



**Criminalization of  
HIV and  
Sex Work**  
in Western and Central Africa



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# Introduction



The criminalization of HIV is the application of criminal law against people living with HIV in cases of non-disclosure or transmission of or alleged exposure to HIV. More generally, the criminalization of HIV can be described as “the unjust application of criminal law against people living with HIV on the sole basis of their HIV status.”<sup>1</sup>

The criminalization of HIV is a worldwide phenomenon. In 2024, at least 79 countries have legislation specifically criminalizing HIV.<sup>2</sup> Other countries resort to general criminal provisions to penalize alleged non-disclosure of, exposure to, or transmission of HIV, most often — but not exclusively — in the context of sexual relations.<sup>3</sup> Africa is noteworthy in that a very large number of countries (30 countries in 2022) have laws containing provisions specifically criminalizing people in connection with their HIV status.<sup>4</sup> In Western and Central Africa, almost all countries have laws specifically criminalizing HIV.<sup>5</sup> Many of these laws were based on the N’Djamena model law that was developed during a three-day workshop held in 2004 by Action for West Africa Region-HIV/AIDS (AWARE-HIV/AIDS) and funded by the United States Agency for International Development (USAID). This legislative model, presented as a tool for the rapid dissemination of “best practices,” has led to a veritable “legislative contagion” of HIV criminalization across the continent.<sup>6</sup> Since then, several countries have amended their legislation or adopted less punitive measures. In particular, the Democratic Republic of the Congo (DRC) in 2018 repealed provisions in its HIV law criminalizing the deliberate transmission of HIV. Although other criminal provisions, found in other laws of the DRC, continue to criminalize HIV, this remains emblematic. Zimbabwe is the second African country to repeal legislation criminalizing HIV.<sup>7</sup>

There is no evidence demonstrating that the criminalization of the non-disclosure of, exposure to, or transmission of HIV reduces new infections, whether in Western and Central Africa or elsewhere in the world. On the contrary, there is evidence to suggest that criminalizing HIV is detrimental to public health and human rights.<sup>8</sup>

The criminalization of HIV is sometimes seen as a necessary tool to protect women. Yet data collected between 2006 and 2023 show that 31% of prosecutions worldwide were brought against women living with HIV.<sup>9</sup> Of all the women prosecuted for mere “exposure” (actual or perceived) to HIV, 18% are sex workers prosecuted for “exposure” to HIV or “aggravated prostitution” (due to their HIV-positive status).<sup>10</sup>

The criminalization of HIV comes on top of the many punitive laws that control, punish, and marginalize populations disproportionately affected by HIV (“key populations”), such as female sex workers (FSWs), transgender people, people who use drugs, and LGBTQ+ people. Although there is little information on prosecutions based on HIV status in Western and Central Africa, several cases against members of key populations have been recorded, particularly sex workers. As in other parts of the world, sex workers in Western and Central Africa are largely criminalized.<sup>11</sup> This criminalization exposes them to violence, police harassment, and arbitrary arrest, and puts them at greater risk of contracting HIV. Sex workers are disproportionately affected by HIV, with an average prevalence of 7.5% in Western and Central Africa.<sup>12</sup>

The UNAIDS *Global AIDS Strategy 2021- 2026* reminds us that stigma, discrimination, and other human rights violations in the context of HIV reflect and fuel the inequalities that undermine HIV responses.<sup>13</sup> States are called upon to “create an enabling legal environment by removing punitive and discriminatory laws and policies, including laws that criminalize sex work, personal drug use or possession and consensual same-sex relations, or that criminalize HIV exposure, non-disclosure or transmission (and to) introduce and enforce protective and enabling legislation and policies, and end the overuse of criminal and general laws to target people living with HIV and key populations.”<sup>14</sup>

This paper aims to explore this intersection of HIV criminalization and sex work to better understand how HIV criminalization affects sex workers, but also how the different forms of HIV criminalization and sex work reinforce each other and exacerbate violence and discrimination against sex workers living with HIV in the region. This project is a continuation of the work initiated by And Soppeku, an organization of sex workers in Senegal, which published an advocacy document on the issue in 2023, with the support of HIV Justice Worldwide.<sup>15</sup>

“ It should be noted that the criminalization of HIV exposure and sexual transmission particularly harms female sex workers by exacerbating the violation of their human rights, annihilating efforts at prevention, treatment and access to care services and raising the limits of judicial practice in HIV matters. ”

(AND SOPPEKU, 2023)<sup>16</sup>



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# Consultation to gather the experiences of local sex workers

To better understand the links between HIV criminalization and sex work at the regional level, the HIV Legal Network and HODSAS, with the support of the HIV Justice Worldwide coalition, conducted a community consultation with sex workers in Western and Central Africa between July and September 2024. The consultation did not claim to be exhaustive, but it did identify some clear trends and recommendations for strengthening advocacy against the criminalization of HIV and for promoting the rights of sex workers in the region. This document includes the results of the consultation, supplemented and highlighted by the work carried out by And Soppeku in Senegal and the information available to HIV Justice Worldwide on the criminalization of HIV in the region and worldwide.

