

10 REASONS

TO OPPOSE THE

CRIMINALIZATION

OF HIV EXPOSURE

OR TRANSMISSION

The concerns of women's organizations that are pushing for criminal law approaches to HIV need to be addressed clearly and positively. In particular, action needs to be taken against domestic violence and women's subordination.

— Member of Parliament  
Priscilla Misihairabwi-Mushonga,  
Zimbabwe, 2007

**Recent years have seen the creation, particularly in parts of Africa, Asia, Latin America, and the Caribbean, of HIV-specific laws that criminalize HIV transmission and exposure. At the same time, particularly in Europe and North America, existing criminal laws are increasingly being used to prosecute people for transmitting HIV or exposing others to HIV infection.**

The push to apply criminal law to HIV exposure and transmission is often driven by the wish to respond to serious concerns about the ongoing rapid spread of HIV in many countries, coupled by what is perceived to be a failure of existing HIV prevention efforts. These concerns are legitimate. Recently, particularly in Africa, some groups have begun to advocate for criminalization in response to the serious phenomenon of women being infected with HIV through sexual violence or by partners who do not reveal their HIV diagnoses to them.

While these issues must be urgently addressed, a closer analysis of the complex issues raised by criminalization of HIV exposure or transmission reveals that criminalization is unlikely to prevent new infections or reduce women's vulnerability to HIV. In fact, it may harm

women rather than assist them, and negatively impact both public health and human rights.

This document provides ten reasons why criminalizing HIV exposure or transmission is generally an unjust and ineffective public policy. The obvious exception involves cases where individuals purposely or maliciously transmit HIV with the intent to harm others. In these rare cases, existing criminal laws can and should be used. In addition, governments should effectively prosecute all cases of sexual violence and ensure that rape in marriage is recognized as a crime.

However, for cases in which individuals living with HIV do not act with the specific intention to harm others, countries should not criminalize HIV exposure or transmission. Instead, they should take positive steps to increase evidence-based HIV prevention and treatment efforts and reduce women's vulnerability to HIV.

*There is no evidence that criminal laws specific to HIV transmission will make any significant impact on the spread of HIV or on halting the epidemic. Therefore, priority must be given to increasing access to comprehensive and evidence-informed prevention methods in the fight against HIV/AIDS.*

*— Excerpt from the conclusions of the 1st Global Parliamentary Meeting on HIV/AIDS, Manila, Philippines, 2007*

# 1. Criminalizing HIV transmission is justified only when individuals purposely or maliciously transmit HIV with the intent to harm others. In these rare cases, existing criminal laws can and should be used, rather than passing HIV-specific laws.

The most common reason advanced by policymakers for criminalizing HIV exposure or transmission is that people who transmit HIV or expose others to the risk of HIV infection, ought to be punished because their behavior is “morally wrong” or “harmful.”

However, most people who transmit HIV either do so not knowing they are infected and not knowing they are transmitting HIV, or because they fear that to reveal their HIV status will result in violence, discrimination, rejection by family and friends, and other abuses based on their HIV status. These fears, although often well-founded, do not absolve individuals of the moral obligation to take steps to protect others from infection. However, to prosecute people who risk causing harm because of fear of discrimination neither deters their behavior nor achieves justice.

To be sure, there are individuals who maliciously intend to cause harm through HIV transmission and succeed in doing so. In such cases, the application of criminal law is warranted. This limited application would be consistent with recommendations of the Joint

United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Development Programme (UNDP) in their policy brief, *Criminalization of HIV Transmission*.

Even in these cases, however, the creation of HIV-specific offenses is generally not warranted, as existing criminal laws are sufficient to punish individuals who specifically intend to transmit HIV to others. For example, laws against causing bodily harm can be applied to HIV transmission.

