

# BRINGING SCIENCE TO JUSTICE:

## IMPACT OF THE 'EXPERT CONSENSUS STATEMENT ON THE SCIENCE OF HIV IN THE CONTEXT OF CRIMINAL LAW' OVER THE PAST FIVE YEARS

**Edwin J Bernard, Alison Symington, Sofia Varguez, Sylvie Beaumont**  
HIV Justice Network, Amsterdam, Netherlands

### BACKGROUND

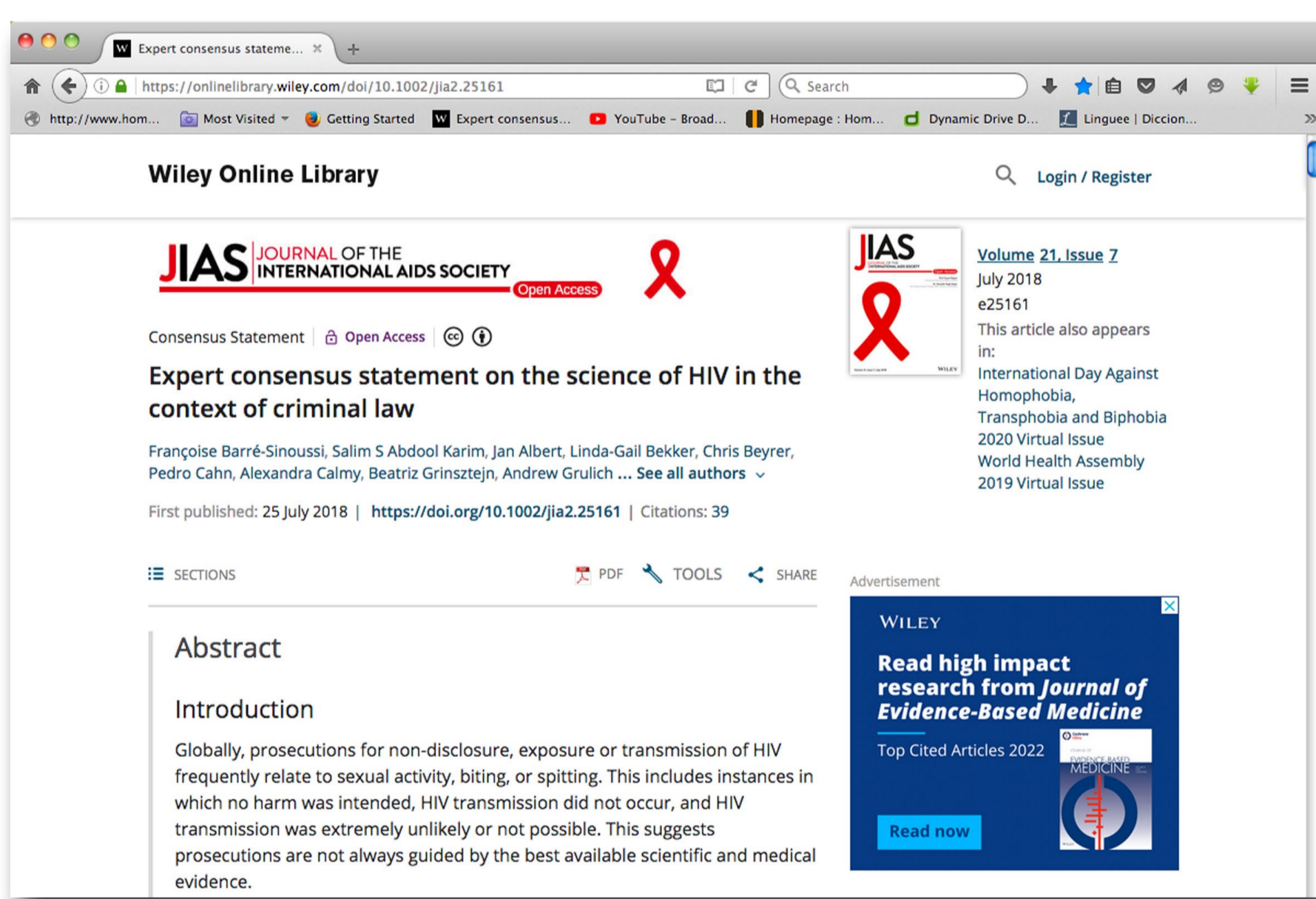
In 2018, 20 leading HIV scientists published an expert consensus statement to address the misuse of HIV science in laws and prosecutions for acts related to sexual activity, biting or spitting. The unjust application of criminal law against people living with HIV on the basis of their HIV-positive status is known as HIV criminalisation.

