

# Reforming the Criminal Law in Zimbabwe

A Case Study

March 2025



# ACKNOWLEDGEMENTS

This report was written by Alison Symington and edited by Edwin J Bernard, with additional research by Elliot Hatt. It was informed by the insights and expertise of:

Immaculate Owomugisha Bazare, Center for Women Justice Uganda / ICW ; Dorcas Tatenda Chitiyo, Health Law and Policy Consortium; Tambudzai Gonese-Manjonjo, Southern Africa Litigation Centre; Tinashe Mundawarara, formerly Zimbabwe Lawyers for Human Rights; Tonderai Mwareka, Zimbabwe National Network of People Living with HIV/AIDS.

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Enquiries should be addressed to: [info@hivjustice.net](mailto:info@hivjustice.net)

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## INTRODUCTION

The HIV and AIDS epidemic hit Zimbabwe hard. UNAIDS estimated that in 2001, adult HIV prevalence in Zimbabwe was 33.7%.<sup>1</sup> There were an estimated 1,820,000 Zimbabweans living with HIV or AIDS in 2003.<sup>2</sup> Under the weight of this health crisis, Zimbabwe became the first African country to enact an HIV-specific criminal law.<sup>3</sup>

### ***Criminal Law (Codification and Reform) Act, 2006***

#### **Section 79. Deliberate transmission of HIV**

[repealed with the *Marriages Bill*, 2022]

- (1) Any person who
  - (a) knowing that he or she is infected with HIV; or
  - (b) realising that there is a real risk or possibility that he or she is infected with HIV; intentionally does anything or permits the doing of anything which he or she knows will infect, or does anything which he or she realises involves a real risk or possibility of infecting another person with HIV, shall be guilty of deliberate transmission of HIV, whether or not he or she is married to that other person, and shall be liable to imprisonment for a period not exceeding twenty years.
- (2) It shall be a defence to a charge under subsection (1) for the accused to prove that the other person concerned
  - (a) knew that the accused was infected with HIV; and
  - (b) consented to the act in question, appreciating the nature of HIV and the possibility of becoming infected with it.

Criminalising HIV exposure and/or transmission has been criticised at the international level for undermining public health and human rights since as early as 2008,<sup>4</sup> and HIV criminalisation is both *a driver* and *a product* of HIV-related stigma. Seventy-five countries retain punitive HIV-specific laws despite advocates around the world engaging in strategic litigation and law reform initiatives attempting to limit or remove these criminal provisions.

[1] UNAIDS, *Report on the Global HIV/AIDS Epidemic*, 2002.

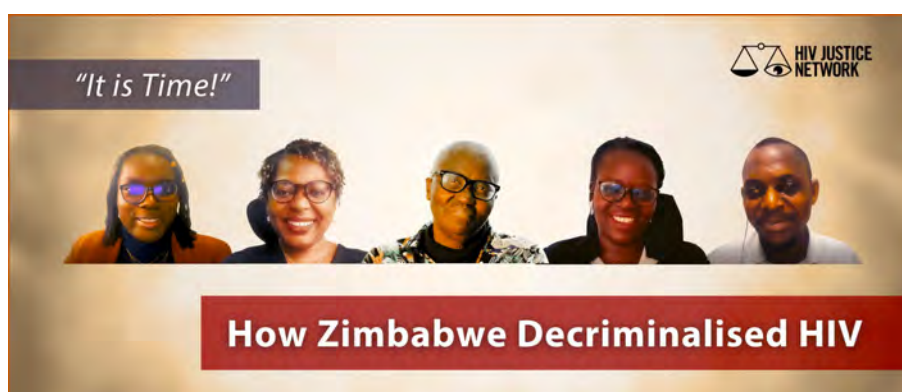
[2] Zimbabwe Ministry of Health, *Zimbabwe National HIV and AIDS Estimates*, 2003.

[3] In 2001, then amended in 2006. See HIV Justice Network's [Global HIV Criminalisation Database](#).