Although it is appropriate to prosecute cases of actual transmission caused by malicious intent under existing criminal laws, care must be taken to ensure these laws are not applied too broadly. In the overwhelming majority of cases, applying criminal law to HIV transmission or exposure would do more harm than good. For example, criminal law cannot justifiably be applied to HIV transmission or exposure where there is no significant risk of HIV transmission, or where a person:

- ▶ did not know that he or she was HIV-positive,
- ▶ did not understand how HIV is transmitted,
- ▶ disclosed his or her HIV-positive status to the person at risk (or had reason to believe the other person was aware of his or her status),
- ▶ did not disclose his or her HIV-positive status because of fear of violence or other serious negative consequences,
- ▶ took risk-reducing measures (such as practicing safer sex through using a condom or other precautions), or

- ▶ previously agreed on a level of mutually acceptable risk with the other person.

Even to extend application of the criminal law to cases where people are “negligent” or “reckless,” but do not act with the purpose to harm another person, would be bad public policy. In such a scenario, the law would potentially apply to so many cases and the facts would be so difficult to prove that many unintended negative consequences could result. These negative consequences are all discussed in reasons 2-10 of this paper.

Instead of applying criminal law to cases beyond malicious intent and actual transmission, states should focus on empowering people living with HIV to seek HIV testing, disclose their status, and practice safer sex without fear of stigma and discrimination. Such empowerment would include protecting people living with HIV from discrimination by enacting and enforcing anti-discrimination laws and promoting social campaigns to reduce stigma. When there are low levels of stigma and discrimination in a social setting, people feel empowered to get tested for HIV and prevent the onward transmission of HIV.

Applying criminal laws to HIV transmission or exposure frustrates these important public health goals. It fosters a climate of fear and retribution around HIV transmission, rather than “a social and legal environment that is supportive of safe and voluntary disclosure of HIV status” – an environment that, by endorsing the *Political Declaration on HIV/AIDS (2006)*, governments committed to create in their national responses to HIV.

## 2. Applying criminal law to HIV exposure or transmission does not reduce the spread of HIV.

Policymakers sometimes argue that applying criminal law to HIV exposure or transmission can reduce the spread of HIV by incapacitating or rehabilitating particular offenders, or by deterring others from transmitting HIV.

In fact, applying criminal law to HIV risk behavior has not been shown to incapacitate, rehabilitate, or deter offenders.

**Incapacitation:** In order to slow the spread of the HIV epidemic, vast numbers of people would have to be prevented from having unsafe sex, sharing syringes, or engaging in other risk behaviors, which no HIV-specific criminal law could possibly do. Indeed, imprisoning a person with HIV does not prevent the transmission of HIV. HIV risk behaviors are prevalent in prisons, and most prison systems continue to reject introduction of evidence-informed prevention measures such as condoms and sterile injecting equipment and fail to undertake measures to reduce the prevalence of rape and other forms of sexual violence.

**Rehabilitation:** There is little evidence to suggest that criminal penalties for conduct that transmits or risks transmitting HIV will “rehabilitate” a person such that they avoid future conduct that carries the risk of HIV transmission. Most cases of HIV transmission are related to sexual activity and/or drug use – human



behaviors that are complex and very difficult to change through the blunt tool of criminal penalties. Nor do prisons provide rehabilitation programs around behavior that transmits HIV. Individual behavior change is more likely to result from interventions such as counseling and support for behavior change, as well as measures that address underlying reasons for engaging in activities that risk HIV transmission.

**Deterrence:** There is no scientific data supporting the claim that criminal prosecution, or the threat thereof, has any appreciable effect in encouraging disclosure to sexual partners by people living with HIV or deterring conduct that poses a risk of transmission. Most people living with or at risk of HIV already believe they have a responsibility to protect others from HIV infection, especially when they have access to good-quality counseling and prevention services such as female and male condoms and interventions to reduce the likelihood of mother-to-child transmission. In any case, during the time when there is the greatest risk of HIV transmission (the first months following infection), most people do not yet know that they are HIV positive, limiting the preventive value that any criminal offense could have.