The *Expert Consensus Statement on the Science of HIV in the Context of Criminal Law*<sup>1</sup> was the result of a multi-year process developed by a partnership comprising the International AIDS Society (IAS), International Association of Providers of AIDS Care (IAPAC), UNAIDS and the HIV JUSTICE WORLDWIDE (HJWW) coalition which came about because it was evident that many criminal legal system actors did not appreciate the significance of up-to-date HIV science. The process involved undertaking detailed analysis of the best available scientific and medical research data on HIV transmission, treatment effectiveness and forensics.

So that HIV science could be better understood in criminal law contexts, the Expert Consensus Statement expressed consensus on three themes:

- 01 **the possibility of HIV transmission in a variety of different individual acts;**
- 02 **the harm of HIV infection;**
- 03 **and the ability to scientifically prove HIV transmission.**

More than 70 additional expert scientists from 46 countries endorsed the Expert Consensus Statement prior to its publication in the *Journal of the International AIDS Society (JIAS)*. The statement was launched at an AIDS 2018 press conference which generated global media coverage in at least 57 news outlets, elevating the conversation about HIV criminalisation, resulting in a powerful, positive narrative the world over. It was immediately made available in French, Russian, and Spanish with subsequent translations into Czech, German, and Mandarin.



### DESCRIPTION

Following an initial scoping report published in 2020,<sup>2</sup> the HIV Justice Network (HJN) undertook further research between April and June 2023 examining the impact of the Expert Consensus Statement on individual cases as well as broader law and policy outcomes in the five years since its publication.

