

HIV JUSTICE WORLDWIDE

Study on the Criminalization of HIV Non-disclosure

**Submission to the Standing Committee on Justice
and Human Rights – House of Commons, Canada**

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Submitted by the HIV JUSTICE WORLDWIDE

Steering Committee

www.hivjusticeworldwide.org

Canada is known internationally for its overly punitive approach and high rates of prosecutions against people living with HIV for not disclosing their positive status to their sexual partners.¹ The Steering Committee of HIV JUSTICE WORLDWIDE welcomes the Canadian Standing Committee on Justice and Human Rights' study on the criminalization of HIV non-disclosure, and thanks the Standing Committee for the opportunity to make a written submission. As a global coalition (with Canadian membership) campaigning for the abolition of criminal and similar laws, policies and practices that regulate, control and punish people living with HIV based on their HIV-positive status, HIV JUSTICE WORLDWIDE hopes that providing some international context will prove useful to the Standing Committee's considerations.

HIV criminalization describes the unjust application of criminal and similar laws to people living with HIV based on HIV-positive status, either via HIV-specific criminal statutes or general criminal or similar laws. HIV JUSTICE WORLDWIDE's recent global audit² covering the 39-month period October 2015 to December 2018, provides data contextualising HIV criminalization in Canada in a number of important ways:

I. High Rates of Prosecution

During the audit period, HIV JUSTICE WORLDWIDE identified reports of at least 913 HIV criminalization cases³, with the highest number of cases reported in: 1) Russian Federation (314), 2) Belarus (249), 3) United States (158), 4) Ukraine (29), and 5) Canada (at least 27)⁴. Canada ranks as 5th in the world for the highest number of HIV-related criminal cases. This is particularly concerning given the following issues:

1) HIV Criminalization undermines Public Health

Canada's public health system, including its healthcare practitioners and community organisations, is well equipped to respond to the HIV epidemic, with no evidence to suggest the blunt force of criminal law interventions are any more effective at changing an individual's behavior than less heavy-handed interventions from within the health sector.⁵ Indeed, healthcare practitioners frequently work with individuals to minimize risk-taking behaviors.

Research has found that laws mandating HIV disclosure do not increase disclosure rates, and HIV criminalization

¹ Global Network of People Living with HIV (GNP+) and HIV Justice Network, *Advancing HIV Justice: A progress report of achievements and challenges in global advocacy against HIV criminalisation*, 2013, available at <http://www.hivjustice.net/advancing/>; E. J. Bernard and S. Cameron, *Advancing HIV Justice 2: Building momentum in global advocacy against HIV criminalisation*, HIV Justice Network and GNP+, April 2016, available at <http://www.hivjustice.net/advancing2/>.

² S. Cameron and E. J. Bernard, *Advancing HIV Justice 3: Growing the global movement against HIV criminalization*, HIV Justice Network, forthcoming May 2019.

³ Obtaining accurate information on HIV-related cases can be challenging — even more so in countries where such information is not freely available. Given the lack, or inadequacy, of systems to track HIV-related criminal cases in most jurisdictions, it is not possible to determine an exact number for every country. Much of what is known about individual cases comes from media reports, and often the outcome of a reported arrest, or the legal disposition of a criminal case, remains unknown.

⁴ The Canadian HIV/AIDS Legal Network has recorded at least 27 cases (charges and prosecutions) of HIV non-disclosure from January 2015 and December 2018.

⁵ S. Burris et al., "Do Criminal Laws Influence HIV Risk Behavior? An Empirical Trial," (2007) 39 *Ariz. St. L.J.* 467; Z. Lazzarini et al., "Evaluating the Impact of Criminal Laws on HIV Risk Behavior," *Journal of Law, Medicine & Ethics*, 30 (2002): 239–253; D. Harsono et al., *Criminalization of HIV Exposure: A Review of Empirical Studies in the United States*, *AIDS Behav.* 2017 Jan;21(1):27-50. doi: 10.1007/s10461-016-15405.