*Decriminalization, not more criminalization, is what is needed.*

— Michael Kirby, *Justice of the High Court of Australia, 2007*

### 3. Applying criminal law to HIV exposure or transmission undermines HIV prevention efforts.

Applying criminal law to HIV transmission could discourage people from getting tested and finding out their HIV status, as lack of knowledge of one's status could be the best defense in a criminal lawsuit. Indeed, in jurisdictions with HIV-specific criminal laws, HIV testing counselors are often obliged to caution people that getting an HIV test will expose them to criminal liability if they find out they are HIV-positive and continue having sex. These same counselors are sometimes forced to provide evidence of a person's HIV status in a criminal trial. This interferes with the delivery of health care and frustrates efforts to encourage people to come forward for testing.

***Other unintended consequences of applying criminal law to HIV exposure or transmission include:***

**Creating a false sense of security:** Placing legal responsibility exclusively on people living with HIV for preventing the transmission of the virus undermines the public health message that everyone should practice safer behaviors, regardless of their HIV status, and that sexual health should be a shared responsibility between sexual partners. People may (wrongly) assume their partners are HIV-negative because they have not disclosed, and thus not take measures to protect themselves from HIV infection.

**Creating distrust in relationships between HIV-positive people and their health care providers:** People may fear that information regarding their HIV status may be used against them in the criminal justice system. This impedes the provision of quality treatment and care and could also negatively impact the enrollment of HIV-positive people into much-needed research studies.

*It is far easier to access counseling and support for safer sex outside the criminal justice system, through the health clinics to which people with HIV go—and yet criminal prosecutions, which use medical records to prove their case, are discouraging people who have difficulty managing safer sex from seeking help. This is a key way in which prosecutions deter people from actions which could prevent onward transmission.*

— Lisa Power, Corporate Head of Policy & Public Affairs, Terrence Higgins Trust, 2008

## 4. Applying criminal law to HIV exposure or transmission promotes fear and stigma.

Nearly 30 years of addressing AIDS has reinforced the importance of breaking the silence around the epidemic, talking openly about HIV, and encouraging people to live positively. Applying criminal law to HIV exposure or transmission, except in very limited circumstances, does the opposite. It reinforces the stereotype that people living with HIV are immoral and dangerous criminals, rather than, like everyone else, people endowed with responsibility, dignity and human rights.

The introduction of HIV-specific criminal offenses, as well as individual criminal prosecutions against people living with HIV for conduct that transmits or risks transmitting HIV, has often been accompanied by inflammatory and ill-informed media coverage or commentary by high-profile figures such as prosecutors, government officials, or legislators. This rhetoric can only discourage people from coming forward to seek HIV testing and counseling and from talking openly and honestly about AIDS.

Prosecutions for HIV transmission or exposure also spread myths and misinformation about how HIV is (and is not) transmitted. In some jurisdictions, serious criminal charges have been laid against HIV-positive people for activities such as biting, spitting, or scratching, despite evidence that the risk of HIV transmission in this fashion is extraordinarily small (and in some

cases, non-existent). In other jurisdictions, the adversarial justice system has encouraged prosecutors to make sweeping and highly inaccurate statements about the risk of HIV transmission, when this risk is often minimal, including for people with HIV on effective antiretroviral treatment and without sexually transmitted infections. Such prosecutions and statements not only undermine efforts to educate the public about HIV, but further engender fear of people living with HIV.

*Tragically, it is stigma that lies primarily behind the drive to criminalization. It is stigma, rooted in the moralism that arises from sexual transmission of HIV, that too often provides the main impulse behind the enactment of these laws.*

*Even more tragically, such laws and prosecutions in turn only add fuel to the fires of stigma. Prosecutions for HIV transmission and exposure, and the chilling content of the enactments themselves, reinforce the idea of HIV as a shameful, disgraceful, unworthy condition.*

*— Edwin Cameron, Justice of the Supreme Court of Appeal of South Africa, 2008*

## 5. Instead of providing justice to women, applying criminal law to HIV exposure or transmission endangers and further oppresses them.

