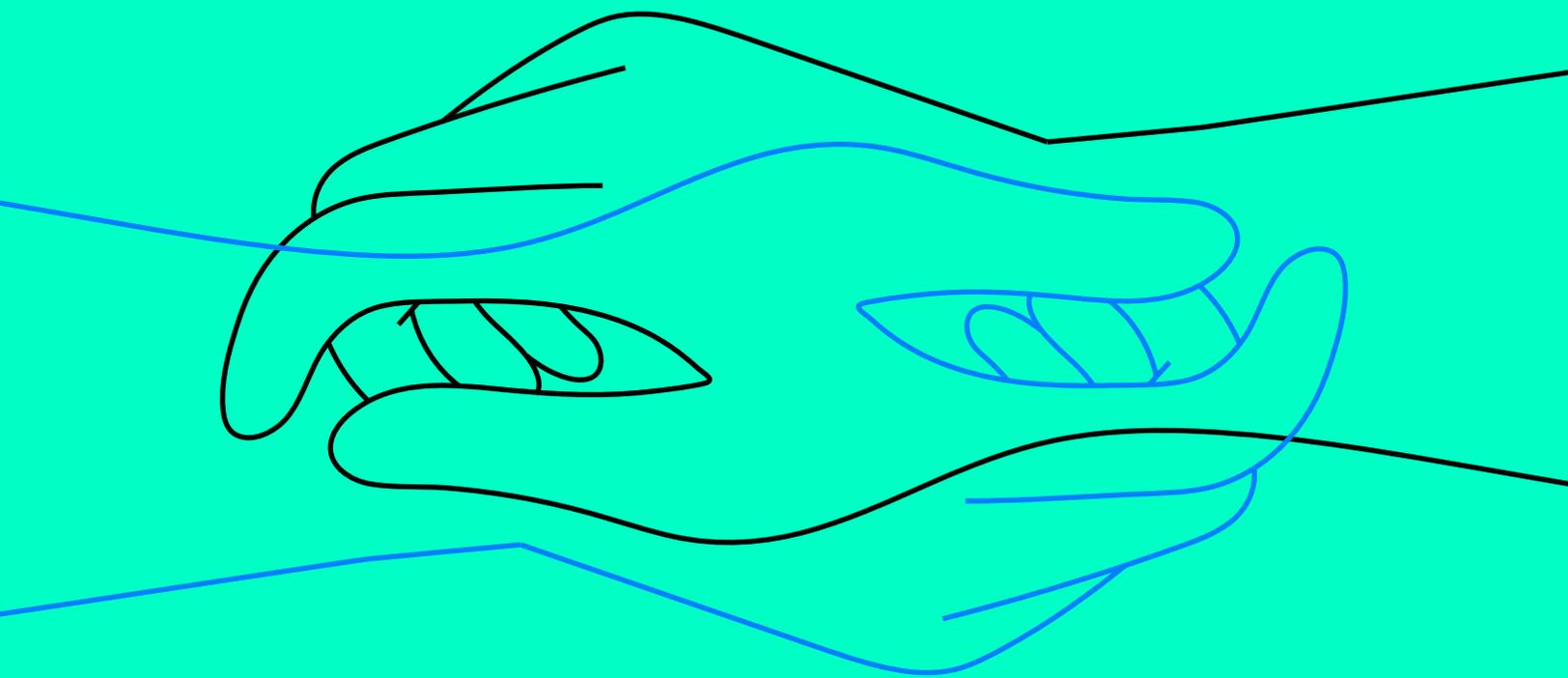


PRACTICAL GUIDE FOR PARALEGALS

Supporting People Living with HIV Affected by HIV Criminalization in the EECA Region



The publication is prepared:



#sos_project Consortium



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This publication was prepared by the CO “100 PERCENT LIFE” and published in the framework of the regional project called “Sustainability of services for key populations in the EECA region” implemented by a consortium of organizations from the EECA region under the leadership of the ICF “Alliance for Public Health” in partnership with the CO “100 PERCENT LIFE”, LEO “Central Asian Association of People Living with HIV/AIDS” and Eurasian Key Population Health Network with financial support from the Global Fund to Fight AIDS, Tuberculosis, and Malaria.

The views expressed in this publication are solely those of the authors and do not necessarily reflect the views of the consortium organizations and the Global Fund to Fight AIDS, Tuberculosis, and Malaria.

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I. Introduction

"It's hard to give a precise definition of our work to protect the rights of people living with HIV.

We are no longer public defenders in the conventional sense because we provide qualified legal advice. However, we are not lawyers and we do not have diplomas in specialized education.

For more than 4 years, we have been responding to requests for help from HIV-positive people and their relatives. We never limit ourselves to formal answers regarding the legality of actions taken by the state and what measures to protect rights can be taken in a specific situation.

If a person seeks our help, it means that he/she is unable to handle the situation on his/her own, even when the law and common sense are on his/her side.

We are doing our best to solve the problems faced by people living with HIV.

Subsequently, individual cases form a comprehensive justification that results in proposals for improving legislative norms. This contributes to solving the problem of HIV criminalization at the state level."

Anatoly Leshenok,
Head of the
"People PLUS" association, Belarus

The criminalization of HIV is a global problem that negatively affects human rights, hampers public health development, and ultimately reduces the impact of measures to end the HIV epidemic. Legal aid is an important element of a fair, humane, and effective criminal justice system based on the rule of law.

The purpose of this guide is to raise the legal awareness of activists from the community of people living with HIV who provide paralegal assistance to people affected by the criminalization of HIV. This guide is also recommended for use by activists from key populations - people who use drugs, sex workers, and representatives of the LGBT community.

This manual reflects the experience of the HIV-positive community members, as well as their partners and associates from across Eastern Europe and Central Asia (EECA), in providing direct assistance to HIV-positive people affected by discriminatory HIV-specific laws and the decriminalization of HIV.

This handbook contains comprehensive information on the concepts associated with the criminalization of HIV and its consequences for the lives of people living with HIV, as well as society as a whole. Moreover, it is a collection of systematized practical information on how to start working on the decriminalization of HIV, what materials can be used in this work, as well as recommendations by human rights defenders and experts from international organizations.

The author team highlights the concept and content of paralegal assistance and its role in improving access to justice, describing the practical experience of their participation in civil and criminal proceedings to defend the rights of HIV-positive people.

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II. What HIV criminalization means

HIV criminalization is the improper application of criminal law to people living with HIV based solely on their HIV status, in particular, **the use of HIV-specific criminal statutes or general criminal laws to prosecute people living with HIV for unintentional HIV transmission**¹.

HIV criminalization is a global phenomenon that undermines human rights and hampers progress in public health, thereby weakening the HIV response.

According to HIV Justice Worldwide, Europe and Central Asia² is the region with the second-highest number of laws in the world criminalizing exposure to HIV, non-disclosure of HIV status, and HIV transmission.

Eighteen of the 19 countries with such legislation belong to the EECA region. Many of them allow prosecution for acts that pose little or no risk of HIV exposure. These laws do not admit that condom use or low viral load can protect against the charge and criminalize oral sex, individual cases of breastfeeding, as well as biting, scratching, and spitting. These laws were developed at a time when effective ARV treatment for HIV was not yet available, an HIV diagnosis was treated as a death sentence, and the law execution was based on myths, misconceptions about HIV transmission routes, stigma against people living with HIV and vulnerable communities.

Legislation in EECA countries criminalizing HIV transmission varies in terms of severity and penal measures. The Russian Federation and Belarus are leaders in both regional and global HIV-related criminal statistics.

In Uzbekistan, a person living with HIV can be charged with intentionally endangering another person by the possibility of transmitting HIV or HIV transmission, regardless of the partner's willingness to initiate legal proceedings. In 2019, Tajikistan introduced administrative liability in the form of a fine for avoiding mandatory medical examination and preventive treatment for HIV (i.e. ARV therapy) and other infectious diseases³.

