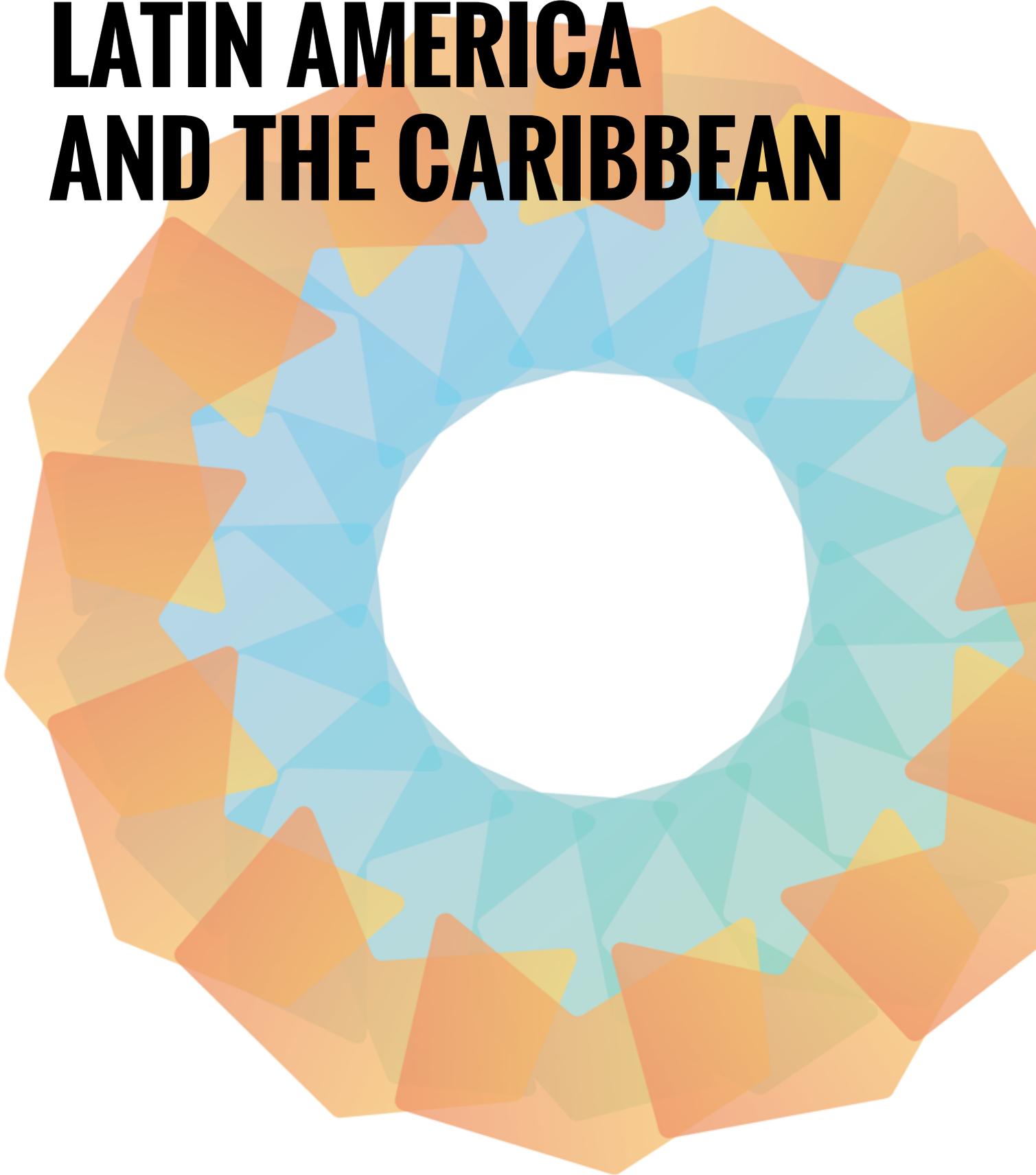


# REGIONAL HIV CRIMINALISATION REPORT LATIN AMERICA AND THE CARIBBEAN



Produced by



**C-NET+**  
COLLABORATIVE NETWORK OF PERSONS LIVING WITH HIV OF BELIZE

On behalf of

**HIV JUSTICE  
WORLDWIDE**

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## ANNEX

1.) Questionnaire

### 1.) Overview of Project:

“HIV criminalization” is a phrase that is used to refer to enacting of laws directed at punishing behavior that may transmit HIV and the application of general laws in a manner that targets those with HIV who may transmit or expose another person to HIV.

The Global Criminalization Scan is a programme that was developed to respond to this growing trend. The Scan was initiated and is led by the Global Network of people living with HIV (GNP+) in partnership with others to map and document the existence of laws, practices and policies that impact on responses to HIV. The scan was adapted in 2010 to include protective as well as punitive laws.

Positive laws and policies create the environment in which necessary services can be easily and equitably accessed. For this to happen, these laws need to be promoted and enforced. Examples of positive laws and practices. Examples of positive laws and practices include laws that protect people living with HIV from discrimination, particularly discrimination on the grounds of actual or perceived HIV positive status.<sup>1</sup>

### Purpose and Objectives

The overall purpose of this report is to share the process and outcome of monitoring laws and prosecutions in the Latin American Region.

### Methodology

#### Team:

This process was led in Belize by the Collaborative Network of Persons living with HIV with the technical support of MC Consultancy: Sexual Health and Development. The team was comprised of:

Regional Coordinator – Diego Grajalez, CNET+ Executive Director

Lead Consultant – Martha Carrillo, MC Consultancy

In country community researchers – Adrianie Alpuche and Lizet Aldana, CNET+

### The Process: Scope of Work

The process of monitoring laws and prosecutions for this project focused on HIV non-disclosure, exposure and transmission (HIV criminalization). This involved providing English translations of new reports regarding prosecutions, proposed laws and other relevant information to the HIV

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<sup>1</sup> HIV Leadership through Accountability: Criminalization Scan overview, GNP+ 2011

Justice Network and updating the HIV Criminalization pages of the GNP+ Global Criminalization Scan through paying attention to other punitive laws where information is incorrect and alerting GNP+ via this report. In the accomplishment this, the team was expected carry out the following tasks:

- 1.) Followed existing data and news reporting on the GNP+ criminalization scan<sup>2</sup> and HIV Justice Network website<sup>3</sup>.
- 2.) Sending English translations of news reports regarding prosecutions, proposed laws and other relevant information to the HIV Justice Network's Research/Outreach Coordinator on a regular basis; incorporating them into the criminalization scan where necessary and appropriate.
- 3.) Updating the data on the new GNP+ portal<sup>4</sup> using the GNP+ Criminalization Scan data, the information contained in the Advancing HIV Justice Network report<sup>5</sup> and other sources.
- 4.) Manipulating data into the new field structures where the fields on the new data portal do not align with those on the GNP+ criminalization scan where necessary;
- 5.) Some 'historic' research to ensure that there is alignment between what is displayed in the criminalization scan website (links and or cases) and HJN website.
- 6.) Providing a summary report of known cases from LAC countries (and the region) for Advancing HIV Justice 3.
- 7.) Capacity building in the Region.

The expected output for this work was that the GNP+ portal database was updated for the countries in the region for which information was collected. The researchers used different types of methodology, direct contact with networking organizations, social media platforms and the internet, such as the OAS an ILO website, where we were able to find the most updated laws per country. This allowed us to compare with the existing information in the Criminalisation Scan. The internet was also used to find information on cases of Criminalisation as most activist and Networks Contacted had limited Knowledge on this.

A tool was adapted to collect data from the different countries. The template was based on existing information for the different countries that was downloaded from the Global Criminalization Portal. The 2 key researchers opted to collect data in one region each - Caribbean and the Latin American region. Respondents were asked to provide any updates and to confirm whether the laws remained the same in their specific countries. The templates (Annex 1 and 2) were disseminated via email, WhatsApp and Facebook in both regions. A Google form was also distributed which asked about the following issues.<sup>6</sup>

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<sup>2</sup> (<http://criminalisation.gnpplus.net>)

<sup>3</sup> (<http://www.hivjustice.net>);

<sup>4</sup> <http://criminalisation.peoplewithhiveurope.org/en>

<sup>5</sup> <http://www.hivjustice.net/advancing2/>

<sup>6</sup>[https://docs.google.com/forms/d/e/1FAIpQLScbKAPG4VRVZhkEFYuEnX\\_eknMKHHanrGz3S78GOaX0RxpWhw/viewform?usp=sf\\_link](https://docs.google.com/forms/d/e/1FAIpQLScbKAPG4VRVZhkEFYuEnX_eknMKHHanrGz3S78GOaX0RxpWhw/viewform?usp=sf_link)

1. Identify the laws in their country that criminalize HIV non-disclosure, exposure and/or transmission. This information was cross checked with the ILO and OAS website which provides the most updated information in regard to laws of all countries<sup>7</sup>
2. Share about their activism.
3. Share their contact information to be included in a Global Directory
4. Share information on the work of HIV JUSTICE WORLDWIDE (HJWW)

Eight countries responded to the questionnaire and Google form.

### **Limitations and Challenges:**

- 1.) Limited knowledge of the situation of legislation affecting key populations among the networks in both regions.
- 2.) Very few recorded information on legislative change in the countries
- 3.) Legislative change is a process that takes time and might not happen until many years after even though advocacy is taking place, actual change has not occurred
- 4.) A need to build the capacity of persons at the CNET+ level as well as other supporting partners in monitoring and reporting of legislation in particular on criminalization of HIV
- 5.) Transition phase at CNET+ which resulted in limited human resources and competing priorities for those involved.
- 6.) Language barriers in the Latin American and Caribbean Region.
- 7.) Lack of availability of translated country legal documents from French, Dutch and Portuguese.
- 8.) Lack of knowledge of country networks on HIV criminalization.
- 9.) Lack of documentation of cases of criminalization across the region.
- 10.) Report does not completely cover the ever-changing environment of HIV criminalization across the LAC Region.

### **Capacity Building in the LAC Region**

Through this Initiative we were able to share the work of HJWW via the Google Forms, where advocates, regional and country NGOs in the region could also express interests in forming part of HJWW. This form was shared through email, Facebook and WhatsApp groups. The work of HJWW, including the Advocacy Toolkit, was also shared through the whole region via regional email groups to activists across the Latin American and Caribbean region. During the 4<sup>th</sup> encounter of The Latin America and Hispanic Caribbean Network of Young Persons with HIV (J+LAC) in Cusco, Peru the information on the work of HJWW and the Criminalization Scan was shared to young activists from across the region.

### **About the Collaborative Network of Persons living with HIV (CNET+)**

Thirty-two years after the first case of HIV was diagnosed in Belize, the country has made notable strides in preventing and combating the effects of the epidemic in Belize. Efforts have

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<sup>7</sup> [http://www.ilo.org/dyn/natlex/natlex4.byCountry?p\\_lang=en](http://www.ilo.org/dyn/natlex/natlex4.byCountry?p_lang=en) [www.oas.org](http://www.oas.org)

been made in addressing the treatment, care and psychosocial needs of PLHIV. Improved provision of antiretroviral medications, nutritional support and initiatives to address stigma and discrimination are indicative of a response that has grown over the years. The Global Progress Report for Belize 2012 indicated the start of greater civil society involvement. Today civil society organizations play an integral role in the response to HIV in Belize. Notably was the creation and the growth of the network for and by people living with HIV - C-NET+.

C-NET+ the first and only NGO by and for persons living with HIV has been actively involved since its establishment in 2011. Having had its conception among a group of concerned persons living with HIV who believed that it was time for them to play a more significant role in the response to HIV, under the leadership of its main founder, Erika Castellanos, C-NET+ has grown to become a successful and important partner in the national response to HIV in Belize. With the support of key partners such as the National AIDS Commission, USAID/PASCA, USAID/PASMO, AMFAR, UNAIDS, Global Fund, US Embassy and REDCA+ among others, C-NET+ has been successfully implementing projects in 3 main areas. These programs include nutritional support; educational scholarships and home care visits. Through a referral process, C-NET+ provides food parcels and poverty alleviation projects to improve the quality of life of persons with HIV. Through REDCA+ PLHIV receive scholarships for primary, secondary, vocational and tertiary level education. Persons living with HIV have the opportunity to complete their formal education or choose job skill training so that they have the necessary tools to be self-sufficient. In addition, C-NET+ provides home-based care and conducts home visits, offers peer counselling and emotional support for people living with HIV and their families.<sup>8</sup>

C-NET+ is now at a critical juncture in its development as it has sought to strategically scale up its programs and expand the level of services offered to its clients through the comprehensive and participatory process of updating its 3-year Strategic Plan 2013-2016 for the next three years 2017-2020. The following are the 4 priority areas that guide the work of CNET+ today:

- Priority Area 1: Promoting Positive Health, Dignity and Prevention
- Priority Area 2: Monitoring universal access
- Priority Area 3: Human Rights, Advocacy and Effective Legislation
- Priority Area 4: Involvement of Persons with HIV and Key Populations

**The Mission of CNET+:** “To improve the quality of life of all persons living with HIV and key populations in Belize by promoting positive health, dignity and prevention, human rights, effective legislation, monitoring universal access and advocating for the greater and more meaningful involvement of persons with HIV and key populations.