Some support the application of criminal law to HIV exposure or transmission thinking that it might protect women and girls from being infected with HIV by unfaithful partners, through sexual violence, and/or by partners who do not reveal their HIV status to them. Many girls and women worldwide are coerced or forced into sexual intercourse. In addition to health, psychological, and rape crisis services, these women and girls deserve justice for the violence perpetrated against them.

Yet, applying criminal law to HIV transmission does nothing to address the epidemic of gender-based violence or the deep economic, social, and political inequality that are at the root of women's and girls' disproportionate vulnerability to HIV. On the contrary, these laws are likely to be used to prosecute women more often than men, for at least three reasons:

**Women are more likely to know their HIV status than their male partners:** Because they engage with the health system more often (including during pregnancy and child birth), women are typically more likely to find out about their positive HIV status before their male partners—particularly as governments move towards provider-initiated HIV testing and counseling

in pre-natal settings. Where laws criminalizing HIV exposure or transmission are in place, to avoid the risk of being prosecuted for exposing their partner to HIV, women who test HIV-positive have to disclose their HIV status to their partners, refuse to have sex, or insist on condom use. However, for many women these actions carry the risk of violence, eviction, disinheritance, loss of their children, and other severe abuses. The combination of more routine forms of testing (particularly during pregnancy) and criminalization of HIV transmission or exposure thus gives women an impossible choice: either to risk violence by trying to protect their partners, or to risk prosecution by failing to do so.

**Women are more likely to be blamed for HIV infection:**

Women are more likely to be blamed by their intimate partners, their partners' families, and their communities for "bringing HIV into the home" than men, and this can result in eviction, ostracism, loss of property and inheritance, and loss of child custody. Laws criminalizing HIV exposure or transmission would only provide another tool to oppress them. This is especially true insofar as apportionment of blame is still an important part of both customary and formal legal systems in relation to divorce and inheritance.

**Some women might be prosecuted for mother-to-child transmission:**

Some laws criminalizing HIV transmission or exposure are drafted broadly enough to include women who transmit HIV to a child during pregnancy or breastfeeding. For millions of women living with HIV/AIDS—but often denied access to family planning, reproductive health services, or medicines that

prevent mother-to-child transmission of HIV—this effectively makes pregnancy, wanted or not, a criminal offense. There are many more effective ways to prevent mother-to-child transmission of HIV, beginning with supporting the rights of all women to make informed decisions about pregnancy and providing them with sexual and reproductive information and services, preventing HIV in women and girls in the first place, preventing unwanted pregnancies among all women, and providing effective medication to prevent mother-to-child transmission of HIV to HIV-positive women who wish to have children.

Criminalization of HIV exposure or transmission also will not protect women and girls from coercion or violence that can transmit HIV, including rape and rape in marriage. Indeed, many countries that already have strong anti-rape laws fail to enforce them. Governments must fulfill their obligation to promote and protect women's right to be free of violence. Instead of additional, ineffective HIV-specific laws that will be used against them, women and girls have a human right to timely, effective, and aggressive prosecution of all forms of gender-based violence and to receive medical and other services that will reduce their risk of contracting HIV, including timely access to post-exposure prophylaxis. It is ironic and tragic that HIV-specific criminal offenses are being promulgated in some countries as a way to protect women, while little progress is made to achieve equality for women and reduce gender-based violence.



