

# The ABCs of HIV Law Reform in Latin America and the Caribbean

This series provides an overview of law reform in three Latin American countries in recent years:

- **Argentina** - which replaced its HIV-specific omnibus statute in July 2022 after a decade-long advocacy process led by a wide coalition of HIV groups and activists.
- **Belize** - which repealed the HIV-specific criminal provision in its Criminal Code in July 2023 after a short process of legislative reform initiated inside government.
- **Colombia** - whose HIV-specific criminal provision in its Penal Code was invalidated by the Constitutional Court in June 2019 following a case brought by a university student.

Collectively, this series provides a snapshot of how reform of HIV laws can be achieved. Each country had its own motivations for reform, and differences in the repeal processes in each were significant. While the process in each country was, and always is, a product of factors unique to the local context and cannot be replicated exactly, lessons can be drawn from these case studies that are likely to be relevant to other countries.

Some of the key lessons learned from these case studies are:

- The strength of civil society and its arguments, as well as the advocacy tactics employed are key to successful legislative reform, with a broad coalition using a diverse range of advocacy strategies being particularly effective in Argentina.
- The importance of high-level champions for the success of reform cannot be overstated, with Belize having key ministers pushing strongly for reform inside government.

- Support from and dialogue with international civil society can also be influential, helping to add weight to arguments for reform, and enabling the sharing of successful advocacy strategies.
- Human rights based litigation can be a legitimate and successful route to reform and/or repeal of HIV criminal laws, especially if strong rights protections exist within national constitutions.
- Regardless of domestic constitutional protections, introducing scientific evidence such as the [Expert Consensus Statement](#), and relevant international jurisprudence to legal arguments adds authority to cases and boosts the success of litigation.
- Public awareness of law reform is often limited, increasing the need for effective awareness raising campaigns to ensure that the impacts of reform are maximised.

In the development of these case studies, we interviewed stakeholders in each country to better understand the legislative and political landscapes, the drivers of reform, the process of repeal, and the impact of legislative change. In Argentina and Colombia, we spoke directly to key proponents of reform. In Belize, a television interview given by the minister who was the main advocate of repeal forms the basis of our study, but is supported by an interview with a local expert for further context.

## Argentina case study

*Argentina replaced its HIV-specific omnibus statute in July 2022 with a new law that has been praised for its human rights basis. The passage of the law was the culmination of a decade of advocacy by HIV groups and activists, who formed a broad coalition of more than 40 organisations, and which leveraged a variety of strategies to lobby for the law. The diversity of this coalition and its tactics were ultimately key to the success of the reform effort, and direct advocacy with legislators brought key deputies and senators on board. While the law did not repeal general disease laws which have been used in HIV cases, its human rights approach, if fully implemented, should curtail HIV criminalisation in Argentina. This case study was informed by an interview with Matías Muñoz, President of the Ciclo Positivo Asociación, a key organisation in the coalition.*

Argentina introduced its first statute to explicitly address HIV in 1990, [Law 23,798](#), 'Declaration of the National Interest to Fight Against AIDS'. This legislation established transmission-reduction measures, as well as principles on the dissemination of information, detection, and notifications of positive test results. That law did not introduce any criminal penalties for HIV transmission, 'exposure', or non-disclosure, though it did establish administrative sanctions for officials who failed to fulfil the responsibilities assigned to them (Article 14). While the 1990 law did include a right of people living with HIV to receive 'adequate assistance' (Article 8), as well as the protection of dignity and confidentiality (Article 2), it failed to enshrine comprehensive and specific human rights beyond this.

Although Law 23,798 did not establish any HIV-specific criminal offences, in the years following its adoption, prosecutors began to apply existing general criminal laws to people living with HIV who were accused of transmitting, or 'attempting' to transmit HIV. We are aware of at least seven [cases](#) since the first known prosecution in 2003 of general criminal laws being applied to such instances. The conduct criminalised includes alleged sexual transmission, attempted breastfeeding, blood donation, and assault involving a transfer of blood. Those accused have been charged under criminal laws such as Article 202 ('spreading a dangerous and contagious disease') and Article 91 (aggravated bodily harm) of the [Penal Code](#), which carry penalties of three to fifteen years' imprisonment, and three to ten years, respectively. A corresponding offence under Article 18 of the archaic [Prophylaxis of Venereal Diseases law](#), which is punishable with the penalty established under Article 202, may also apply.