In many EECA countries, HIV status is an aggravating factor for criminal offenses.

Why HIV criminalization harms not only people living with HIV but the entire society.

The use of laws that criminalize HIV is a serious public health issue because it discredits evidence-informed strategies for HIV prevention, treatment, care, support, and ignores scientific advances related to reducing the risk of HIV transmission.

Criminalization reinforces stigma based on HIV status, identifying HIV-positive people as potential criminals, which in turn contributes to discrimination. Furthermore, fear of criminalization can deter many people living with HIV - particularly women and people from key populations (people who use drugs, sex workers, migrants, men who have sex with men, and trans* people) from accessing appropriate treatment and support, restrain from disclosure, and increase the vulnerability to the violence of people living with HIV.

The criminal prosecution of HIV-positive people makes them solely responsible for HIV transmission, thus creating for the rest of society grounds for a false sense of confidence in their health. People think that under the fear of criminal liability their partners will warn them that they have HIV. In reality, this rarely happens because the very dynamics of intimate contacts, especially casual ones, often preclude such information. As a result, people do not practice safer sex, believing that if partners do not report HIV to them, they are healthy and do not need to use protection. In many cases, the added burden of possible criminal liability for not disclosing HIV-positive status only exacerbates the problem, making it difficult to talk openly about HIV while establishing relationships, being in workplaces and families.

As a result, existing criminal laws against HIV do not protect society because most new HIV transmissions are made by people who are unaware of their status, and HIV criminalization prevents them from testing, thus contributing to new cases.

Criminalization also creates an atmosphere of false efficacy for states - they often keep away from implementing HIV awareness and prevention programs.

¹ HIV Justice Worldwide. Frequently Asked Questions. What is HIV criminalization

² This region includes the countries of Northern, Southern, and Western Europe, as well as Eastern Europe and Central Asia (EECA)

³ Administrative Code of the Republic of Tajikistan. Article 119. Evasion of compulsory medical examination and preventive treatment of persons with infectious diseases, HIV infection

The criminalization of HIV has failed to halt the development of the HIV epidemic. For example, in 1987, Ukraine introduced criminal liability for the willful placing of a person in danger of being infected with HIV or the infection of another person with HIV by a person who was aware of the presence of infection caused by this virus (Article 108-2 of the Criminal Code of Ukraine, 1960).

Responsibility for this crime is also provided for by the Criminal Code of Ukraine, which has been in force since 2001 (Article 130).

At the same time, the number of HIV-positive people has only increased since 1987 and it has epidemic proportions. Thus, according to official statistics for the period from 1987 to May 2019, 341,084 cases of HIV infection were officially registered among Ukrainian citizens.

The criminalization of HIV threatens women's rights to health, freedom from torture and abusive, inhuman, or humiliating treatment or punishment, the right to privacy, creation of a family, and other human rights regarding the following aspects:

- Women living with HIV are more likely to be prosecuted for putting themselves at risk of HIV transmission, failing to disclose HIV status, or transmitting HIV because they are often the first who learn about their HIV-positive status in perinatal care, but they are less likely to let their partners know about this because they are economically dependent on them or fear violence, blackmail, or other forms of retaliation;
- Fears that private, confidential medical information, including information about HIV status and drug use or substance use disorder, may be shared with law enforcement and will harm relationships with healthcare workers and other healthcare providers, and may prevent them from sharing relevant information or seeking health care services in general;
- The risk of criminal punishment may also prevent women from getting tested for HIV and seeking HIV- or drug-related or other health services, including sexual and reproductive health services, or discussing their HIV or drug use status with healthcare providers, as well as considering their HIV or drug-use prevention and treatment; women fear that this information may be made public and expose them to criminal punishment;
- Criminal prosecution contributes to stigma and discrimination against women living with HIV. Stigma has an extremely negative impact on HIV prevention and harm reduction programs, as well as on the lives of women living with HIV and women who use drugs, which increases their chances of being stigmatized, prejudiced, blamed, and marginalized in families and communities;
- The criminalization of HIV also has a negative impact on healthcare workers; forcing patients into disclosing private medical information is incompatible with their duty of medical confidentiality and the Hippocratic Oath ("Do No Harm"), and makes it impossible to have a relationship of trust with a patient, which is a prerequisite for health care.
- In some jurisdictions, women living with HIV are prohibited from adopting children or arranging foster care. These prohibitions may also prevent women from seeking HIV and other health information.

1 HIV Justice Worldwide. Часто задаваемые вопросы. Что такое криминализация ВИЧ

2 Этот регион включает страны Северной, Южной и Западной Европы, а также Восточной Европы и Центральной Азии (ВЕЦА)

III. The role of paralegals in improving access to justice for communities

Paralegal activities are designed to help improve the legal capabilities of clients living with HIV, assist them in learning about their rights, and taking action to protect their interests.

The role of paralegals is to increase the legal literacy of community members to address their problems in a timely manner and ensure that their rights are respected.

Paralegals provide primary legal assistance to community members, informing them of their fundamental rights and responsibilities, and involving them in finding common community-related solutions.⁴

The paralegal's purpose is to help community members find rational solutions, guided by the rule of law and acting in the interest of and with respect for the human rights of clients, which in turn involves considerable effort, including calling on the conflicting parties to discuss problems to resolve them.

The role of paralegals in the community has the following aspects:

1) Paralegals identify systemic legal challenges and make efforts to respond to them.

Paralegals who work in local communities often know the needs of these communities better than lawyers, counsels, and other legal professionals.

Community-based paralegal programs can legally empower these groups and keep them protected. Using a variety of tools and strategies, they can often solve legal problems faster than the formal legal system.⁵

A paralegal can focus on the justice needs of the entire community, not just the client. The work of a paralegal program can include the legal protection of public interests and the conduct of strategic proceedings.

Moreover, there are many topics of interest to community members that the paralegal could actualize. The decriminalization of HIV transmission is also an example of such a topic of discussion.

A particular advantage of working with paralegals is preventing existing problems from escalating. Paralegals can take a preventive approach through community education and public campaigns, not only to prevent existing problems from worsening but also to prevent new ones from arising.

2) Paralegals help solve private legal problems. Often paralegals can resolve the issue much faster than counsels.

In some cases, paralegal programs operate like traditional legal service organizations. They are also focused on solving clients' legal problems or, in other words, finding legal remedies to restore their rights. Paralegals keep files on cases and are required to maintain client confidentiality, just as lawyers are.

In intra-community disputes, both parties do not have a representation and the paralegal program can be the only source of legal services available. Therefore, it would be wrong for paralegals to privilege the first party to seek assistance. Thus, the role of paralegals is not only to formally resolve a request (filing a complaint) but also to protect the entire community and uphold basic principles of fair justice and equality.

Often conflicts arise because of negative, poor, and/or insufficient communication within communities, so it is important to explain all aspects of the problem to the parties.

Peaceful and constructive conflict resolution is a way to protect the entire community from the possible negative consequences of conflict. This also applies to cases, when partners accuse each other or one partner accuses another of hiding HIV status or HIV transmission.

Reducing the use of regulations that criminalize HIV can lead to the elimination of HIV-specific laws and the modernization of HIV-related law in general, which is in the interest of the entire community.