## 6. **Laws criminalizing HIV exposure and transmission are drafted and applied too broadly, and often punish behavior that is not blameworthy.**

Many laws criminalizing HIV exposure and transmission are poorly drafted or applied, encompassing behavior that society has no interest in punishing and placing innocent people at risk of prosecution. For example, some laws require that people with HIV inform “all sexual contacts” of their status, meaning they could be jailed for not revealing their HIV status before kissing someone or engaging in other behavior that carries no risk of HIV transmission. In practice, both under new HIV-specific laws and under existing broader offenses, people living with HIV are often sentenced to imprisonment for exposing a sexual partner to HIV, even if the risk of transmission is minimal. For example, in one jurisdiction, a man with HIV who performed oral sex on a partner was sentenced to a year in prison under an HIV exposure law, despite the fact that the risk of HIV transmission was minimal, if not non-existent, in this case.

Other laws criminalize people who take risk-reducing measures (such as using a condom), people who do not know their HIV status, or people who have consensual sex after disclosing their HIV status. For example, in another jurisdiction, a woman living with HIV was convicted under the country’s HIV-specific law for having sexual intercourse with her partner, even though he knew of her HIV status and used a condom.

Some laws even criminalize pregnant women by punishing any act that a person with HIV can “reasonably foresee” will transmit HIV to another. This means that getting pregnant while living with HIV could be grounds for prosecution. For example, in several African jurisdictions, the wording of the law stretches wide enough to cover a pregnant woman who knows she has, or fears she may, have HIV. If she does “anything” that involves the possibility of infecting another person—such as giving birth or breast-feeding—the law could make her guilty, even if her baby is not infected.

Still other laws criminalize any “omission” that results in HIV transmission, meaning that failure to get an HIV test and learn one’s status could be a criminal offense—without any inquiry into whether HIV testing was even available.

*In countries such as South Africa where there are still high levels of discrimination against people living with HIV, a specific law criminalizing HIV transmission can never be implemented. HIV would be pushed underground. Criminalization would defeat attempts to encourage testing and voluntary disclosure. It will also further perpetrate stigma, creating a parallel society of “us” and “them.”*

— Member of Parliament Henrietta Bogopane-Zulu,  
South Africa, 2007

## 7. Laws criminalizing HIV exposure and transmission are often applied unfairly, selectively and ineffectively.

Not surprisingly, where HIV-specific criminal provisions exist, only very few of the actual cases of HIV exposure or transmission are ever prosecuted. The wide discretion regarding which cases are prosecuted creates great scope for selective and arbitrary prosecution.

**Risk of selective or arbitrary prosecution:** Given the stigma that still surrounds HIV and the persistence of HIV-related discrimination, criminal sanctions are often directed disproportionately at those who are socially and/or economically marginalized. For example, in one jurisdiction a homeless man living with HIV was sentenced to 35 years in prison because he spat at the police officer who was arresting him for disorderly conduct. Many other cases suggest that criminal law is invoked in sensational circumstances, often in relation to those who are most marginalized and stigmatized in a society, including immigrants and refugees, foreigners, or sex workers, and occasionally in response to emotional media campaigns.

**Likelihood of conviction without sufficient evidence:** Proving that an accused person was HIV-positive at the time of an alleged offense, as well as proving who infected whom and when, is a serious challenge. In a sexual relationship, the one blamed for transmitting

HIV will most likely be the one who first learned of his or her status, not necessarily the one who was first infected. Even if the accused person was infected first, it could have been a third party who actually infected his or her sexual partner. To prove guilt, scientific evidence of transmission by the accused person is required. In recent years, where resources exist, prosecutors handling cases of HIV transmission increasingly have resorted to “phylogenetic testing,” which seeks to establish a genetic relationship between the HIV viruses of the two parties. However, such evidence only indicates similarities in the viruses; it does not prove beyond a reasonable doubt the source of the virus. Such technical evidence and its limitations are not well understood by police, prosecutors, defense lawyers, courts, the media, or people living with HIV or HIV organizations. Phylogenetic testing is also very expensive to apply and thus unaffordable in many low-resource countries. As a result of all these factors, there is considerable potential for a conviction without sufficient evidence.