fails to encourage safer sex behaviors.⁶ In fact, HIV criminalization may make disclosure more difficult for those who fear that disclosure might expose them to violence or threat of prosecutions: we note the 2013 Australian study which found more than 45% of people living with HIV surveyed were worried about disclosing their HIV-positive status to a sexual partner because of recent prosecutions.⁷ Instead, the greatest likelihood of HIV-positive people disclosing their HIV status is achieved in an enabling environment, where HIV and sexual health can be discussed without fear of repercussion or reprisal. HIV prevention is most effective when people take responsibility for their own (sexual) health. HIV criminalization encourages those who are (or believe themselves to be) HIV-negative to disclaim any such responsibility, with a misguided belief that all responsibility for reducing HIV transmission rests entirely upon disclosure by a sexual partner with HIV.

HIV criminalization also undermines public health efforts to respond to HIV by creating additional barriers to access to HIV testing, prevention and treatment.⁸ For example, HIV criminalization may deter people from voluntarily accessing HIV testing, including as a result of fear that knowing their HIV positive status may expose them to prosecution. Such concerns have been documented in the United States⁹ in Australia,¹⁰ and also in Canada where a recent study found that 7% of men who have sex with men (MSM) were less likely to be tested for HIV because of a concern about potential prosecution. Notably, the authors found this reduction in testing would result in an 18.5% increase in community HIV transmission.¹¹ HIV criminalization can also discourage patients from being open and honest with healthcare workers, the frontline in HIV prevention services, for fear of their confidential information being used against them. Such concerns have been identified in studies in Canada¹², including among women living with HIV.¹³

The intersection of health and criminal law responses can have profound consequences for HIV health promotion, treatment and care. International research has uncovered alarming practices in some states in Eastern Europe where police have been notified of a person's HIV diagnosis by health authorities, prompting police investigation of a person's relationship with their partner, with charges resulting.¹⁴ This is a gross misuse of health processes, significantly undermining efforts to encourage HIV testing, access to treatment and support. Even in Canada,

⁶ S. Burris et al., "Do criminal laws influence HIV risk behavior? An empirical trial," supra note 5.; KJ. Korvath, et al. Men Who have Sex with Men Who Believe that Their State has a HIV Criminal Law Report Higher Condomless Anal Sex than Those Who are Unsure of the Law in Their State, *AIDS and Behavior*, 21(1):51-58, 2017.

⁷ J. Grierson, M. Pitts, R. Koelmeyer, "HIV Futures Seven: The Health and Wellbeing of HIV Positive People in Australia," monograph series number 88, The Australian Research Centre in Sex, Health and Society, 2013.

⁸ See for example, P. O'Byrne et al., "HIV criminal prosecutions and public health: an examination of the empirical research," *Medical Humanities* 2013; 39(2): 85, doi:<http://dx.doi.org/10.1136/medhum-2013-010366>, and E. Mykhalovskiy, "The public health implications of HIV criminalization: past, current, and future research directions," *Critical Public Health* 25,4 (2015), pp. 373–385.

⁹ The SERO Project National Criminalization Survey Preliminary Results (2012). Available at: <http://toolkit.hivjusticeworldwide.org/wp-content/uploads/2017/02/Sero-Survey-Complete.pdf.pdf>.

¹⁰ E. Jeffreys, K. Matthews and A. Thomas "HIV Criminalisation and Sex Work in Australia" *Reproductive Health Matters* (2010) 18:35, 129-136.

¹¹ M. A. Kesler et al., "Prosecution of non-disclosure of HIV status: Potential impact on HIV testing and transmission among HIV-negative men who have sex with men," *PLoS ONE* 2018; 13(2): e0193269, available at <https://doi.org/10.1371/journal.pone.0193269>; P. O'Byrne et al., "Nondisclosure prosecutions and HIV prevention: Results from an Ottawa-based gay men's sex survey," *Journal of the Association of Nurses in AIDS Care* 24, 1, 2013, pp. 81–87.

¹² E. Mykhalovskiy, "The problem of 'significant risk': Exploring the public health impact of criminalizing HIV non-disclosure," *Social Science & Medicine* 73, 5 (2011): pp. 668–675.