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<sup>8</sup> CNET+ 2017-2020 Strategic Plan, 2017

### SITUATION OF HIV AND KEY POPULATIONS IN LAC

In Latin America and the Caribbean, the overall rate of new HIV infections in adults has remained stable between 2010 and 2016. However, this stability masks differences between adults and children and between Latin America and the Caribbean region.

Among adults, a 3% rise in rates of new HIV infections between 2010 and 2015 contrasted sharply with a 20% decline during the previous decade. In 2016, there were an estimated 2.1 million people living with HIV in this region – an infection prevalence of 0.5%. In the same year, there were an estimated 115,000 new HIV infections and 45,000 deaths from AIDS-related illnesses.

In the Caribbean, new HIV infections among adults rose by 9% between 2010 and 2015, reversing gains made in the previous decade. In 2016, the annual number of new HIV infections in the Caribbean was estimated at 17,000. Despite its small population size, the Caribbean has the second-highest HIV prevalence globally after South-Saharan Africa.<sup>9</sup>

#### Key affected populations in Latin America and the Caribbean

Though HIV prevalence is generally low, prevalence among key affected populations, such as men who have sex with men and transgender women, is particularly high. These key populations and their sexual partners accounted for nearly two-thirds of new infections in 2014. Young people in the Caribbean are also disproportionately vulnerable to HIV. Men who have sex with men (MSM) are the group most affected by HIV in Latin America and the Caribbean. In 2014, men who have sex with men accounted for nearly a third of new HIV infections in the region. However, HIV prevalence among this group varies greatly between countries. For example, it is as high as 25.4% in Bolivia, falling to 1.8% in Cuba. Transgender women are highly affected by HIV in Latin America and the Caribbean. HIV prevalence among this group is thought to be 49 times higher than the general population while in 2013, 6.1% of female sex workers in Latin America were thought to be living with HIV. Male sex workers tend to be much more affected by HIV than female sex workers. There are many reasons for high levels of HIV transmission among this group. These include barriers to HIV prevention such as social and legal barriers.

#### Social barriers

Discrimination against key populations and HIV stigma continue to proliferate through many societies in the region and discriminatory practices are widespread in health and other social

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<sup>9</sup> UNAIDS 2017 Global Report

services. Key populations and women living with HIV are subject to practices such as forced sterilization and denial of health services. Discriminatory and punitive laws and policies further limit access to services. Throughout many countries in the Caribbean and Latin American many people still remain ignorant and fearful of HIV and AIDS.

### **Legal barriers: Punitive Laws**

Some countries in the LAC region still have punitive laws are a barrier to HIV prevention and treatment as they often deter people who use from accessing services for fear of punishment and may force people to hide injecting equipment and engage in unsafe injecting practices.

In 2009 Mexico partially decriminalized the possession of small quantities of drugs such as cocaine and heroin, with users referred to treatment services rather than criminalized. In 2011, Bolivia began allowing indigenous communities to legally cultivate and use coca leaves which had previously been banned. In 2013, Uruguay became the first country in the world to sanction state-controlled sales of cannabis.<sup>10</sup>

Despite this progress, across the region large numbers of people who use drugs are still imprisoned. Around one in five prisoners in the region are detained due to drug-related offences and their numbers have been rising. In Mexico, for example, the number of people held for drug-related offences increased by 1,200% between 2006 and 2014. This was despite partial decriminalization in 2011.

Most countries in Latin America and the Caribbean lack anti-discrimination laws and legislation on gender identity and sexual orientation. As a result, transgender people, in particular, face very high levels of transphobia. Furthermore, the arbitrary detention of transgender women, including torture and inhumane treatment, is not investigated and prosecuted. Transphobia is reported to be widespread among police forces in Guatemala and Honduras. Some countries in the region have made significant progress in recognizing the rights of LGBTI people. Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Uruguay allow marriage or civil unions between people of the same sex.

In contrast, discriminatory laws against sex between men exist in 11 countries in the Caribbean. While seldom enforced, existing legislation has the impact of institutionalizing discrimination against men who have sex with men. Even though progress has been slow, a number of Caribbean states have either implemented or accepted recommendations on measures to protect sexual minorities or are currently considering such measures.<sup>11</sup> In August 2016 the Belize Supreme Court ruled that the Sodomy Law as it relates to consenting adults was in contravention of the Constitution of Belize setting a precedent for all the Caribbean and other countries in the region. This was followed by Trinidad and Tobago, On April 12<sup>th</sup>, 2018 Judge Devindra Rampersand of the High Court of Trinidad and Tobago ruled that Sections 13 and 16 of the Sexual Offences Act are unconstitutional as applied to acts between consenting

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<sup>10</sup> The Global State of Harm Reduction 2016

<sup>11</sup> THE CRIMINALISATION OF CONSENSUAL SAME-SEX SEXUAL RELATIONS ACROSS THE COMMONWEALTH – DEVELOPMENTS AND OPPORTUNITIES

adults.<sup>12</sup>

The majority of countries in Latin America and the Caribbean have no restrictions on entry, stay and residence for people living with HIV. Nicaragua and Paraguay have restrictions on the permanent stay of people living with HIV who have been in the country longer than three months. In both countries, resident permits are withdrawn in the case of a positive HIV test. In Belize and Trinidad Immigration Laws include prohibition of entry on the basis of sexual orientation and infectious diseases including HIV.<sup>13</sup>

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<sup>12</sup><https://www.theguardian.com/world/2018/apr/13/trinidad-and-tobago-sexual-offences-act-ruled-unconstitutional>

<sup>13</sup> <http://www.hivtravel.org/>

## FINDINGS AND DISCUSSIONS

HIV criminalization refers to the use of existing criminal laws or HIV specific legislation in regard to transmission and/or perceived risk of exposure to HIV. The overly broad use of laws that criminalize people living with HIV is a public health concern because it undermines evidence-based public health strategies for HIV prevention, treatment, care and support for those living with HIV and ignores scientific advancements relating to the risk of HIV transmission. Criminalization increases stigma surrounding HIV status and casts people living with HIV as predisposed to criminality, which in turn increases discrimination. Critically, rather than reducing transmission of HIV, fear of prosecution may deter many people living with HIV, in particular women and key populations (such as people who use drugs, sex workers, migrants, men who have sex with men and transgender people) from accessing needed treatment care and support, discourage disclosure, and increase the vulnerability of people living with HIV to violence. This is a grave human rights concern in the Latin American and Caribbean region.<sup>14</sup>

According to the United Nations there are 33 countries that make up the Latin and Caribbean Region. Of these 13 are in the Caribbean and 20 are in Latin America. Based on the data collected by the researchers up to this date, the findings (*table #1*) indicate that there has been slow progress in the region as it relates to the eradication of laws that criminalize HIV. This article explores HIV-specific laws in Central America: why they exist, where their terms come from, what choices have been made, and what the laws do.

Latin America has had most HIV criminalization cases in the whole region. According to available data most cases of HIV criminalization have occurred in Mexico, while in the rest of the countries many cases have gone undocumented. In the Caribbean region there only been one case of HIV criminalization which happened in Suriname on February of 2018. In the LAC Region There are 6 countries with HIV specific laws ranging between one to twenty years imprisonment. While in countries that have none, specific laws carry a sentence of one hundred thirty days to ten years imprisonment or a fine depending on the country.

There has been much support from regional networks in order to remove legal barriers that affect persons with HIV. This support comes in Regional grants such as the REDCA+ regional project ***"Ensuring through Political Incidence Actions Universal Access to Health and Respect of Human Rights in Response to HIV in Central America, to Improve the Quality of Life of People with HIV" Global Fund to Fight AIDS, Tuberculosis and Malaria Grant QRC-H-SISCA***<sup>15</sup>.

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<sup>14</sup> HIV Justice Network,

<sup>15</sup> <http://translate.google.com/translate?js=n&sl=auto&tl=en&u=http://redca.org>

National Networks in the Caribbean Region are also receiving support from the Caribbean Regional Network of Persons living with HIV (CRN+)<sup>16</sup> and The Caribbean Vulnerable Communities Coalition (CVC)<sup>17</sup>. These regional organization are supporting the advancement of advocacy to remove legal barriers and provide platforms for the reporting and redress of human rights violations of persons living with HIV and other key affected populations.

The findings and conclusions drawn are only based on the information that the team of researchers was able to collect. It is based on data available on the GNP+ portal that has now been updated and serves as the foundation for further research.

*Table #1: Situation in all LAC countries*

<b>Countries</b>	<b>HIV Specific Laws</b>	<b>HIV Non-Specific Laws</b>	<b>Reported Cases</b>
Belize	Yes	Yes	None
Costa Rica	No	Yes	None
El Salvador	No	Yes	None
Guatemala	No	Yes	None
Honduras	Yes	Yes	1
Mexico	No	Yes	<b>More than 20</b>
Nicaragua	Yes	No	None
Panama	Yes	Yes	None
Argentina	No	Yes	2
Bolivia	No	Yes	1
Brazil	No	Yes	5
Chile	No	Yes	1
Colombia	Yes	No	1
Ecuador	No	Yes	None
Guyana	No	Yes	None
Paraguay	No	Yes	1
Peru	No	Yes	1
Suriname	No	Yes	1
Uruguay	No	Yes	None
Venezuela	No	Yes	None
Antigua & Barbuda	No	Yes	None
Bahamas	No	No	None
Barbados	No	Yes	None

<sup>16</sup> <http://www.crnplus.com/>

<sup>17</sup> <http://www.cvccoalition.org/>

Cuba	No	Yes	None
Dominica	No	No	None
Dominican Republic	Yes	No	None
Grenada	No	No	None
Haiti	No	No	None
Jamaica	No	Yes	None
Saint. Kitts & Nevis,	No	No	None
Saint. Lucia	Yes	No	None
Saint. Vincent & Grenadines	No	No	None
Trinidad & Tobago	No	Yes	None

## INFORMATION BY COUNTRY



### BELIZE

#### Laws

##### **1.) Belize Criminal Code, Chapter 101 Section 46.01**

“(2) Every person who deliberately or recklessly transmits or spreads HIV/AIDS shall (a) on summary conviction, be liable to imprisonment for a term not exceeding five years; and (b) on conviction on indictment, be liable to imprisonment for a term not exceeding ten years.”

Further, section 73.01 of the Code provides that:

“(1) A person deliberately or recklessly spreads HIV/AIDS if the person does any act specified in subsection (2) or (3).

(2) Subsection (1) applies where the person (a) knows that he is infected with HIV/AIDS; and (b) does a sexual act with another person which involves bodily contact and is capable of transmitting bodily fluids; and (c) does not inform the other person that he is infected with HIV/AIDS.

(3) Subsection (1) applies where the person (a) knows that he is infected with HIV/AIDS; and (b) donates blood or does anything not provided in subsection (2) which is likely to cause another person to be infected with HIV/AIDS.

(4) In this section “Sexual Act” means vaginal, oral, or anal intercourse.”

##### **2.) Belize Criminal Code, Revised Edition 2000. Chapter 101**

Intentional Harm Section 79: Every person who intentionally and unlawfully causes harm to a person shall be liable to imprisonment for one year.

Grievous harm Section 81. Every person who intentionally and unlawfully causes grievous harm to a person shall be liable to imprisonment for five years.

Administering noxious matter Section 84. Every person who unlawfully and knowingly administers any noxious matter to a person shall be liable to imprisonment for two years.

##### **3.) Belize Public Health Act, Revised Edition 2003. Chapter 40**

Interpretation of “infectious disease”

Section 67. (1) In this Part, “infectious disease” means any of the following diseases, namely, acute poliomyelitis, alastrim, anthrax, bubonic plague, cerebrospinal meningitis, chicken pox, cholera, diphtheria, dysentery, encephalitis, lethargica, erysipelas, ophthalmia neonatorum, pneumonia, pulmonary tuberculosis, rabies, scarlet fever, small-pox, enteric fever, puerperal

fever, yellow fever and any other disease which the Director of Health Services with the approval of the Minister may have notified or may notify in the Gazette as being an infectious disease within the meaning of this Act.

Removal of infected persons without proper lodging.

Section 86. (1) Where any person is suffering from a dangerous infectious disease and is lodged in a room or dwelling occupied by others besides those in attendance on him in which proper precautions cannot be taken for preventing the spread of the disease, any justice of the peace may, on the application of a medical officer of health, by order on a certificate signed by him or by a duly registered medical practitioner, direct the removal at public expense, from the room or dwelling in which such person suffering from such disease is lodged, of all others not in attendance on him, making suitable accommodation for such other persons:

Provided that no such order shall be necessary where the removal is carried out with the consent of such other persons or their parents or guardians.

