

ISSUE PAPER 02**CRIMINALIZATION OF WOMEN LIVING WITH HIV:
NON-DISCLOSURE, EXPOSURE AND TRANSMISSION**

The term **criminalization of HIV** refers to the use of the criminal laws in regard to the transmission and/or a perceived risk of exposure to HIV. Despite evidence that criminalization undermines evidence-based public health strategies for HIV prevention, both legislative efforts to criminalize HIV status and prosecutions are on the rise around the world. Criminalization increases stigma surrounding HIV status and casts people living with HIV as predisposed to criminality, which in turn increases discrimination. Critically, rather than reducing transmission of HIV, fear of prosecution may deter women from accessing needed treatment care and support, discourage disclosure, and increase vulnerability of women to violence. The criminalization of HIV transmission, attempted transmission, and behavior that might result in transmission by those who know their HIV status is overly broad, difficult to enforce, and disproportionately impacts women living with HIV.

Increased vulnerability to violence: An unintended consequence of criminalization

Criminalization is often framed as a mechanism to protect women who are experiencing intimate partner violence or sexual assault. However, in practice these same laws intended to protect women often place them in increased risk for violence and increasing stigma surrounding HIV. Women are often the first to know their HIV-positive status, particularly in the context of provider initiated testing in prenatal settings. Often, women are then blamed by their intimate partners, families, and communities for ‘bringing HIV into the family/home,’ placing them at increased risk of abuse and fatal violence. Women living with HIV may feel forced to disclose their status to avoid prosecution under laws that criminalize exposure or transmission, placing them at increased risk.

Women living with HIV are also at increased risk of intimate partner violence as threats by abusive partners to take legal action under criminalization laws become a part of the cycle of power and control and are employed by abusers to control and silence women, effectively forcing them to stay in abusive relationships.

Criminalizing Motherhood: Criminalization of Vertical Transmission

Although the scale up of efforts to prevent vertical transmission of HIV have resulted in lower rates of transmission of HIV to infants, some countries have criminalized “harm to the fetus/child” by the mother in instances of transmission of HIV from mother to child—also known as vertical transmission. In many countries this language has been defined broadly enough so that if an HIV-positive woman gets pregnant, the mere state of being pregnant could become a crime. Under these laws, breastfeeding would also be penalized.

The **criminalization of mothers for HIV transmission and/or exposure serves to further increase stigma for positive women who want to have children or who are pregnant, by blaming women for transmission.** Additionally, women living with HIV may choose not to disclose their HIV status to health care providers whose records and notes may be subpoenaed, reducing the quality of health care, lowering the effectiveness of efforts to reduce vertical transmission of HIV and creating further barriers to adequate care and support.

Additionally, violence, gender norms and inequality make women disproportionately vulnerable to prosecution. Economic dependence and lack of legal literacy means that women may respond to violence or a fear of violence, abandonment, or mistreatment differently than men. In interpreting laws, courts often do not take into account the nuances of women's lives.

ICW advocates for an end to the criminalization of HIV transmission and exposure and other forms of criminalization that oppress women living with HIV.

The sentencing of HIV exposure and/or transmission is disproportionate to other equivalent acts. In some cases, people are receiving life sentences and having to register as sex offenders, even where there is no intent to transmit or no transmission of HIV. Laws that criminalize nonintentional HIV exposure or transmission must be repealed, particularly those that single out women living with HIV or people living with HIV for prosecution or increased punishment solely based on their HIV status. Criminal laws should only be used in extraordinary cases of intentional exposure or transmission.

ICW seeks the repeal of laws that criminalize non-intentional HIV exposure or transmission, and an end to laws that single out women living with HIV or people living with HIV for prosecution or increased punishment solely related to their HIV status. In addition, criminal laws should only be used in extraordinary cases of intentional exposure or transmission. Overly broad use of the criminal law results in unjust prosecutions and incarceration of people living with HIV. Criminal justice systems must ensure that similar risks and harms are treated alike.

ICW believes that criminalization is counterproductive and undermines evidence-based health strategies for prevention. It discourages women living with HIV from accessing care, undermines the goals of counselling and the service provider relationship with patients, increases the risk of violence against women living with HIV, and can discourage people who know they have HIV from disclosing that fact to potential sexual partners and others.

ICW advocates for the end of unjust criminalization of key populations based on their lifestyles and identities, including, but not limited to, lesbian, bisexual, and transgender women, women who use drugs, sex workers, and migrant and undocumented workers. These laws in turn increase vulnerability to HIV acquisition among these populations.¹

ICW recommends that:

- Repeal laws that criminalize non-intentional HIV exposure or transmission, particularly those that single out women living with HIV or people living with HIV for prosecution or increased punishment solely based on their HIV status
- Empower women to know about the criminal context of HIV transmission and exposure
- Enact legislation that promotes gender equality in the criminal justice system
- Remove all laws that disproportionately target women living with HIV and marginalized groups
- Promote community based awareness campaigns to address criminalization as a human rights violation
- Train health care providers, and other support workers to ensure that confidentiality for women living with HIV is protected
- Increase legal support for women living with HIV facing prosecution under these harmful laws.



¹ ICW 2014-2016 Global Strategic Plan