¹³ S.E. Patterson et al., "The impact of criminalization of HIV non-disclosure on the health care engagement of women living with HIV in Canada: a comprehensive review of the evidence," *Journal of the International AIDS Society* 18, 1 (2015): 20572

¹⁴ Eurasian Women's Network on AIDS. Regional HIV Criminalisation Report Eastern Europe and Central Asia, 2017

prosecutions have been shown to undermine delivery of HIV health and prevention services.¹⁵

Public health also has an important role to play supporting potential complainants to ensure their needs are more effectively met through access to physical and mental healthcare services and community support. Notably, in some jurisdictions police have taken a (quiet but active) role referring aggrieved into support services as a constructive alternative to commencing prosecutions.

2) HIV Criminalization undermines Human Rights

The state's intrusion into private spaces must be taken seriously given the harms caused by HIV criminalization, which continues to destroy the lives of individuals and their families: the consequences of HIV criminalization can be catastrophic for people living with HIV. Threats to go to police with accusations of HIV non-disclosure are used as a form of abuse or retaliation against current and former HIV-positive partners.¹⁶ HIV criminalization places people living with HIV, particularly but not only women, at heightened risk of violence and abuse and ignores the reality that some may not be able to safely disclose their status or be in a position to ask their partner to use a condom.¹⁷

Stigmatising statements from law enforcement or public health agencies, and media coverage including full names and photographs (including those people subject only to allegations) can result in public disclosure of a person's HIV status and criminal accusations, leading to loss of employment and housing, social ostracism or even physical violence. In Canada, where the name and HIV-positive status of people charged for HIV non-disclosure are often made public by the media, research has shown that mainstream newspapers profoundly stigmatize African Caribbean and Black men living with HIV, in particular.¹⁸

Penalties in relation to HIV criminalization are often vastly disproportionate to any harm caused, including lengthy jail terms and/or designation as a sex offender¹⁹. Non-citizens are likely to be deported to their country of origin after serving their sentence even if they have family ties in their adopted country. In some cases, this will deprive them of access to treatment.

3) HIV Criminalization Operates Contrary to Scientific Evidence

In some jurisdictions – notably but not only in North America – prosecutions continue to reflect myths and misconceptions about HIV and its modes of transmission, with acts by people living with HIV such as spitting, biting, scratching and oral sex overly criminalized and/or unjustly prosecuted despite no risk of HIV transmission.²⁰

¹⁵ C. Sanders, "Discussing the Limits of Confidentiality: The Impact of Criminalizing HIV Nondisclosure on Public Health Nurses' Counselling," *Public Health Ethics*, Vol. 7, Issue 3, pp. 253-260, November 2014; P. O'Byrne et al., "HIV criminal prosecutions and public health: an examination of the empirical research," *Medical Humanities*, Vol. 39, No. 2, pp. 85-90, December 2013.

¹⁶ S. Green et al., "How women living with HIV react and respond to learning about Canadian law that criminalises HIV non-disclosure: 'How do you prove that you told?'" *Culture, Health & Sexuality* (2019), DOI: 10.1080/13691058.2018.1538489

¹⁷ A. Krüsi et al., "Positive sexuality: HIV disclosure, gender, violence and the law - A qualitative study," *PLOS ONE*, 13(8): e0202776, 2018; S. Green et al., *supra* note 16.

¹⁸ E. Mykhalovskiy et al., "'Callous, Cold and Deliberately Duplicious': Racialization, Immigration and the Representation of HIV Criminalization in Canadian Mainstream Newspapers," SSRN (2016). Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2874409.

¹⁹ Center for HIV Law & Policy, *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, 2017; Canadian HIV/AIDS Legal Network, *Sex Offender Registries: Fact Sheet*, April 21, 2017.