## Method

An introductory webinar was held in July 2024 to promote the participation of sex worker organizations in the region. A link to an online survey was distributed across the HODSAS and HIV Legal Network networks, particularly targeting the organizations that took part in the introductory webinar. Interviews with individuals were also conducted in Ivory Coast and the Democratic Republic of the Congo with the support of HODSAS. These two countries were chosen to have individual interviews both in Western and Central Africa, but also because the HODSAS networks made it possible to organize interviews in these two countries. The results of the consultation were then shared at a feedback webinar in December 2024 attended by over 25 people, mainly members of sex worker organizations in the region. This feedback session provided an opportunity to validate and supplement the information gathered during the consultation.

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# Participants in the community consultation: demographics

Twenty-two (22) sex workers from Togo, Burkina Faso, Congo Brazzaville, Ivory Coast, Senegal, Mauritania, Mali, and the Democratic Republic of the Congo took part in the community consultation (online survey and individual interviews). The majority are from Ivory Coast or the DRC, where interviews were conducted with 12 sex workers (seven in Ivory Coast and five in the DRC). Two thirds of the sex workers that participated in the consultation are living with HIV (17 in total). All 12 sex workers interviewed in Ivory Coast and the DRC are living with HIV. Among the sex workers that participated in the consultation, two are men who have sex with men, four are transgender, one is a person who uses drugs, and at least three are young people between the ages of 15 and 24. The majority of participants in the online survey are members of a sex workers' organization.<sup>17</sup> In each of the eight (8) countries represented by people taking part in the survey, there are legislative provisions specifically criminalizing HIV.<sup>18</sup>

### Intersectionality

This concept describes how different forms of discrimination are not isolated phenomena, but feed off and reinforce each other when a person is targeted.<sup>19</sup>

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## Knowledge of the provisions intended to protect people living with HIV and/or sex workers from discrimination

Nearly half of the participants indicated that legal provisions did not exist, or that the participants were unaware of any provisions intended to protect people living with HIV and/or sex workers from discrimination in their country.<sup>20</sup> Yet these countries have HIV legislation that includes articles guaranteeing the right to non-discrimination for people living with HIV. This means that either nearly half of the sex workers are unaware of the laws in their country (including people living with HIV), or the lack of provisions protecting sex workers influenced their responses. It is worth noting that the sex workers from the DRC who were consulted stand out for their knowledge of these protective provisions, which may be due to the activities carried out by organizations on the ground – including HODSAS.

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## Knowledge of provisions criminalizing HIV and of any obligation to disclose one's HIV status

Most of the sex workers who participated in the consultation are well aware of the laws criminalizing HIV in their countries.<sup>21</sup> On the other hand, most sex workers,<sup>22</sup> and in particular sex workers living with HIV,<sup>23</sup> are unaware of what the law says in their country about disclosing their HIV status. Several sex workers living with HIV indicated that there was no legal obligation to disclose their HIV status to a sexual partner, even though such an obligation exists in their country (e.g. Mauritania). This is particularly striking in the DRC, where most sex workers say they are unaware of any such obligation. This may be due to the fact that, since 2018, non-disclosure of HIV is no longer criminalized in the DRC.<sup>24</sup> In addition, And Sopheku in Senegal has observed that it is “common practice among healthcare providers (in Senegal) to threaten sex workers living with HIV with prosecution to pressure them into disclosing their status, *even though no legal provision requires this in Senegal.*” A mediator for People Living with HIV (PLHIV) is quoted as saying that “*we use the law to encourage sex workers living with HIV to respect protective measures.*”<sup>25</sup>

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# The criminalization of HIV comes against a backdrop of already heightened stigmatization and abuse of sex workers living with HIV

Online, with one exception, all of the participants felt that sex workers living with HIV are at greater risk of experiencing abuse and sexual violence. During in-person interviews, almost all sex workers living with HIV said they had been abused.

“ In our context, a sex worker is already a victim of discrimination when they are seropositive, and their vulnerability is accentuated not only in their family but also in their community. ” (DRC)

Breach of confidentiality in the community and rejection by their family, clients, and the community, including among sex workers, are realities widely shared by those consulted, who also report violence, threats, and loss of clients.



## Rejection by family members

“ They discovered (my status) (when) I became seriously ill, and I was thrown out of the family compound. ” (IVORY COAST)

“ My cousin told my aunt, who in turn told my grandmother, and my mother. I was rejected, I ate once a day and had to eat away from the others. ” (IVORY COAST)

## Threats, accusations, and violence from partners or their relatives

“ Here where we live, information spreads very quickly, to the point that whenever a member of the community learns something about you, they pass on messages and the person is threatened either by the client's wife, a family member, or paid bandits. ” (DRC)

“ The violence I experienced came from my partner, with whom I shared my status. He went to my workplace at the hotel (...) to tell my FSW co-workers. ” (IVORY COAST)

“ A soldier had beaten up a sex worker, claiming that he had been contaminated by her in the mining town of Misisi, without proof. ” (DRC)

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## Family, work, and community: environments at risk

Whether online or during in-person interviews, sex workers highlighted the risks of stigma, discrimination, violence, and breaches of confidentiality within their families, in the workplace, and within the sex worker community itself.