As the inadequacy of Law 23,798 to protect the rights of people living with HIV became clearer, civil society began to organise for its replacement. Advocates, such as the Argentinian Asociación Ciclo Positivo (Positive Cycle Association), highlighted the '[bio-medical approach](#)' it took to the HIV/AIDS response, as opposed to an approach centred on the rights of people living with HIV. Activists began what would ultimately be an arduous decade-long effort to replace the law with legislation fit for the 21st century. This new law would be designed not only to properly protect the rights of people living with HIV and other STIs, but address structural problems such as stigma, discrimination, and poverty, in an effort to improve the lives of individuals and reduce mortality rates.

*“Taking into account the progress in recent years of science and social behaviour in relation to these pathologies, it is necessary to update this purely biomedical character and move to a regulation that is a comprehensive response, with a human rights approach.”*

- [Matías Muñoz, President of the Ciclo Positivo Asociación.](#)

The process [kicked off](#) in 2013, with the initial drafting of a new HIV law. Over the next two years, consultations with stakeholders including people living with HIV would take place, before a bill was presented to the Chamber of Deputies for the first time in 2016. Under Argentinian congressional protocol, bills must be passed to a number of advisory commissions to issue their opinion on its merits. In this instance, the draft was discussed by three different Commissions. The Health Commission was one such commission tasked with issuing an opinion, and in 2017 gave the bill its first positive opinion. However, this attempt, and further attempts in 2018 and 2020 [failed](#) to result in the bill being adopted or even debated by Congress, and ultimately lost their parliamentary status. During these attempts, a network of 40 organisations worked together to put [pressure](#) on Congress to debate the bill.

During this timeline, a variety of tactics were leveraged by proponents of the bill to advocate for its introduction. While at first the government and legislators did not appear open to the changes proposed in the draft, civil society approached deputies and senators directly to advocate for the bill and to explain the need for reform, which proved to be successful particularly during election cycles. This was accompanied by campaigning and awareness-raising through social and conventional media, as well street advocacy including flyering and a public display in which the Congress building was illuminated in red for World AIDS Day 2020. Additionally, proponents engaged in ‘data activism’, which involved offering scientific data and stories about the impact of HIV to bring credibility to the campaign, and allowed the media to verify and replicate their claims.<sup>1</sup>

While the need for HIV law reform was not initially on the public agenda, the campaign managed to bring it more central in the public consciousness. As well as the continued advocacy of civil society, two public health events in the intervening years have been identified as contributing to a greater public understanding of the need for comprehensive and science-based health policies. First, a medical supply shortage in 2017-18 which included a shortage of medications and condoms, and secondly, the COVID-19 pandemic.<sup>2</sup>

In 2022, these attempts would be successful. The fourth presentation of the bill was made to the Chamber of Deputies, where it would pass the Health and Budget Commissions for the first time. In May, the bill was [approved](#) by the Chamber, with 241 votes in favour and just eight against. Notably, two of these eight dissenters, Deputies Javier Milei and Victoria Villaruel, now hold the positions of President and Vice President of Argentina. It was then passed to the Senate, which [adopted](#) the bill with a vote of 60-1.

*“This law is a historical reparation to all the people who suffered and continue to suffer discrimination, stigma, fear and ignorance about HIV. It is a law that will dignify and save lives to have a fairer and more supportive Argentina.”*

- [Senator Sandra Mendoza \(Frente de Todos coalition\).](#)

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<sup>1</sup> HJN interview with Matías Muñoz, 29 August 2023. See also: HIV Justice Network, Advancing HIV Justice 4, July 2022, page 48. [https://www.hivjustice.net/wp-content/uploads/2022/07/AHJ4\\_EN.pdf](https://www.hivjustice.net/wp-content/uploads/2022/07/AHJ4_EN.pdf).

<sup>2</sup> HJN interview with Matías Muñoz, 29 August 2023.