In order to discuss a solution, it is important to have certain information about the conflict, namely:

- Know the facts and circumstances of the case;
- Be informed about the parties to the conflict before entering into negotiations, know the character and motives that influenced their certain actions;
- Determine a list of questions the parties are interested in and arrange these questions in a coherent logical chain;
- Identify and anticipate the positions and actions of all parties;
- Determine the most convenient moment to present proposals to the other party.⁶

4 A methodological guide for paralegals. 2018.

5 Community-based paralegals. A Practitioner's Guide. Open Society Justice Initiative (2010): <https://www.justiceinitiative.org/uploads/6001868b-f85d-4883-8da7-bdf2ebc93a4c/OSJI-Paralegal-Manual-US-11-05-2014.pdf>

6 Community-based paralegals. A Practitioner's Guide. Open Society Justice Initiative (2010): <https://www.justiceinitiative.org/uploads/6001868b-f85d-4883-8da7-bdf2ebc93a4c/OSJI-Paralegal-Manual-US-11-05-2014.pdf>

When resolving a dispute, the paralegal encourages discussions between the parties in the context of the problem and facilitates the search for and finding as many acceptable solutions as possible. Negotiations should not be protracted, but one should not hurry the parties.

For effective mediation, a paralegal must have the following important qualities:

- Have the ability to listen to each party;
- Motivate the parties to reach mutual agreement;
- Help the parties to find various favorable solutions;
- Help the parties better understand the case in terms of human rights, international norms, and the applicable law;
- Help the parties correctly formulate the decision they have made;
- Avoid making decisions on the content of the agreement the parties may come to.⁷

Even if the case is directing to the court, the paralegal can also play an active role in the process, from preparing the client and presenting the issue of HIV decriminalization to the counsel to attending court hearings on the case.

The paralegal can also work with lawyers on the client's case at a later stage, serving as a liaison to the community while doing preparatory work. The paralegal can also represent the client in court as a public defender if it is required by national law.

3) Paralegals can have their own experience in protecting their rights. This greatly increases the confidence of the community in them and the effectiveness of the advocacy process.

A community-based paralegal can better assess the case and apply the most appropriate methods of resolution based not only on his or her knowledge of the law but also on his or her personal experience. This body of knowledge, combined with susceptibility to the community's peculiarities and needs, allows paralegals to work very effectively and find non-standard solutions for conflicts and situations. The paralegal also has an additional advantage over lawyers because he or she lives the life of the community.

The feature that should not be underestimated is the paralegal's desire to make positive changes in his or her community. Effective paralegals working in a human rights framework are often committed to empowering the populations they work with.

4) Paralegals can form national networks with representatives throughout the country. Such communication strengthens the capacity of both the network and the individual members.

The creation of national paralegal networks can increase the capacity and effectiveness of paralegals in terms of enhancing legal skills and knowledge, supporting rights, assisting and protecting them in dialogue with authorities and law enforcement. Consequently, paralegal networks can act as umbrella organizations, ensuring the ethical behavior of their members and holding discussions with authorities on behalf of the network.

Paralegal networks have additional benefits of regional or country coverage, mobilizing communities to address issues of common concern.

An association of paralegals can be a nonprofit or professional organization. In the latter case, paralegal assistance can develop in a professional network, similar to associations of lawyers, bailiffs, or notaries.

5) Paralegals can use various tools in their work, such as REAct.

REACT



The REAct online system (<https://react-aph.org/>) allows documenting and responding to cases of rights violations and criminalization of representatives of key communities, as well as monitoring and evaluation of legal barriers in applying for HIV prevention and treatment and other health care services.

Among the countries of Eastern Europe and Central Asia, REAct has been operating in Ukraine (since late 2019), Georgia, Moldova, Kyrgyzstan, and Tajikistan (since early 2020), as well as Russia and Uzbekistan (since late 2020).

As of the middle of 2021, the REAct system applied in:

7	More than 50	More than 80	More than 120	More than 4000
Countries	Cities	NGOs	Paralegals	Cases

REAct capabilities:

- Structured collection and storage of information on cases of criminalization and rights violations;
- Instant monitoring of information collected and legal services provided to the client;
- The ability for multiple professionals to work instantly and collaboratively on a single case to provide a comprehensive response;
- Monitoring of client referrals for medical and social services;
- Qualitative and quantitative analysis of cases;
- Extensive visualization capabilities (graphs, charts, maps);
- Use of data for planning and implementing human rights interventions and for preventing similar cases in the future;
- An evidence base for planning and implementing programs, policies, and advocacy initiatives.

REAct peculiarities:

- Online/offline/mobile access;
- Information is stored in the cloud - preventing data loss;
- Confidentiality, strict control of access to the database, and two-level authorization - prevents data theft/leakage;
- User-friendly interface and different language versions;
- No paid licenses and updates;
- Free use, training, and technical support.

IV. Examples of court sentences in EECA

The criminalization of HIV transmission in EECA countries is a growing human rights issue, according to the results of the first regional report in 2017 based on the community of women living with HIV. The study was organized and conducted by the Eurasian Women's Network on AIDS (EWNA) with the support of the Global Network of People Living with HIV (GNP+) and HIV Justice Worldwide⁸.

Analysis of various HIV criminalization cases⁹ showed that they do not reflect the demographic profile of local epidemics. Furthermore, the likelihood of persecution is aggravated by discrimination against marginalized groups in terms of drug use, ethnicity, immigration status, gender, gender identity, sex work, and sexuality.

Belarus

Name: Y.

Gender: Male

Age: 45 years

Place of residence: Belarus

Y. lives with HIV. He has a common-law marriage with Yulia and they have a common child. The common-law wife knew about her spouse's HIV status and had nothing against it. Law enforcement authorities initiated a criminal case against the man after Yulia was registered because of HIV.

In 2017, the court sentenced him to 2 years in a correction settlement colony under paragraph 2, Article 157 of the Criminal Code.

The prosecutor's office submitted an appeal against the court's decision, demanding to add another 1.5 years to the term.¹⁰

Georgia

Name: A.

Gender: Male

Age: 31 years

Place of residence: Tbilisi, Georgia

A. has been registered at the National AIDS Center since May 2006.

In 2014, his wife filed a lawsuit accusing him of intended HIV transmission, even though the defendant himself claimed otherwise. He was in custody from March 2014 until late 2016, having been convicted under paragraph 2, Article 131 of the Criminal Code of Georgia.

Although the defendant stated that his actions were not intentional, the testimonies of the victim and doctors were used against A.

His wife insisted that her spouse opposed protected sexual intercourse, and doctors stated that they counseled the defendant several times about the use of protective products.

A. disclosed his status to the wife when she told him that she was expecting a child. The wife claimed that A.

insisted on having an abortion, assuming the risk that their child would also be HIV-positive. This prompted the wife to get tested. She turned out to be HIV-positive, but after counseling, she refused to have an abortion and. She is taking ARVs, gave birth to a healthy child.

The court convicted A. under paragraph 2, Article 131 of the Criminal Code.

The man was sentenced to four years' imprisonment and was released two years later due to an amnesty.

Russia

Name: unknown

Gender: Female

Age: 27 years

Place of residence: Nizhny Novgorod Oblast, Russia

The press service of the prosecutor's office of the Nizhny Novgorod region reported that a 27-year-old local resident was convicted for HIV transmission to her partner.

The court found that between May 20 and May 31, 2017, the woman, hiding her HIV-positive status, had several sexual contacts with her partner and transmitted HIV to him.

The woman was convicted under paragraph 2, Article 122 of the Criminal Code, "Infection of another person with HIV by a person who knew that he or she had such disease".

The criminal case was considered in a special order.

The court found the woman guilty and sentenced her to two years suspended prison sentence, with a probation period of one year.

Tajikistan

Name: B.N.

Gender: Female

Age: unknown

In 2018, the police opened a criminal case under paragraph 1, Article 125 of the Criminal Code, against a woman who injected drugs.

The victim in the case was the woman's partner. During the trial, the man himself stated that he did not agree with the fact that he was recognized as a victim in the case, because he did not believe that he was at risk of HIV transmission during sexual contact with B.N. After the initiation of the criminal case, based on the expert commission testimony, it was revealed that the man did not have HIV.

The court sentenced the woman to one year and two months' imprisonment, despite the fact that the man stated that he knew the defendant's HIV status.