[4] UNDP/UNAIDS, *Criminalization of HIV transmission Policy Brief*, 2008.

**In 2022, Section 79 was removed from Zimbabwe’s criminal law. Why did the repeal effort succeed in Zimbabwe? What strategies did advocates and policymakers use? What can communities around the world learn from Zimbabwe?**

This case study aims to share lessons from the successful law reform effort in Zimbabwe with community members, advocates and policymakers in other countries where HIV exposure or transmission is criminalised. It was informed by several of the key players in the process and is accompanied by a video documentary.



**“It is Time!” – How Zimbabwe Decriminalised HIV** – A video documentary by Nicholas Feustel 24 min, HIV Justice Network, 2025, available on the [HIV Justice Network’s YouTube channel](#)

## THE PARTICIPANTS

A **coalition of civil society organisations** were actively engaged in activities aimed at ending HIV criminalisation, including:

- Zimbabwe National Network of People Living with HIV (ZNNP+);
- Zimbabwe Lawyers for Human Rights (ZLHR);
- Health Law and Policy Consortium (HLPC);
- Southern Africa Litigation Centre (SALC);
- AIDS and Rights Alliance for Southern Africa (ARASA); and
- Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN);

with support from UNDP and the HIV Justice Network.

**Lawyers** defending people facing prosecution under Section 79.

A parliamentary group of **sexual and reproductive rights ‘champions’** formed under the leadership of Dr Ruth Labode to advance sexual and reproductive rights initiatives in parliament and lobby for legislative changes.

The **Minister of Justice** introduced the bill that repealed Section 79.

The **Minister of Health** and the **Portfolio Health Committee** highlighted problems with the impact of the law on the country’s HIV response and problems with prosecutions (e.g., not being able to determine who transmitted the virus to whom).

## THE STRATEGIES

**Training workshops:** Civil society organisations convened several regional and national workshops on HIV criminalisation to inform judges, lawyers, activists, journalists and community members about laws criminalising HIV exposure and transmission, science about HIV prevention, transmission and treatment, and tools to advance human rights and evidence-based public health approaches.<sup>5</sup> The *Expert Consensus Statement on the Science of HIV in the Context of Criminal Law* was used extensively in these workshops.<sup>6</sup>



**EXPERT CONSENSUS STATEMENT  
ON THE SCIENCE OF HIV  
IN THE CONTEXT OF CRIMINAL LAW**

Available in the HIV Justice Academy's Resource Library

**Constitutional litigation:** The constitutionality of Section 79 was challenged in court.<sup>7</sup>

**Media engagement:** Civil society representatives participated in radio and newspaper interviews to inform the public about the issues.

**Legal defence:** Lawyers defending people facing prosecution under Section 79 tried to chip away at the broad and vague provisions, introducing evidence regarding risk-reducing behaviours, the mental element of the offence, and the harm of acquiring HIV.<sup>8</sup>

**Public hearings:** Advocates helped build the capacity of people living with HIV to participate in the public hearings about the proposed law reform, by providing training, speaking notes and support at the hearings and meetings with parliamentarians.

**Lobbying:** Community members and advocates met with policymakers, delivering petitions and asking them to repeal Section 79.

**Link to national HIV response:** Advocates collaborated with national (i.e., National AIDS Council) and international (i.e., UNDP) organisations to highlight the detrimental influence of criminalising HIV exposure on achieving HIV prevention, testing and treatment objectives.<sup>9</sup>

**Unintended effects:** Parliamentary champions and advocates highlighted that the law was not meeting its objectives. Rather than protecting women and punishing reckless behaviour, most of the people being prosecuted were women.<sup>10</sup> Moreover, it is impossible to prove the direction of transmission in a sexual interaction so the person who was first infected could initiate a prosecution against someone who had been infected from them.

[5] See for example, SALC, *Equipping lawyers and activists with the skills to counter criminalisation of HIV and TB*, March 2018; and Global Commission on HIV and the Law, *2nd Meeting of the African Regional Judges' Forum on HIV, Human rights and the Law*.