(2) The order may be addressed to any police officer, and if any person willfully disobeys or obstructs the execution of such order, he is guilty of an offence and is liable to a fine not exceeding one hundred dollars.

Penalty for exposing infected person or articles. Section 93. Any person who-

1. while suffering from any infectious disease, willfully exposes himself without proper precautions against spreading the said disease in any street, public place, school, store, factory, shop, inn or public conveyance or enters any public conveyance without previously notifying the owner, conductor or driver thereof that he is so suffering; is guilty of an offence and is liable to a fine not exceeding two hundred dollars.

## **Discussion**

### **1.) Willful Transmission of HIV**

These sections have allowed for the willful transmission of HIV to be a separate criminal offence. At present there have not been any prosecuted cases under the section so the section's effect in law remains untested. When introduced the section was intended to boost public awareness campaigns for behavioral change by ensuring that persons understood that they have a legal responsibility to ensure the non-transmission of the disease. Even though the section seeks to serve as a deterrent against persons who use the disease as a weapon, willfully infecting others, HIV stakeholders in Belize indicate that the law reinforces discrimination against persons with the disease thereby undermining prevention and treatment campaigns.

### **2.) Harm**

Sections including grievous and intentional harm may be used to find persons who willfully and knowingly transmit HIV guilty in a court of law. However, this has never resulted in a prosecution.

### **3.) Infectious Diseases:**

The public health act was passed at a time when much was not known in Belize about the mode of transmission of HIV. We now know that HIV/AIDS cannot be transmitted by casual bodily contact, so HIV/AIDS does not fit within the parameters of other infectious diseases named in the act and the provisions for quarantining individuals and prohibition on working with food if infected do not apply to persons with HIV/AIDS, the act is, therefore redundant and should be repealed. The act is inconsistent with other legislation regulating health.

According to section 2 of the Quarantine Act, infectious diseases are defined to exclude venereal diseases. Accordingly, the act, therefore, serves no useful purpose and should be repealed. The ACT contravenes the National AIDS Commission HIV Policy, international conventions and reinforces stigma and discrimination resulting in a barrier to access to HIV prevention, care and treatment.

### **4.) Prosecution Cases: None**

### **5.) Section 53**

The Belize Supreme Court ended a monumental court case on Wednesday, August 11th striking down the country's law of punishing 'intercourse against the order of nature with any other person', declaring it as unconstitutional. The law is a remnant of the country's colonial past, and Belize is the first in the entire Caribbean to overturn the anti-sodomy law. It all began in 2010, when LGBTIQ rights activist Caleb Orozco of the United Belize Advocacy Movement (UNIBAM) challenged the court with a lawsuit, claiming that Belize's constitution infringes the right to: human dignity, personal privacy, right to equality before the law, equal protection of the law and freedom from discrimination. Orozco was represented by Attorney Westmin James, and Attorney for UNIBAM, Lisa Shoman.

Three years later, on August 11, 2016, Honorable Chief Justice of Belize, Kenneth Benjamin ruled in his favor, stating that Section 53 of the Criminal Code breaches the right granted by the constitution. Section 53 criminalizes intercourse between consenting adults of the same sex, subjecting them up to 10 years' imprisonment. Chief Justice Benjamin said that section 53 is inconsistent with the Constitution to the extent that it includes violates consensual and private sexual activities between adults and ruled that it be modified to bring it into conformity with the constitution. He held section 53 should be read down to exclude consenting same sex intimacy in private and indicated that it did not affect sex with minors nor sex with animals. He also accepted Orozco's challenges on all counts, including: that the law is a violation of the rights to dignity, privacy, equality and non-discrimination on grounds of sex; there is no public morality justification; international legal obligations must be complied with; the law must be modified; and the costs were awarded to the claimant.<sup>18</sup>

### **UPDATE:**

Even though the ruling has been challenged, the appeal has been withdrawn by the two church parties involved and the Government has been advised to also consider withdraw its conditional

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<sup>18</sup> <https://www.sanpedrosun.com/community-and-society/2016/08/12/supreme-court-of-belize-rules-section-53-unconstitutional/>

appeal on the section of the ruling which indicated that the word “sex” includes sexual orientation.

The National AIDS Commission has been engaged in the process of conducting a legal review to be forwarded to Cabinet since as early as 2008. The review has finally been conducted and submitted to the Attorney General’s Office.<sup>19</sup>

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<sup>19</sup> [http://www.guardian.bz/index.php?option=com\\_content&view=article&id=15014%3Acatholic-church-withdraws-from-case-against-unibam&catid=53%3Aheadlines&Itemid=91](http://www.guardian.bz/index.php?option=com_content&view=article&id=15014%3Acatholic-church-withdraws-from-case-against-unibam&catid=53%3Aheadlines&Itemid=91)



## **COSTA RICA**

### **Laws**

COSTA RICA PENAL CODE.

(Translated from original Spanish)

Law 4573 May 04, 1970. (Revised)  
PART II - TITLE I - Section III - Injuries  
Article 130 - Venereal contagious

Anyone who knowingly carries a venereal disease, and contaminates other, shall be punished with imprisonment of one to three years. This can only be prosecuted upon private instance.

PART II - TITLE IX - Section IV - Crimes against Public Health  
ARTICLE 264 - Spread of infectious-contagious diseases

A term of imprisonment of three to sixteen years who knowingly infects with any contagious or infectious-disease which results in serious risk to life, physical integrity or health, infection of another person, under the following circumstances: a) Donating blood or blood derivatives, semen, breast milk, tissues or organs. b) sex with another person without informing the status of infected; a.) Using an object-invasive, cutting or puncture which has previously used to it.

(Just as amended by Section 51 of the General Law on HIV / AIDS No.7771 of April 29, 1998)  
(Thus amended the numbering of this article by the numeral 185, subsection a) of the Act No.7732 of December 17, 1997, it passed the 262 to 264)

ARTICLE 265.- If any of the acts described in the three previous articles is committed by guilt, a fine of one hundred and thirty days will be imposed, if this results in illness or death.  
(Thus amended the number of this article by the number 185, paragraph a) of the Act No.7732 of December 17 1997, it passed the 263 to 265)

### **Discussion**

- Costa Rica enacted an HIV-specific law in 1998 that criminalizes HIV transmission in the absence of disclosure of known HIV-positive status, with a maximum sentence of 16 years. There are no data on the number of prosecutions or convictions.
- Article 130 is not a HIV specific law, however articles 264 and 265 can be considered a HIV specific criminal law.
- Costa Rica penalizes the intentional venereal contagion, but this requires a private accusation.
- The spread of contagious and infectious illness, intentional and guilt, is clearly sanctioned by the penal code.

- It is expressly indicated that persons have the duty of informing sexual contacts of their infection condition
- It is not very clear if the HIV exposure could be included in this norm.

**Prosecution Cases: None**



## **EL SALVADOR**

### **Laws**

#### **CRIMINAL CODE OF EL SALVADOR - Decree Law 1030 of April 26, 1997. (Reformed - Unofficial translation)**

Book II - Special Part - Title II - Chapter I – Injuries

##### Article 142 - Injuries

Anyone who, by any means, including infection, occasions in another, an impairment of their physical or mental integrity, which could result in a failure to meet the ordinary occupations or in an illness for a period of five to twenty days, having been required medical care or surgery, will be punished with imprisonment of one to three years.

##### Article 143 - Serious Injuries

The injuries are considered serious if they occasion inability to meet the ordinary occupations or illness for a longer period of twenty days, having been required medical or surgical treatment. In these cases, a sentence of imprisonment of three to six years shall be imposed.

##### Article 144 - Very Serious Injuries

The sentence shall be of four to eight years of imprisonment if any of the following apply:

- 1) Severe physical deformity in the body;
- 2) Severe permanent functional disturbance, loss of, a function of an anatomical organ, or of a principal organ.
- 3) Severe mental disturbance and,
- 4) An illness which put in grave danger the health of the person.

##### Article 145 - Aggravated Injury

If, in the cases described in previous articles, applies any of the circumstances of aggravated homicide, the penalty shall be increased by up to one third of its peak.

##### Article 146 - Injuries Fault

Anyone guilty of inflicting injuries to another, shall be punished with imprisonment of six months to two years.

When the injuries fault were committed through driving a vehicle, a sentence of deprivation of the right to drive or to get the license in question by a term of one to three years shall be imposed when applicable.

When the injuries fault occurred as a result of the exercise of a profession or a medical or paramedical activity, a further penalty of disqualification for the exercise of that profession or activity, for a period of six months to two years, shall be imposed.

#### Article 147 - Attenuating Consent and Exemption of Consent

In the crimes of injury, when an act of intimidation alters the free, spontaneous and clearly expressed consent of the victim, the perpetrator shall be punished with imprisonment of six months to two years or a fine of thirty to sixty days of basic salaries. The agreement exempts from criminal liability in cases of donation of organ, organ transplants, sterilizations and transsexual surgery, performed under the Code of health or willingly. The consent given by a minor or a disable person for these purposes will not be valid, nor that the consent given by his legal representatives. However, the sterilization of incapacitated person who suffers severe mental deficiency, when authorized by the court or tribunal, at the request of the legal representative of the incapacitated, or a previous medical diagnosis, shall not be punished. These are the main criminal law regulations. Also, as below a further law was passed in 2003 which details rights afforded to people living with HIV. (The pdf. of this law is only available in Spanish).

#### Discussion

- Penal Code of El Salvador referred in Title II, Chapter I, of Book II the crimes of injuries, includes transmittable virus as a type that can cause injury to another person.
- There is no specific mention of HIV, but the conducts described in the penal type are applicable to HIV transmission, unintentional or reckless transmission, and exposure to HIV.
- El Salvador passed an HIV-specific law in 1993 stating that “if HIV-infected patients or patients with AIDS do not comply with sexual abstinence or prevention measures, the Commission is to inform the Ministry of the situation with a view to taking appropriate legal measures to prevent the spread of AIDS.” Non-HIV-specific assault laws apply, and it is thought that both intentional and reckless HIV exposure or transmission could be prosecuted with a maximum sentence of eight years’ imprisonment, increased by a third if there is ‘aggravated injury’<sup>20</sup>.
- There is no data on the number of prosecutions or convictions.

#### Prosecution Cases: None

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<sup>20</sup> Diario Oficial Decree No 53 of 25 May 1993 promulgating regulations for the investigation, prevention and control of acquired immune deficiency syndrome (AIDS). No. 230, pp. 35-44, as summarized in International Digest of Health Legislation Vol. 45, No. 3, 1994, pp. 304-305, 1993



## **GUATEMALA**

### **Law**

CRIMINAL CODE OF GUATEMALA - Decree 17-73 of July 5, 1973 (Unofficial translation)

Book II - Special Part - Title VII - Chapter IV - Spread of Disease

Article 301 - Spread of Disease

Article 305 - Contravention of Sanitary Measures

Article 312 - Guilty Conducts

CRIMINAL CODE OF GUATEMALA - Decree 17-73 of July 5, 1973 (Unofficial translation)

Book II - Special Part - Title VII - Chapter IV - Spread of Disease

Article 301 - Spread of Disease

Anyone who intentionally spreads a disease, dangerous or contagious for others, shall be punished with imprisonment of one to six years.

Article 305 - Contravention of Sanitary Measures

Anyone who violates the measures imposed by law or those taken by health authorities to prevent the introduction or spread of an epidemic, a plague of a plant or animal disease that could affect human beings, shall be punished with imprisonment of six months two years

Article 312 - Guilty Conducts

If the acts contained in Articles 301, 302, 303 and 304, have been culpably committed, the offender shall be punished with the punishment appropriate to the crime, reduced by two thirds

### **Discussion**

- This Criminal Code penalizes the intentional and recklessly transmission of any dangerous or contagious illness.
- This includes HIV transmission.
- Guatemala penal law too sanctions the infraction of sanitary measures taken by the health authority in order to prevent the introduction or spread of any epidemic.
- It is not clear if the exposure to HIV or other contagious or danger illness is penalized by this law. The article 40 of HIV Specific Law, mentioned that the information to sexual partners is a right, not an obligation, of the person living with HIV.

## Prosecution Cases: None



**Country: Honduras**

### Law

CRIMINAL CODE OF HONDURAS (Decree No. 144-83) (1983) Unofficial translation BOOK TWO - SPECIAL PART - TITLE V - Crimes against Public Health

Article 180 - Intentional spread of dangerous illness

Article 184 - If result death

Article 186 - Violation of measure of health authority

CRIMINAL CODE OF HONDURAS (Decree No. 144-83 September 26, 1983) - Unofficial translation

BOOK II - SPECIAL PART - TITLE V - Crimes against Public Health

Intentional spread of dangerous illness

Article 180 - To anyone who intentionally spreads a dangerous illness or causes an epidemic through the spread of pathogens, will be imposed an imprisonment of three to six years.