Ukraine

Name: unknown

Gender: Male

Age: unknown

Place of residence: Chernivtsi, Ukraine

⁸ A scan of HIV criminalization in Eastern Europe and Central Asia. An analytical review. EWAN, 2018.

⁹ Case collection report in the framework of the HIV Criminalization Scan EECA Region Project. EWAN, 2018.

¹⁰ http://www.ewna.org/wp-content/uploads/2018/01/HIV-Criminalisation_Case-studies_EECA_rus.pdf

In 2015, the Chernivtsi city court convicted an HIV-positive man to 4 years' imprisonment for criminal offenses under paragraph 1 Article 125, paragraph 1 Article 130, paragraph 2 Article 186, paragraph 2 Article 15, and paragraph 2 Article 186 of the Criminal Code of Ukraine.

During the theft of property openly, the defendant bit the hand of the victim, who tried to stop him and hold the man until the police arrived.

The court sentenced the man to punishment for robbery and for knowingly placing another person at risk of HIV transmission under paragraph 1 Article 130 of the Criminal Code of Ukraine. The man fully admitted his guilt in court.

Uzbekistan

Name: M.

Gender: Male

Age: 40 years

Place of residence: Bekabad, Uzbekistan

M. has been registered at the Tashkent Regional AIDS Center since 2010.

At the end of 2014, he met a woman and told her about his status. The woman wrote a receipt that she was aware of the man's status. Sometime later, they registered their marriage. A month later, there was a conflict and the spouse wrote a statement to the law enforcement authorities. The man was detained on suspicion of committing a crime under Article 113 of the Criminal Code. The court did not take into account the wife's receipt that she was aware of her husband's HIV-positive status. The man was sentenced to five years' imprisonment. Two years later, M. was released and ¼ of his sentence was replaced with correctional labor.

Estonia (no specific HIV-related law)

Name: A.

Gender: Male

Age: 34 years

Place of residence: Tallinn, Estonia

A. was sentenced to three years and six months' imprisonment under the article titled "Intentional infliction of harm to health" after a woman reported that he had transmitted HIV to her. The court did not receive any evidence that the woman had been infected with HIV specifically by the defendant. There was also no testing to determine the genotype of the virus, and the court used the "word against word" principle to sentence him.

The gendered optics of HIV criminalization

The EWAN study found that HIV criminalization is a gender issue¹¹. The stories and cases documented in this report and in subsequent years demonstrate that women are more likely to be persecuted because, as a rule, they were the first to learn their status through regular HIV testing during pregnancy. However, they are less likely to safely disclose their HIV status to a partner because of gender

inequality in the household, economic dependence, and widespread violence of high levels.

In addition, women living with HIV are less likely to receive adequate legal assistance and competent representation in court. In their stories, women describe violence, threats, and blackmail related to their HIV-positive status. New laws are supposedly adopted to protect women from HIV. In fact, unfortunately, it is not true: HIV criminalization makes women more vulnerable to violence and structural inequalities. The criminalization of HIV makes women more vulnerable to loss of property, deprivation of parental rights, and economic status.

Belarus

Name: O.

Gender: Female

Place of residence: Belarus

The woman got to know about her HIV-positive status being in marriage during her pregnancy in 2009. The first child was born without HIV.

In 2018, O. gave birth to her second child, but HIV was transmitted to the baby. While investigating the case of HIV transmission to the baby, the Investigative Committee tried to prove that O. did not take ART. The criminal case was closed.

However, based on the fact that the child was conceived, investigative actions were initiated under paragraph 1, Article 157 of the RB CC "Placing the child at risk of HIV infection".

The young woman is a highly qualified specialist (a doctor) and her family from the countryside had to change their place of residence after the investigation, which took place in open view of neighbors.

Moldova

Name: A.

Gender: Female

Age: 31 years

Place of residence: Ribnita, left bank of the Dniester

An HIV-positive woman has been under regular medical check-ups for about 8 years; she takes ARV therapy and has an undetectable viral load.

The woman was sure that that marriage would not put her partner at risk of transmitting HIV.

The HIV status of A.'s spouse was unknown.

A year and a half later, the husband returned to drug use and was later prosecuted. When he was sent to a correctional facility, the husband's mandatory HIV test turned out to be positive.

The man used his status for personal advantage. For three years, while he was serving his sentence, he has threatened to prosecute the woman if she did not regularly bring him parcels, money, and cigarettes.

A. had to satisfy her spouse's demands because she was afraid of being prosecuted, even though she firmly believed that it was impossible to save the marriage in the future.

The woman did not even consider the line of defense but was firmly convinced that she would be sent to prison.

Russia

Name: M.

Gender: Female

Age: unknown

Place of residence: Volgograd, Russia.

M., who is raising her son without a husband's help, met a man with whom she had sexual contact without a condom. After the contact, the woman told him about her HIV-positive status. The man threatened to take her to court for transmitting HIV and also started extorting money for the examination. The woman transferred him the full amount of money to pay for the HIV test. He did not provide the result but continued blackmailing and extorting 1.5 million rubles for the so-called treatment of HIV abroad. The woman turned to the «Peer to Peer» project for help.

Tajikistan

Name: unknown

Gender: Female

Age: unknown

A sex worker who was not taking ART was detained within an epidemiological investigation. In May 2018, police seized her phone and contacted all her clients. Men who confirmed sexual relations with the woman were found and invited for examination. All men were tested negative for HIV, but she was convicted under paragraph 1, Article 125 of the Criminal Code of the Republic of Tajikistan.

The state prosecutor demanded that the woman be sentenced to two years' imprisonment. The court took into account the difficult economic situation of the defendant's family and her repentance for what she had done and sentenced her to one year's imprisonment.

In December 2018, the woman was released early due to poor health. And in March 2019, the criminal case was reopened for the same episodes on the basis of an appeal by the prosecutor's office. The investigation did not identify new victims. None of the more than 20 men involved in the case were found to be HIV-positive. They were tested at the time of the investigation in 2018 and 2019. However, the court convicted the woman.

V. Recommendations of international organizations and statements by representatives of civil society

The Global Commission on HIV and the Law¹², the United Nations Development Programme (UNDP), and the Joint United Nations Programme on AIDS (UNAIDS)¹³, among others, declare that any use of criminal law against people living with HIV should be strictly limited to cases of truly intentional transmission. However, in many countries, law and practice go beyond this limitation.

International organizations recommend:

- Not applying the criminal law in cases where there is no significant risk of HIV transmission, or when the person;
- Did not know about his or her HIV-positive status;
- Did not understand how HIV is transmitted;
- Disclosed his or her HIV-positive status to the person who was at risk of transmission;
- Did not disclose his or her HIV-positive status because of fear of violence or other serious negative consequences;
- Took reasonable measures to reduce the risk of HIV transmission;
- Agreed on a level of mutually acceptable risk with the other person;
- Not introducing specific corpus delicti to cases of intentional and unintentional transmission of HIV, but to use corpus delicti related to general criminal law in these cases;
- Applying the criminal law only in the case of intentional HIV transmission.

Expert consensus statement on the science of HIV in the context of criminal law

Concerned that prosecutions are not always guided by current evidence-informed medicine, 20 of the world's leading HIV scientists have developed the Expert Consensus Statement on the Science of HIV in the Context of Criminal Law¹⁴. It describes current evidence on HIV transmission, treatment effectiveness, and forensic evidence to better understand HIV science in criminal law contexts.

The application of current scientific evidence in criminal cases can limit unjust prosecutions and convictions. While applying the law in HIV cases, the authors recommend that caution be exercised when initiating prosecutions and encourage authorities, law enforcement, and judicial officials to use current scientific knowledge based on significant advances in HIV science that have occurred over the past thirty years.

