



Statement of national and regional networks and civil society organisations on HIV criminalisation in the EECA region

19 May 2023

Criminalisation of HIV transmission is a major human rights issue in Eastern Europe and Central Asia (EECA). Currently, most countries in the region have specific legal provisions criminalising HIV exposure and/or transmission. Moreover, the consequences can be very serious, depending on the corpus delicti and the country.

The latest Global AIDS Strategy explicitly recognizes that HIV criminalisation is an obstacle to ending HIV infection as a public health threat by 2030 and sets out bold new global targets of less than 10% of countries having punitive laws and policies by 2025, less than 10% of people living with HIV and key populations experiencing stigma and discrimination, and less than 10% of women, girls, people living with HIV and key populations experiencing gender based inequalities and gender based violence¹. The United Nations Committee on Economic, Social and Cultural Rights has determined that HIV criminalisation impedes the realization of the right to sexual and reproductive health². This conclusion is supported by the World Health Organisation (WHO)³, the Global Commission on HIV and the Law^{4,5}, the Secretary-General of the United Nations⁶.

The EECA region has the second-highest number of HIV-specific criminal laws, enacted in the jurisdictions of 16 countries⁷. In some countries, specific criminal provisions aimed to “prevent the

¹ UNAIDS. Global AIDS Strategy 2021-2026. [End Inequalities. End AIDS](#) March 2021

² United Nations economic and Social Council. General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/GC/22), 2016

³ WHO. Sexual and reproductive health and rights. Geneva: WHO, 2015

⁴ The Global Commission on HIV and the Law. Risks, Rights & Health. New York: UNDP; 2012

⁵ The Global Commission on HIV and the Law. Risks, Rights & Health, 2018 Supplement. New York: UNDP; 2018.

⁶ UN Human Rights Council. The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) (A/HRC/16/69, para. 38), 2010.

⁷ Alison Symington, Edwin J. Bernard, et al. [Advancing HIV Justice 4: Understanding Commonalities, Seizing Opportunities..](#) HIV Justice Network, Amsterdam, July 2022.

spread of HIV” remain only formal, in others they have practical application with negative consequences for people living with HIV. It is clear that the very fact of their existence is contrary to the International Guidelines on HIV/AIDS and Human Rights. The most critical situation with HIV criminalisation remains in Belarus, Russia, Tajikistan and Uzbekistan.

In 2022, the Eurasian Women’s Network on AIDS (EWNA) conducted a women-led study “HIV Criminalisation Scan in EECA for 2018-2022”⁸, which includes data collected by community activists regarding laws and policies that criminalise people living with HIV. This regional report focuses on an overview of the situation in 11 EECA countries: Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Uzbekistan, Ukraine and Estonia.

In the vast majority of the studied EECA countries, there are HIV-specific laws, which provide for criminal penalties for HIV exposure and/or transmission ranging from public works to imprisonment for up to 15 years. Such laws do not fulfil their inherent function of protecting public relations, being used to intimidate people living with HIV, playing an obviously discriminatory and stigmatizing role, that is, being “a legalised stigma” against them. HIV-specific criminal laws in one way or another criminalise HIV exposure and/or transmission, achieving an objective that is apparently the opposite of that on which the existence of such laws is based. In none of the countries studied, laws criminalising HIV have had an impact on ending the HIV epidemic in the country, because such legislative approaches are ineffective in terms of harm reduction and prevention of HIV transmission.

In a number of countries⁹, criminal laws contain clauses (notes) exempting from liability for HIV exposure and/or transmission, in case of timely warning of the partner about the presence of HIV and voluntary consent to commit actions that created the risk of infection. In the Republic of Belarus, the introduction of such a clause has significantly reduced the number of cases of prosecution for HIV transmission.

It does not remain uncommon for health authorities to notify the police of a patient's HIV status, violating the secrecy of the diagnosis, which subsequently becomes a pretext for investigating sexual relations between people. Thus, HIV criminalisation also negatively affects health care workers. Coercion to disclose private medical information is incompatible with their obligation to maintain medical secrecy, and also makes it impossible to have a trusting relationship with the patient, which is a prerequisite for the provision of medical care¹⁰.

Case studies show that HIV criminalisation continues to disproportionately affect women, racial and ethnic minorities, migrants, gay men and other men who have sex with men, transgender people and sex workers. The women’s community is actively developing and opposing HIV criminalisation. The women-led research, as well as examples of documented personal stories and court convictions, clearly demonstrate that HIV criminalisation not only does not protect women from contracting HIV, but, on the contrary, worsens their position in society.

Gender-disaggregated data and documented case studies show that HIV criminalisation disproportionately affects women in some countries. Belarus stands out in particular, where in 2019-

⁸ [HIV Criminalisation Scan in EECA for 2018-2022](#).. EWNA, 2023

⁹ Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia

¹⁰ [Practical Guide for Paralegals](#).. Supporting People Living with HIV Affected by HIV Criminalisation in the EECA Region. 2021. SoS_project.