If results in death,

Article 184 - If the crimes configured in the four preceding articles proves the death of any person they are liable to be punished with a sentence of simple homicide or of qualified homicide, depending on the circumstances recurring in the incident.

Violation of measure of health authority

Article 186 - Shall be punished with imprisonment of six months to two years anyone who violates the measures provisioned by the health authority in order to prevent the introduction or spread of an epidemic, or of an animal epidemic that could affect humans. The penalty will be increased by a quarter when the offender is a public or health employee, doctor, dentist or pharmacist, or to exercise some of the auxiliary activities of these professions.

### Discussion

Honduras passed an HIV-specific law in 1999 that makes it mandatory that people who are aware they are living with HIV must inform their spouse or sexual partner. It also allows for “the spread of HIV in a fraudulent or negligent manner” to be subject to existing laws criminalizing the “intentional spread of dangerous illness” or “violation of health authority measures”. This suggests that both HIV exposure and transmission without disclosure may be subject to prosecution. Maximum penalties would be two years for HIV exposure and six years for HIV transmission. There are no data on the number of prosecutions or convictions.

As other codes, the Penal Code of Honduras penalizes the intentional transmission of any dangerous illness. The article 186 seems to criminalize the exposure if somebody violates the sanitary measures adopted by the health authority.

In this sense, by the article 32 of the specific HIV Law the HIV test is compulsory to legal marriage and when one of the spouses has any suspicion of the HIV infection of the other.

Also, if the Secretary of State determines practice the test, yet without permission of the person to who practice. The article 74 of the specific HIV Law, determines that people living with a person living with HIV should be inform their serologic condition to any other person with whom they have or will have sexual relations.

### **Prosecution Cases**

March 2018, Roatan Agents of the Police Directorate of Investigations (DPI), captured Thursday Ramón Moisés Argueta Fino (30) known as "Laura" indicated by several of his neighbors having supposedly infected with HIV and tuberculosis.	<a href="http://www.abriendobrecha.tv/dpi-capturan-laura-infectar-vih-sida-vecinos/">http://www.abriendobrecha.tv/dpi-capturan-laura-infectar-vih-sida-vecinos/</a>
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## **MEXICO**

### **Laws**

Book II - Special Part

Title VII - Crimes against Health - Chapter II - The danger of contagion Article 199 Bis - Danger of Contagion

Title XIX - Crimes against life and bodily integrity - Chapter III - Common rules for injuries and homicide.

Article 199 Bis - Danger of Contagion

Anyone knowing that he is ill with a bad venereal disease or with any other serious infection illness during incubation period, risking contaminating the health of another, through sexual act or through any other transmissible way, shall be liable for three days to three years imprisonment and a fine of up to forty days.

If the illness suffered should be incurable, the penalty of six months to five years in prison shall be imposed.

In the case of spouse, partner or concubines, the case shall only be prosecuted with a lawsuit from the victim.

### **Article 315 - Aggravated Injures and Homicide**

Understand that injures and homicide are qualified when those commit with premeditation, advantage, treachery, or betray.

There is premeditation whenever the, offender intentionally causes injury after they have contemplated the crime they will commit.

Will be presuming the premeditation exist when injuries or homicide will be committed by flood, fire, mine, bombs or explosive; by poisons or any substance harmful to health, venereal contagion, suffocation, enervating substances, or retribution given or promise, by torture, deprivation cause or brutal fierceness.

### **Discussion**

In Mexico 30 of the 32 confederative entities that make up the Mexican Republic are in force laws that sanction administrative and / or criminally the possibility of transmission of HIV or after sexual transmission of infection to another person under the charge of, most of the cases of, "Crime of Contagion" also contained in the federal criminal code. Most of the current state

criminal codes stipulate that the sanction will be carried out when it is determined that the person infected with HIV deliberately or at risk but not finally infected.<sup>21</sup>

While there is no national HIV specific law on HIV non-disclosure, exposure, or transmission, the Criminal Code includes two applicable offences: Article 199 Bis - Danger of Contagion and Article 315 - Aggravated Injures and Homicide. Mexico is a federal republic; with each of the 31 federated States and Mexico City having enacted laws within its jurisdiction which to a greater or lesser degree are independent of the national law.

According to a comparative table prepared by **Ricardo Hernandez Forcada** , coordinator since 2004 of the HIV Program of the National Human Rights Commission of Mexico, along with Omar Feliciano Mendoza , except for the States of Aguascalientes and San Luis Potosi, all states of the United Mexican States, criminalizes the exposure to communicable diseases.

There are no specific entry regulations for people living with HIV and AIDS (neither for immigrants nor for tourists).

Regulations in the Mexican law on foreigners consider the reason of stay and the person's residency status. There is no reference to sero-status or HIV/AIDS as a condition. Specific regulations are online at [www.inami.mx](http://www.inami.mx).

HIV/AIDS is not grounds for expulsion.

### **State of Guerrero**

The State of Guerrero made specific mention of HIV exposure as a crime in the State's Criminal Code, Article 195 A.:

Who knowing that have sexually transmitted diseases in infecting period, including acquired immunodeficiency syndrome, has intercourse with a person who ignores status and health risk thereof, shall be punished with imprisonment for three months to five years and fines of twenty to one hundred days of wages; without detriment subject to its placement in a medically appropriate to cease the infective period.

To married couples, prosecutions only proceed after a complaint by the offended.

### **State of Chiapas**

In September 2009, various media reported reactions in Mexico and Latin America from human rights and civil society organizations categorized as Criminalization of HIV, the reform proposed and ultimately adopted in Article 444 of the Criminal Code of the State of Chiapas, which introduced the penalty of exposure to contagious STDs conditional on the infectious person has knowledge of the infection which has caused and the victim. This reform includes a paragraph that states that it is presumed that the active subject is aware of his illness, when injuries or external signs caused by it, easily discernible, or when, knowing of his condition is being treated medically. Despite opposition, the reform was approved. However, the sources tell us have not to date knowledge of cases brought to justice for this cause. Indicate that this may be through

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<sup>21</sup> <https://lasillarota.com/opinion/columnas/criminalizar-transmision-de-vih-no-significa-prevenir/184122>

conditions of the offense: prior knowledge of the active subject and disregard for the taxpayer, often difficult to prove.

## **Veracruz State**

Article 158 of the Criminal Code of Veracruz State was passed in July 2015:

Whoever suffers from a sexually transmitted infection or other serious illness and willfully exposes another person will receive six months to five years in prison and a fine up to fifty days' wages. A judge will make the necessary arrangements for the protection of public health.

This 'wilful exposure' statute is vague and overly broad. Neither the actual acts, state of mind, nor defenses are specified. Veracruz civil society under the name 'the Multisectoral HIV/AIDS Group', are currently working with Mexico's National Human Rights Commission to challenge the law as unconstitutional. ·

Prison time for HIV? It's possible in Veracruz. El Daily Post 6 August 2015. <http://www.eldailypost.com/news/2015/08/prison-time-for-hiv-its-possible-in-veracruz>

**Mexico First Spanish language “HIV is not crime” meeting leads to the new network and impressive early results.** As a result, they have a declaration issued by the newly formed network. They also have a very active WhatsApp group, that keeps them connected and share information.

Letra Ese Report on criminalization

<http://desastre.mx/mexico/en-mexico-se-han-procesado-a-mas-de-20-personas-por-contagiar-el-vih-y-otras-its/>

## **Success!**

Successful advocacy as a result of the HIV Justice Worldwide Meeting in Mexico City

<http://www.hivjustice.net/news/mexico-first-spanish-language-hiv-is-not-a-crime-meeting-leads-to-new-network-and-impressive-early-results/>

<https://vihnoescrimenmexico.wordpress.com/2017/10/28/activistas-en-quintana-roo-dan-un-paso-adelante-contra-iniciativa-de-ley-que-criminaliza-el-vih/>

<https://valledelmayo.com.mx/noticia/3812>

<https://www.youtube.com/watch?v=ZfDfB2j2j9w>

<http://www.hivjustice.net/storify/mexico-human-rights-commission-files-motion-before-supreme-court-arguing-veracruz-law-criminalising-wilful-transmission-of-hiv-and-stis-is-unconstitutional/>

## Prosecution Cases

A research undertaken by the civil society organization Letra Ese found that in Mexico more than 20 legal proceedings have been carried out against people living with HIV and other STIs in the last 16 years, when they are accused of "infecting" other people or to put their health "at risk" with "incurable diseases". Veracruz 15, Sonora 9, Mexico State 1, Tamaulipas 5, Chihuahua 3, Nuevo Leon 1 and Mexico City 1.

**There is no additional data found of over the 20 cases of criminalization except for what the Letra Ese report contains.**

<http://desastre.mx/mexico/en-mexico-se-han-procesado-a-mas-de-20-personas-por-contagiar-el-vih-y-otras-its/>

<https://lasillarota.com/opinion/columnas/criminalizar-transmision-de-vih-no-significa-prevenirla/184122>



## NICARAGUA

### Laws

Detail Art. 156 Aroused contagion

Anyone who knowingly suffers from a sexually transmitted disease or any other serious infectious disease, I will execute on another person acts importing danger of transmission or contagion of such disease, putting with this endangering his health, physical integrity or his life, will be sanctioned with imprisonment from six months to three years. If the infection occurs, the penalty will be from one to four years in prison.

Specific law criminalizing HIV non disclosure, exposure, or transmission: (NO) laws Ley 820 art 14 Every person, including those with STIs, HIV and AIDS, has the duty to exercise his sexuality responsibly and solidarity with others, using barrier methods, in order to minimize the risks of transmission, confection and reinfection, for the control of the epidemic and other STIs.

SPECIAL LAW ON HIV / AIDS PUBLISHED IN THE OFFICIAL JOURNAL LA GACETA NUMBER 29,020 OF SATURDAY 13 NOVEMBER 1999 DECREE: No. 147-99

Guarantees quality health care and an environment free of discrimination however it emphasizes on none disclosure and intentional transmission of the HIV as a penal code violation.

ARTICLE 74.- All persons in knowledge of their HIV seropositivity, they have the obligation to communicate their serological status to the people with whom have established, established or are going to establish sexual relations in order to have the informed consent of the same.

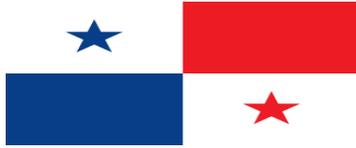
ARTICLE 75.- It is the duty of every person who has diagnosed him as carrier of HIV or AIDS patient; inform your spouse, partner or partner of home, or to people with whom you have sex, of your condition serological

ARTICLE 80.- The propagation of HIV in a fraudulent or intentional manner will be subject to the penalties and penalties provided for in Articles 180, 184 and 191 of the Penal Code.

In 2012 there was a law project that criminalize non-disclosure and transmission <http://www.corresponsalesclave.org/2012/08/penalizar-la-transmision-del-vih-el-turno-de-nicaragua.html>

<http://www.ipsnoticias.net/2012/11/nicaragua-al-borde-de-penalizar-transmision-de-vih/>

**Prosecution Cases: None**



## PANAMA

### Laws

PANAMA PENAL CODE / Law 14, May 18, 2007 (Unofficial translation)

TITLE IX - Chapter IV

CRIMES AGAINST THE COLLECTIVE SECURITY

ARTICLE 302: Those who propagate a dangerous illness or contagious to humans or violates the sanitary measures taken by the competent authorities to prevent the introduction or spread of disease will be punished with a prison sentence of four to six years. If this is a contagious disease, the penalty shall be ten to fifteen years in prison.

ARTICLE 305: When any of the acts described in previous articles were committed by guilt, punishment applicable will be as follows:

1. In the case of Articles 298 and 302, imprisonment of one to two years.
2. In the case of Articles 299 and 301, imprisonment of six months to one year.

### Discussion

- The text refers to the propagation of a dangerous or contagious illness, and the violation of authority measures to prevent the spread of an illness. Literally, HIV is not a contagious illness.
- Article 34 of Law 3, Jan. 5th, 2000, about STI, HIV and AIDS, obligate to people living with HIV to communicate their situation to contacts and people in risk of "contagious".
- Panama enacted an HIV-specific law in 2000 that places a legal obligation on people who are aware they are living with HIV to disclose to people who may be at risk of infection. It also criminalizes 'intentional' HIV transmission, although there is no further definition of which specific acts are criminalized. The maximum sentence is five years' imprisonment. There are no data on the number of prosecutions or convictions.
- In Panama, a national dialogue resulted in a government pledge to strengthen HIV prevention and care in prisons, and to develop a new national HIV law. The new HIV bill was drafted and is currently being reviewed prior to enactment.<sup>22</sup>

### Prosecution Cases: None

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<sup>22</sup> UNDP Issue Brief, March 2017



## **ARGENTINA**

### **Laws**

ARGENTINA PENAL CODE. Law 11.179 (Official Text 1984). Unofficial translation

#### **PART II - TITLE I CRIMES AGAINST PERSONS**

##### **Chapter II - Injuries - Articles 89 to 94**

ARTICLE 89. - A term of imprisonment of one month to one year shall be imposed on anyone who causes, in the body or health, a damage that is not under any provision in this code.

