

# HIV Criminalisation and Young People

## Our priorities for action



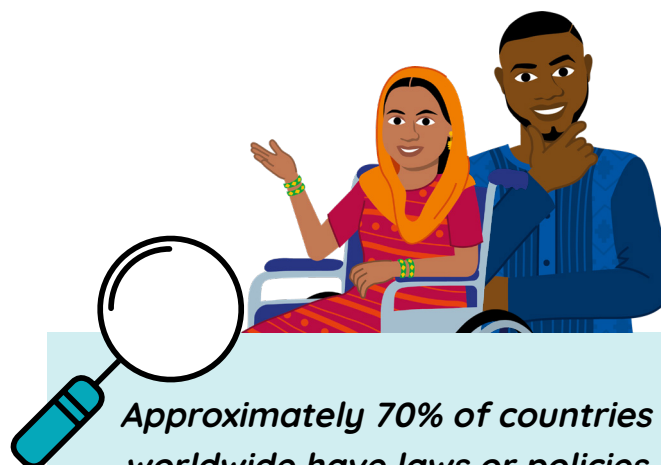
In November 2022, the Global Network of Young People Living with HIV (Y+ Global) convened an online dialogue to explore how criminalising HIV non-disclosure, potential or perceived exposure, or unintentional transmission affects young people living with HIV, young sex workers, young people who use drugs, and young LGBTIQ+ persons. The participants were all from networks representing these groups of young people from Africa, Asia, Europe and Latin America and globally. Youth-led HIV and key population networks can strengthen and contribute to the HIV decriminalisation movement by building on existing work, working together, and advocating at different levels.

### What are young people saying about HIV criminalisation?

“As soon as we learn our status it’s like the law stops protecting us. Instead it turns us into criminals, to be avoided and feared.”

### Criminalisation reinforces and sanctions stigma, discrimination and violence

HIV criminalisation positions people living with HIV including young people as a threat to the general population. It promotes, reinforces and sustains prejudice towards us, and sanctions stigma, discrimination and violence against us. We already face stigma, discrimination and



*Approximately 70% of countries worldwide have laws or policies which unjustly criminalise people living with HIV who are alleged not to have disclosed their HIV status prior to sex, as well as for potential or perceived exposure or unintentional transmission of HIV<sup>1</sup>. This overly broad use of the criminal law is what we refer to as ‘HIV criminalisation’.*

sometimes violence because of our HIV status in different settings. These laws and policies seem to say that those things are justified. As soon as we learn our diagnosis, the criminal law changes from something that should protect us to something that could punish us. The same goes for young LGBTIQ+ people, young sex workers and young people who use drugs, who can often face double or triple layers of stigma, discrimination and violence.

## Criminalisation stands in the way of achieving global targets

HIV criminalisation can make us afraid of finding out our status or telling other people about our status. These laws do the exact opposite of what they are supposed to do. Instead of protecting us, they cast a moral judgement on us and make it less likely that we will seek HIV testing and treatment services. So they stand in the way of reaching the 95-95-95 goals <sup>2</sup>. Also, these laws are unscientific. They often fail to take into consideration whether the person living with HIV is on treatment and virally suppressed, making transmission of the virus impossible (U=U).

### U=U

*The ‘undetectable = untransmissible’ (U=U) campaign is based on evidence that a person with an undetectable viral load cannot pass HIV onto another person through sexual or vertical transmission. U=U has been used as a defence, where people have been prosecuted for HIV non-disclosure, exposure or transmission, and the science on which the campaign is based is vital for reducing both the fear of HIV transmission and the associated stigma - including self stigma. U=U can be used at interpersonal levels to help support disclosure, adherence, mental health, positive living and self care, and at policy level to support access to treatment and protection of rights. But the message needs to be framed carefully to ensure that it doesn’t further marginalise people living with HIV who do have a detectable viral load. People who don’t achieve viral suppression are often from already-marginalised communities facing compound stigma, discrimination and violence which act as barriers to accessing HIV testing, treatment and retention in care.*



<sup>1</sup> This includes both countries with HIV-specific laws and countries with general laws that refer to HIV.

<sup>2</sup> Global commitment to ensure that by 2030, 95% of people living with HIV know their HIV status; 95% of those who know their status start antiretroviral treatment; and 95% of people on treatment have achieved viral load suppression.