²⁰ *Op cit. Advancing HIV Justice, Advancing HIV Justice 2, Advancing HIV Justice 3*. See also, Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, July 2012. Available at: <http://hivlawcommission.org/index.php/report>. For

In Canada, overreach of the law has included many prosecutions for acts that constitute no or negligible risk of HIV transmission, as a result of a failure to recognize the uncontested preventative effects of condom use *or* low viral load. For example, in 2013, a woman living with HIV in Canada was sentenced to three years in prison for not disclosing her HIV-positive status before one brief sexual encounter²¹, despite having an undetectable viral load which meant she could not transmit the virus.²² In another recent instance, a young man was convicted for not disclosing his HIV-positive status despite using a condom to protect his partners.²³ Prosecutions against people living with HIV who use condoms *or* have a low viral load are at odds with authoritative medical and scientific evidence²⁴. Such cases, illustrative of systemic discrimination against people living with HIV, also pose a threat to public health given they undermine messaging around use of condoms *or* treatment as prophylaxis: the cornerstone of HIV prevention.

In principle, criminal law should take into account the actual or possible harms caused by an act, but in practice HIV is over-criminalized as the result of persistent misconceptions exaggerating both the risks and the harms of HIV. We refer the Standing Committee's attention to the recently published 'Expert consensus statement on the science of HIV in the context of criminal law'²⁵ (the Expert Consensus Statement). Concerned that prosecutions are not always guided by the best available scientific and medical evidence, twenty of the world's leading HIV scientists (including a Nobel Laureate) developed the Expert Consensus Statement specifically to address the (mis)use of HIV science within the criminal justice system. Published in the peer-reviewed *Journal of the International AIDS Society* on 25 July 2018, and available in four languages, the Expert Consensus Statement has been endorsed by more than 70 leading scientists from 46 countries, as well as by the International AIDS Society (IAS), the International Association of Providers of AIDS Care (IAPAC) and the Joint United Nations Programme on HIV/AIDS (UNAIDS).

The Expert Consensus Statement describes the possibility of HIV transmission during a single episode of sex, biting or spitting as ranging from no possibility to low possibility. The Statement reaffirms that with access to adequate treatment, HIV has become a chronic manageable health condition. Finally, the Statement discusses the use of scientific and medical evidence in HIV-related prosecutions where proof of HIV transmission from one person to another is at issue. In particular, it indicates that while phylogenetic analysis can be compatible with the claim that a defendant has infected a complainant with HIV, it cannot conclusively prove transmission, but can be used to exonerate the accused.

The Expert Consensus Statement should be read in conjunction with the 2013 UNAIDS Guidance Note, which recommends that no prosecutions take place when a condom has been used *or* the person with HIV was on effective HIV treatment *or* had a low viral load, *or* when oral sex has taken place regardless of whether preventative measures were used.²⁶

examples of recent prosecutions in the U.S., see Center for HIV Law & Policy, *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, 2017.

²¹ M. Walker, "J.M. sentenced to two years in jail" [the name of the accused has been intentionally removed], CTV News Barrie, September 20, 2013.

²² Prevention Access Campaign, "Undetectable = Untransmittable," at www.preventionaccess.org

²³ R. v. G., 2017 ONSC 6739 [the name of the accused has been intentionally removed].

²⁴ F. Barré-Sinoussi et al., "Expert consensus statement on the science of HIV in the context of criminal law," *Journal of the International AIDS Society*, 2018. Available at: <https://onlinelibrary.wiley.com/doi/full/10.1002/jia2.25161>.

²⁵ *Ibid.*

²⁶ UNAIDS, *Ending overly broad criminalisation of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations*, 2013. Available at :

www.unaids.org/sites/default/files/media_asset/20130530_Guidance_Ending_Criminalisation_0.pdf.