ARTICLE 90. - A term of imprisonment or detention of one to six years shall be imposed if the injury causes a weakening of health, of a sense, of a body, of a member or causes a difficulty to talk or if it has endangered the life of the victim, made him disabled for work for over a month or causes him a permanent disfigurement.

ARTICLE 91. - A term of imprisonment or detention of three to ten years shall be imposed if the injury causes a physical or mental illness, certainly or probably incurable, permanent incapacity to work, the loss, of a sense, of a body, of a member, of the use of an organ or of a member, of the capacity to speak or the ability to breed or conceive.

ARTICLE 92. - If any of the circumstances listed in Article 80 apply, the penalty shall be: in the case of Article 89, six months to two years in the case of Article 90 of three to ten years, and in the case of Article 91, from three to fifteen years.

ARTICLE 93. - If the circumstances set forth in paragraph 1 letter a) of Article 81 apply, the penalty shall be: in the case of Article 89, fifteen days to six months in the case of Article 90 of six months to three years; in the case of Article 91 for one to four years.

Article 94. - A term of imprisonment of one month to three years or a fine of one thousand to fifteen thousand pesos and specific disqualification for one to four years, shall be imposed to anyone who, recklessly or negligently, by inexperience in his art or profession, or by failure to observe the regulations or duties of his charge, causes to another a damage in the body or in his health. If the injuries were described in articles 90 or 91 and any of the circumstances foreseen in the second paragraph of Article 84, the minimum punishment under the first paragraph, is six months or a fine of three thousand pesos and a disqualification for eighteen months.

Amended by: Law 25,189 Art.2 (BO 28/10/99 Article replaces)

Background: Law 23,479 Art.1 ((BO 26-01-87).

### **Discussion**

- The Penal Code of Argentina criminalizes the transmission of an illness certainly or probably incurable.

- Recklessness is clearly sanctioned.
- Article 89 is so broad it could include any other conduct, including exposure to HIV

### Prosecution Cases

<ol style="list-style-type: none"> <li>1. October 2015, Mendoza Argentina The first trial for HIV transmission in a couple. It is a complaint made by a 35-year-old woman against her former partner, a plastic artist of 43 who is accused of intentionally infecting the AIDS virus in 2012.</li> <li>2. April 2002, Rosario, Argentina. The second one tried by the Argentine justice for knowingly Transmitting of the HIV (the virus that causes the AIDS) to his partner, to which he had denied information relative to his illness.</li> </ol>	<p><a href="https://www.lanacion.com.ar/1841064-controvertido-juicio-en-mendoza-por-contagio-de-vih">https://www.lanacion.com.ar/1841064-controvertido-juicio-en-mendoza-por-contagio-de-vih</a></p> <p><a href="https://www.lanacion.com.ar/388863-otra-condena-por-contagiar-el-sida-a-la-ex-pareja">https://www.lanacion.com.ar/388863-otra-condena-por-contagiar-el-sida-a-la-ex-pareja</a></p>
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## **BOLIVIA**

### **Laws**

#### **BOLIVIA CRIMINAL CODE**

##### **Book II - Special Part - Title V - Chapter III - Crimes against Public Health**

##### **Article 216 - Spread contagious or severe diseases**

Art. 216 - (OFFENSES AGAINST PUBLIC HEALTH) - Shall be liable to imprisonment of one to ten years, anyone who:

1. Spreads contagious or severe diseases resulting in epidemics.
2. Poisons, contaminates or alters water intended for public consumption or industrial, agricultural and fish farming use.
3. Poisons, contaminates or alters medicinal substances and food products.
4. Commercializes substances harmful to health or drinks and food products proved unfit for consumption.
5. Commits acts contrary to provisions on hygiene and health or alters medical prescriptions
6. Causes shortages or price rises of food products, medicines, to the detriment of public health.
7. Breaches health measures or spreads animal or vegetal diseases.
8. Administrates or supplies of drugs or medicinal substances in kind, quality, quantity not corresponding to the medical prescription.
9. Takes any other action which in any way could affect the health of the population.
10. Transmits or attempts to transmit HIV to know who lives with this condition.

##### **Article 219 - If cause death or mortal danger**

Article 219 - (COMMON DISPOSITIONS) - In either case of the three previous chapters, the penalty shall be increased:

1. In one quarter, in case of mortal danger to someone.
2. At third, if the act is the immediate cause of death or serious injury to any person.

##### **Article 220 - Guilt forms**

Article 220 - (GUILT) - When any of the above facts is committed by guilt, shall be imposed imprisonment of six months to two years, if not proves to illness or death of any person, and imprisonment increased by half, if it is illness or death.

### **Discussion**

- The numeral 1 of article 216 of Penal Code of Bolivia typified the transmission of any contagious or severe illness.
- This is not a specific HIV disposition, but definitely could be applicable to any transmission disease.

- The paragraph 10 addendum by the law 3729 of August 8, 2007 to article 216, expressly punishes anyone who transmits or attempts to transmit HIV to know who lives with this condition.
- There is no record to date processes followed to any person for violation of paragraph 10 of Article 216 of the Bolivian Penal Code.
- 3729 Act of August 8, 2007, cannot be considered a law criminalizing the transmission although final disposition amending the Criminal Code.
- Although the 3729 Act of August 8, 2007 introduces an addendum to the Criminal Code, criminalizing HIV transmission and exposure, not less true that in other respects the law is very guarantors of the rights of people with HIV. Preserves equality before the law and non-discrimination against people with HIV. It ensures confidentiality, the right to timely information and education, job protection. Sets the duty of people with HIV to practice responsible sexuality to themselves and others. In contradiction to right to confidentiality, duty to report the serological status to their sexual partners and health personnel.
- On the other hand, article 220 criminalizes the HIV exposure, because it imposes a penalty still if the passive part of the offense will not result infected.
- In 2013 a female sex worker was sentenced to home arrest by a female judge in Chuquisaca, Bolivia, for continuing to work while HIV positive. The State Health Department reported the case and applied to the Justice Department of Chuquisaca under Judge Ximena Mendizábal for precautionary measures against a sex worker living with HIV, deeming her a risk to public health. The Judge ruled that the accused was guilty of a crime against public health, ordering her to undergo medical treatment and report every 15 days to the Public Prosecutor's Office to sign the Register. In her verdict she also ordered home arrest with police guard.<sup>23</sup>

### Prosecution Cases

<p>1. October 2013, Bolivia 25 year old sex worker single mother of 2 was sentenced under house arrest after being found working in Sucre and Potosi</p>	<p><a href="http://www.hivjustice.net/news/bolivia-join-the-campaign-against-the-criminalisation-of-female-sex-workers-with-hiv/">http://www.hivjustice.net/news/bolivia-join-the-campaign-against-the-criminalisation-of-female-sex-workers-with-hiv/</a>  <a href="http://www.keycorrespondents.org/sex-workers-with-hiv-targeted-in-bolivia/">http://www.keycorrespondents.org/sex-workers-with-hiv-targeted-in-bolivia/</a>  <a href="http://www.nswp.org/news/sex-worker-living-hiv-targeted-bolivia-worrying-trend-evident">http://www.nswp.org/news/sex-worker-living-hiv-targeted-bolivia-worrying-trend-evident</a></p>
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<sup>23</sup> Javier Hourcade Bellocq, Sex Worker with HIV prosecuted in Bolivia, 2013



## **BRAZIL**

### **Laws**

BRAZILIAN PENAL CODE, January 1st, 1942. Unofficial translation

SPECIAL PART- TITLE I - Chapter III - Endanger Life and Health

Danger of venereal contagion

Article 130 - Expose someone through sexual intercourse or any lewd act, the contagion of venereal disease, that it knows or should know that is contaminated: Penalty- detention of 3 (three) months to one (1) year or a fine.

Section 1 - If the intention is to transmit the disease agent: Penalty - imprisonment of from one (1) to 4 (four) years and a fine.

Section 2 - only take place through representation.

Danger of contagion from severe disease

Article 131 - Practice, in order to forward another serious disease that is contaminated, act capable of producing the contagion: Penalty - imprisonment of from one (1) to 4 (four) years and a fine.

Danger to life or health of others

Article 132 - Expose the life or health of others to direct and imminent danger: Penalty - detention of 3 (three) months to one (1) year, is the fact no crime more serious.

SPECIAL PART- TITLE VIII - Chapter III - Crimes against public health

Epidemic

Article 267 - Causing epidemic, through the spread of pathogenic germs: Penalty - imprisonment of 10 (ten) to 15 (fifteen) years.

Section 1 - If a death result, the penalty is applied twice.

Section 2 - In case of guilt, the penalty is of imprisonment of 1 (one) to 2 (two) years, or, if death results, of 2 (two) to 4 (four) years.

Violation of preventive health measure

Article 268 - Violate determination of public power, to prevent introduction or spread of contagious disease: Penalty - detention of 1 (one) month to one (1) year and a fine.

Single paragraph: The penalty is increased by one third, if the agent is an official public health or exercising the profession of doctor, pharmacist, dentist or nurse.

## Discussion

There are relatively few prosecutions known about in Brazil, five in total. The issue came to a head in 2009 following two high-profile prosecutions in São Paulo. Both the Federal Ministry of Health and the Sao Paulo Ministry of Health produced technical notes (attached below) in 2009 expressing their concerns and highlighting the problems of criminalizing non-intentional transmission and asking that current laws be adjusted to take into account recent developments in HIV prognosis and transmission risk.

In April 2015, Draft Bill No. 198/2015, an amendment to Article 1 of Law No. 8072 of July 25, 1990, proposing to add individuals who “transmit and infect consciously and deliberately others with the AIDS virus. [sic]” to the list of heinous crimes – which currently includes murder, extortion, rape, child exploitation and spreading an epidemic that results in death –with a penalty of imprisonment from two to eight years, and fine, was presented to Parliament by the populist Congressman, Pompeo de Mattos. The bill was in response to a moral panic due to media reports earlier in the year of a gay ‘barebacking’ subculture where anonymous interviewees alleged that some men were deliberately passing on HIV to unsuspecting partners. Defenses are unclear, as the proposed amendment uses the terms ‘consciously and deliberately’ without further elaboration.

To date, interventions on the proposed amendment from UNAIDS, the Ministry of Health, former President Fernando Henrique Cardoso, and press releases from three Brazilian civil society organizations – ABIA (Brazilian Interdisciplinary AIDS Association), RNP+ (National Network of People Living with HIV) and GIV (Group to Encourage Life) have been unsuccessful. Despite public debate, the proposed law continues to be considered by Parliament (see Latest cases and news). [Follow the progress of bill PL 198/2015 here.](#)

The criminalization of HIV transmission in Brazil: advances, setbacks and gaps. This study aims to examine the legal procedures related to infection with the Aids virus during sexual practices in the Brazilian context and its implications for updating the stigma of HIV/Aids. The reflection focused on the analysis of processes related to HIV transmission recorded in JusBrasil Portal and review of the academic literature and media reports on the subject.<sup>24</sup>

**<http://www.hivjustice.net/news/brazil-law-withdrawn/> - BRAZIL: ACTIVISTS CELEBRATE AS ‘DELIBERATE HIV TRANSMISSION’ LAW AMENDMENT IS WITHDRAWN**

Latest cases and news can be found at: <http://www.hivjustice.net/country/br/>

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<sup>24</sup> [http://www.scielo.br/scielo.php?script=sci\\_abstract&pid=S0103-73312015000401185&lng=en&nrm=iso&tlng=en](http://www.scielo.br/scielo.php?script=sci_abstract&pid=S0103-73312015000401185&lng=en&nrm=iso&tlng=en)

Edwin J Bernard and Sally Cameron. *Advancing HIV Justice 2: Building momentum in global advocacy against HIV criminalization*. HIV Justice Network and GNP+. Brighton/Amsterdam, April 2016. [http://www.hivjustice.net/wp-content/uploads/2016/05/AHJ2.final2\\_10May2016.pdf](http://www.hivjustice.net/wp-content/uploads/2016/05/AHJ2.final2_10May2016.pdf)

[http://www.planalto.gov.br/CCIVIL\\_03/Ato2011-2014/2014/Lei/L12984.htm](http://www.planalto.gov.br/CCIVIL_03/Ato2011-2014/2014/Lei/L12984.htm)

### **Prosecution Cases**

<ol style="list-style-type: none"> <li>1. The first known prosecution took place in 1995 under art. 131 , when a woman was sentenced to a year in prison because she failed to inform her partners that she had HIV. The woman testified she had always required the use of condoms with her partners.</li> <li>2. A married man who was charged with attempted murder for not disclosing his HIV status to his mistress during their three year affair.</li> <li>3. Heterosexual man who has also been charged with attempted murder for having unprotected sex without disclosure with three women</li> <li>4. July 2017 Rio de Janeiro, Brazil. Accused of intentionally infecting women with HIV, Renato Peixoto Leal Filho surrendered on Monday night to the Court of Justice of Rio de Janeiro.</li> <li>5. Man given a conviction of 2 years for intentionally transmitting HIV virus, granting him the benefits of the conditional suspension of sentence - because the assumptions of art. 77 of CP - term of 4 years.</li> </ol>	<p><a href="http://criminalisation.gnpplus.net/country/brazil">http://criminalisation.gnpplus.net/country/brazil</a></p> <p><a href="http://criminalhivtransmission.blogspot.com/2009/11/brasil-health-ministry-says-no-to.html">http://criminalhivtransmission.blogspot.com/2009/11/brasil-health-ministry-says-no-to.html</a></p> <p><a href="https://extra.globo.com/casos-de-policia/homem-acusado-de-infectar-mulheres-com-hiv-se-entrega-justica-21550202.html">https://extra.globo.com/casos-de-policia/homem-acusado-de-infectar-mulheres-com-hiv-se-entrega-justica-21550202.html</a></p> <p><a href="http://www.tjdft.jus.br/institucional/imprensa/noticias/2016/outubro/reu-e-condenado-por-contaminar-companheira-intencionalmente-com-virus-hiv">http://www.tjdft.jus.br/institucional/imprensa/noticias/2016/outubro/reu-e-condenado-por-contaminar-companheira-intencionalmente-com-virus-hiv</a></p>
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## CHILE

### Law

CHILEAN PENAL CODE. 1875. (Reformed) Unofficial Translation

PART II - TITLE VI - Section 14 - Crimes and simple offenses against public health:

Art. 316

Anyone who disseminates pathogenic germs with the aim of producing a disease shall be punished with imprisonment in its minimum degree and a fine of twenty-one to thirty basic salaries.