The [Law on the Comprehensive Response to HIV, Viral Hepatitis, Sexually Transmitted Infections and Tuberculosis](#) (Law 27,675) has received praise both by domestic civil society and by international stakeholders, including [UNAIDS](#). The law made significant changes to HIV regulation in Argentina, favouring an approach based on science and human rights, and which adopts an intersectoral and comprehensive response guaranteeing prevention, diagnosis, treatment, and research for a cure (Article 2). The law affirms the rights to free universal healthcare, both for treatment and all prevention measures available and to be created in the future including vaccines (Article 3), confidentiality and privacy (Article 6), access to testing based on informed consent and without compulsion (Articles 7, 14-17), labour rights without discrimination (Article 9), rights in education (Article 10), the rights of pregnant women and children (Articles 11-13), and social security including early retirement at 50 years of age for people living with HIV (Articles 24-25).

While the law does provide for sanctions for officials who fail to fulfil the obligations established of them under the law (Article 36), importantly it does not introduce any provisions criminalising people living with HIV. Conversely, it fails to address the issue of HIV criminalisation under general laws which has occurred in Argentina. The repeal of Article 202 and the Prophylaxis law were initially goals of the law reform; however a narrower approach was ultimately taken after this proved to be a contentious issue which might derail the adoption of the law altogether. However, several articles do establish the principle of decriminalisation as a goal of the law (Articles 2, 6, 21), meaning that if the law is fully implemented, it should preclude criminalisation.

Nonetheless, the 2022 law fails to firmly repeal HIV criminalisation in Argentina – and indeed there has been at least one [case](#) of criminalisation under the prophylaxis law since it was adopted – however this appears to represent what was politically possible at this time. This may create space for further legislative reform, or the introduction of non-legislative measures such as prosecution guidelines to limit the use of general laws in HIV cases to only those involving intentional and actual transmission. This notwithstanding, the law should be praised for its human rights approach to HIV regulation, including within a comprehensive package of protected rights. Its effectiveness will ultimately be dependent on the ability of health officials and the judiciary to implement it, which will necessitate training and awareness raising. As far as wider lessons to be taken, the variety and diversity of advocacy tactics used by civil society, as well as the united front put on by the range of organisations involved, has proven to be successful in raising public consciousness of the key issues and ensuring the law could be adopted.

## Belize case study

*Belize repealed its HIV-specific criminal law in July 2023 after a short process of legislative reform initiated by the government. This repeal was championed by Dolores Balderamos García, Minister of Human Development, Women and Civil Society, and personnel inside the Ministry of Health and Wellness including its Minister Kevin Bernard, and Dr Daniela Largaespada, Director of Maternal and Child Health. Each department had its own motivations for advocating for repeal of these laws, discussed in detail below, and together they were able to create a compelling case for reform based on both human rights and public health grounds. Our case study is based upon insight provided by Minister Balderamos García in a morning television interview given in July 2023, in which she spoke persuasively about the time being right for repeal of Belize's HIV-specific laws. To better understand the context surrounding the reform, we conducted an interview with Liz Aldana, who has worked on issues related to HIV criminalisation in Belize since 2018, including working for the National AIDS Commission.*

In 2001, Belize adopted an amendment to the [Criminal Code](#), explicitly criminalising HIV for the first time. This law introduced two new provisions to the Code; section 46A, 'Deliberate or reckless spreading of HIV/AIDS', and section 73A, 'Deliberate or reckless spreading of HIV/AIDS defined'. Together, these provisions made it an offence for any person knowingly living with HIV to do any sexual act involving bodily contact which is capable of transmitting bodily fluids without first disclosing their HIV status. It also made it an offence for those knowingly living with HIV to donate blood, or do anything else which is 'likely' to cause transmission.

Although these provisions were described in terms of the intentional or reckless transmission of HIV, they did not require transmission to occur for the offence to be completed. In effect, they criminalised mere 'exposure' and non-disclosure. However, these laws were never enforced, and no one was ever charged under sections 46A or 73A.