“Once confidentiality about HIV status has been broken, they are forced to leave where they were and go into hiding.” (BURKINA FASO)

“I heard of a sex worker living with HIV whose status was revealed by her friend who accompanied her to the hospital. The sex worker was stigmatized and discriminated against everywhere; she no longer had the courage to go on. She left to seek refuge in another region without taking her treatment, and in the end she died.” (SENEGAL)

In the DRC, in particular, sex workers living with HIV highlighted the risks of being reported by peers and pushed away by co-workers.

“I have a neighbor who is a FSW who experienced this discrimination by disclosing her HIV status; she was no longer able to get clients, and she was even rejected by her community.” (DRC)

“Often members of the sex worker community reveal the HIV status of one of their own to reduce their chances of getting clients, I’ve heard of this.” (DRC)

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## The role of sex worker organizations and solidarity

While the community can pose a risk of discrimination and stigmatization, the sex workers consulted overwhelmingly emphasized the importance of the support of their co-workers and organizations in protecting them and helping them cope with abuse and violence: “We support each other as a group” (Ivory Coast), including through paralegal programs.





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## The difficulty in getting police protection

While many sex workers in Ivory Coast, including those living with HIV, stated they could call upon the police in cases of abuse, most in other countries admitted they would not do so for fear of being arrested (since sex work is illegal) (Mauritania) or because no one would listen to them (Togo). In the DRC, sex workers stressed that there was no point in running to the police, since *“the main perpetrators of rape and sexual violence against sex workers are men in uniform.”* (DRC) Going to the police would expose them to the risk of sexual violence.

“Most men who assault and rape us are security agents, so filing a complaint would result in further sexual violence.” (DRC)

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## Limited availability of legal aid

While many sex workers indicated that legal assistance exists in their country, they expressed reservations, stating that *“legal aid exists, but only as long as you don’t introduce yourself as a sex worker”* (DRC), or that *“there are processes for filing complaints, but they don’t do so because they are afraid of the police.”* (Burkina Faso)

Others spoke of the lack of a legal aid program in their area. *“When a sex worker is a victim of violence or discrimination, we don’t get legal aid. It is the members of the association who contribute to support and pay for the lawyer. We have heard of sex workers who have received legal aid, but we (here) are not so lucky.”* (Senegal)

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## The criminalization of HIV takes place in a context where access to healthcare and viral load testing can be difficult

A number of sex workers described barriers to accessing treatment, including lack of time and the impracticality of receiving treatment at the hospital during the day while they work at night. Several sex workers reported barriers related to stigma, precarious living conditions, and stock outages of medications.

“There are many of us who live in precarious conditions – we often aren’t able to eat two meals a day. It’s difficult to find clients because many sites have been broken up (brothels, bars, hotels) by the government. That’s why we don’t have the money to go to the hospital, let alone pay for the medications we need for our treatment. Apart from antiretroviral (ARV) treatment, other illnesses and tests are not free, you know. We are also put off by the long wait. The attention we attract puts us in a complicated situation, even to see a doctor in public health centres, which leads many of us to buy medicine on the street for relief.” (IVORY COAST)

“Given these difficulties, it’s hard for us to properly follow our antiretroviral (ARV) treatments. That’s why we want injectable ARVs, once a week or even once a month, because we can’t eat properly. Oral ARVs are supposed to be taken daily, and due to the lack of food, we become weak and often become sick.” (IVORY COAST)

“Once a sex worker is HIV-positive, she is discriminated against in healthcare facilities or by co-workers if there is a breach of confidentiality regarding her HIV status. She leaves the area and no longer undergoes screening or takes her treatment.” (SENEGAL)

And Soppeku had already noted in its argument against the criminalization of HIV that “sex workers are already exposed to daily violations of their dignity and find themselves increasingly persecuted if they are living with HIV. As a result, they live in perpetual fear, and suffer from a lack of self-esteem. This is what happened to a co-worker, who was overwhelmed by suicidal thoughts that caused her to stop receiving treatment and lose her life. This poses a threat to HIV prevention and treatment efforts.”<sup>26</sup>

Access to viral load testing seems even more problematic. The vast majority of sex workers who took part to the consultation said they had no access to viral load tests because they are not available in their area, or cost too much at community facilities.

“First of all, the viral load testing machine is not everywhere, so many of us don’t know our viral loads.” (DRC)

“You have to go to the state facilities for the viral load test. They want to go to specialized facilities for care.” (BURKINA FASO)

Moreover, many sex workers said they didn’t know what viral load testing was: “Viral load testing, what’s that? They don’t explain it to us.” (Ivory Coast)

It should be noted that when the results of the study were presented in December, it was widely emphasized that access to treatment and viral load testing varies from country to country and from location to location. Participants in the feedback session readily identified the mobility of sex workers as a key factor hindering access to treatment and viral load testing.

Persistent barriers to access to treatment and viral load testing have an impact on sex workers’ vulnerability to HIV-related prosecution. Indeed, a person on effective treatment does not transmit HIV.<sup>27</sup> Without being able to demonstrate that their viral load is undetectable, sex workers risk being falsely accused of exposing a partner to a significant risk of transmission.