## Ripple effects: criminalisation has life-long impacts

HIV criminalisation can stop young people living with HIV from realising their sexual and reproductive health and rights (SRHR). Young people with HIV - particularly young women - may be afraid to have children in case we are prosecuted for passing on HIV to our child or partner in the process. We may be afraid to breastfeed our children - or be put under pressure not to - for the same reason. Sometimes women living with HIV experience rights violations such as forced sterilisation, and these abuses cannot be undone. There has been no legal or financial redress for women living with HIV who have been coerced or forced into sterilisation, and the emotional, physical and social fall-out is life-long and far-reaching.

## HIV criminalisation intersects with other criminalised identities and behaviours to create double jeopardy for people from key populations, including sex workers, people who use drugs, and LGBTIQ+ people

Laws which criminalise HIV non-disclosure, exposure and transmission are compounded among young people with other criminalised identities. Young people who use drugs, young sex workers, and young people from the LGBTIQ+ community living with HIV are more likely to be arrested on HIV-related charges, as they are already on the police's radar as criminalised populations. In some cases, HIV prevention-related behaviour (such as carrying condoms) or simply being in a certain place at a certain time may be used as 'evidence' against the person.

## Criminalisation restricts civil society space and prevents meaningful involvement

HIV criminalisation makes young people fearful



### Spotlight:

#### Young women, HIV and the law

*In 2016 in Malawi, a young woman living with HIV and on antiretroviral treatment was arrested for breastfeeding another woman's baby. She was unrepresented at her trial and sentenced to nine months imprisonment with hard labour. After spending 5 months in prison with her baby daughter, an appeal was held and this time she was well represented. She was acquitted in January 2017 and immediately released. The judge noted that the young woman did not know or believe that breastfeeding was likely to transmit HIV, her breastfeeding of the child was accidental, and the child did not contract HIV. The HIV Justice Network has produced an [animated film](#) to tell her story.*

to stand up and advocate for our rights, as we may be at risk of being exposed as living with HIV and/or as a sex worker, LGBTIQ+

identifying, a person who uses drugs or another criminalised population. We could experience stigma, discrimination, blackmail or violence as a result. This means we may only choose to speak out in places where we already feel safe, but our advocacy on human rights and gender justice is needed everywhere. Civil society and social justice movements can't grow if we continue to be treated as criminals.

### So, what can we do about it? Our call to action!

HIV decriminalisation is fundamental if we want to achieve other goals, like eliminating stigma and discrimination, improving our quality of life, claiming our human rights, ensuring we have access to services, schools, employment and justice, and being meaningfully involved - in all our diversity - in decisions that affect our lives. So our ambition is to eradicate and reform the laws that criminalise young people living with HIV and young key populations in all jurisdictions - from local laws to the country's penal code - that punish young people on the basis of their HIV status or another related identity. But laws can take a long time to change. These are some of the ways youth HIV networks alongside sex worker networks, networks of people who use drugs, and LGBTIQ+ networks - among others - can strengthen and contribute to the HIV criminalisation movement by building on existing work, working together, and advocating at different levels.



#### 1. Build awareness and capacity

- Build awareness and capacity among networks of young people living with HIV about the laws which criminalise HIV non-disclosure, exposure and transmission; what these mean for us as young people in practice; and, how to join the 'decrim' movement
- Use toolkits, reports and data to support decriminalisation advocacy led by young people
- Use campaigns like U=U to reduce stigma, discrimination and violence against young people living with HIV

#### 2. Build evidence

- Gather and share evidence of how criminalisation harms young people and stands in the way of an effective HIV response
- Monitor HIV criminalisation cases



at country level, shining a light on how youth intersects with other factors of vulnerability

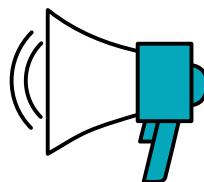
- Share stories and lived experience, to put faces to the numbers - help young people frame their experience through the narrative of criminalisation
- Participate in shadow reporting on the Universal Periodic Review (UPR) and the Convention of Elimination of all Forms of Discrimination Against Women (CEDAW) to promote the rights of people living with HIV in the criminal justice system

