



Punitive Responses to Women Living with HIV who Breastfeed: Towards a Consensus

Context

In 1986, it was discovered that HIV could be transmitted from a woman to a child through breastfeeding. Since this time, women living with HIV have borne the weight of the responsibility of preventing HIV transmission to their offspring. This responsibility has been used to justify surveillance, judgement, and limitations on autonomy and decision-making for women living with HIV.

Some women living with HIV have faced criminal prosecution for exposing fetuses and/or infants to a risk of HIV infection, especially through breastfeeding. These numbers may be small compared to the number who have faced [criminal charges with respect to HIV non-disclosure, exposure and transmission in sexual contexts](#), but cases are increasing. The HIV Justice Network is aware of [at least 13 such cases](#), with a growing number of criminal prosecutions taking place across the African continent as well as in Russia since 2018. We are also aware of several cases that took place in North America and Europe between 2005 – 2012.

These cases include charges laid against mothers, community members and domestic employees. Various criminal charges have been used in these cases, including failure to provide the necessities of life, grievous bodily harm, unlawfully doing an act likely to spread a dangerous disease, and deliberately infecting another with HIV. In addition to these criminal cases, many more women have experienced punitive responses from service providers, public health, and child welfare authorities.

Criminal prosecutions and other punitive responses to breastfeeding by women living with HIV pose significant harms to both the accused and the child. HIV criminalisation threatens the health and wellbeing of people living with HIV and jeopardizes the goals of ending HIV discrimination and, ultimately, the epidemic. Not only do punitive laws targeting people living

with HIV lack a scientific evidence base they also serve as barriers to HIV prevention, treatment, and care, and perpetuate stigma.

Infant feeding choices should not be a criminal issue. Parents should be provided with full information to make the best choices for their families and infant feeding should be managed through clinical support. Science supports that the best outcomes for a mother and a child result from proper medical care, access to treatment and openness. Criminalising maternal and child health issues generally risks worse outcomes for the infant.

HIV and breastfeeding

While the science around HIV transmission through breastfeeding and the effects of suppressive antiretroviral therapy [is not robust enough](#) for most health agencies to support [U=U messaging for breastfeeding mothers](#), clinical experience is increasingly demonstrating that the risk of transmission through breastfeeding [is low and can be reduced with clinical management](#). We are seeing increasing numbers of women living with HIV, sometimes supported by their healthcare providers, choosing to breastfeed in regions where formula feeding is recommended, and [an increasing push for research and clinical guidance on how to do so safely](#).

Breastfeeding is “the gold standard” of infant feeding in most circumstances (i.e., “breast is best” campaigns) and it has multiple benefits for both the infant and the mother. Breastfeeding could save the life of an infant, even if the mother is living with HIV. Guidelines regarding breastfeeding and HIV vary by region, primarily based on whether infant feeding alternatives are considered acceptable, feasible, affordable, sustainable and safe (“AFASS”). Where there is lack of access to clean water and reliable refrigeration, for example, guidelines may recommend breastfeeding, however in other areas mothers living with HIV are advised to use formula.

Infant feeding choices involve balancing risks and benefits. For example, a woman living with HIV may need to balance the risk of passing on HIV with the benefits of breastmilk for a premature infant’s immunity and gut health. She also may be balancing the risk of HIV transmission against the risk of malnutrition if she cannot afford or access adequate formula, against the risk of illness from unclean water, or against the risk of domestic violence or ostracism if she refuses to breastfeed and her HIV status becomes known to her partner or community. Guidelines take some, but not all, of these balancing issues into consideration. Every person will evaluate the risk and benefit in their personal circumstances differently — which is perfectly reasonable.

Punitive approaches are unhelpful and unjust

We have seen a recent increase in prosecutions related to women living with HIV and breastfeeding, including charges in relation to brief episodes of comfort nursing by caregivers. As a global community of HIV justice advocates and people living with HIV, **we need to take action to prevent further prosecutions and punitive responses.**

Punitive approaches to breastfeeding are unhelpful and unjust because they:

- can result in infants and children being taken away from loving parents, which is not in the best interests of the child;
- are not in-line with the best available science on HIV and infant feeding, literature and experience that show the risk of transmitting HIV to a child through breastmilk to be low, especially if the woman is on effective antiretroviral therapy;
- drive women living with HIV away from seeking expert medical advice and community support, which are known to result in the best outcomes with respect to maternal and child health;
- interfere with sexual and reproductive health and rights;
- result in women living with HIV facing punishment, ranging from loss of employment to incarceration, for low-risk actions that may be the best choice for the health and well-being of the child; and
- spread misinformation and stigma related to HIV.

Towards a just and supportive consensus based on rationality

Justice and rationality demand that:

- criminal charges are never laid against women living with HIV for breastfeeding;
- children should not be removed from the care of their parents because of breastfeeding by a woman living with HIV;
- public health interventions should be supportive, not punitive, with respect to infant feeding decisions;
- no one living with HIV should be denied employment or dismissed from employment where they engage with infants and/or children because of their HIV-positive status;
- women living with HIV are given complete and accurate information regarding the risks and benefits of breastfeeding for the child and the woman, in order to make informed decisions; and
- women and children living with or affected by HIV receive comprehensive healthcare and social support, irrespective of their infant feeding choices.

HIV Justice Network's mission is to support individuals, communities and organisations to effectively advocate against criminal and similar laws, policies and practices that unjustly regulate, control and punish people living with HIV, based on their HIV-positive status. We invite you to join us in the fight against criminal and other punitive responses to women living with HIV who breastfeed.

It is our goal to collaborate with advocates, researchers, service providers, organisations and community members around the world raise awareness and prevent further unjust prosecutions against women living with HIV who breastfeed.

Contact us at breastfeeding@hivjustice.net