**The criminalization of HIV is often the result of fear, prejudice, and an exaggerated view of the risks of transmission.**

Concerned that criminal law is sometimes applied in ways that are incompatible with contemporary scientific and medical evidence, 20 of the world’s leading scientific experts developed an *Expert Consensus Statement on the Science of HIV in the Context of Criminal Law* in 2018 to address issues related to the use of scientific data on HIV by the criminal justice system. This statement had an impact in many countries, where it has been used in the courts to support advocacy against the criminalization of HIV.<sup>28</sup>

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# The criminalization of HIV occurs in a context where it can be difficult to disclose one's HIV status or to impose the use of condoms

Sex workers living with HIV in Togo, Congo (Brazzaville), Mauritania, and the DRC all emphasized the difficulty they have insisting that clients use condoms, particularly due to issues related to precarious living conditions, as this could drive clients away or lower the price of the sexual encounter.

“ We need the clients' money; often, sex workers are unable to insist that their clients use condoms for fear of missing the opportunity. But health comes first, and how many are able to insist. ” (TOGO)

“ The vulnerability of sex workers does not enable them to insist on the use of condoms by clients. ” (DRC)

The reality of sex workers living with HIV also makes it difficult to disclose their HIV status:

“ It's not easy for me to disclose my HIV-positive status for fear of rejection. ” (IVORY COAST)

These difficulties are a cause for concern, and contribute to increasing the risks associated with the criminalization of HIV among sex workers, who could be prosecuted for having unprotected sex without disclosing their HIV status, depending on the laws in effect in their country. Lastly, sex workers are themselves victims of rape and sexual violence. This violence exposes them to HIV. When sex workers are living with HIV, this violence is compounded by the fear of being unjustly accused, including at the judicial level, of having exposed an attacker to HIV. This was the case for a sex worker in the DRC who was violently beaten by a high-ranking military officer who accused her of transmitting HIV to him, even though he had forced her to have unprotected sexual intercourse.<sup>29</sup>



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# Vulnerability to HIV criminalization reinforced by the surveillance and the criminalization of sex work

Throughout the region, sex workers are criminalized either because sex work is illegal, or because the law punishes solicitation and/or bans bawdy houses. In some countries, notably the DRC, the criminalization of HIV is commonly associated with the criminalization of sex work and the violence suffered by sex workers at the hands of the authorities and law enforcement agencies through raids on bawdy houses and forced HIV testing. In the DRC, all of the sex workers we consulted with (online and in person) said they had heard of forced testing, particularly in the mining sector and in certain bawdy houses. Forced testing is prohibited by law in the DRC, however, and is contrary to human rights.<sup>30</sup> The law specifies that a foreign national cannot be expelled from the country “either on the basis of a compulsory HIV test or on the basis of the proven or presumed HIV status of the person in question, their spouse, or relatives.”<sup>31</sup> The mass raids and forced testings in Goma in 2024,<sup>32</sup> which led to the expulsion of Rwandan sex workers, are reminiscent of the prosecutions of sex workers in Greece who were rounded up and screened en masse in 2012, for which Greece was condemned by the European Court of Human Rights in 2024.<sup>33</sup>

In Senegal, sex work is highly regulated and, in most cases, prohibited. Sex workers can be prosecuted for soliciting or under other illegal provisions related to the practice of sex work, and are subject to police raids, extortion, or harassment.<sup>34</sup> In addition, in order to legally practice their trade, sex workers must register with the health authorities, keep an up-to-date health record, and undergo monthly medical check-ups. Health records are registered with the health authorities, and a duplicate is sent to the police. Failure to comply with this registration results in sex workers facing one to three months in prison and a fine. This is one of the causes of women’s incarceration in Senegal.<sup>35</sup> The law also stipulates that sex workers can be penalized for failing to follow prescribed treatment for a sexually transmitted infection.<sup>36</sup> It is not clear whether HIV testing is performed as part of monthly medical check-ups.<sup>37</sup> Practices vary across the country, and the law on health records is interpreted differently by different police forces and health authorities. The monitoring of sex workers through the health record system may increase their vulnerability to HIV criminalization, since they are known to the authorities. At the same time, their healthcare provides them with a form of protection (if they can demonstrate that they are on effective treatment and have an undetectable viral load), but only if judges agree to take into account the scientific data demonstrating the absence of risk of transmission in the event of effective HIV treatment — which is not necessarily the case (see below).



# Prosecution of sex workers based on their HIV status in the region

Although little information is available, it is clear from the testimonies of the participants and the data collected by HIV Justice Worldwide that the criminalization of HIV is a reality for sex workers in Western and Central Africa.

## Cameroon

A 2017 report mentions at least one case in which a sex worker was accused of transmitting HIV to a client. The judge then ordered an HIV test, which proved negative. The sex worker was released.<sup>38</sup>

## Congo (Brazzaville)

“ There were lawsuits, a man accused a sex worker of transmitting HIV to him but this was never confirmed. Despite the sex worker’s insistence on using a condom and the man’s refusal, everyone focused solely on the woman, who was not even listened to. ”

(CONGO)

## DRC

“ In early 2024, a group of Burundian and Rwandan sex workers were arrested in Goma and forcibly screened under military pressure, as the province was still under military siege. Some 50 sex workers were screened, more than 20 of whom tested positive. They were detained for over a week and were supposed to appear in court, but since no one took care of that, they were eventually expelled at the border and prohibited from returning to the Congo. If they are caught, they are executed directly. ” (DRC)