This Consensus Statement aims to assist scientific experts considering individual criminal cases in which HIV non-disclosure, (perceived or possible) exposure, or transmission has been alleged. It provides an expert opinion regarding individual HIV transmission dynamics (i.e. the “possibility” of transmission), the long-term impact of chronic HIV infection (i.e. the “harm” of HIV), and the application of phylogenetic analysis as evidence. It describes the possibility of HIV transmission between individuals who have engaged in a specific act at a specific time under specific circumstances, as that is usually the focus of criminal cases, and aims to communicate current scientific evidence relating to HIV in a manner understandable to a non-scientific audience.

While describing the evidence, the authors aimed to use scientific concepts in ways that are helpful in the context of criminal law. For example, the chapter “Possibility of Transmission: Overview” states that HIV is not easily transmitted from one person to another. It is a relatively fragile virus that is transmitted by certain well-described routes. It is not transmitted through airborne, droplet, contact, vector-borne transmission, or fomites routes and cannot penetrate intact human skin.

For HIV transmission to occur, certain basic conditions must exist:

- There must be a sufficient amount of the virus in particular bodily fluids (i.e. blood, semen, pre-seminal fluid, rectal fluids, vaginal fluids, or breast milk);
- A sufficient quantity of at least one of those bodily fluids must come into direct contact with sites in the body of an HIV-negative person where infection can be initiated. These are usually mucous membranes, damaged tissue, or inflamed ulcers, but not intact skin;
- The virus must overcome the person's innate immune defenses so that infection can be established and propagated.

Most everyday activities carry no risk of HIV transmission because these conditions are not met. Leaving aside parenteral or vertical transmission, intimate contact, such as sexual intercourse, is usually required for transmission. Even in those cases, the per-act chance of transmission is zero to low (with estimates ranging from 0% to 1.4% per act)¹⁵

The Expert Consensus Statement on the Science of HIV in the Context of Criminal Law was used by “People PLUS’s” activists to protect HIV-positive people from criminal prosecution in Belarus.

¹² [Global Commission on HIV and the Law](#). Risks, Rights and Health: Supplement. - New York: UNDP, 2018. Pages 27-28.

¹³ [Ending overly broad criminalization of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations](#). Guidance note. UNAIDS, 2013.

¹⁴ [Expert consensus statement on the science of HIV in the context of criminal law](#)

¹⁵ Appendix 1. Expert Consensus Statement on the Science of HIV in the Context of Criminal Law.

Statement by national and regional networks and civil society organizations on HIV criminalization in the EECA region.

On November 25-26, 2019, the “Decriminalization of HIV transmission in the EECA region: the role of civil society and advocacy tools” meeting was held in Minsk, Belarus, by the Eurasian Women’s Network on AIDS (EWNA), the Global Network of People Living with HIV (GNP+) and CO “100 PERCENT LIFE”¹⁶. Activists representing national, regional, and international networks discussed the current situation with HIV criminalization in the EECA region and opportunities to develop cooperation aimed at counteracting this criminalization.

Activists of the EECA region have made significant efforts concerning the decriminalization of HIV. Thus, thanks to the active advocacy work of the community of people living with HIV, in 2018 Belarus adopted the amendment: the HIV-positive partner should be exempt from criminal liability if he or she has timely warned the HIV-negative partner about HIV and the latter has voluntarily agreed to take actions, which created a risk of infection¹⁷. But, unfortunately, this measure is not sufficient to solve the issue of HIV criminalization.

On December 10, 2019, Human Rights Day, the activists released the Statement by national and regional networks and civil society organizations on HIV criminalization in the EECA region¹⁸ to appeal to a wide range of stakeholders, and over 120 organizations and individuals have signed this statement by the end of the year. The appeal states the following:

We call the attention of the EECA countries to the fact that in a society with low stigma and discrimination, people are more likely to be voluntarily tested for HIV and, learn about their status, and begin ARV treatment.

We urge communities of people living with HIV and other criminalized and marginalized communities, in particular sex workers, LGBT people, people who use drugs, to unite and take a consolidated position to counter HIV criminalization, presenting a united front against HIV stigma and discrimination embedded in the law.

We urge governments and parliamentarians to use general law to prevent HIV transmission in the context of harm to health and, instead of applying criminal law in any cases other than actual infection transmission by malicious intent, take steps to encourage people to be tested, take ARV treatment, communicate their HIV status and have safe sex without fear of stigma, discrimination, and violence. This can be achieved by adopting and applying anti-discrimination laws and organizing public information campaigns to dispel myths about HIV, as such campaigns are evidence-informed and are led by people living with HIV.

We urge prosecution agencies and prosecutors to use scientific evidence and evidence-informed medicine, in particular the evidence included in the Expert consensus statement on the science of HIV in the context of criminal law, in pre-trial and trial proceedings, in order to limit or prevent abuse of criminal prosecution in cases of allegations of HIV transmission or exposure or in cases of non-disclosure of HIV status.

We urge the media to stop demonizing people living with HIV, presenting us as criminals and as sources of infection. We request the media to consider HIV-related issues from the perspective of human rights and use facts and evidence-informed medicine while covering such issues.

We encourage donors to invest in communities and advocates opposing HIV criminalization, which undermines human rights and public health.

¹⁶ Decriminalization of HIV Transmission in the EECA Region

¹⁷ Criminal Code of the Republic of Belarus. Article 157. “Transmission of human immunodeficiency virus”

¹⁸ Text of the Statement by national and regional networks and civil society organizations on HIV criminalization in the EECA region

VI. Experience of community support for HIV-positive people in courts

Experience of the republican public association “People PLUS”, Belarus¹⁹

How legal aid was distributed to those accused of committing a crime under Article 157 of the Criminal Code of the Republic of Belarus (the RB CC)?

Article 157. Transmission of human immunodeficiency virus.

1. Knowingly placing another person at risk of contracting the human immunodeficiency virus (HIV) is punishable by a fine, or arrest, or imprisonment for up to three years.

2. HIV infection of another person by recklessness or indirect intent by a person who knew about being infected with this disease is punishable by imprisonment for a term from two to seven years.

3. The action provided for in paragraph 2 of this article committed against two or more persons, or a person who is known to be minor, or with direct intent, is punishable by imprisonment for the term from five to thirteen years.

Note. A person who has committed the actions provided for in paragraphs 1 or 2 of this article shall be exempt from criminal liability in the event that another person exposed to the risk of infection or infected with HIV has been timely warned of the presence of this disease in the first person and has voluntarily agreed to commit the acts that created the risk of infection.

Since 2017, “People PLUS’s” activists have been working to protect the rights of HIV-positive people charged under the above-mentioned Article 157 of the RB CC²⁰.

HIV-positive people, who were the first to contact the Association in connection with the verification or investigative actions that had already begun, were usually members of the initiative groups of the organization, visited self-help groups, and consulted with peer counselors²¹.

After the first verdicts in cases in which “People PLUS’s” activists supported the defense, one of the sources of information was the so-called “word of mouth” communication among lawyers and interested parties.

Since 2018, the Association has significantly expanded its work in the regions where law enforcement authorities have initiated the largest number of criminal proceedings related to HIV transmission (Gomel Oblast).

At meetings with epidemiologists and infectious disease doctors, HIV-positive activists discussed the absurdity of

criminal prosecution without statements from the victims and/or facts of HIV transmission.

These meetings resulted in agreements to distribute business cards and information about “People PLUS” by healthcare workers among the target audience and to place flyers on stands in AIDS centers urging patients to seek help and support. Information about legal assistance was also posted on the organization’s website and disseminated through social networks.

Building a dialogue with defendants and their lawyers

People who come to the organization to seek help are most often open to dialogue. At the first contact, we provide psychological help and try to create a trusting atmosphere. This is necessary in order to get correct and reliable information for a real assessment of the situation. We are convinced that an important aspect of successful dialogue is the work of peer counselors, namely, the implementation of a gender-sensitive approach in practice. Many of those who received help became volunteers themselves and they developed skills in psychological and legal support for people charged under Article 157 of the RB CC.