Art. 317

If as a result of any of the crimes identified in the four preceding articles, there is death or serious illness of any person, corporal punishment shall be increased by one or two degrees, depending on the nature and number of such consequences, and the fine may be increased up to twice the maximum specified in each case. If any of these offenses were committed by gross negligence or simple negligence in breach of regulations, the penalties will be less rigorous in its minimum degree or a fine of six to twenty basic salaries.

Art.318.

Anyone who put in danger the public health by breaching the rules of hygiene and health, duly issued by the authority, in times of disaster, epidemic or contagion, shall be punished with imprisonment at its lowest level minimum fine or six to twenty basic salaries.

### Discussion:

- Chilean Penal Code originally dated from 1875, has been revised several times. Consequently, the code presents terminology like "pathogenic germs" which today is not common in penal codes.
- It is debatable whether the penal type contemplated in the article 316 is applicable to HIV transmission.
- The article 318 seems to contemplate exposure to HIV infection.
- The specific HIV Law does not contain obligation to inform sexual partners of one's infection, however the health authority can realize any inquest.

### Prosecution Cases

1. April2018,Valparaiso Chile, Viñamarino doctor faces lawsuit after being charged with intentional HIV infection	<a href="http://www.soychile.cl/Valparaiso/Sociedad/2018/04/09/526964/Medico-vinamarino-enfrentara-demanda-tras-ser-acusado-de-contagiar-VIH-a-proposito.aspx">http://www.soychile.cl/Valparaiso/Sociedad/2018/04/09/526964/Medico-vinamarino-enfrentara-demanda-tras-ser-acusado-de-contagiar-VIH-a-proposito.aspx</a>
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## COLOMBIA

### Laws

CRIMINAL CODE OF COLOMBIA - Law 599 July 24, 2000. (Reformed - Unofficial translation)

Book II - Special Part - Title XIII - Chapter I - Of Crimes against Public Health

Article 368 - Violation of sanitary measures

Anyone who violates health measure taken by the competent authority to prevent the introduction or spread of an epidemic shall be liable for imprisonment for one (1) to three (3) years.

Article 369 - Spread of epidemic

Anyone who spreads epidemic shall be liable to imprisonment for one (1) to five (5) years.

Article 370 - Spread of human immunodeficiency virus or hepatitis B

Anyone who, after being informed of being infected by the human immunodeficiency virus (HIV) or hepatitis B, makes practices by which he can contaminate another person, or gives blood, semen, organs or general anatomical components, shall be liable for imprisonment of three (3) to eight (8) years.

### Discussion

- Article 369 of Colombian Penal Code although not being HIV specific, is applicable to the intentional or reckless transmission of HIV.
- The article 370 specifically criminalizes the exposure to HIV.
- The article 36 of Decree 1543 of June 12, 1997, (specific HIV Law) obligates people living with HIV in Colombia to inform their HIV status to sexual partner and health personnel. Like other legislation, there are contradictions between legal dispositions and the guarantee of confidentiality and the principles of non-discrimination that this obligation violates.
- Further reading: [Colombia UNGASS report 2012](#) , [UNAIDS Country page - Colombia](#)

### Prosecution Cases

1. March 2014, Bogota, Colombia A man is sent to prison for HIV infection.	<a href="https://www.elespectador.com/noticias/judicial/carcel-hombre-contagio-vih-su-pareja-sentimental-articulo-483120">https://www.elespectador.com/noticias/judicial/carcel-hombre-contagio-vih-su-pareja-sentimental-articulo-483120</a>
2. September 2013, Santander, Colombia. Policeman captured for the crime of human spread of the human immunodeficiency virus, AIDS.	<a href="http://www.vanguardia.com/judicial/226528-capturado-policia-que-contagio-en-santander-a-varias-mujeres-con-sida">http://www.vanguardia.com/judicial/226528-capturado-policia-que-contagio-en-santander-a-varias-mujeres-con-sida</a>



## **ECUADOR**

### **Laws**

ECUADOR PENAL CODE. (Official Text Unified).

PART II - TITLE V - Chapter X - CRIMES AGAINST PUBLIC HEALTH

Art. 432. Will be punished with imprisonment of one to five years and a fine of fifty thousand sucres, anyone who, consciously, spreads a dangerous or contagious disease to humans.

The law on prevention and Integral Assistance of HIV/AIDS. No. 2000-11. The National Congress Article 11. – The person who knows himself to be HIV / AIDS carrier, because he has been notified and informed, in a conscious and voluntary way transmits HIV to another person, with knowledge of the cause, will be responsible before the law for the damage caused

### **Discussion**

Notes on Penal Code:

- This is not a HIV specific law.
- Penal Code of Ecuador penalizes the consciously spread of a dangerous or contagious illness.

**Prosecution Cases: None**



## **GUYANA**

### **Laws**

Criminal Law (Offences) Act 1894

#### Section 43 Assault

Everyone who assaults any person shall be guilty of a misdemeanor and shall be liable to imprisonment for one year.

#### Section 49 Assault causing actual bodily harm

Everyone who assaults any person so as to cause him actual bodily harm shall be guilty of a misdemeanor and liable to imprisonment for five years.

#### Section 50 Unlawful wounding

Everyone who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon a person, whether with or without any weapon or instrument, shall be guilty of a misdemeanor and shall be liable to imprisonment for five years.

### **Discussion**

In September 2011, a Special Select Committee unanimously rejected a bill on the Criminal Responsibility of HIV Infected Individuals proposed by Guyana Action Party parliamentarian Everall Franklin in 2010.

According to a news report the Committee's Chair, Health Minister Dr. Leslie Ramsammy said that the committee agreed that "the willful transmission of HIV is unacceptable and is criminal" but believed that there are general criminal laws that are adequate to address the willful transmission of HIV. He added that after hearing the views of individuals and organizations who came before the committee, they concluded that criminalization of HIV transmission has not been proven to prevent the spread of HIV.

"It merely encourages individuals not to get tested and increases the stigma and discrimination against those who are positive," he added.

This in turn could lead to an increase in the spread of HIV since people would fear to get tested and could pass the virus on. Stigma and discrimination, the minister said have proven to be "the most powerful drivers" of the HIV epidemic.

UNAIDS in the Caribbean congratulated the Government via a press statement 'Guyana gets it right' which noted "Such a law would have deepened the climate of denial, secrecy and fear

surrounding the virus in Guyana and in so doing reduce people's willingness to learn their status and access treatment and support. Ironically, a measure meant to reduce the spread of HIV could have led to its increase."

The [full Report of the Special Select Committee to the Guyana Parliament](#) can be read online.

The Speech of Honorable Dr. Leslie Ramsammy, Minister of Health, to Parliament, September 8th 2011, on the Committee's Decision not to create an HIV-specific law is attached below. He cited international developments led by UNAIDS questioning HIV criminalization as a major reason for the decision.

As experts on HIV scientists and legal minds meet at the global level, and as countries revoke their earlier broad criminalization of HIV exposure and transmission, we cannot in Guyana go in the opposite direction, and act backwardly as a nation that is proud to be forward looking, progressive and basing its policies and practices on evidence.

**Cases: None**



## PARAGUAY

Commented [EJB1]: Yes (article 26)

### Laws

The law on AIDS control and prevention was adopted in 1991. The article 26, law no. 102/91 states:

Los portadores del VIH que premedita damente intenten transmitir o trasmitieren a otras personas la enfermedad, serán pasibles de sanción penal.

HIV carriers who deliberately try to transmit or transmit to others the disease, will be subject to criminal sanctions.

### PUNISHABLE FACTS AGAINST PHYSICAL INTEGRITY

#### Article 111. - Injury

1º the one that harms the health of another, will be punished with deprivation of liberty of up to one year or a fine.

#### Article 112. - Serious injury

1. put the victim in danger of death;
4. Will cause a serious or distressing illness.

#### Article 113. - Wrongful injury

- 1º the person who, through culpable action, causes another to harm his health, shall be punished with Deprivation of liberty of up to one year or a fine.
- 2º the criminal prosecution of the event will depend on the instance of the victim.

### Prosecution Casses

1. April 2017, San Lorenzo Paraguay A lawyer accused of transmitting HIV to a dozen women is captured	<a href="http://www.paraguay.com/nacionales/capturan-a-abogado-acusado-de-transmitir-vih-a-decena-de-mujeres-161644">http://www.paraguay.com/nacionales/capturan-a-abogado-acusado-de-transmitir-vih-a-decena-de-mujeres-161644</a>  <a href="http://www.hivjustice.net/storify/paraguay-prosecutor-files-additional-charge-against-man-living-with-hiv-for-alleged-hiv-transmission/">http://www.hivjustice.net/storify/paraguay-prosecutor-files-additional-charge-against-man-living-with-hiv-for-alleged-hiv-transmission/</a>
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## PERU

### Laws

#### Wrongful Injuries

Article 124.- The one that causes another person a fault in the body or in health, shall be repressed, by private action, with custodial sentence not greater than one year and with sixty one hundred twenty days-fine.

The Penal Code Decreto legislative No 635 has 242 pages... no info on the portal, on laws and applicable laws it says "see attachments", but it doesn't have a link or where to look for it.

Laws and regulations relating to entry, stay or residence in the country:

There are no specific entry or residence regulations for people with HIV/AIDS. Neither a medical certificate nor an HIV test result is required when entering the country. Foreigners with a known HIV infection are not subject to specific residence regulations. There are no regulations regarding the control, deportation or expulsion of those concerned.

Antiretroviral medication can be imported for personal use.

Some communities require a health certificate and HIV testing of people who want to get married (Peruvians and foreigners). If the result is positive, the right to marry can be denied. Antiretroviral medication can be imported for personal use and for the expected duration of stay.

### Prosecution Cases

June 2014, Chiclayo Peru, Man accused of raping and transmitting HIV to 2 minors.	<a href="https://larepublica.pe/archivo/802559-exregidor-violo-y-contagio-con-vih-sida-a-2-menores">https://larepublica.pe/archivo/802559-exregidor-violo-y-contagio-con-vih-sida-a-2-menores</a>
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## **SURINAME**

**Laws** – Section 306 B of the Surinamese Penal Code  
Grave bodily harm.

### **Discussion**

A specific law was proposed and discussed in Parliament. However, the Minister of Justice publicly said that this is a serious issue and needs to be dealt with in depth. Article 294 of the Penal Code which was HIV specific punishable for a maximum of 6 years was cancelled in the amendment of 2004. HIV can still be criminalized under Grave bodily Harm.

### **Prosecution Cases**

<p>1. February 2018 Suriname, Thirty eight year old woman accused by intimate partner of 2 years of not disclosing her status and intentionally transmitting the HIV virus to him.</p>	<p><a href="http://www.nationnews.com/nationnews/news/131337/woman-suriname-arrested-alleged-intentional-hiv-infection">http://www.nationnews.com/nationnews/news/131337/woman-suriname-arrested-alleged-intentional-hiv-infection</a></p>
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## **URUGUAY**

### **Laws**

#### TITLE XII OF CRIMES AGAINST THE PHYSICAL AND MORAL PERSONALITY OF MAN

##### Chapter II

Art. 318. Very serious injuries.