This testimony is corroborated by an online article indicating that 79 sex workers were apprehended during raids by the authorities on bawdy houses and then exposed to the press. The senior police commissioner boasted that he had “carried out forced screenings” and that “it turns out that 90 percent of these prostitutes are infected with HIV-AIDS,” declaring that this constituted “a great danger for the population of the city of Goma.”<sup>39</sup>

Members of civil society in the eastern DRC have also reported that the criminal provisions applicable to HIV in the DRC are sometimes used to criminalize sex workers and justify police raids and arbitrary arrests without it even being established that they are living with HIV.<sup>40</sup>

## Niger

In Niger, in 2022, a sex worker living with HIV was arrested by the judicial police of Niamey. She was accused, following a report, of having had sexual relations with her clients without using a condom and without informing them of her HIV status. The prosecutor’s recognition of the impact of treatment on the risk of transmission led to an end to the prosecution, and the sex worker was released.<sup>41</sup> As in other countries in the region, cases of criminalization of HIV are rare in Niger. The two cases reported in recent years were both against women living with HIV, one of them a sex worker.

## Nigeria

In 2017, the media in Nigeria relayed that a female sex worker was actively sought by the police for allegedly transmitting HIV to numerous clients.<sup>42</sup>

## Senegal

“ One of our members is sex worker living with HIV. She worked in a bawdy house. One day, sex workers told her boyfriend that she was living with HIV. The boyfriend filed a complaint with the court, since in Senegal voluntary transmission is criminalized. The sex worker was arrested and, when checked, her viral load was undetectable and the boyfriend was HIV-negative. That’s when the sex worker also filed a complaint against her boyfriend, who has so far fled. This problem has had negative consequences for the sex worker, who can no longer find clients because of her HIV status. ” (SENEGAL)<sup>43</sup>

A 2017 ruling by the Ziguinchor court in Senegal mentions the conviction of a sex worker in connection with HIV.<sup>44</sup> In his ruling, the judge considers that the mere fact that the accused is a sex worker undermines her credibility. He also refused to acquit the sex worker, even though her viral load was undetectable, on the grounds that “transmission of HIV remains possible.”<sup>45</sup> However, it is now clearly established that a person on effective treatment cannot transmit the virus.

Lastly, and although **Tunisia** is not in the region, it seems important to point out that a transgender, underage sex worker was prosecuted in autumn 2024 on the basis of her sexual orientation, but also for allegedly exposing clients to HIV. This person has been denounced on social networks and was the target of harassment and defamation. This case, which concerns a transgender sex worker, is the first case, to our knowledge at HJWW, of criminalization of HIV in Tunisia.<sup>46</sup>

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# Highlights of prosecutions related to HIV and sex work in the region

Certain trends emerge from the documented cases of HIV criminalization against sex workers and the testimonies gathered in the community consultation.

- Unequal access to justice due to the stigmatization of sex workers. They are not seen as credible and/or do not feel listened to by those involved in the justice system.
- Some HIV-related prosecutions are the result of denunciations.
- Sex workers are at risk of being unfairly held responsible for having had unprotected sex with a client when they may not be able to enforce condom use, and are at increased risk of rape or sexual assault. *“Often sex work is linked to HIV by clients, even if you tell him to use a condom but then he still goes in without a condom, fortunately I’m on treatment with an undetectable viral load.”* (Togo) Conversely, given the reluctance of sex workers to seek police protection, it seems unlikely that sex workers would use HIV criminalization laws to file complaints against a client and/or a sexual aggressor who may have transmitted HIV to them.
- Scientific data on viral load is still poorly understood and not necessarily taken into account by judges. More generally, it emerged from the community consultation that it is a challenge for many sex workers to have access to viral load testing and thus be able to demonstrate their undetectability.
- The prosecution of sex workers on the basis of their HIV status takes place against a backdrop of violence, criminalization, and lawlessness towards sex workers, who are subjected to raids and forced testing, as observed notably in the DRC.
- Establishing culpable intent, particularly in countries where the law penalizes so-called “deliberate” transmission, comes up against the reality of sex workers who may not have a good understanding of HIV and its modes of transmission and/or do not have the means to impose condoms or safely disclose their status.
- Lastly, prosecutions have an impact beyond conviction, as identity and HIV status are sometimes publicly revealed. And Soppeku emphasized in their argument: *“This is the case of a married woman, mother of three (3) children, who was brought before the Ziguinchor High Court for sexual transmission of HIV, following an anonymous report. During the trial, her identity was revealed and she witnessed the exploitation of her medical records and the interrogation of her attending physician.”*<sup>47</sup>

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# International recommendations on the criminalization of HIV

The criminalization of HIV has been denounced by numerous human rights and HIV experts, including regional and international bodies responsible for ensuring the proper application of treaties<sup>48</sup> such as the African Commission on Human and Peoples' Rights.<sup>49</sup> If criminal law were to be applied, then it would have to be strictly limited to exceptional cases of *intentional HIV transmission*, requiring intent to transmit the virus and actual transmission.<sup>50</sup>





# Conclusions

Sex workers living with HIV experience abuse and violence in connection with their HIV status and their status as sex workers.

Criminalizing HIV does not protect sex workers from HIV. On the contrary, it exacerbates violence, discrimination, and the risk of arbitrary arrest against sex workers living with HIV, who continue to have limited access to HIV treatment and justice.