Despite their lack of use, it would take more than two decades for these provisions to be repealed. One early attempt at repeal failed due to a lack of political will by government ministers.<sup>3</sup> On the second attempt, the involvement of high level politicians was key to success. The main champion of repeal was Dolores Balderamos García, Minister of Human Development, Women and Civil Society, who was also the Chairperson of the National AIDS Commission (NAC). Coincidentally, Balderamos García was also the NAC Chair in 2001 when the criminalising provisions were first introduced; by her own [admission](#), she personally pushed for the introduction of these provisions, her reasoning being that antiretroviral therapy was not yet available in Belize, meaning that HIV transmission had significantly more impact on the lives of those affected than in the present day.

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<sup>3</sup> HJN interview with Liz Aldana, 3 August 2023.



However, by 2023, the Minister's views had evolved as the response to the virus improved. In an [interview](#) given to 7 News Belize on 17 July 2023, Balderamos García explained her change of heart, outlining both human rights and public health reasons for decriminalisation. The Minister explained that she was influenced by conversations with international partners and stated that it became clear that criminalisation was not a suitable method for disease prevention, and had unintended consequences. She highlighted the discrepancy between the treatment of HIV and other diseases, which were not subject to criminal laws, correctly pointing out that this distinction served to further stigmatise HIV and discriminate against people living with HIV. Specifically, the Minister noted that the laws placed a greater burden on women, because those who were pregnant and living with HIV could be held responsible for vertical transmission. From a public health perspective, the Minister explained that the laws also drove transmission on the ground as they acted to dissuade people from accessing testing and treatment for fear of criminalisation, particularly marginalised people who were already at greater risk of stigmatisation in the health system.

*"We realise that it is time that we do not have this restrictive and discriminatory legislation on the books anymore [...] It is not necessary to have that amendment to the Criminal Code."*

- [Dolores Balderamos García, Minister of Human Development, Women and Civil Society.](#)

Anticipating potential criticisms of repeal, Balderamos García noted that any cases of intentional transmission - or even sexual assault resulting in HIV transmission - could be adequately dealt with under existing general criminal laws, including reckless endangerment, wounding, or aggravation offences. Altogether, the Minister argued that these factors meant it was time for the laws to be repealed, particularly given that they had never been enforced in 22 years.

The other ministry which championed repeal had its own motivations. The Ministry of Health and Wellness joined the reform effort due to its desire for [validation of its elimination of mother to child transmission of HIV, syphilis and hepatitis B](#) by the World Health Organization. Such validation requires the elimination to occur while protecting and respecting human rights, which explicitly includes HIV-specific decriminalisation. As such, the continued HIV-specific criminal laws presented a major obstacle to validation, providing additional motivation to repeal. Dr Daniela Largaespada, Director of Maternal and Child Health in the Ministry of Health and Wellness, had a special interest in attaining this WHO validation and pushed for repeal inside the Ministry, which ultimately resulted in Minister Kevin Bernard's support.<sup>4</sup>

With two ministries on board, repeal occurred swiftly. The ministries [sent a proposal](#) to Cabinet which authorised repeal in principle in June 2023. The government introduced a bill to repeal the law in the House of Representatives, which [adopted](#) it in late June, [followed](#) by the Senate in July. Both the Minister of Human Development, Women and Civil Society, Dolores Balderamos García, and the Minister of Health and Wellness, Kevin Bernard, spoke in favour of the bill in the Assembly. Having passed all legislative stages, the [Criminal Code \(Amendment\) Act 2023](#) was signed into law on 27 July 2023, and was published in the gazette the following day, confirming the repeal of the HIV-specific criminal laws in Belize.

*"We should focus our efforts on education, prevention, care, and support rather than punishment. We should aim to reduce the stigma and discrimination that surrounds this*

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<sup>4</sup> HJN interview with Liz Aldana, 3 August 2023.

*disease to encourage more people to get tested, to know their status, and to seek treatment.”*

- [Kevin Bernard, Minister of Health and Wellness](#).