[6] HIV Justice Network, *Use of the Expert Consensus Statement on the Science of HIV in the Context of Criminal Law, Interim Scoping Report July 2018 - June 2020*, 2020. p. 8.

[7] Ultimately, the Constitutional Court upheld the law. (*Mpofu and Another v The State*)

[8] A. Raw et al., *Using Science for Justice: The Implications of the Expert Consensus Statement on Zimbabwe's HIV Criminalisation Law*, *University of Oxford Human Rights Hub Journal* Vol. 1 - 2020.

[9] UNDP, National AIDS Council of Zimbabwe, *Zimbabwe: Legal Environment Assessment for HIV, TB, Sexual and Reproductive Health & Rights*, 2019, pp. 64 - 68.

[10] See *Zimbabwe HIV Criminalisation Cases*, HJN, Global HIV Criminalisation Database.

**Educational resources:** Advocates produced a policy brief and several plain language brochures explaining the HIV-related criminal law in Zimbabwe and why law reform was necessary – for parliamentarians, community members and journalists.<sup>11</sup>

**Piggyback on another bill:** The provision repealing Section 79 was included in a largely unrelated, more comprehensive and controversial bill to reform the Marriages Act.

## INSIGHTS & LESSONS

### Building collaborative working relationships is critical to success

In this case, we saw parliamentary champions using their positions and influence to get their colleagues on side with the law reform effort. Civil society organisations partnered to produce resources, host events and raise awareness among the public and members of parliament. The National AIDS Council and UN agencies highlighted that criminalisation undermined the country's HIV response. Judges from various countries in the region met at forums to discuss the issues and share precedents, resulting in 'peer pressure' to protect human rights. *Collaboration* was a key theme throughout this campaign.

Relationships must be nurtured and sustained. The various stakeholders involved in this effort worked together over multiple years, on a range of issues, intentionally sharing information and tasks.

### How do you sustain relationships with parliamentarians and other public actors?

- Introduce your work to new parliamentarians;
- Plan workshops or other activities parallel to their official meetings;
- Strengthen their capacity by doing research for them or offering training;
- Do catch-up calls and inform them about your activities;
- Invite them to your activities; and
- Offer to sponsor a drafting process.

[11] Zimbabwe Lawyers for Human Rights and HIV JUSTICE WORLDWIDE, *A Call to End HIV Criminalisation in Zimbabwe*, Policy Brief, May 2019; *People living with HIV in support of s. 2. 53(2) Marriage Bill 2019 in Zimbabwe*, 2019; *Zimbabwe Marriages Bill - Repeal section 79, End HIV Criminalisation in Zimbabwe*, 2021; *Role of Media in Ending Criminalisation of HIV - Media Toolkit 2021 - 2023*, 2021.

## Proactively formulate clear, persuasive messages; then distribute them far and wide

You can minimise opposition to your law reform initiative by anticipating what people will worry about. Address misconceptions and show how criminalising HIV is at odds with your national HIV response. Everyone involved in the law reform initiative can share the same key messages.

In this case, the parliamentary health committee was an important ally. The advocacy became easier once the ministers were talking about the issue. So finding champions like Dr Ruth Labode to help spread the messages is strategic. In Zimbabwe, public hearings are constitutionally required to change a law.



From: "It is Time!" – How Zimbabwe Decriminalised HIV, Video, 24 min, HIV Justice Network, 2025

The community members who spoke at the hearings are credited as having been instrumental in changing minds about HIV criminalisation.

In order to reach people living with HIV throughout the country, ZNNP+ worked with ZLHR and other partners to empower support group leaders with information and communications materials. Raising awareness of the human rights of people living with HIV and the science of HIV transmission and treatment in support groups and at community meetings provided overtures to address internal stigma and discrimination.

Support group leaders were able to pass information about HIV criminalisation on to group members and mobilise community members around events like World AIDS Day and the AIDS Candlelight Memorial. As such, the decriminalisation campaign was integrated into other community capacity building and education efforts rather than a distinct initiative.