# Recommendations

The majority of the following recommendations were put forward by the sex workers who took part in the community consultation. The other recommendations are based on the results of the consultation.

## Information on the law and access to legal assistance

- Ensure that sex workers in Western and Central Africa have access to information on the laws applicable to sex work and HIV in their country, and on their rights.
- Empower peer educators, mediators, and community leaders on the rights of sex workers and people living with HIV.
- Expand paralegal and legal assistance programs for sex workers in the region.

## Strengthening care and access to treatment for sex workers living with HIV

- States must guarantee sex workers' right to health and voluntary access to HIV testing, care, and treatment without discrimination.
- Guarantee care adapted to the needs and realities of sex workers, including through community-based care.
- Facilitate access to injectable antiretroviral treatments to make it easier for patients to take their medication.
- Guarantee access to viral load tests.

## Strengthening the autonomy and leadership of sex workers

- Reinforce the financial autonomy of sex workers in Western and Central Africa, including through skills training.
- Boost sex workers' self-esteem and reduce self-stigmatization.
- Strengthen sex workers' ability to negotiate condom use and disclose their HIV status if necessary.
- Reduce stigma within sex worker groups and protect confidentiality to strengthen and support peer solidarity regardless of HIV status.
- Support and strengthen sex workers' organizations in the region, including those for transgender sex workers and men who have sex with men.



## **Raising awareness among law enforcement officers and other key stakeholders about human rights and HIV**

- Raise awareness of sex workers' rights and HIV among the justice system, health professionals, and health authorities.
- Take all necessary measures to combat violence, including violence by law enforcement agencies, against sex workers.
- Fight against illegal forced testing of sex workers and for the protection of confidentiality of HIV status, including in medical settings but also within the community.
- Reinforce the fight against discrimination and family rejection.
- Inform the public about HIV and the impact of treatment on the risk of transmission (Untreatable = Untransmittable).

## **Legislative reforms**

- Decriminalize sex work and adopt legislation to protect the rights of sex workers.
- Repeal laws specifically criminalizing HIV. Alternatively, reform legislation to restrict the criminalization of HIV to exceptional cases of deliberate transmission of the virus, i.e. when there is a deliberate intention to transmit HIV and transmission has been proven.
- Establish guidelines for prosecutors to regulate HIV-related prosecutions.<sup>51</sup>
- Repeal legislation criminalizing consensual sex between people of the same sex, and prohibit discrimination on the basis of sexual orientation.