This process demonstrates the importance of high level champions, emphasising the power of targeted advocacy to ensure that reform proposals have ministerial support. In this case, the involvement of two key ministries added legitimacy to the position, which undoubtedly strengthened the case for repeal in government. The ministers were well aware of established arguments for the repeal of HIV-specific criminal laws on both human rights and public health grounds, which demonstrates their engagement with international and domestic civil society on the issues, and were able to use their positions to articulate these positions to the general public. There was some hostility towards reform expressed on social media, suggesting a need for further outreach to engage with the benefits that repeal brings for both public health and individual rights.



## Colombia case study

*Colombia's HIV-specific criminal law was invalidated in June 2019, when it was found by the Constitutional Court to be in violation of the rights to equality before the law and free development of personality. Repeal was initiated after Felipe Chica Duque, a university student, lodged a 'public action of unconstitutionality' against the HIV law, a participatory process provided for in the Colombia Constitution. Following his initiation of the action, a variety of organisations and individuals concerned with HIV, public health, and/or legal issues became interested in the process and submitted interventions to the Court. Conversely, there was little public awareness of the legal proceedings, and the action largely evaded media scrutiny. In preparation of this case study, we spoke with Felipe Chica Duque to understand his motivations for lodging the action, and the unfolding of the legal process. Interviews with the Colombian organisations Dejusticia and Más Que Tres Letras, provided additional insight into the context and impact of the Constitutional Court's ruling.*

In 2000, Colombia introduced a provision in its new [Penal Code](#) which explicitly criminalised HIV transmission for the first time.<sup>5</sup> Article 370, 'Propagation of HIV or hepatitis B', criminalised those who were aware of their status, and engaged in activities which could transmit HIV or hepatitis B, which included sexual activity or donating blood, semen, organs, or other body parts. The penalty provided for this offence was 6 to 12 years' imprisonment, having been [increased](#) in 2004 and 2008. By comparison, the general disease provision under Article 369, 'Propagation of an epidemic', leads to a sentence of one to five years' imprisonment.

We are aware of three reported cases under Article 370 for alleged sexual transmission of HIV in [2014](#), [2015](#), and [2017](#), all of whom were men accused of transmission to women. An additional historic case reported in [2023](#) related to a cluster of cases of HIV transmission from blood donations in 1989, allegedly stemming from donations by a person living with HIV. As this case occurred before Article 370 was introduced, the case was charged under Article 369, with additional charges for manslaughter. [Data](#) from the Attorney General's Office suggests this likely represents a significant underreporting of enforcement in Colombia; between 2010-2019, 218 criminal investigations were opened under Article 370, resulting in eight convictions. However, it is not possible to state how many of these cases involved HIV, as the law also covers hepatitis B.

Less than two decades after its introduction, Article 370 would come under challenge. Unlike in other countries where reform was initiated by government, in Colombia, the route taken was through the courts. The action was brought by a young university student, Felipe Chica Duque. The fact that an undergraduate student was able to lead this action was possible due to the conjunction of two factors specific to the Colombian legal and education systems. Firstly, the [Constitution](#) allows for any citizen to challenge legal norms deemed to violate constitutional

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<sup>5</sup> While HIV statutes adopted in 1991 and 1997 were the first to establish penalties for acts which may lead to transmission, these provided only for temporary detention in health facilities or referral to pre-existing general disease provisions in the Penal Code.

protections (Article 242), and these public actions of unconstitutionality ([acción pública de inconstitucionalidad](#)) do not formally require any professional intermediation. Secondly, universities regularly hold legal clinics in which professors encourage and assist students to submit public actions of unconstitutionality, creating a litigious culture in which anyone can challenge a law.

In this case, Felipe Chica Duque was encouraged to lodge a complaint after a university professor discussed the issue of HIV criminalisation in class, which led him to investigate the law and become motivated to file a challenge.<sup>6</sup> Chica Duque filed his claim in September 2018. Although it was initially rejected and then declared only partially admissible, on both occasions Chica Duque was given an opportunity to revise the action and following appeal, it was declared [admissible](#) in its entirety in October 2018. Having accepted the challenge, the Court opened it up to public consultation, leading to briefs being filed by 11 interested parties, including university law and health departments, civil society organisations and experts both domestic and international - including Justice Edwin Cameron from South Africa - the Attorney General, and the Ministries of Health and Justice.