2020, 80.6% of sentences in cases of exposing to HIV were made against women. In Tajikistan, women sex workers often suffer, even when the “injured party” has no claims against them and HIV infection has not occurred. Media headlines in Tajikistan are regularly full of stigmatizing phrases about women living with HIV and make them the perpetrators of the infection spread. In Ukraine, in 2008-2018, 64.3% of sentences under the first part of Article 130 of the Criminal Code of Ukraine (exposure to infection) were issued against women. In Uzbekistan, trans* people living with HIV are subject to double criminalisation – HIV and homosexual relationships. In 2021, women activists from Russia in just two months documented 8 cases of blackmail and intimidation of women in the filing of charges under Article 122 of the Criminal Code of the Russian Federation. The UN Committee on the Elimination of All Forms of Discrimination against Women recommended that the three countries of Central Asia – Tajikistan (2018), Kyrgyzstan (2021) and Uzbekistan (2022) - decriminalise HIV transmission¹¹.

On May 11, 2023, a regional consultation “**The role of the community in HIV decriminalisation in the EECA region: experience, challenges and prospects**”, organised by the Eurasian Women’s Network on AIDS (EWNA), was held. Activists from national, regional and international networks discussed the current situation with HIV criminalisation in Eastern Europe and Central Asia (EECA). The consultation highlighted practices of conducting research, community-led campaigning and providing direct assistance to people living with HIV affected by criminalisation. This statement was issued as a result of the consultation in order to strengthen the consolidated position and mobilise the community regarding the importance of continuing active work on HIV decriminalisation in the EECA region.

We draw the attention of the EECA countries of the EECA region to the fact that in a society with a low level of stigma and discrimination, people are more willing to be tested for HIV and, having learned about their status, start ARV treatment.

We are concerned about global trends and the current state of HIV criminalisation in the EECA region and make the following key calls:

1. Development of a joint position

We call on the community of people living with HIV and other criminalised and marginalised communities, including LGBT communities, women sex workers, people who use drugs, to unite and take a consolidated position against HIV criminalisation, speaking as a united front against the HIV-related stigma and discrimination embedded in legislation.

2. Revision of legislation

The Global Commission on HIV and the Law called on countries to end punitive laws, policies and practices and adopt legal frameworks and practices that protect public health and human rights as the foundation of an effective response to HIV. Among the critical issues identified by the Commission was the continued abuse of the criminal law in dealing with cases of alleged HIV transmission, exposure to HIV and non-disclosure of HIV-positive status. The Commission made a clear recommendation that the application of criminal law provisions should be strictly limited to cases of HIV intentional actual transmission. **We call on governments and parliamentarians** to review laws that criminalise non-disclosure of HIV status, exposure to HIV and reckless transmission of HIV.

¹¹ [HIV Criminalisation Scan in the EECA region](#). EWNA, 2023

3. Use of modern scientific evidence

We call on the entities and people involved in criminal prosecution, including prosecutors, to use modern scientific data and evidence-based medicine, in particular, contained in the Expert consensus statement on the science of HIV in the context of criminal law¹², in the pre-trial and trial process, in order to limit or prevent the abuse of criminal prosecution in cases of accusation of HIV transmission or exposure, or in cases of failure to disclose one's HIV status. Any use of the criminal law against people living with HIV should be strictly limited to cases of actual intentional transmission of HIV to another person. There should be no specific *corpus delicti* for cases of intentional transmission of HIV, but instead general criminal law should apply to such cases.

4. Review of procedures

We call on the medical community to review the epidemiological investigation procedure that physicians conduct immediately after HIV-positive status is confirmed. First of all, it is necessary to conduct a full-fledged post-test counselling and create conditions when a person can accept their HIV status, start treatment and maintain contact with a healthcare institution. It is necessary to exclude repressive elements that accompany the epidemiological investigation and lead to negative consequences.

5. Use of tolerant language

We call on the media to stop demonising people living with HIV by portraying us as criminals and sources of infection. We ask that all issues related to HIV infection be considered through the prism of human rights, and when writing about them, use facts and evidence-based medicine. We urge representatives of media resources on HIV, as well as all other media, to use tolerant and neutral language. This will reduce the level of stigma and discrimination against people living with HIV in society.

6. Support for activists

We note the growing support from international donor organisations and UN agencies for advocacy to reduce/eliminate HIV criminalisation and community capacity building. **We call on donors and technical partners** to continue to invest in communities and human rights defenders who are advocating against HIV criminalisation, which undermines human rights and public health. Mobilisation of the women's community, meaningful participation of women living with HIV and their partners in advocacy for legislative changes, protection of rights, preparation of alternative reports to the UN Committees are a necessary condition for countering HIV criminalisation.

Signatory organisations included in the working group:

- Eurasian Women's Network on AIDS, Georgia
- People Plus NGO, Belarus
- Sibiryachki Plus NGO, Russia
- The Tajikistan Network of Women living with HIV, Tajikistan
- Positive women CO, Ukraine
- The Kazakhstan Union of People Living with HIV, Kazakhstan
- Ishonch va Haet NGO, Uzbekistan
- ANSWER PF, Kazakhstan
- Equal to equal ALE, Kazakhstan
- Youth movement "Teenergizer Qazaqstan", Kazakhstan

You can sign the Statement in English at the [link](#).

¹² [Expert consensus statement](#) on the science of HIV in the context of criminal law. 2018