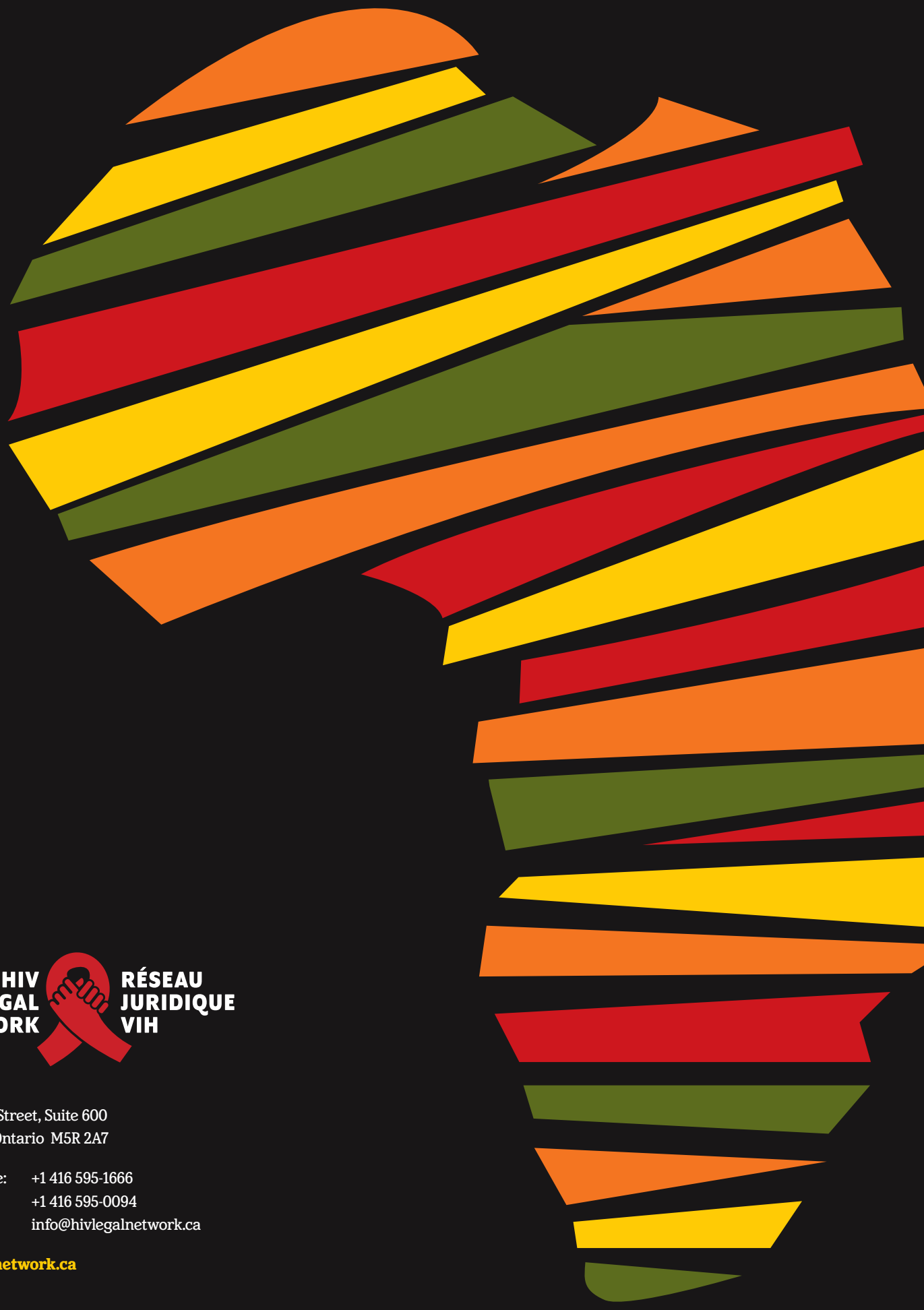
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- <sup>3</sup> The vast majority of HIV-related lawsuits are linked to the transmission of, or exposure (perceived or real) to, the virus through sexual intercourse. However, individuals have been prosecuted for spitting on or biting another person. Several cases of vertical transmission or exposure through breastfeeding have also been recorded. See A. Symington, E. J. Bernard, et al., *Advancing HIV Justice 4: Understanding convergences, seizing opportunities*. HIV Justice Network, Amsterdam, July 2022.
- <sup>4</sup> *Ibid.*
- <sup>5</sup> *Ibid.*
- <sup>6</sup> R. Pearshouse, “Contagion législative: bâtir la résistance”, *Revue VIH/sida, droit et politiques* 13(2/3) (2008) (Legislative contagion: building resistance, *Journal of HIV/AIDS, law and policies* 13(2/3) (2008)); PM Eba “HIV-specific legislation in sub-Saharan Africa: A comprehensive human rights analysis”, *African Human Rights Law Journal*, 15 (2015), pp. 224–262.
- <sup>7</sup> A. Symington, E. J. Bernard, et al., *supra* note 3.
- <sup>8</sup> “HIV criminalization is bad policy based on bad science,” Editorial, *The Lancet*, 5:9,, (2018), DOI: [https://doi.org/10.1016/S2352-3018\(18\)30219-4](https://doi.org/10.1016/S2352-3018(18)30219-4).
- <sup>9</sup> S. Beaumont, E. J. Bernard, A. Symington, The relevance of gender to potential or perceived HIV “exposure” charges in HIV criminalization cases, Poster presented at the 25th International AIDS Conference (AIDS 2024), Munich, THPEF635.
- <sup>10</sup> *Ibid.*
- <sup>11</sup> UNAIDS, HIV and sex work, Human Rights Fact Sheets, 2021.
- <sup>12</sup> UNAIDS, Regional Profile. Western and Central Africa, 2024.
- <sup>13</sup> UNAIDS, Ending inequality. Putting an end to AIDS. Global AIDS strategy, 2021-2026 (2021).
- <sup>14</sup> UNAIDS, Ending Inequalities, *ibid.*, p. 67.
- <sup>15</sup> Dially Dia for And Soppeku, *Argumentaire de plaidoyer (un état des lieux pour le recueil d’informations sur les cas de poursuites, les menaces de poursuites ou les conséquences de la pénalisation du VIH chez les femmes vulnérables PVVIH au Sénégal)*, 2023.
- <sup>16</sup> *Ibid.*
- <sup>17</sup> In the DRC, the individuals interviewed were either affiliated to a sex workers’ organization or connected to a solidarity committee. We have no information regarding participants who were interviewed in Ivory Coast.
- <sup>18</sup> See HIV Justice Network, Global HIV criminalisation database, available at [www.hivjustice.net/global-hiv-criminalisation-database/](http://www.hivjustice.net/global-hiv-criminalisation-database/).
- <sup>19</sup> Extract from Amnesty International, *L’intersectionnalité, c’est quoi ?*, consulted online at <https://www.amnesty.fr/focus/intersectionnalite-cest-quoi> (December 2024).
- <sup>20</sup> 10 out of 22 (5 online, 5 in person).