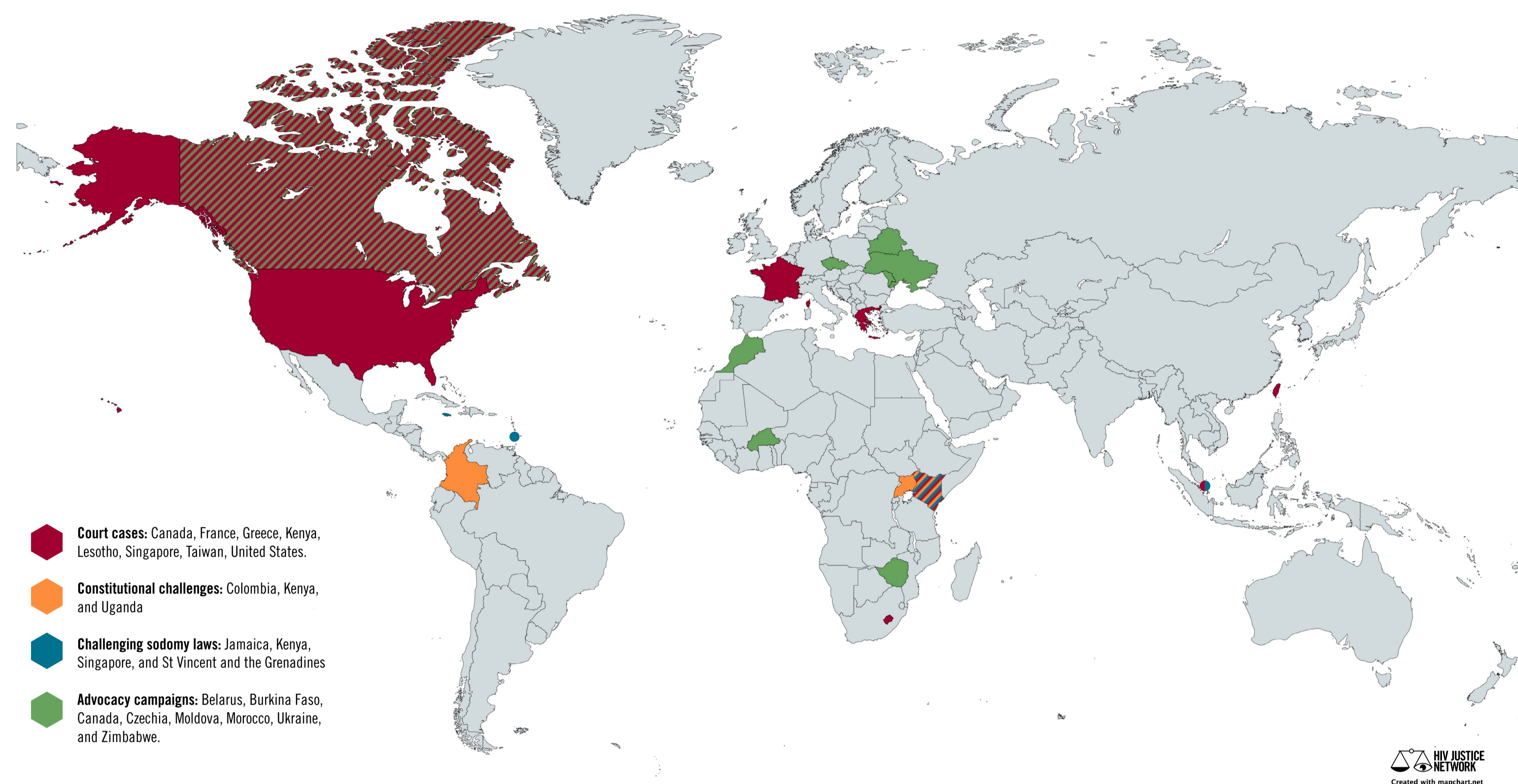
This involved a questionnaire sent to all 20 original authors; a survey in English, French, Spanish and Russian distributed through HJN's social media networks; and desk-based research utilising various databases including HJN's Global HIV Criminalisation Database,<sup>3</sup> Google Scholar, Dimensions, Altmetric, PlumX and Mendeley.

Follow-up interviews with several authors, human rights defenders and other advocates took place in June and July 2023.



### LESSONS LEARNED

#### GLOBAL IMPACT OF THE EXPERT CONSENSUS STATEMENT



#### 1. The Expert Consensus Statement has been instrumental to successful defences in court

It has been used to support defence arguments in many cases (the project's primary aim), in strategic litigation testing the constitutionality of highly problematic laws, and as evidence in court cases challenging sodomy laws. Charges have also been dropped before proceeding to court in some cases where the statement was used to show prosecutors that there was no risk of HIV transmission and therefore no reason to proceed to trial.

#### 2. The Expert Consensus Statement has been an effective tool in successful advocacy campaigns

The project continues to meet its secondary aim – supporting lobbying for law and policy reform. The ongoing process of promoting the Expert Consensus Statement has further supported advocacy efforts to raise the profile of the harms of HIV criminalisation.

Respondents to our April-May 2023 survey told us that the Expert Consensus Statement has been used:

- to inform their own understanding of HIV science;
- to provide advice or recommendations to governments or public health bodies on the use of the criminal law with respect to HIV non-disclosure, exposure or transmission;
- to inform the development of guidance for prosecutors internationally and domestically; and
- in discussions with public health agencies about policy and practice including allowing people living with HIV to access assisted reproductions and to adopt in Moldova and Ukraine.<sup>4</sup>

#### 3. The Expert Consensus Statement has supported education and awareness-raising initiatives

Although specifically drafted to support defence arguments in HIV criminalisation cases and bolster advocacy for law and policy reform, the Expert Consensus Statement has been broadly used as a general reference on HIV science and HIV criminalisation.

Users have found the “continuum of risk” used in the statement to be accessible and clear, and therefore useful in a variety of contexts. For example, it is often cited as an authoritative source on HIV transmission risk in academic papers and research reports, it is distributed in training sessions and courses, and to inform discussions with policymakers, public health authorities and media. The Expert Consensus Statement has also been cited extensively in academic journals, including at least 77 published articles and at least 15 doctoral theses.