**Invasions of privacy:** In a number of cases, the confidentiality of medical records kept by health professionals or counselors has been breached in the attempt to establish someone’s HIV status during a criminal prosecution. Such breaches of confidentiality may reduce the willingness of HIV-positive people to discuss risk behaviors with counselors, agree to HIV testing and counseling, or seek treatment of other sexually transmitted infections that increase the risk of HIV transmission.

## 8. Laws criminalizing HIV exposure and transmission ignore the real challenges of HIV prevention.

Rather than applying criminal law to HIV exposure and transmission, governments must demonstrate political will and dedication of resources, and implement evidence-informed programs in order to ensure HIV-prevention services for all who need them. In some countries, governments are reluctant to implement effective and human rights-based HIV prevention measures that may be controversial or resource-intensive—such as scaling up HIV testing and counseling, protecting the equal rights of women and reducing violence against them, improving sexual and reproductive health care, providing comprehensive prevention of mother-to-child transmission services, increasing access to effective HIV treatments, and establishing harm reduction programs in the context of injecting drug use. Applying criminal law to HIV exposure or transmission effectively shifts the total burden of HIV prevention onto people living with HIV rather than using proven methods to empower them to avoid the onward transmission of HIV and empower others to protect themselves from HIV infection.

This tactic particularly fails women and girls, for whom criminalizing HIV transmission is a poor substitute for the enactment and enforcement of laws and policies that address their social and economic inequality as well as protect them from gender-based violence. Focusing on criminal law sometimes results in less

attention to measures that truly make a difference in preventing HIV transmission, such as:

- ▶ comprehensive, age appropriate HIV/AIDS and sexuality education for young people,
- ▶ integration of HIV prevention services into comprehensive reproductive and sexual health care,
- ▶ enhanced access to HIV testing and counseling, treatment and support services,
- ▶ enhanced access to male and female condoms, post exposure prophylaxis, sterile syringes, and other methods of reducing the risk of HIV transmission among those who are sexually active or inject drugs, including access to effective antiretroviral therapy for people living with HIV which can reduce infectiousness (recently, Swiss HIV clinical specialists released a consensus statement “that individuals with HIV on effective antiretroviral therapy and without sexually transmitted infections are sexually non infectious”),
- ▶ enhanced positive prevention programs, and
- ▶ programs that address some of the root causes of vulnerability to HIV infection, including gender-based violence, gender inequalities and discrimination, HIV stigma and discrimination, and substance use.

Allocating limited resources to prosecutions, rather than to HIV prevention measures that work and to programs to deal with the underlying causes, is a misuse of resources.

*Mauritius decided not to criminalize exposure to HIV or even HIV transmission. Legislators realized that legislation criminalizing HIV exposure and/or transmission would not be able to withstand a constitutional challenge, because of the difficulties with proof, the likely vagueness of the definition of exposure, and the risk of selective prosecution. The main reason for not criminalizing HIV transmission was however the concern about detrimental impacts on public health and the conviction that it would not serve any preventive purposes. Criminalization would have created more problems than solving them. Therefore, Mauritius decided to put its resources where they are most likely to have a positive impact on reducing the spread of HIV: increased funding for HIV testing and counseling and for evidence-informed prevention measures.*

*— Rama Valayden, Attorney General and Minister of Justice and Human Rights of the Republic of Mauritius, 2007*

## 9. **Rather than introducing laws criminalizing HIV exposure and transmission, legislators must reform laws that stand in the way of HIV prevention and treatment.**

The law can be a powerful tool in addressing HIV—if it is used to empower those vulnerable to HIV infection and guarantee their access to services, not to punish them, create greater vulnerability, or drive them further from HIV services. In most countries, removal of legal barriers to HIV prevention, treatment, care, and support are essential positive steps for legislators to take in addressing the epidemic. Critical laws are those that prohibit discrimination against people living with HIV; provide redress against any form of violence, including gender-based violence; and guarantee equal access to HIV services.