4) HIV Criminalization is Overly Broad

In most jurisdictions around the world, HIV criminalization laws and the use of general laws against people with HIV (such as in Canada) allow for convictions despite no requirement for proof of intention to cause harm.²⁷ This is true even in those jurisdictions where the law is presented as punishing “willful transmission of HIV” but where wording of the law does not require proof of ‘willfulness’ or ‘transmission’ for the offense to be constituted.²⁸ Instead, many prosecutions and convictions are based only on whether disclosure of known HIV-positive status occurred prior to consensual sex, without a requirement of any proof of a higher degree of *mens rea* or of actual transmission. In these cases, the law conflates a desire to have sex with a desire to transmit HIV and ignores the complexity of HIV disclosure. Consequently, people are routinely convicted where there was no intention to transmit HIV and/or transmission did not occur. This is the case in Canada, where HIV non-disclosure before sex effectively becomes a crime in a broad range of circumstances.

HIV Justice Network’s global audit of the hundreds of cases that occurred during the audit period revealed only a handful of cases where any malice, purpose or plan to transmit HIV was revealed on the part of the accused, suggesting such instances are extremely rare. The lack of requirement of clear intention to harm appears to arise from fear surrounding HIV, based on outdated notions of transmission risk and the harms of HIV infection. A realistic appraisal of the harm caused by HIV is frequently absent from criminal trials as is proof of actual transmission between the accused and complainant even where transmission is alleged.

Concerns about HIV criminalization have prompted increasing international attention to the issue, with international human rights and health experts and organizations recommending avoidance of HIV-specific criminal laws and urging to limit the use of the criminal law to cases of intentional transmission. These include the Joint United Nations Programme on HIV/AIDS (UNAIDS), United Nations Development Programme (UNDP),²⁹ World Health Organization

²⁷ For example, in the United States, HIV specific laws generally do not require intent to harm or transmission. For a review of HIV specific laws in the U.S., see Center for HIV Law & Policy, *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, 2017.

²⁸ R. Pearshouse, “Legislation contagion: building resistance,” *HIV/AIDS Policy & Law Review* 13,2/3 (2008): pp.1–10; C. Kazatchkine, “La pénalisation du VIH en Afrique francophone: état des lieux,” 2017 (in French only). For information about the situation in Russia, see “HIV as a crime. Mikhail Golichenko - about the case of Alexandra,” Radio Liberty (Радио Свобода), April 17, 2019. Translation from Russian available at <http://www.hivjustice.net/storify/russia-criminalisation-of-hiv-infection-is-a-futile-measure-that-creates-a-false-sense-of-security/>

²⁹ UNAIDS/UNDP, *Policy brief: Criminalization of HIV Transmission*, August 2008, available at www.aidslaw.ca/site/wp-content/uploads/2014/02/1.UNAIDSUNDPposition.pdf; UNAIDS, *Criminal Law, Public Health and HIV Transmission: A Policy Options Paper*, 2002.

(WHO),³⁰ African Commission on Human & People's Rights,³¹ UN Special Rapporteur on the right to health,³² Global Commission on HIV and the Law,³³ and numerous UN human rights committees,³⁴ among others.

Concerned that HIV-related stigma and ignorance of the lived realities of people with HIV in the context of modern HIV treatment and care, may influence perceptions of mental culpability, recommendations generally follow those of UNAIDS which notes that:

- Intent to transmit HIV cannot be presumed or solely derived from knowledge of positive HIV status and/or non-disclosure of that status and/or engaging in sex;
- Proof of intent to transmit HIV in the context of HIV non-disclosure, exposure or transmission should at least involve (i) knowledge of positive HIV status, (ii) deliberate action that poses a significant risk of transmission, and (iii) proof that the action is done for the purpose of infecting someone else.
- Active deception regarding positive HIV-status may be considered an element in establishing intent to transmit HIV, but it should not be dispositive on the issue. The context and circumstances in which the alleged deception occurred—including the mental state of the person living with HIV and the reasons for the alleged deception—should be taken into consideration when determining whether intent to transmit HIV has been proven to the required criminal law standard.

With regard to the mental element of the offense, a 2013 UNAIDS Guidance Note to law and policy-makers, judges and prosecutors on critical scientific, medical and legal considerations by which States can end or mitigate the overly broad criminalisation of HIV non-disclosure, exposure and transmission notes that “[s]etting the bar for mental culpability to this high threshold [intentional transmission] is aimed at finding the right balance between ensuring that truly blameworthy cases are brought to justice (i.e. where the person acted intentionally and maliciously to harm, and real harm occurred) and avoiding an overly broad application of criminal law to HIV that undermines public health and human rights in the context of HIV.”³⁵

The 2013 UNAIDS Guidance Note includes other important recommendations with regard to harm, risk, proof, defenses and penalties that should be taken into account in any efforts to review HIV criminalization applicable laws.

