

# HIV JUSTICE WORLDWIDE

## STEERING COMMITTEE STATEMENT ON COVID-19 CRIMINALISATION

Wednesday, 25 March 2020

*Communicable diseases are public health issues, not criminal issues: what we have learnt from the HIV response*

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*Measures that are respectful of human rights and the empowering of communities are more effective than punishment and imprisonment.*

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As the world struggles with a new global pandemic, law- and policymakers are taking drastic measures in an attempt to minimise the spread of SARS-CoV-2, the virus that causes COVID-19. The situation continues to evolve rapidly and, as it does so, our liberties are being limited in unprecedented ways.

We remind law- and policymakers that each and every limitation of rights should satisfy the five criteria of the [Siracusa Principles](#), as well as be of a limited duration and subject to review and appeal. These principles are:

- *The restriction is provided for and carried out in accordance with the law;*
- *The restriction is in the interest of a legitimate objective of general interest;*
- *The restriction is strictly necessary in a democratic society to achieve the objective;*
- *There are no less intrusive and restrictive means available to reach the same objective;*
- *The restriction is based on scientific evidence and not drafted or imposed arbitrarily, that is in an unreasonable or otherwise discriminatory manner.*

We also warn law- and policymakers against the temptation to use the criminal law or other unjustified and disproportionate repressive measures in relation to COVID-19. These measures can be expected to have a devastating impact on the most vulnerable in society, including those who are homeless and/or living in poverty, as well as individuals from marginalised and already stigmatised or criminalised communities – especially where no economic and social support is provided to allow people to protect themselves and others, including through self-isolation.

As a [global coalition](#) campaigning to abolish criminal and similar laws, policies and practices that regulate, control and punish people living with HIV based on their HIV-positive status, we know the [deleterious consequences of the criminalisation of diseases on both human rights and public health](#).

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*Criminalisation disproportionately impacts the most marginalised, stigmatised and the already criminalised people and communities in society.*

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Criminalisation is not an evidence-based response to public health issues. In fact, the use of the criminal law most often undermines public health by creating barriers to prevention, testing, care, and treatment – for example, people may not disclose their status or access treatment for fear of being criminalised. It can also lead to ill-informed ‘trial’ by social and news media, and to a myriad of human rights violations, from arbitrary arrests and detentions to unfair trials (or no trials at all under new emergency measures) and harsh prison sentences. This can also lead to the spread of infections and communicable diseases in prisons and is of particular relevance in the context of COVID-19, which reveals, once again, the need to address overcrowding and other poor healthcare and sanitation conditions that are all too common in prisons and other closed settings.

Our experience has taught us that hastily drafted laws, as well as law enforcement, driven by fear and panic, are unlikely to be guided by the best available scientific and medical evidence – especially where such science is unclear, complex and evolving. Given the context of a virus that can easily be transmitted by casual contact and where proof of actual exposure or transmission is not possible, we believe that the criminal justice system is unlikely to uphold principles of legal and judicial fairness, including the key criminal law principles of legality, foreseeability, intent, causality, proportionality and proof.

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*The human rights of those involved in criminal cases related to COVID-19 are at risk of being ignored or violated.*

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We therefore urge law- and policymakers, the media, and communities at large, to keep human rights front and centre as we collectively respond to a new public health crisis in a climate of fear and uncertainty. It is more critical than ever to commit to, and respect, human rights principles; ground public health measures in scientific evidence; and establish partnerships, trust, and co-operation between law- and policymakers and communities.

**THE [HIV JUSTICE WORLDWIDE](#) STEERING COMMITTEE, COMPRISING: [AIDS Action Europe](#); [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 [Southern Africa Litigation Centre](#).**

## Additional references

Last week, a group of human rights experts at the United Nations warned governments against the [abuse of emergency measures to suppress human rights](#):

*“While we recognize the severity of the current health crisis and acknowledge that the use of emergency powers is allowed by international law in response to significant threats, we urgently remind States that any emergency responses to the coronavirus must be proportionate, necessary and non-discriminatory,” the experts said. “Restrictions should be narrowly tailored and should be the least intrusive means to protect public health.” Also, authorities must seek to return life to normal and must avoid excessive use of emergency powers to indefinitely regulate day-to-day life.”*

UNAIDS also [issued guidance last week](#) that included a number of recommendations, including recommending that States “avoid the use of criminal laws when encouraging behaviours to slow the spread of the epidemic”, noting that empowering and enabling people and communities to protect themselves and others will have a greater overall effect.

And, as described [in a recent open letter](#) by more than 800 public health and legal experts in the United States providing recommendations to government officials: “Voluntary self-isolation measures [combined with education, widespread screening, and universal access to treatment] are more likely to induce cooperation and protect public trust than coercive measures and are more likely to prevent attempts to avoid contact with the healthcare system.”