Media engagement is an important element of law reform initiatives. Advocates in Zimbabwe provided resources and training directly to journalists, and also actively participated in interviews and appearances, using the media to talk to the public about the amendment.



The policy brief and plain language brochures served as ongoing messaging references and resources.

Without further education on the topic, many people assume that criminal law is a useful tool in the HIV response. In this case, advocates successfully demonstrated that the criminal law was not containing the HIV epidemic nor advancing the rights and well-being of people living with HIV in Zimbabwe.

Showing that the law is ineffective can also be helpful to convince governments to adopt prosecutorial guidelines to narrow the application of existing criminal provisions.

### Bury the criminal law repeal within another bill

Law reform campaigns can be lengthy, expensive and difficult. By inserting a consequential amendment within another bill, as they did in Zimbabwe, a lot of attention and controversy can be deflected.

The *Marriages Bill* proposed changes to the customary marriage regime, marital property distribution, child marriage, bride price, and civil partnerships – plenty of complex issues to sustain attention away from the one sentence decriminalising HIV exposure or transmission.

### *Marriages Act, 2022*

54 (2) Section 79 of the *Criminal Law Code* is repealed.

Note however that there are risks to this strategy. If the amendment is ‘snuck in’ and is not fully debated and explained, there is an increased possibility that efforts to criminalise may re-emerge.

### Remain vigilant

HIV-related stigma and misinformation persist, so we must always remain vigilant. Punitive laws, regulations and processes can be included in a range of health, criminal, child protection, gender-based violence, and other initiatives. General laws with no specific mention of HIV or sexually transmitted infections (e.g., provisions related to rape or sexual assault, negligence, gender identity, sex work, etc.) can also be used to unjustly penalise people living with HIV.



The Zimbabwe story does not end with the repeal of Section 79 in 2022. In March 2024, a bill was put forward to amend criminal laws relevant to the protection of children and youth.<sup>12</sup> A provision was added to this bill that sought to amend Section 78 of the criminal code which criminalised the ‘deliberate infection’ of another person with a sexually transmitted disease other than HIV. The amendment would have included HIV within scope of Section 78.<sup>13</sup>

Advocates were alarmed by the proposed change to Section 78 which would re-criminalise HIV exposure or transmission. They began campaigning and mobilising the local community again. To support the local efforts, the HIV JUSTICE WORLDWIDE coalition, the Health Law and Policy Consortium and Sonke Gender Justice released a civil society statement criticising the proposal:

“Rather than adding HIV to Section 78, this provision should be repealed ... [We] conclude that re-criminalising HIV, as well the existing criminalisation of STIs, is a threat to Zimbabwe’s HIV and SRHR response and to the rights, security and dignity of people living with HIV, particularly women living with HIV.”<sup>14</sup>

The bill passed in September 2024, but changes were made before it was adopted into law. Rather than adding HIV to Section 78, the provision was repealed and replaced with a new offence: “deliberate infection of a child with a sexually transmitted disease”, which includes HIV.<sup>15</sup> This was enacted despite the fact that Section 80 of the criminal law already provided for aggravated sentencing in cases where a person living with HIV is convicted of rape, aggravated sexual assault, or sex with a person under 18 years of age.<sup>16</sup>

So while Zimbabwe’s HIV decriminalisation was celebrated domestically and internationally, some broad and problematic HIV-related provisions remain on the books. Local advocates are especially concerned with the possibility of the criminal law being used with respect to breastfeeding.

[12] *Criminal Laws Amendment (Protection of Children and Young Person) Bill*, 2024.

[13] HIV was not previously included in the list of diseases in Section 78 because it was criminalised under Section 79, with a much harsher penalty.

[14] *Civil society statement on the proposed re-criminalisation of HIV in Zimbabwe*, 2024.

[15] Section 70A. *Criminal Laws Amendment (Protection of Children and Young Persons) Act*, 2024.

[16] *Criminal Law (Codification and Reform) Act*.