The personal injury is very serious, and the penalty of twenty months of imprisonment will be applied to eight years of penitentiary if the fact is derived:

1º A certain illness or probably incurable.

2º The loss of a sense.

3º The loss of a limb or mutilation that renders it unusable, or the loss of an organ, or of the ability to generate, or a serious and permanent difficulty of the word.

4º A permanent deformation of the face.

5th Abortion of the offended woman. (75)

**Prosecution Cases: None**



## **VENEZUELA**

### **Laws**

#### CHAPTER II Personal injuries

Article 415 .- He who without intent to kill, but if it caused harm, has caused any person a physical suffering, damage to health or a disturbance in the intellectual faculties, will be punished with imprisonment of three to twelve months.

Article 416. - If the act has caused a mental or bodily illness, certain or probably incurable, or the loss of any sense of a hand, a foot, the word, the ability to generate or the use of any organ, or if it has produced a wound that disfigures the person; in short, if the offense against a woman on tape has resulted in an abortion, she will be punished with imprisonment for three to six years.

### **Discussion**

Articles on the Venezuelan crisis that has displaced millions, left persons with HIV without antiretroviral medication and basic health access.

<http://www.pinknews.co.uk/2018/02/03/hiv-positive-man-to-be-deported-from-the-us-to-venezuela-despite-lack-of-access-to-treatment/>

<https://www.theglobeandmail.com/news/world/in-venezuela-a-once-leading-aids-program-lies-inruins/article35417359/>

<http://www.dw.com/en/for-venezuela-hiv-patients-lack-of-medicine-a-death-sentence/a-42592193>

<https://www.nbcnews.com/feature/nbc-out/no-hope-left-venezuela-those-hiv-advocates-say-n795866>

<https://www.gnpplus.net/call-to-action-people-living-with-hiv-in-venezuela-need-our-immediate-help/>

<https://www.poz.com/blog/grave-concern-hiv-venezuela>

**Prosecution Cases: None**



## **ANTIGUA AND BARBUDA**

### **Laws**

Offences against the Person, 1873. Chapter 300.

Section 43. Common assault or battery

Section 44. Aggravated assault on females, and boys under the age of 14

Section 48. Assault occasioning bodily harm

The Public Health Act 1957, Chapter 353 Declaration of infectious disease.

### **Discussion**

Offences against the Person, 1873. Chapter 300.

Common assault or battery

Section 43. When any person unlawfully assaults or beats any other person, any Magistrate, upon the complaint by or on behalf of the party aggrieved, praying him to proceed summarily on the complaint, may hear and determine such offence, and the offender shall, on summary conviction, at the discretion of the Magistrate either be imprisoned, with or without hard labor for any term not exceeding two months, or else shall forfeit and pay such fine as shall appear to the Magistrate to be meet, not exceeding the sum of one thousand dollars, together with costs (if ordered).

Aggravated assault on females, and boys under the age of 14

Section 44. When any person shall be charged before a Magistrate with an assault or battery upon any male child, female, and whose age shall not, in the opinion of such Magistrate, exceed fourteen years, or upon any female, either upon the complaint of the party aggrieved or otherwise, the said Magistrate, if the assault or battery is of such an aggravated nature that it cannot, in his opinion, be sufficiently punished under the provisions hereinbefore contained as to common assaults and batteries, may proceed to hear and determine the same, and every such offender shall be liable on summary conviction, to be imprisoned, with or without hard labor, for any period not exceeding six months, or to pay a fine, not exceeding (together with costs) the sum of five thousand dollars and, if the Magistrate shall so think fit, in any of the said cases, shall be bound to keep the peace and be of good behavior for any period not exceeding six months from the expiration of such sentence.

Assault occasioning bodily harm

Section 48. Whosoever is convicted, upon an indictment, of any assault occasioning actual bodily harm shall be liable to be imprisoned for any term not exceeding five years, with or without hard labor; and whosoever is convicted, upon an indictment, for a common assault shall be liable to be imprisoned for any term not exceeding two years, with or without hard labor.

The Public Health Act 1957, Chapter 353

Declaration of infectious disease.

100. The Governor-General may by proclamation declare any disease (in addition to the diseases mentioned in section 2) to be an infectious disease or a dangerous infectious disease within the meaning of this Act, and so long as the proclamation remains unrevoked, the disease specified therein shall be deemed to be an infectious disease, or a dangerous infectious disease, as the case may be.

Removal to isolation hospital.

107. (1) Where any suitable hospital or place for the removal to isolation hospital. reception of the sick, established and maintained from public funds, is provided, any person who is suffering or suspected to be suffering from an infectious disease, and is without proper lodging or accommodation, or is so lodged that proper precautions cannot be taken for preventing the spread of disease, or is lodged in any common lodging house, or is on board a ship, vessel or aircraft, may, on a certificate signed by the Medical Officer of Health, the medical officer of health of the district or any medical practitioner authorized by the Board, and with the consent of the persons in this section mentioned, be removed by order of any Justice or Magistrate, to such hospital or place at the cost of the Board; and such person may be detained at such hospital or place so long as he continues in an infected condition, and any police officer or any person authorized by the Medical Officer of Health engaged or aiding and assisting in such removal may for the purpose of such removal break into any house or any building whatsoever and may break open any door in any such house or building.

(2) An order under this section may be addressed to any police officer or officer of the Board; and any person who willfully disobeys or obstructs the execution of such order shall be liable on summary conviction to a fine not exceeding five hundred dollars.

Infected person not to carry on occupation

108. (1) (2) If any person-

(a) while suffering from an infectious disease, willfully exposes himself without proper precautions against spreading the disease in any street, public place, shop, hotel or public conveyance; or

(b) being in charge of any person so suffering, so exposes such sufferer, or causes such sufferer to be so exposed,

He shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred dollars.

**Prosecution Cases: none**



## **BAHAMAS**

### **Laws**

Sexual Offences and Domestic Violence Act 1991

### **Discussion**

Section 8. Prostitution and disclosure of AIDS

(2) Any person who knows that he is infected with a virus causing, or known to cause, acquired immune deficiency syndrome (commonly known as "AIDS") and who has sexual intercourse with any other person, with the consent of that other person but without disclosing the fact of the infection to that other person, is guilty of an offence and liable to be detained for a term of five years in such place and under such conditions as may be specified by the court before which he is convicted; and, while so detained, he shall be deemed to be in legal custody.

(3) It shall be a sufficient defense to any charge under subsection (2), if it is made to appear to the court before which the charge shall be brought that the person with whom the person so charged had sexual intercourse knew, or had reasonable cause to believe, before sexual connection was occasioned, that the person so charged was so infected.

Section 9. No person shall be convicted of an offence under section 7 or 8 (1) upon the evidence of one witness unless such evidence be corroborated in some material particular by evidence implicating the accused person.

From the information received, it appears that due to stigma, discrimination and fear, there is not much attention paid to the issue. Disclosure of HIV infection remains problematic.

**Prosecution Cases: None**



## **BARBADOS**

### **Laws**

### **Discussion**

Respondent states that transmission of HIV is prosecuted under the criminal law, but does not refer to any specific law. Note that in Barbados, appellate jurisdiction is a matter of constitutional law. The Caribbean Court of Justice Act of 2003 and the Constitution Amendment Act of 2003, both of which were brought in force by Proclamation on April 8, 2005, effectively made the Caribbean Court of Justice (CCJ) the court of last resort for Barbados on new cases on appeal. A short six months after its inauguration, the CCJ addressed the issue of jurisdiction in a civil case on appeal from Barbados. Addressing an objection to jurisdiction, the CCJ ruled that it had jurisdiction to hear the appeal under the terms of the enabling legislation passed by Parliament. The jurisdiction of the court was not challenged thereafter in the criminal case. Thus, it appears that new cases on appeal are now to be heard by the CCJ, rather than the Judicial Committee of the Privy Council (JCPC) of the United Kingdom.

An editorial in the Barbados Advocate ("Radical Action: Is it justifiable" / 07/10/2009) suggests the branding of people living with HIV. Posing whether it would be a violation of human rights to stipulate that in order to receive state-funded medication, patients must agree to have a permanent indication their HIV status in an area that would only be visible were they to engage in sexual activity? Further asking where does their right to privacy end and the rights of their potential partners to be protected begin? See attached media article.

From the information received it appears that the state considers HIV transmission to be a greater threat than the transmission of other sexually transmitted infections.

**Prosecution Cases: None**



## **Cuba**

### **Laws**

Penal code N° 62 de 1999 (Penal Code - Law No. 62 of 1999)

CHAPTER V

CRIMES AGAINST PUBLIC HEALTH

Propagation of Epidemics

ARTICLE 187.

1. The one that infringes the measures or dispositions dictated by the competent health authorities for the prevention and control of communicable diseases and programs or campaigns for the control or eradication of diseases or epidemics of a serious or dangerous nature, incurs terms of deprivation of liberty from three months to one year or a fine of one hundred three hundred installments or both.

2. Anyone who refuses to collaborate with the authorities incurs the same sanction health services in places in the national territory in which any disease transmissible disease acquires serious epidemic characteristics or in the territories adjoining exposed to the spread.

3. The one that maliciously propagates or facilitates the spread of a disease, incurred a penalty of deprivation of liberty for three to eight years<sup>25</sup>.

### **Discussion**

1. Those who contravene the measures and dispositions dictated by competent health authorities for the prevention and control of communicable diseases, and fail to support the programs and/or campaigns designed for the control and eradication of serious or dangerous diseases or epidemics, will be subject to 3 months to 1 year in prison, or receive a fine of 100-300 pesos, or both.

2. This sentence also applies to those who refuse to collaborate with health authorities in the national territory where any communicable disease becomes a serious epidemic or in adjacent territories to which the epidemic can spread.

3. Those who maliciously spread or facilitate the spread of a disease can be sentenced to 3 to 8 years in prison.

### **Prosecution Cases: Unknown**

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<sup>25</sup> [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=242550](http://www.wipo.int/wipolex/en/text.jsp?file_id=242550)



## COMMONWEALTH OF DOMINICA

### Laws – None

The following link provides information on laws of Dominica

<http://www.dominica.gov.dm/laws-of-dominica?page=18&term=&sort=>

### Prosecution Cases: None



## DOMINICAN REPUBLIC

### Laws

Código Penal de la Republica Dominicana

República Dominicana Ley No. 4471 de 1956, Código de Salud Pública.

Dominican Republic Law 135-11: HIV/AIDS Law 7, June 2011.

República Dominicana Ley No. 4471 de 1956, Código de Salud Pública. Artículo 50. Toda persona que padezca de una enfermedad transmisible.

Dominican Republic Law 135-11: HIV/AIDS Law 7 June 2011.

Article 78: Obligation to disclose one's sexual partner. Any person who knows that they are HIV positive and does not tell their sexual partner can be sentenced to two to five years' imprisonment.

Article 79: Intentional transmission of HIV. Any person who intentionally transmits HIV, via any means, can be sentenced to twenty years' imprisonment.

### Discussion

Dominican Republic Law No. 4471 of 1956, Public Health Code

Article 50. Any person suffering from a communicable disease of compulsory declaration, as well as carriers or contacts, may be submitted to observation, isolation or quarantine for the time and in the manner determined by the health authority in accordance with the provisions of the Respective regulation.

Dominican Republic Law 135-11: HIV/AIDS Law 7 June 2011.

On the 7th of June 2011, the president of the Dominican Republic enacted Law 135-11, known as the “HIV/AIDS Law, the regulations thereof are still being finalized. This national law is the result of five years of multisectoral work, and although most of its articles are very progressive, at the same time it includes the criminalization of HIV transmission. The most questionable parts of the law are to be found in the following articles:

This law, and in particular Articles 78 and 79, promote the criminalization, persecution and seclusion of people living with HIV in the Dominican Republic. It violates their human rights and contradicts a number of international agreements.

Source: Petition to the President of DR to amend the AIDS Law criminalization of HIV transmission article in recent bill.

**Prosecution Cases: None**



## **GRENADA**

### **Laws**

Review of the Laws of Grenada, Carriacou and Petite Martinique of implications of discrimination and breach of Human Rights, <http://ufdc.ufl.edu/AA00000030/00001>

Respondent states that transmission of HIV is prosecuted under the criminal law, but does not refer to any specific law. Note that in Barbados, appellate jurisdiction is a matter of constitutional law. The Caribbean Court of Justice Act of 2003 and the Constitution Amendment Act of 2003, both of which were brought in force by Proclamation on April 8, 2005, effectively made the Caribbean Court of Justice (CCJ) the court of last resort for Barbados on new cases on appeal. A short six months after its inauguration, the CCJ addressed the issue of jurisdiction in a civil case on appeal from Barbados. Addressing an objection to jurisdiction, the CCJ ruled that it had jurisdiction to hear the appeal under the terms of the enabling legislation passed by Parliament. The jurisdiction of the court was not challenged thereafter in the criminal case. Thus, it appears that new cases on appeal are now to be heard by the CCJ, rather than the Judicial Committee of the Privy Council (JCPC) of the United Kingdom.