The Constitutional Court issued its judgement, [Sentence C-248/19](#), on 5 June 2019. The basis of the action was that Article 370 violated the constitutional rights to equality before the law (Article 13) and free development of personality (Article 16). In regard to the former, because the law singles out two diseases (HIV and hepatitis B) for different treatment compared with other STIs, penalising activities not criminalised for others. For the latter, on the basis that the law interferes with the freedom to have sexual relations, even if preventative measures are taken. This law, it was argued, amounted to an unnecessary and disproportionate measure to protect public health. Conversely, the Attorney General defended the law, arguing that the application was legally unsound on the basis that the law doesn't prohibit sexual relations by people living with HIV and/or hepatitis, and that fraud and intent to cause transmission are required for prosecution.

The Court reflected on a range of scientific data concerning the risk of transmission including where precautions such as condoms and antiretroviral medications are used, citing the [Expert Consensus Statement](#) among its sources. It also considered relevant rulings on HIV criminalisation from courts around the world, noting a need to strike a balance between the protection of public health and the rights of people living with conditions such as HIV.

It then turned to the legal arguments. In considering the Article 13 claim, it noted a need first to identify whether there is unequal treatment, and then whether this treatment is justified through the principles of reasonableness and proportionality. The Court found that the proscribed diseases are comparable to other STIs which are dealt with separately and generally under Article 369, which was enough to determine unequal treatment under the law. In considering whether this was justified, the effectiveness of criminalisation as a means for protecting public health was considered, and the Court acknowledged that the law might encourage people not to be tested so as not to be held liable for transmission, and may also lead to higher transmission rates in prison. Criminalisation was therefore not a reasonable measure. It was also not proportional, as the law promoted discrimination and stigmatisation of people living with HIV and/or hepatitis, who include historically marginalised people, and because cases of intentional transmission could reasonably be dealt with under Article 369.

Regarding Article 16, the Court noted that although individual rights can be restricted if necessary to protect the rights of others, there must be a constitutional basis, which does not

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<sup>6</sup> HJN interview with Felipe Chica Duque, 21 August 2023.

include simple referrals to a general public interest. In this case, the manifestation of free development of personality can be subject to reasonable restriction if necessary to protect public health, but not annulled entirely. In the Court's view, the effect of the law was to annul the sexual rights of people living with HIV and/or hepatitis, and for the reasons discussed for Article 13, was not an effective measure to protect public health. As such, the Court ruled that Article 370 violated both Articles 13 and 16 of the Constitution, and was therefore unenforceable.

This legal process attracted little media attention. One of the reasons might be that the judgement was issued in the same week as a high-profile ruling on public cannabis and alcohol consumption, which drew attention from other matters in the Court, such as the Article 370 ruling. However, the journalists who covered the news demonstrated a lack of knowledge of the issues and some hostility to the result. Similarly, some adverse reaction was noted on social media.<sup>7</sup> More positively, the decision was welcomed by civil society both domestic and international, including by [UNAIDS](#). This limited public attention may have had both positive and negative impacts. The lack of media scrutiny during legal proceedings avoided the whipping up of any hostility which might have jeopardised the result or the safety of people living with HIV.

Finally, it should be noted that there is still work to do in Colombia; this judgement does not preclude HIV criminalisation, as Article 369 may be used to penalise HIV transmission, while transmission and even 'exposure' can be prosecuted under general criminal laws, as indeed the latter was in a [2019](#) case involving biting and spitting. This might necessitate further legislative action, or non-legislative measures such as prosecution guidelines to limit the use of general laws in HIV cases to only those involving intentional and actual transmission. However, the considerable review of scientific data in the ruling should serve to limit prosecutions under general laws including Article 369, and is a significant benefit of the judgement. Furthermore, there is a need for steps to be taken to increase awareness of the implications of the 2019 judgement among both the public and the judiciary to ensure that its findings are properly implemented. This notwithstanding, this ruling does represent the eradication of explicit HIV criminalisation, which is an undeniable success.

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<sup>7</sup> HJN interview with Felipe Chica Duque, 21 August 2023.