### 3. Build partnerships and cross-movement collaboration

- Engage youth-led networks in the 'Not a Criminal' campaign to promote the human rights of young people living with HIV
- Strengthen solidarity between movements of people living with HIV, the LGBTIQ+ rights movement, and feminist and gender justice advocates at all levels to advocate for HIV decriminalisation
- Work with parliamentarians, decision-makers, and service providers to raise awareness of how criminalisation stands in the way of an effective HIV response

## Acknowledgements

*Participants in the Y+ Global dialogue were ten young people aged between 18 and 30 (3 aged 18-25; 7 aged 25-30) representing young people living with HIV in their diversity, young sex workers, young people who use drugs, adolescent girls and young women, young LGBTIQ+ people, from: Kenya, Colombia, Indonesia, Ireland, South Africa, Morocco, Zimbabwe and Netherlands. Organisations and networks involved in the dialogue included: Y+ Global, SIBA MENA, Youth RISE, Youth LEAD, Latin American and Caribbean Regional Network of Young People Living with HIV (J+LAC), Coast Sex Workers Alliance (Kenya), International Community of Women Living with HIV (ICW), the Global Network of People Living with HIV (GNP+) and ATHENA Network.*



# Key Information on HIV and Criminalisation

## Global commitments on decriminalisation

The UNAIDS Global AIDS Strategy 2021 - 2026 End Inequalities. End AIDS <sup>3</sup> provides a roadmap for achieving the commitments agreed by the global community in the 2021 Political Declaration on HIV and AIDS, in order to end AIDS as a public health threat by 2030. In addition to global goals around preventing new HIV acquisition, and ensuring access to treatment for all who need it (95-95-95), the Strategy introduces three new mutually supporting and inter-related societal enabler goals (the '10-10-10s'), necessary to put the response back on track. These goals support a mandate for an HIV decriminalisation advocacy agenda.

1

*Less than 10% of countries have legal and policy environments that impede access to HIV services*

2

*Less than 10% of women, girls and key populations experience gender inequality and violence*

3

*Less than 10% of people living with HIV and key populations experience stigma and discrimination*



<sup>3</sup> [Global AIDS Strategy 2021-2026 | UNAIDS](#)

## How does HIV criminalisation play out in reality?

HIV criminalisation is a reality. More than 80 countries have HIV-specific criminal laws on the books, and another 50 have applied the general criminal to HIV criminalisation cases. Between 2019-21, laws that criminalise HIV non-disclosure, exposure or transmission were applied in 39 countries against an estimated 700 people <sup>4</sup>.

Recent examples include: In Uzbekistan a group of transgender sex workers living with HIV were arrested and charged with HIV exposure (2021). In Canada, a young First Nations man living with HIV who has mental health challenges was sentenced to 6 months' community service for spitting on a care worker (2021), while in the UK a woman living with HIV who has post-traumatic stress disorder (PTSD) faced 25 months in jail for biting a police officer after she was detained, despite being on treatment and virally suppressed (2020).

- Number and percentage of countries that criminalise <sup>5</sup>:
  - Any aspect of sex work: 153 (80%)
  - HIV exposure, transmission or non-disclosure: 134 (70%)
  - Drug possession for personal use: 115+ (>60%)
  - Same-sex sexual relations: 70 (36%)
  - Countries that criminalise or prosecute transgender people: 20+ (>10%)
  - Restrict the entry and/or residence of people with HIV: 40+ - 60+ (>21 - 31%) <sup>6</sup>



<sup>4</sup> HJN estimation; official numbers are 275, but low reporting in criminalisation 'hotspots' including Belarus, Russian Federation and Uzbekistan, see [AHJ4\\_EN.pdf \(hivjustice.net\) page14](#).

<sup>5</sup> UNAIDS 2022, [In Danger: Global AIDS Update](#)

<sup>6</sup> UNAIDS tracks two markers: countries with laws or policies restricting the entry, stay or residence of people living with HIV (+40 countries) and countries with mandatory HIV testing for marriage, work or residence permits for certain groups (+60 countries). The global database on HIV-specific travel or residence restrictions <https://www.hivtravel.org/> lists 54 countries with restrictions for long term stays (over 90 days)