Lawyers are usually open to cooperation because a not-guilty verdict or a sentence that does not involve actual imprisonment has a positive effect on their reputation. A defense counsel, knowing the criminal process, prepares a petition to involve a “People PLUS’s” peer counselor in the case as a witness and attaches the petition and other documents to the case file.

Thanks to coordinated work with peer consultants, defense counsels expand their knowledge of HIV issues by learning special information. They are familiar with the terminology, they know what phylogenetic expertise is, they ask “uncomfortable” questions when questioning the experts invited to the court (epidemiologists, infectious disease specialists). Examples of such questions are: “Does the result of the phylogenetic analysis show exactly, who is the source of transmission, given the fact that 90% of HIV-positive people in the EECA region have the same A-6 virus subtype?”, “Is it possible that these two people also had relationships with other persons, especially if they live in a small settlement?”

If judges do not consider peer counsel to be experts, the situation is saved by defense counsels who can bring the same information. This generates more interest and contributes to the detailed processing of cases.

¹⁹ <http://hiv.by/>

²⁰ https://kodeksy-by.com/ugolovnyj_kodeks_rb/157.htm

²¹ Peer counselors are specialists with equal characteristics to those being counseled. In this case, HIV-positive people counsel HIV-positive people

Examples of successful experiences in terminating criminal cases at the pre-trial investigation stage

Criminal prosecution can be stopped at the pre-trial investigation stage due to the early counseling advice because the evidential basis of cases related to HIV transmission is somewhat specific. The main evidence is a confessionary statement. Investigators/enquirers often put psychological pressure on the accused person, which is an abuse of power, sometimes based on blatant manipulation of illegally obtained medical information.

Thus, law enforcement can use private (medical) information disclosed to the treating physician (for example, about sex without a condom in a discordant couple in order to conceive a child). These facts are simply rewriting in a protocol; the interrogated person signs it, essentially admitting guilt, which gives the case further consideration.

Another illustrative example of pressure can be the interrogation of a pregnant woman in the presence of a large number of people at the police station. Being afraid of publicity and disclosure of the diagnosis, a woman will sign anything, just to get away as fast as possible. Even if a child was conceived naturally and an HIV-positive woman takes ARV therapy, she could be charged under Article 157 of the RB CC for placing the future child at risk of HIV transmission. Unfortunately, such cases have been documented, even though they oppose evidence-informed medicine (for example, in the case of an undetectable viral load, an HIV-positive woman cannot transmit HIV to her child) and public health policy (in 2016, Belarus received a WHO certificate on validation of the elimination of mother-to-child transmission of HIV²²).

While advising people against whom an investigation has been initiated, peer consultants of the NGO “People PLUS” teach the basic background of dialogue with law enforcement officers, how to answer questions, and avoid situations when the investigation is based on a person’s confession under pressure. By receiving legal and psychological support, people living with HIV feel more confident and most often their cases do not go to court but are closed due to the absence of the event of a crime.

Participation of the organization’s representatives in court proceedings under Article 157 of the RB CC.

The organization’s representatives have counseled more than 110 HIV-positive people since 2017. The peer counselors and the leadership of the organization participate in court processes on the side of the defense. During this time, courts have imposed custodial sentences, but in most cases supported by peer counselors sentences have not entailed deprivation of liberty.

Example of social support (or paralegal work) in Belarus

Irina and Alexander got acquainted at the meeting of a self-help group for people living with HIV. Alexander tested positive for HIV in 2009, but he was not under regular medical check-ups for fear that Irina would be accused of transmitting HIV to her husband. At that time, Irina was already registered at the AIDS Center. In 2017, due to a sharp deterioration in his health, Alexander went to an infectious disease doctor, who referred the data of the epidemiological investigation to law enforcement authorities. A criminal case was initiated against Irina under paragraph 2 of Article 157 of the RB CC (HIV transmission). The husband wrote in all the reports that he did not consider himself a victim.

Representatives of “People PLUS” acted as witnesses for the defense in the trial. The organization also provided a description of Irina as an activist involved in training people on adherence to ART and life with HIV. Besides, we provided information that Irina and Alexander’s family is socially adapted, they have a child, and parental responsibilities are properly fulfilled.

The case file was attached by the following materials:

- *Recommendations of the WHO Global Validation Committee for Belarus on the revision of criminal legislation, including Article 157 of the RB CC²³;*
- *A letter from WHO on the current classification of HIV as a “not fatal, but controllable chronic infectious disease”²⁴;*
- *A joint motion by “People PLUS” and the human rights organization “The Center for the Promotion of Women’s Rights—Her Rights» on not applying punishment involving deprivation of liberty.*

The court sentenced Irina to two years’ imprisonment without referral to an open-type institution.

Information provided by: **Anatoly Leshenok**, Head of the NGO “People PLUS”.

Experience of the republican public organization “Tajikistan Network of Women Living with HIV”²⁵

How has the organization joined in the work to overcome HIV criminalization?

Since 2018, the country has begun to impose mass sentences under Article 125 of the Criminal Code “Infection with human immunodeficiency virus” (as amended by RT Law No. 1330 dated July 23, 2016)²⁶ against HIV-positive people, especially women.

Article 125. Infection with human immunodeficiency virus

1. Deliberately exposing another person to the danger of contracting the human immunodeficiency virus is punishable by restraint of liberty for a term of up to three years or imprisonment for a term of up to two years.
2. Infection of another person with the human immunodeficiency virus by a person who knew about the presence of this disease is punished with imprisonment for a term of two to five years.
3. The act provided for in part two of this article, committed:
 - a) in relation to two or more persons;
 - b) in relation to a knowingly minor, is punished with imprisonment for a term of five to ten years.

The prosecutor of the Tajikistan's Sughd Region announced that 33 criminal cases under Article 125 of the RT CC were opened against 26 HIV-positive people in 2018, and 39 criminal cases have already been opened against 32 HIV-positive people in 2019.

Inaccurate and distorted information in the media about HIV-positive women charged under Article 125 of the RT CC encouraged the Tajikistan Network of Women Living with HIV to start working on HIV decriminalization.

The organization prepared an alternative topical report to the Committee on the Elimination of Discrimination against Women (CEDAW). The report also included a recommendation to the state to remove Article 125 "Infection with HIV" from the Criminal Code, as prosecuting people for not disclosing their HIV status and transmitting HIV when there is no evidence of intentional transmission is excessive and may be counterproductive in terms of public health and violations of the rights of women living with HIV.

During the meeting in Geneva, the organization's representatives actively discussed the issue of HIV decriminalization and managed to report on the essence of the problem to committee members. As a result, the Committee on the Elimination of Discrimination against Women recommended in its concluding observations²⁷ that Tajikistan should decriminalize HIV transmission.

After that, the President's Office, with the participation of all stakeholders, developed an action plan to implement the Committee's observations in the country. In 2020, the Tajikistan Network of Women living with HIV was involved in the preparation of the national plan to end the HIV epidemic for 2021-2025 and the topic of decriminalization was included in this document. However, the lack of statistics on convictions under Article 125 of the RT CC hampers the work on this issue, and there is no disaggregation by gender and age.

Since 2019, the NGO "Center for Human Rights" has been working to protect the rights and interests of people living with HIV in the country. In 2020 this organization managed six cases under Article 125 of the RT CC.

What should paralegals, who defend people living with HIV in courts, be prepared for?

According to the legislation of RT, only lawyers with licenses may participate in the courts. This means that paralegals are not allowed to participate in courts as defenders, but they may appear in court as witnesses if they are relevant to the case under consideration. Paralegals consult clients and support them in contacts with lawyers. They also know the country's laws, which is important for protecting the rights of HIV-positive people accused of virus transmitting.

Examples of communications and case management for women facing charges.