- 21 15 out of 22 (7 online, 8 in person).
- 22 14 out of 22 (5 online, 9 in person).
- 23 11 of 17 (4 online, 9 in person).
- 24 In 2018, the HIV law was amended and Article 45 criminalizing deliberate transmission of the virus was removed. While Article 41 establishing an obligation to disclose one's HIV-positive status to one's partner has been retained, it no longer refers to the deleted Article 45. Provisions criminalizing the deliberate transmission of an incurable sexually transmitted infection, including HIV, remain in effect in the DRC.
- 25 Dially Dia for And Soppeku, *supra* note 15.
- 26 Dially Dia for And Soppeku, *supra* note 15.
- 27 F. Barré-Sinoussi et al, "Expert Consensus Statement on Scientific Knowledge related to HIV in the context of criminal law", *J Int AIDS Soc.* 2018; 21(7):e25161; The role of HIV viral suppression in improving individual health and reducing transmission: policy brief. Geneva: World Health Organization; 2023. License: CC BY-NC-SA 3.0 IGO.
- 28 A. Symington. *Expert consensus statement on the scientific understanding of HIV in the context of criminal law - Five-year impact study: Science in the service of justice.* HIV Justice Network, Amsterdam, July 2023.
- 29 Information shared by Modeste Mambo Amisi from HODSAS on December 27, 2024.
- 30 Article 36 of Law no. 08/011 of July 14, 2008, protecting the rights of people living with HIV/AIDS and those affected (amended in 2018).
- 31 Article 38. *Ibid.*
- 32 "Goma: Seventy-nine (79) prostitutes of Rwandan and Burundian origin expelled from Congolese territory," *Le regard*, March 9, 2024.
- 33 ECHR, *The O.G. Case and others v. Greece*, (Application No. 71555/12 and 48256/13), January 23, 2024.
- 34 NSW, How are sex work laws implemented on the ground and what is their impact on sex workers? Case study of Senegal, 2021.
- 35 Sénégal : être femme en prison (Senegal: being a woman in prison), *Prison Insider*, October 21, 2021 at [www.prison-insider.com/articles/senegal-etre-femme-en-prison](http://www.prison-insider.com/articles/senegal-etre-femme-en-prison) (accessed January 2025).
- 36 Any person referred to in Article 1 who is found to be suffering from a contagious venereal disease is required, subject to the penalties laid down in Article 2, to undergo treatment under the supervision of the public authorities in the conditions defined in Article 1. Any person referred to in paragraph 1 may be required by a simple decision of the administrative authority to reside, for the duration of the treatment, in a special section of a dispensary or hospital establishment. Article 3 of Law no. 66-21 of February 1, 1966, on the fight against venereal diseases and prostitution (Senegal).
- 37 NSW, How are sex work laws implemented on the ground and what is their impact on sex workers? Senegal case study conducted in 2019. According to this document, sex workers are required to undergo HIV and syphilis testing every six months. It should be noted that the law on HIV prohibits forced testing in Senegal. According to And Soppeku (an organization of sex workers in Senegal): "At the time of registration, the sex worker is given a consent form to sign, which includes a periodic HIV test every year and a syphilis test every six months. Most FSWs can't read or write, so the social worker reads the consent form to them briefly. The only thing the FSW wants at the moment is to have a health card to avoid prison during police raids. The declaration of consent is in fact a false consent, because anyone working without a booklet risks going to prison. From the Blog "Ma lumière rouge (My red light)" "Au Sénégal, malgré le soutien du Fonds Mondial, les travailleuses du sexe doivent payer les soins" (In Senegal, despite support from the Global Fund, sex workers must pay for healthcare), *Libération*, December 4, 2017.

- <sup>38</sup> HIV Legal Network and HIV Justice Worldwide, *La pénalisation du VIH en Afrique francophone : état des lieux*, 2017 (The Criminalization of HIV in Francophone Africa: A Status Report, 2017).
- <sup>39</sup> “Goma: 79 prostitutes of Rwandan and Burundian origin expelled from Congolese territory”, *Le regard*, March 9, 2024.
- <sup>40</sup> Information gathered during an interview with a civil society organization in Bukavu in 2022, see “Pas un crime (Not a crime)” podcast, November 1, 2022, available at <https://podcasters.spotify.com/pod/show/reseaujuridiquevih/episodes/Modeste-Mambo-Amisi-elqli8m/a-a8ph8mp> (accessed January 2024).
- <sup>41</sup> *Niger: The Charges against a sex worker arrested for HIV exposure are dropped following the intervention of advocates*, HIV Justice Network, Database, August 9, 2022.
- <sup>42</sup> *Nigeria: Sex worker in Zamfara State hunted by police following rumors about alleged HIV transmission*, HIV Justice Network, Database, January 21, 2017.
- <sup>43</sup> The sex worker was sentenced by the Ziguinchor court for voluntary transmission of HIV to a two-year suspended prison sentence. 2017 Ziguinchor Court decision on file.
- <sup>44</sup> It is probably the same case.
- <sup>45</sup> The High Court of Ziguinchor/Ruling No. 547 of 10/17/2017).
- <sup>46</sup> Information from *Avocats Sans Frontières* (Lawyers without Borders), November 2024.
- <sup>47</sup> Dially Dia for And Soppeku, *supra* note 15.
- <sup>48</sup> UNAIDS, Policy brief: Criminalization of HIV transmission, August 2008; UNAIDS, Ending overly broad criminalization of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations, 2013; UN, General Assembly, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Human Rights Council, Fourteenth session, Agenda item 3, A/HCR/14/20, April 27, 2010; Global Commission on HIV and the Law, *HIV and the Law: Risks, Law and Health*, UNDP, HIV/AIDS Unit, July 2013 and 2018 supplement, Committee on the Elimination of Discrimination against Women, Concluding Observations on the eighth and ninth periodic reports (submitted in one document) of Canada, CEDAW/C/CAN/CO/8-9, November 25, 2016 (see also observations on Tajikistan in 2018), United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the right to sexual and reproductive health (art. 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, March 4, 2016.
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