Respondents to our April-May 2023 survey also told us that the Expert Consensus Statement has been used:

- in presentations on HIV criminalisation at scientific or policy meetings;
- in research and advocacy on phylogenetics and molecular HIV surveillance;

- when delivering training to criminal legal system actors, medical students, civil society organisations, and/or people living with HIV;
- to answer client questions about HIV transmission;
- in educational resources about HIV criminalisation; and
- when writing editorials or giving interviews to the media.

*Guidance for Prosecutors on HIV-related Criminal Cases*,<sup>5</sup> published by UNDP in June 2021, makes numerous references to the Expert Consensus Statement and excerpts key elements and conclusions as Annex C. Principle 1 of the Guidance is “Prosecutions should be informed at all stages by the most reliable evidence.” The Guidance notes that “A correct working understanding of the relevant science is essential to ensuring that prosecutorial practice is consistent and that prosecutions (and any convictions that may result) are based on fair and objective facts” and points prosecutors to the Expert Consensus Statement for the needed scientific info.

### CONCLUSIONS / NEXT STEPS

Five years after its publication, the *Expert Consensus Statement on the Science of HIV in the Context of Criminal Law* remains relevant, accurate and extremely useful. Newer studies bolster the conclusions presented in the statement, reinforcing its overarching message that science does not support HIV criminalisation.

By providing accurate messaging about HIV science in the context of criminal law, the statement has elevated the global conversation about HIV criminalisation and the importance of science- and evidence-informed laws and policies.

Nevertheless, too many laws and prosecutions for HIV-related offences continue to rely on incorrect and outdated interpretations of scientific evidence. Although some lawmakers and courts have acknowledged scientific advances, others remain hesitant to revisit decades-old laws or depart from previous judicial decisions.

Ending HIV criminalisation cannot rely on science alone. However, the Expert Consensus Statement – and its influential authors – can help limit unjust prosecutions while we work to end the HIV-related stigma, discrimination and structural inequalities that drive criminalisation.

1 Françoise Barré-Sinoussi, Salim S Abdoori Karim, Ian Albert, Linda-Gail Bekker, Chris Beyrer, Pedro Cahn, Alexandra Calmy, Beatriz Grinsztejn, Andrew Grulich, Adeeba Kamaruzaman, Nagalingeswaran Kumarasamy, Mona R Loutfy, Kamal M El Fihali, Souleymane Boupp, Julio SG Montaner, Paula Munderi, Vadim Pokrovsky, Anne-Mieke Vandamme, Benjamin Young, Peter Godfrey-Faussett. Expert consensus statement on the science of HIV in the context of criminal law. *Journal of the International AIDS Society (JIAS)*, 25 July 2018. Available at: <https://onlinelibrary.wiley.com/doi/10.1002/jia2.25161>

2 Sally Cameron. *Use of the Expert Consensus Statement on the Science of HIV in the Context of Criminal Law. Interim Scoping Report: July 2018–June 2020*. HIV Justice Network, 2020. Available at: <https://www.hivjustice.net/publication/use-of-the-expert-consensus-statement-on-the-science-of-hiv-in-the-context-of-criminal-law/>

3 Available at <https://www.hivjustice.net/global-hiv-criminalisation-database/>

4 Eurasian Women's Network on AIDS. *HIV Criminalisation Scan in the countries of Eastern Europe and Central Asia for 2018–22*. Available in Russian at: [https://academy.hivjustice.net/wp-content/uploads/2023/04/EWNA-HIV-Criminalization-Scan-2023\\_rus.pdf](https://academy.hivjustice.net/wp-content/uploads/2023/04/EWNA-HIV-Criminalization-Scan-2023_rus.pdf) Also in machine translated English at: [https://academy.hivjustice.net/wp-content/uploads/2023/04/EWNA-HIV-Criminalization-Scan-2023\\_eng.pdf](https://academy.hivjustice.net/wp-content/uploads/2023/04/EWNA-HIV-Criminalization-Scan-2023_eng.pdf)

5 Available at: <https://hivlawcommission.org/guidance-for-prosecutors/>