The Tajikistan Network of Women Living with HIV promotes women's interests at various levels. The organization works closely with governmental and non-governmental organizations and is a member of the National Coordinating Committee to Combat HIV/AIDS, Tuberculosis, and Malaria in the Republic of Tajikistan.

Information about the organization's services is available on its website and Facebook page²⁸, as well as in the city and district AIDS Centers. Most often, HIV-positive people learn about the organization from peer counselors and NGO staff. HIV-positive people also spread this information through "word of mouth" communication.

In 2018, the media reported on a woman who allegedly transmitted HIV to at least 10 men.²⁹ The case received widespread publicity in the country. The organization, together with the NGO "Center for Human Rights", UNAIDS, and UNDP, was involved in following up the case.

The head of the organization, together with a lawyer, went to the town where the woman lived and met with her doctor and mother. However, the woman's mother refused the help in her daughter's defense. The woman was sentenced to one year's imprisonment in July 2018; the sentence went into effect in August 2018, and in October 2018 the prosecutor protested to the court to reopen the case due to the leniency in the sentence. No one at the detention facility where the woman was serving her sentence was notified of this protest, and at the same time, the head of the prison applied to the court for conditional early release of the convicted woman due to her serious health condition.

²³ Annexes 2 and 3. Recommendations of the WHO Global Validation Committee for Belarus to revise criminal legislation

²⁴ Annex 4. WHO response dated of 11.10.2017 confirming that HIV is no more a fatal disease

²⁵ www.tnwplus.org

²⁶ http://continent-online.com/Document/?doc_id=30397325#pos=8:-145

²⁷ Concluding remarks on the sixth periodic report of Tajikistan, 2018

²⁸ <https://www.facebook.com/tnwplus/>

²⁹ <https://rus.ozodi.org/a/29261366.html>

The convicted woman was released on parole in December 2018, but she was sent back to prison in March 2019. During the new proceeding, no new witnesses or new victims were found. About 24 intimate partners of the woman were named in the case as victims, but none of them had HIV, either initially or repeatedly³⁰.

Not all communications with victims are successful. For example, in September 2020, a woman contacted the organization and reported that her HIV-positive sister, who had been registered at the AIDS Center since 2010 (she was taking ARV therapy, and her viral load was undetectable), had been detained and a criminal case was opened against her under Article 125 of the TR CC. The girl was in a pre-trial detention center and needed the assistance of a lawyer. The organization contacted a friendly lawyer, who agreed to represent the girl in court. During the study of the case file, the defense counsel identified violations on the part of law enforcement agencies.

Since 2010 the girl has been registered at the AIDS Center, she takes ARVs regularly and her viral load is undetectable. The criminal case was initiated on the basis of the report of an operative and a victim's statement. The information about the girl's HIV-positive status became known to the operatives in violation of the procedure, which is an interference with her right to privacy and makes such evidence inadmissible. According to paragraph 2, Article 162 of the Code of Health Care of the Republic of Tajikistan, the information about the disease of human immunodeficiency virus is confidential (medical secrecy). This information can be disclosed only based on a court order or at the request of investigative bodies.

The MIA officers received information from the mobile operator about all incoming and outgoing calls of the girl. Then they started contacting all persons and found a man who had sexual contact with her in 2019. They used condoms during sex. After he was called to the police station, he wrote a statement and learned about the girl's HIV status.

At the court hearing, the girl confessed to what she had done and asked the court to release her according to Article 10 of the Law "On Amnesty" of October 29, 2019. She was released in the courtroom based on the court order of May 10, 2020.

The defense counsel offered to appeal against the wrongful actions of the law enforcement agencies, but the girl refused to defend her rights because she was afraid of being sentenced again. The organization provided the girl with psychological support.

Information provided by: **Tahmina Haydarova**, Head of the Tajikistan Network of Women Living with HIV.

The experience of E.V.A Association³¹ in public protection, Russia

How has the organization joined in the work to overcome HIV criminalization?

Russia is one of the leaders in the world and the first country in the post-Soviet space in terms of HIV convictions under Article 122 of the Criminal Code of the RF. Many are convicted under its first paragraph – "An obvious threat to infect a person with HIV" when no actual transmission occurs.

Article 122. Infection with Human Immuno-deficiency Virus (HIV)

1. An obvious threat to infect a person with HIV shall be punishable by restraint of liberty for a term of up to three years, or by arrest for a term of three to six months, or by deprivation of liberty for a term of up to one year.
2. Infection of another person with HIV by a person who knew that he had such disease, shall be punishable by deprivation of liberty for a term of up to five years.
3. The act against envisaged by the second part of this Article, committed against two or more persons, or an obvious juvenile, shall be punishable by deprivation of liberty for a term of up to eight years.
4. Infection of another person with HIV through of the improper discharge by a person of his professional duties, shall be punishable by deprivation of liberty for a term of up to five years, with the deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years.

Note. A person who has committed the deeds provided for by Parts One and Two of this Article shall be released from criminal liability, if the other person subjected to the risk of being infected, or infected, with HIV was warned in due time that the former had such disease and agreed of his own free will to commit the actions posing the risk of infection.

According to the statistical department of the Supreme Court of the RF³², from 1997 to June 30, 2020, there were 1,014 convictions under paragraphs 1, 2, 3 of Article 122 of the Criminal Code of the RF, of which 577 (57%) convictions were for placing another person at risk of HIV transmission.

Since 2017, the E.V.A. Association members have been involved in the issue of decriminalization of HIV transmission in Russia. In 2017, a working group was created to develop a position on Article 122 of the RF CC. In 2018, the Association started counseling

³⁰ <http://www.ewna.org/zhenshiny-v-tadzhikistane-bolee-ujazvimy-k-kriminalizacii-peredach-vich/>

³¹ <https://evanetwork.ru/ru/>

³² <http://www.cdep.ru/index.php?id=5>

and supporting HIV-positive people charged under Article 122. Members of the organization are part of an informal working group that conducts media monitoring, participates in discussions in social networks about the importance of decriminalization, analyzes statistics on sentences imposed under Article 122 of the RF CC, counsels and supports people living with HIV. In 2019, the analytical review titled “HIV Criminalization Scan: Russia” was prepared³³. In 2020, the topic of decriminalization was raised in the State Duma as part of a roundtable on legislative support for HIV prevention and treatment³⁴.

What should paralegals, who defend people living with HIV in courts, be prepared for?

Counsels assigned to the defendant are not always ready for a dialogue. There were situations when defense counsels treated badly paralegals because of the absence of specialized education. However, the paralegal’s role is not based on having a legal education, but on the fact that the paralegal knows about HIV and has experience in working with HIV-positive people.

The following steps should be followed in such situations:

1. Give the defense counsel an order to make contact with the paralegal/public defender³⁵. It is a letter of reminder in writing that the defense counsel has to coordinate the defense position with the defendant and, on behalf of the defendant, with the social worker, who, at the defendant’s request, should be admitted as a paralegal to the court hearing.
2. If the defense counsel refuses to receive the order or continues to obstruct the defense, a complaint should be sent to the bar association to which the defense counsel belongs. If the obstruction continues, the complaint can be forwarded to the Regional Bar Association.
3. If even after that the defense counsel does not begin to perform his/her duties, it is possible to apply for his/her replacement. The problem is that the question of replacing the assigned defender is not clearly resolved in the CPC, and therefore it is left to the discretion of the court. There is a very high chance that the court will refuse to replace the defense counsel unless the counsel himself supports the request for the replacement. In order to convince the court and the defense counsel him/herself to replace the defender, it is necessary to perform the following steps: delivering orders and addressing complaints.

Examples of social support (or paralegal work) in Russia

Nº1. The case of a boarding school student V.M.

V.M., a girl of 18 years old, contacted the E.V.A. Association’s hotline in the spring of 2017^{36,37}. She was charged under paragraph 1, Article 122 of the RF CC, “An obvious threat to infect a person with HIV”³⁸. She

met a 31-year-old man through social networks, went on dates with him for several weeks, and they had a sexual relationship. During the first contact, she offered to use a condom, but he refused. After that call to the hotline, the girl disappeared for several months.