An editorial in the Barbados Advocate ("Radical Action: Is it justifiable?" / 07/10/2009) suggests the [branding of people living with HIV](#). Posing whether it would be a violation of human rights to stipulate that in order to receive state-funded medication, patients must agree to have a permanent indication their HIV status in an area that would only be visible were they to engage in sexual activity? Further asking where does their right to privacy end and the rights of their potential partners to be protected begin? See attached media article.

From the information received it appears that the state considers HIV transmission to be a greater threat than the transmission of other sexually transmitted infections.

**Prosecution Cases: None**

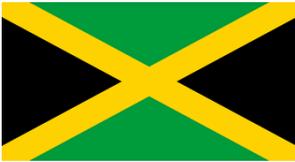


## HAITI

### Laws

No specific law about transmission of HIV.

Prosecutions – none known



## JAMAICA

### Laws

There is no specific law on HIV transmission.

Jamaica Public Health Act 1985

Offences against the Person Act 1864

Public Health Act 1985 notifiable disease; Offences against the Person Act 1864 unlawful wounding

### Discussion

In 2008, a search of the Laws of Jamaica found that HIV is mentioned in three pieces of legislation:

- The Public Health Act, which makes HIV a notifiable disease;
- The Shipping Act, which makes HIV a notifiable disease for visiting seafarers;
- The National Health Services Act, which sets out fees for private and public patients for HIV tests.

Though there is no HIV specific law, there is a possibility that a person can be isolated under the Public Health Act 1985.

Section 2(1) In this Act, unless the context otherwise requires –

“Communicable disease” means any disease due to a specific infectious agent or its toxic products, which arises through transmission of that agent or its products from an infected person

or animal to a susceptible person either directly or indirectly, through the agency of an inanimate environment and includes any infectious disease and any quarantinable disease.

“Notifiable disease” means any communicable disease declared by the Minister by order to be a notifiable disease.

Section 14 (1). The Minister may make regulations generally for carrying out the provision and purposes of this Act, and in particular, subject to section 7, but without prejudice to the generality of the foregoing, may make regulations in relation to –

(a) Notifiable and communicable disease, the treatment and prevention thereof and the isolation of patients suffering therefrom.

Also, HIV transmission could be prosecuted under the Offences against the Person Act 1864.

Section 22 Whoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any person, either with or without any weapon or instrument, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour.

In 2010, the Labour Minister threatened that he could push for legislation to impose criminal sanctions on persons who knowingly spread HIV/AIDS. See attached media report.

Discrimination of sex workers, MSM and transgender has been reported.

**Prosecution Cases: None**



## **ST KITTS AND NEVIS**

### **Laws**

The Public Health Act 1969 has not been revised since that time. Available Statutory Rules and Orders which support the Act speak mainly to issues of immunization, sanitation and general environmental health concerns.

### **Prosecutions cases – none known**



## **ST LUCIA**

### **Laws**

#### Saint Lucia's Criminal Code, No. 9 of 2004 (Effective 1 January 2005)

#### Transmission of HIV

Section 140 — (1) Any person who, knowing that he or she suffers from acquired immune deficiency syndrome commonly known as AIDS, intentionally or recklessly infects another person with the human-immuno deficiency virus known as HIV, whether through sexual intercourse or any other means by which the disease may be transmitted to another person commits an offence of aggravated sexual assault and is liable on conviction on indictment to imprisonment for ten years.

(2) It is no defence for a person charged with an offence under subsection (1), to prove that the act was committed with the consent of the other person.

#### St Lucia Public Health Act 1975

9. —(1) The Minister may, subject to negative resolution of the House of Assembly, make regulations for the proper carrying out of the provisions of this Act and without limiting the generality of the foregoing may make regulations—

- (a) Prescribing the forms to be used for the purposes of this Act;
- (b) For the prevention, treatment, limitation and suppression of disease;

### **Prosecution cases – none known**



## **ST VINCENT AND THE GRENADINES**

**No information**



## **TRINIDAD AND TOBAGO**

### **Laws**

Law proposal is under review

### **Discussion**

A legislation proposal was brought to the Cabinet of the Government of the Republic of Trinidad and Tobago for the criminalization of persons who knowingly transmit HIV to an HIV-negative person. However, as the proposal was incomplete it was rejected and referred for further formulation. (The first proposal was considered to be not clear about how the court could prove the guilt.)

In 2000, the Trinidad and Tobago Law Commission decided against introducing laws that would criminalize HIV exposure or transmission for the following reasons: creating a criminal offence might create a false sense of security “whereas individuals need to be responsible and protect themselves”; in countries where HIV-specific laws have been introduced “they have rarely been used and have often been harshly criticized”; legislation enacted “in reaction to a public demand for action, can be counterproductive because it diverts attention from underlying problems by creating the impression that decisive action is being taken while hindering the implementation of constructive solutions”; “proof and enforcement of this type of law can be difficult”; and prosecuting only people who know their status may discourage HIV testing.

**Prosecutions cases- none**

## CONCLUSIONS AND RECOMMENDATIONS

This report has explored HIV-specific laws in Latin America and the Caribbean. This includes data available and update on the GNP+ Criminalization Portal, reports from partner networks in the regions and internet research. It must be highlighted that as a first attempt at this process, CNET+ has gained much knowledge and experience from a topic that they were not familiar with before. This present report is being viewed as a work in progress. The organization is now better poised with this foundation to continue building and strengthening the monitoring and reporting of cases of HIV Criminalization in the LAC region. Several challenges were identified but the greatest was the lack of knowledge among peers within the countries on the status of their laws and how these influence and affect HIV processes in their countries.

### **Recommendations:**

1. There is a need for a regional training on HIV criminalization with a focus on monitoring and reporting the status of countries as a part of the GNP+ project.
- 2.) The need for guidance to the CNET+ in development of the mechanisms for collecting data. For example, establishment of a network online via social media or other platform where partners can deposit data for collection and analysis by CNET+.
- 3.) To provide CNET+ with the opportunity to continue building on the lessons learnt in this experience by continue to be responsible for the monitoring of the situation in LAC based on the information that they have already collected in this first phase.
- 4.) Legal change can be a process that can take many years. It is important that a longitudinal approach also be taken where steps towards change can be documented throughout the process.
- 5.) Opportunities for the team at CNET+ to continue receiving training in monitoring legislation as it relates to HIV Criminalization but to also have an opportunity to share with other regions and learn from them as well.
- 6.) To strengthen the efforts of the HIV Justice Network and GNP+ to reach the LAC region with information, updates and opportunities for learning. The Networks are involved in the advocacy and they have the information but there are no specific avenues for the exchange on data among those that are not aware of the work of HIV Justice Network and GNP+ in the region and globally.

## REFERENCES

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(<http://www.hivjustice.net>);
- <sup>4</sup> <http://criminalisation.peoplewithhiveurope.org/en>
- <sup>5</sup> <http://www.hivjustice.net/advancing2/>
- <sup>6</sup> [https://docs.google.com/forms/d/e/1FAIpQLScbKAPG4VRVZhkEfYuEnX\\_eknMKHHanrGz3S78GOaX0RxpWhw/viewform?usp=sf\\_link](https://docs.google.com/forms/d/e/1FAIpQLScbKAPG4VRVZhkEfYuEnX_eknMKHHanrGz3S78GOaX0RxpWhw/viewform?usp=sf_link)
- <sup>7</sup> [http://www.ilo.org/dyn/natlex/natlex4.byCountry?p\\_lang=en](http://www.ilo.org/dyn/natlex/natlex4.byCountry?p_lang=en) [www.oas.org](http://www.oas.org)
- <sup>8</sup> CNET+ 2017-2020 Strategic Plan, 2017
- <sup>9</sup> UNAIDS 2017 Global Report
- <sup>10</sup> The Global State of Harm Reduction 2016
- <sup>11</sup> THE CRIMINALISATION OF CONSENSUAL SAME-SEX SEXUAL RELATIONS ACROSS THE COMMONWEALTH – DEVELOPMENTS AND OPPORTUNITIES
- <sup>12</sup> <https://www.theguardian.com/world/2018/apr/13/trinidad-and-tobago-sexual-offences-act-ruled- unconstitutional>
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- <sup>20</sup> Diario Oficial *Decree No 53 of 25 May 1993 promulgating regulations for the investigation, prevention and control of acquired immune deficiency syndrome (AIDS)*. No. 230, pp. 35-44, as summarized in International Digest of Health Legislation Vol. 45, No. 3, 1994, pp. 304-305, 1993
- <sup>21</sup> <https://lasillarota.com/opinion/columnas/criminalizar-transmision-de-vih-no-significa-prevenir/184122>
- <sup>22</sup> UNDP Issue Brief, March 2017
- <sup>23</sup> Javier Hourcade Bellocq, Sex Worker with HIV prosecuted in Bolivia, 2013
- <sup>24</sup> [http://www.scielo.br/scielo.php?script=sci\\_abstract&pid=S0103-73312015000401185&lng=en&nrm=iso&tlng=en](http://www.scielo.br/scielo.php?script=sci_abstract&pid=S0103-73312015000401185&lng=en&nrm=iso&tlng=en)
- <sup>25</sup> [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=242550](http://www.wipo.int/wipolex/en/text.jsp?file_id=242550)

## ANNEX 1: Questionnaire

### HIV Criminalization – Regional mapping

1. Please select your language (English, Spanish, French)

#### Organization details

Thank you for completing this questionnaire about your organization's HIV criminalization work.

HIV criminalization describes the unjust application of the criminal law of people living with HIV based solely on their HIV status – either via HIV-specific criminal statutes, or by applying general criminal laws that allow for prosecution of unintentional HIV transmission, potential or perceived exposure to HIV where HIV was not transmitted, and/or non-disclosure of known HIV-positive status.

The survey should only take about 5 minutes to complete

2. Are you
  - An Organization
  - A lawyer/law firm

NOTE: if you are a lawyer working, or interested in working on HIV criminalization, please write your name, or the name of your firm, for name of organization in question 3

3. Contact details
  - Name of Organization
  - Address
  - City/Town
  - State/Province/County
  - ZIP/Postal Code
  - Country
  - Email
  - Phone

4. Internet & Social media

- Website
- Facebook
- Twitter
- Blog
- YouTube

5. Would you say your organization

- Has experience of HIV criminalization work
- Has an interest in HIV criminalization work

- Is willing to help if needed
6. What is the geographical scope of your organization?
    - Local / provincial
    - National
    - Regional
    - Global/international
  7. Is HIV criminalization
    - The primary focus of your work
    - One of your focus area
    - Not yet a focus area
  8. Do you work in other areas of criminalization? And if yes, which?
    - Drug use
    - LGBT relationships/identity
    - Migrants
    - Prison reforms
    - Racial justice
    - Reproductive rights
    - Sex work
    - Other (please specify)
  9. Do you specialize in gender issues to HIV criminalization or other forms of criminalization?
    - Yes
    - No
    - Not currently, but interested in doing so
  10. Which of the following activities related to HIV criminalization are actively carried out by your organization? Select all that apply
    - Community mobilization
    - Legal services
    - Media response
    - Political advocacy
    - Public education
    - Research
    - Tracking and monitoring prosecutions
    - Others (please specify)
  11. Does your organization actively carry out work on HIV-related discrimination issues, and, if yes, in which areas? Select all that apply
    - Employment
    - Healthcare
    - Military
    - Travel/residence status
    - Prisons
    - Other (please specify)

12. Would your organization be able to offer practical or technical support to other organizations/groups working in HIV criminalization?
  - Yes, in some areas
  - No (please go to question 15)
13. Please tell us what services/resources, related to HIV criminalization work, you might be able to offer support with (e.g. legal services, policy work, campaigning etc.)
14. Is your expertise specific to a particular geographic area or population?
  - No, my expertise is broadly applicable
  - Yes (please specify the geographic areas or populations)
15. Please tell us what services/resources, related to HIV criminalization work, your organization would like to receive support with (e.g. access to legal services, help with policy work, advocacy etc.)
16. Do you know if there has been any legal proceeding linked to HIV Criminalization initiated in your country against people living with HIV
  - Yes
  - No (please go directly to question 18)
  - Don't know (please go directly to question 18)
17. Do you know under which laws (for example HIV specific law, national criminal law etc.) these proceedings were initiated?
  - No
  - Yes. Please specify which laws
18. Do you know other organizations, agencies or individuals (for example lawyers) working on HIV criminalization in your region?
  - No
  - Yes. If possible, please give the names of these individuals, agencies or organizations along with their contact details (this information is confidential and will not be published).
19. Name and email of person to contact in your organization for issues related to criminalization (this information is for internal use only and will not be published)
  - Name:
  - Email:

Thank you!

Please contact if you have any queries about this questionnaire or would like further information