II. Highly Problematic Use of Sexual Assault Laws

HIV Justice Network's global audit shows that 37 countries have applied general criminal law to prosecute people living with HIV for alleged non-disclosure of their HIV status, possible or perceived HIV exposure or HIV transmission. Canada is the only country known to rely on general sexual assault laws for this purpose, as the result

³⁰ WHO, *Sexual health, human rights and the law*, June 2015. Available at:

www.who.int/reproductivehealth/publications/sexual_health/sexual-health-human-rights-law/en/

³¹ African Commission on Human & People's Rights, *HIV, The Law and Human Rights System: Key Challenges and Opportunities for Rights-Based Responses*, December 2017.

³² UN General Assembly, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Human Rights Council, Fourteenth session, Agenda item 3, A/HRC/14/20, April 27, 2010.

³³ Global Commission on HIV and the Law (UNDP HIV/AIDS Group), *HIV and the Law: Risks, Rights & Health*, July 2012; and *HIV and the Law: Risks, Rights & Health – Supplement*, July 2018; both online via www.hivlawcommission.org.

³⁴ UN Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, May 2, 2016 (para. 40); UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined eighth and ninth periodic reports of Canada, CEDAW/C/CAN/CO/8-9, November 18, 2016 (para. 43)

³⁵ UNAIDS, *Ending overly broad criminalisation of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations*, 2013, p. 21.

of a unique legal position that HIV non-disclosure can amount to fraud vitiating consent to sex. Canada is also unique in its use of “aggravated sexual assault” general provisions to prosecute people living with HIV who engaged in (otherwise) consensual sex.

Associating HIV non-disclosure and sexual violence is highly problematic for a number of reasons. At face value, the law of sexual assault is not fit-for-purpose when applied to an act that was consensual, not forced or coerced, undertaken with no intention to cause harm, and usually with no harm (i.e. HIV transmission) resulting. Moreover, sex offender registration carries enormous stigma and long term, life-changing restrictions.

The use of sexual assault laws in cases of HIV non-disclosure also trivialises violence against women and the egregious harms of (actual) sexual assault: a practice difficult to reconcile with the hard-fought gains of feminist movements who advanced the development of such laws to protect women. Further, Canadian women have been prosecuted under sexual assault laws for alleged HIV non-disclosure, including in cases where it has been established that the accused woman had been the victim of violence.³⁶ Rather than the law operating to protect women from violence, Canadian women living with HIV can be prosecuted for sexual assault when they are victims of violence, coercion and/or sexual assault.

The November 2016 CEDAW Committee’s Concluding Observations on Canada’s periodic report of its compliance with the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) are particularly relevant in this respect, with the Committee welcoming:

review [of] the use and application of criminal norms to certain HIV/AIDS issues ... [including] the concerning application of harsh criminal sanctions (aggravated sexual assault) to women for non-disclosing their HIV status to sexual partners, even when the transmission is not intentional, when there is no transmission or when the risk of transmission is minimal. The Committee recommends that [Canada] limit the application of criminal law provisions to cases of intentional transmission of HIV/AIDS, as recommended by international public health standards.³⁷

III. Slow Progress Modernizing Use of Law

HIV Justice Network’s global audit identified numerous examples of engagement around law and policy reform related to HIV criminalization, as jurisdictions moved to address outmoded HIV criminalization laws and policies. Canada’s introduction of a useful Federal Directive on HIV non-disclosure prosecutions is welcomed. However, the Directive only applies to three territories and does not meet international standards which require HIV criminalization to be limited to cases of intentional transmission.