Lawmakers can also work to reform laws that stand in the way of HIV prevention. For example, many of those at highest risk of HIV—especially people who use drugs, sex workers, and men who have sex with men—are driven from HIV services by the fear of arrest under anti-drug, anti-prostitution, and anti-sodomy laws. Punitive approaches to drug use, sex work, and homosexuality fuel stigma and hatred against these socially marginalized groups, pushing them further into hiding and away from services to prevent, treat, and mitigate the impact of HIV and AIDS.



Instead of passing more criminal laws, legislators should:

- ▶ pass laws protecting women's equal rights and their right to be free from violence, and provide resources for the effective implementation of such laws;
- ▶ remove legal barriers to condoms and comprehensive, age-appropriate sex education and sexual and reproductive health services, including post exposure prophylaxis, needle and syringe programs, effective drug dependence treatment (including opioid substitution therapy with methadone and buprenorphine) and other evidence-informed strategies designed to reduce HIV risk;
- ▶ enact and enforce comprehensive anti-discrimination laws that protect people actually or presumed to be living with HIV and AIDS or at risk of infection, and provide the resources needed to effectively implement such laws;
- ▶ review and, if necessary, repeal laws that criminalize or further marginalize vulnerable groups such as sex workers, people who use drugs, and men who have sex with men, which create barriers to effective HIV prevention and treatment services;
- ▶ reform police practices that target vulnerable groups for harassment, abuse, and violence;
- ▶ ensure treatment for all people living with HIV; and,
- ▶ involve community representatives and scientific experts in the lawmaking process to ensure that HIV legislation is based on the best scientific and medical evidence rather than misguided fears and stigma.

# 10. Human rights responses to HIV are most effective.

Now, more than ever, greater attention to human rights is needed in national responses to HIV. Broad criminalization of HIV exposure and transmission threatens rights responses to HIV that empower people to avoid infection or live successfully with HIV.

Human rights emphasize the dignity—including the sexual freedom—of all people, and provide the conditions in which they can make healthy, responsible and safe choices about their health and their lives.

These conditions include the right to full and accurate information, to the tools and technologies for comprehensive HIV prevention, and to the right to make responsible choices about intimate behaviors such as consensual sex and reproduction.

They include freedom from violence, from assaults on bodily integrity, from marital or any other form of rape and from all forms of sexual coercion.

They include freedom from arbitrary arrest, discrimination, detention, and violence under laws criminalizing sex work, drug use, and sodomy.

They include equal access to property and inheritance, so that women and children are not driven into poverty and higher HIV vulnerability by the death of their spouse or dissolution of marriage.

Only when conditions such as these are met—when all men, women, and young people are able to make informed decisions and have access to the commodities and services that empower them to act on these decisions—can the spread of HIV be effectively reduced. In contrast, except in cases where individuals specifically intend to do harm, criminalizing HIV exposure or transmission cannot be justified because it does not empower people to avoid HIV infection and may in fact make it more difficult to do so, thus endangering both public health and human rights.

*Instead of applying criminal law to HIV transmission, governments should expand programmes which have been proven to reduce HIV transmission while protecting the human rights both of people living with HIV and those who are HIV negative.*

— UNAIDS Policy Brief: Criminalization of HIV Transmission, 2008

## For more information:

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([www.aidsfonds.nl](http://www.aidsfonds.nl))

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**Botswana Network on Ethics, Law and HIV/AIDS, Botswana**  
([www.bonela.org](http://www.bonela.org))

**Canadian HIV/AIDS Legal Network, Canada**  
([www.aidslaw.ca](http://www.aidslaw.ca))

**Center for Reproductive Rights, United States**  
([www.reproductiverights.org](http://www.reproductiverights.org))

**Coalition des Organismes Communautaires Québécois de Lutte contre le Sida, Canada**  
([www.cocqsida.com](http://www.cocqsida.com))

**Community HIV/AIDS Mobilization Project (CHAMP),  
United States**  
([www.champnetwork.org](http://www.champnetwork.org))

