sex sexual activity, respectively, though the latter was struck down in 2024.

These data demonstrate that the Commonwealth is far behind global law reform trends. While there was almost an equal number of repeals and new laws introduced in the Commonwealth, globally repeals and modernisations outstripped new HIV laws by a rate of 2.71 (19 to 7).

Importantly, these figures do not account for changes in prosecution guidance, which may also result in HIV criminalisation being limited. For instance, in March 2023, the Crown Prosecution Service, responsible for setting guidance for prosecutors in the **United Kingdom** (England and Wales), [endorsed](#) for the first time the scientific consensus that an undetectable viral load effectively eliminates the risk of HIV transmission, and that cases where an accused is undetectable should not be prosecuted.

Case geography

During the review period, we received 63 individual HIV criminalisation case reports in the Commonwealth through our routine media monitoring. More than three quarters of cases (78%) occurred in just four countries: **Canada** (14), the **United Kingdom** (13), **India** (12), and **Singapore** (10). The other countries with more than one case during the reporting period were **Australia** (6) and **Kenya** (4).

These case numbers mean that Canada continues to be the biggest hotspot of HIV criminalisation in the Commonwealth, as it has been historically, despite a substantial drop in case reports since 2018. Likewise, historic hotspot countries, Australia and the United Kingdom, have seen a drop in cases in recent years but continue to be among the most persistent enforcers of HIV laws in the Commonwealth. In India and Singapore, a relatively large proportion of total cases occurred during the review period, suggesting a more severe approach to alleged HIV ‘exposure’, non-disclosure, and transmission in recent years, or better reporting of HIV cases in the media. In one Commonwealth country, **Lesotho**, we received a report of HIV criminalisation for the first time.

Importantly, however, the number of individual case reports published in the media is always a significant underrepresentation of the true number of global HIV cases, as only a proportion are reported and make it through our monitoring systems. In some countries, significant numbers of unreported cases have been uncovered either through publication of official enforcement statistics by government departments, or through analysis of police data by civil society organisations.

Case demographics

Of the 63 individual HIV cases reported in the Commonwealth during the review period, the largest demographic among those accused were **heterosexual men** (22, 35% of total cases), followed by **cisgender women** (12, 19%). A smaller number of cases involved **gay men** (6, 9.5%), those **25 years old or below** (4, 6.5%), **sex workers** (5, 8%), **migrants** (4, 6.5%), and **trans people** (3, 5%).¹ Importantly, as discussed above, these data do not include cases published in official data or uncovered by civil society reporting.

¹ Demographic data was not identified in every case. For instance, cases involving biting and spitting cannot always be categorised by the accused’s demographic information, as sexual orientation is generally not recorded in these types of media reports.

These data are roughly comparable to global data during the same period, however there was a higher rate of cases involving heterosexual men accused globally (153, 45.5%). Gay men were more likely to be accused in the Commonwealth compared with the global rate (23, 7%), which may be attributed to the hostile policing of LGBTQ people in the Commonwealth where same-sex activity is criminalised at a higher rate,² and/or the fact that HIV prevalence is five times higher among men who have sex with men in countries that criminalise same-sex activity.³

Around two thirds of cases involved alleged **sexual transmission** (19, 30% of total cases) or **‘exposure’** (23, 36.5%). The most frequent alleged conduct outside of sexual means were **biting** (9, 14.5%), **spitting** (5, 8%), and **blood donations** (5, 8%).

While alleged transmission (173, 51%) was more common than alleged ‘exposure’ (102, 30%) globally, this trend is reversed in the Commonwealth. This may be attributed to the fact that in countries which make up the bulk of prosecutions, including Australia, Canada, India, and Singapore, as well as Scotland, the law is formulated to allow for criminalisation without evidence of transmission.

When compared with global data during the same period, alleged sexual transmission and ‘exposure’ were less commonly reported in the Commonwealth (42, 66.5%) than globally (275, 81.5%).⁴ Biting cases were reported at almost three times the rate in the Commonwealth compared with globally (17, 5%), while spitting cases were roughly comparable (24, 7%). Although still a relatively small number of cases, instances involving blood donations (5, 1.5%) were reported at more than five times the rate in the Commonwealth than globally during the same period.

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² https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/?type_filter_submitted=&type_filter%5B%5D=crim_lgbt&type_filter%5B%5D=country_in_commonwealth.

³ https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2023/may/20230517_idahobit

⁴ Some cases may involve multiple allegations and there may be categorised with both transmission and ‘exposure’.

Annex. Commonwealth jurisdictions with active enforcement during [review period](#) (descending order by date).

Note – underlined jurisdictions have HIV-specific laws in place.

(Canada)

1. Quebec
2. Ontario
3. BC
4. Alberta
5. Nova Scotia
6. Saskatchewan
7. Manitoba
8. India
9. South Africa
10. Singapore
11. Kenya

(UK)

12. England & Wales
13. Scotland

(Australia)

14. Queensland
15. WA
16. NSW
17. Zambia
18. Uganda
19. Lesotho