Recently, 15 jurisdictions (not including Canada) have undertaken reform to bring law and policy in line with current scientific understanding of HIV and/or protect the human rights of people living with HIV. Between October 2015 and December 2018, two HIV criminalization laws were repealed³⁸, two were found to be unconstitutional³⁹, at least four

³⁶ LEAF (Women’s Legal Education and Action Fund), *A Feminist Approach to Law Reform on HIV Non-Disclosure*, January 2019

³⁷ UN Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined eighth and ninth periodic reports of Canada, CEDAW/C/CAN/CO/8-9, November 18, 2016, para. 43 and Concluding observations on the sixth periodic report of Tajikistan, CEDAW/C/TJK/CO/6, November 14, 2018, para. 40.

³⁸ Victoria (Australia) 2015 and Republic Democratic of Congo 2018.

³⁹ Kenya 2015, Veracruz (Mexico) 2018.

proposed laws to unjustly criminalize people with HIV were withdrawn⁴⁰, and seven laws were modernized (i.e. applied up-to-date science on HIV-related risk or harm and/or legal and human rights principles to limit the application of the law).⁴¹ In addition, six countries saw precedent-setting cases which have the potential to limit the overly-broad application of the law through the recognition of up-to-date HIV-related science: Finland, Germany, Greece, Italy, Sweden and Morocco.

In particular we would like to highlight the HIV-related law reforms in California which resulted in the 2017 repeal of provisions targeting sex workers living with HIV and added further legal standards to their HIV-specific criminal law, with the law now requiring both intent to transmit and actual transmission.⁴²

4. Conclusion

Canada is internationally known for its extremely severe approach to HIV non-disclosure. Sound law reform to repeal or limit HIV criminalization in Canada would be consistent with expert consensus that HIV criminalization not only fails to prevent HIV transmission but is in fact harmful for human rights and public health.

ABOUT HIV JUSTICE WORLDWIDE

HIV JUSTICE WORLDWIDE is a global coalition that campaigns to abolish criminal (and similar) laws, policies and practices that regulate, control and punish people living with HIV based on their HIV-positive status. HIV JUSTICE WORLDWIDE has 92 members including national, regional, and international organizations working on HIV criminalization around the globe.

The Steering Committee comprises ten legal, human rights and people living with HIV global, regional and national networks: AIDS Action Europe, AIDS-Free World, AIDS and Rights Alliance for Southern Africa (ARASA), Canadian HIV/AIDS Legal Network, Global Network of People Living with HIV (GNP+), HIV Justice Network, International Community of Women Living with HIV (ICW), Positive Women's Network – USA, Sero Project, and the Southern Africa Litigation Centre. HIV Justice Network serves as the HIV JUSTICE WORLDWIDE Secretariat.

HIV JUSTICE WORLDWIDE recommends the abolition of criminal and similar laws, policies and practices that regulate, control and punish people living with HIV based on their HIV-positive status. For more information, please visit: www.hivjusticeworldwide.org

⁴⁰ Brazil 2017, Chihuahua (Mexico) 2017, Quintana Roo (Mexico) 2017, San Luis Potosi (Mexico) 2017, Malawi 2017.

⁴¹ Colorado (U.S.) 2016, Switzerland 2016, California (U.S.) 2017, Norway 2017, Belarus 2018, Michigan (U.S.) 2018, North Carolina (U.S.) 2018.

⁴² For more information on law reform in California, see Center for HIV Law & Policy, *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, 2017 (updated in 2019). Of note, "a person can't be prosecuted for acting with the 'specific intent' (a conscious desire to transmit the disease), if they take, or attempt to take, practical means to prevent transmission. This includes 'any method, device, behavior, or activity demonstrated scientifically to measurably limit or reduce the risk of transmission of an infectious or communicable disease, including, but not limited to, the use of a condom, barrier protection or prophylactic device, or good faith compliance with a medical treatment regimen for the infectious or communicable disease prescribed by a health officer or physician.' But the new law also makes it clear that a person who doesn't take any of these steps to avoid transmission is not presumed to be guilty of specific intent to transmit disease required for conviction under the revised law." *Ibid.*