**Deutsche AIDS Hilfe e.V. (German AIDS Federation),  
Germany**  
([www.aidshilfe.de](http://www.aidshilfe.de))

**Estonian Network of PLWH, Estonia**  
([www.ehpv.ee](http://www.ehpv.ee))

**European AIDS Treatment Group**  
([www.eatg.org](http://www.eatg.org))

**Forum for Youth Organizations in Zambia, Zambia**  
(<http://zambia.jhuccp.org/about/response.php>)

**Global Coalition of Women against AIDS in Uganda, Uganda**

**Global Network of People Living with HIV**  
([www.gnpplus.net](http://www.gnpplus.net))

**HIV Europe**  
([www.hiveurope.org](http://www.hiveurope.org))

**Human Rights Watch**  
([www.hrw.org](http://www.hrw.org))

**Hungarian Civil Liberties Union, Hungary**  
([www.tasz.hu](http://www.tasz.hu))

**International AIDS Society**  
([www.iasociety.org](http://www.iasociety.org))

**International Community of Women Living with HIV/AIDS**  
([www.icw.org](http://www.icw.org))

**International Council of AIDS Service Organizations**  
([www.icaso.org](http://www.icaso.org))

**International HIV/AIDS Alliance**  
([www.aidsalliance.org](http://www.aidsalliance.org))

**International Planned Parenthood Federation**  
([www.ippf.net](http://www.ippf.net))



**International Women's Health Coalition**  
([www.iwhc.org](http://www.iwhc.org))

**Lega Italiana per la Lotta contro l'AIDS**  
(**Italian League for Fighting AIDS**), Italy  
([www.lila.it](http://www.lila.it))

**National AIDS Trust, United Kingdom**  
([www.nat.org.uk](http://www.nat.org.uk))

**Open Society Institute**  
([www.soros.org](http://www.soros.org))

**Polish National Network of PLWHA "SIEC PLUS," Poland**  
([netplus@netplus.org.pl](mailto:netplus@netplus.org.pl))

**Q-Club, Serbia**  
([www.q-club.info](http://www.q-club.info))

**Red Mexicana de Personas que Viven con VIH SIDA (Mexican Network of Persons Living with HIV/AIDS), Mexico**  
([www.redmex.org](http://www.redmex.org))

**Terrence Higgins Trust, UK**  
([www.tht.org.uk](http://www.tht.org.uk))

**The ATHENA Network**  
([www.athenanetwork.org](http://www.athenanetwork.org))

**Treatment Action Campaign, South Africa**

**Treatment Monitor, Health Systems Trust, South Africa**  
([www.hst.org.za](http://www.hst.org.za))

**UN Plus**  
([www.unplus.org](http://www.unplus.org))

**Women Won't Wait. End HIV and Violence Against Women Now. Campaign**  
([www.womenwontwait.org](http://www.womenwontwait.org))

**World AIDS Campaign**  
([www.worldaidscampaign.org](http://www.worldaidscampaign.org))

*For an up-to-date list of all organizations that have endorsed the declaration, see [www.soros.org/health/10reasons](http://www.soros.org/health/10reasons).*

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For more information, contact:

Law and Health Initiative

Open Society Institute Public Health Program

400 West 59th Street

New York, NY 10019

United States

[lawandhealth@sorosny.org](mailto:lawandhealth@sorosny.org)

Open Society Initiative for East Africa

P.O. Box 2193-00202

Nairobi, Kenya

[info@osiea.org](mailto:info@osiea.org)

Open Society Initiative for Southern Africa

PO Box 678

Wits 2050

Johannesburg, South Africa

[info@osisa.org](mailto:info@osisa.org)

AIDS & Rights Alliance for Southern Africa

53 Mont Blanc Street

Windhoek, Namibia

Ph +264 61 300381; Fax +264 61 227675

**ARASA**  
AIDS & Rights  
**Alliance**  
for Southern Africa



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