While waiting for the ninth court hearing in November 2017, she again sought legal assistance and support from the E.V.A. Association. The peer counselor of the project “Peer to Peer Protection,” Mikhail Golichenko and lawyers, advising the organization, joined the case. A plan of action was developed together. The closest to the venue of the court hearings was a member of the E.V.A. Association, Director and Psychologist of the CF “Vector of Life”³⁹, Elena Titina, who has great experience in work with HIV-positive people. It was decided to file a petition to the court for her involvement as a public defender⁴⁰. Elena Titina concluded social support contract⁴¹ with V.M. and developed a support plan. After learning the case materials, she developed a defense position. Next, it was necessary to familiarize the assigned defense counsel with it. During the court hearings, the assigned counsel was changed. A new counsel refused to talk with the public defender via the phone and did not answer the telephone calls of her client. It was possible to meet the assigned counsel and familiarize her with the position of the defense only 15 minutes before the beginning of the court session.

By that time, the assigned defense counsel had convinced the defendant to plead guilty and promised a more lenient sentence in such a case. At the court session, the counsel suggested that the parties conclude a settlement agreement. The victim refused such a settlement. The state prosecutor said about the possible punishment of a year of restriction of liberty.

The defense informed the court about the peculiarities of the disease and the need for constant examination and HIV treatment. All of this requires V.M. to regularly visit the AIDS Center, which was a 3-hour drive from her town and was already another county, so the punishment requested by the state prosecutor could have prevented V.M. from receiving regular health care.

The public defender spoke and read out the defense position; the main message of the position indicated that the actions of the defendant had had no direct intent to transmit HIV to the victim⁴². It was clear from the defendant’s testimony that she did not want to put the victim in danger of transmitting HIV and was not indifferent to the situation. She did not insist that the victim F. had not used a condom, but she had only failed to warn him that she had had HIV. She was afraid to tell him about the diagnosis, but she tried to hint indirectly by telling him about her HIV-positive girlfriend.

33 <https://evanetwork.ru/ru/article/analiticheskij-obzor-skan-kriminalizatsii-vich-rossiya/>

34 <https://evanetwork.ru/ru/2020/02/21/predlozheniya-v-gosdumu/>

35 Annex 5. Appeal to an attorney to involve a public defender to public proceedings

36 <https://evanetwork.ru/ru/2018/02/01/vikino-delo/>

37 <https://evanetwork.ru/ru/2019/05/06/vikino-delo-prodolzhenie/>

38 Article 122 of the Criminal Code of the Russian Federation

39 <https://vektor-life.ru/>

40 Annex 6. Petition for admission of a public defender to legal proceedings

41 Agreement of social support on a free-of-charge basis

42 On this basis, the criminal case against the accused person should be terminated on the basis of paragraph 1 of Article 212 and clause 2, paragraph 1 of Article 24 of RFCCP for absence of the event of a crime. A crime is recognized as committed with direct intent, if a person was aware of the public danger of his/her actions (inaction), foresaw the possibility or inevitability of socially dangerous consequences and wished their occurrence.

The court received the information about psychological peculiarities in adapting to an HIV diagnosis. V.M. could not tell about her diagnosis directly and did not fully understand all the consequences, as she was an adolescent, learned about her disease at the age of 16, and never received help from specialists. Her knowledge about HIV was extremely limited.

Despite the arguments of the public defender and the position of the defense counsel, the justice of the peace passed a verdict: "To find V.M. guilty of committing a crime under paragraph 1 of Article 122 of the RF CC and to impose a punishment in the form of two months of limitation of freedom with the following restrictions: not to leave the place of permanent residence from 10:00 pm until 06:00 am of the following day, not to change the permanent place of residence, and not to leave the city districts without consent of supervisory authorities".

Right after the trial ended, the girl was beaten and kicked out of the house by her boyfriend, who was unhappy that the supervisory authorities would control her. V.M. found shelter at her girlfriend. While the girl was in a children's home, her mother, who was deprived of parental rights, illegally terminated her registration at the place of her residence. To restore her rights to housing and obtain registration, V.M. had to move to another locality, and this could only be done with the consent of the supervisory authorities. She had the right to receive an apartment from the state but was unable to execute the necessary documents due to the lack of registration. She could not live in the dormitory of the technical school where she studied, because the management got to know about her HIV status and threatened to disclose her diagnosis. Due to invalid documents and lack of registration she could not receive a pension and would live on a scholarship that was below the poverty rate. Social support partly resolved her problems.

V.M.'s public defense and social support continued after the verdict was delivered. The appeal was rejected. A cassation appeal to the Supreme Court was considered. As a result, the case was returned first to the Samara Regional Court and then to the court of the first instance. During the new court sessions, the judge repeatedly emphasized that the conviction was removed from official records and there was no need to go through courts again to prove her innocence. The public defender, providing psychological support, motivated the girl to take further steps. V.M. understood the importance of her case, its strategic significance, and uniqueness with respect to the decriminalization of Article 122 in the Russian Federation.

It is worth noting that during the trial, which lasted more than two years, the representatives of the justice were constantly changing. Assigned counsel and representatives of the prosecutor were changed several

times. The court hearings were not easy for V.M. She had to live through traumatic memories again. She understood the very essence of the charge of willful HIV transmission long after the proceedings began. The "victim" constantly provoked the girl and her public defender during court sessions. She was discharged from employment due to the need to be present at the court all the time. The drive to the court took about three hours one way.

On June 4, 2019, Justice of the Peace Court ruled: "In respect of minor V.M., accused of committing a crime under paragraph 1, Article 122 of the RF CC to terminate the criminal case (criminal prosecution), releasing her from criminal responsibility, and apply to her a compulsory measure of educational influence in the form of a warning. The measure of procedural coercion - the obligation to appear - is to be canceled".

After all, they found her guilty but changed the punishment according to the recommendations of the Supreme Court. V.M. cried in the courtroom after realizing that her charge was dropped.

For three years of social support, community defender Elena Titina has become a meaningful adult person for the girl. Now V.M. has received an apartment under the housing program for orphans, has married; she is working and preparing to initiate ART.

Nº2. A case on breastfeeding

Despite WHO guidelines recommending breastfeeding to HIV-positive women, in the Russian Federation a woman living with HIV who breastfeeds her baby can be prosecuted.

In May 2019, an HIV-positive woman breastfed her newborn baby in a maternity hospital. The administration of the maternity hospital reported it to the child protection services and the police. The woman was charged under Article 122 of the RF CC for putting at risk of HIV transmission and separated her from the child. The child protection services initiated the process of depriving the mother of her parental rights. The woman was not legally married to the child's father, and paternity was not legally confirmed.

The child was in a children's hospital and children's home after being separated from the mother. Paternity was judicially established and the claim to transfer the child to the father was satisfied only in September 2019. In November 2019, the court decided not to terminate the woman's parental rights. All charges against the woman were dropped in June 2020. The defense proved that there was no direct intent in her actions. The criminal case was dismissed due to the absence of the event of a crime.

This story is based on the work of a whole team of people: peer counselors from the E.V.A. Association, Lawyer Olga Krivonos, psychologists, and healthcare workers from the AIDS Center.

The woman became part of the E.V.A. Association's "Peer to Peer" project after the child was taken away from her; it was in the children's home, and the case was in the prosecutor's office. A social support agreement was signed with her and a plan of action was developed. Together with psychologists and the AIDS Center's doctors, counseling and support were organized for the woman and her partner to improve adherence to ARV therapy. The mother was provided with access to the children's home. The counsel was involved in preparing all the necessary documents for the court authorities. The woman also agreed to undergo a voluntary psychiatric evaluation. Timely media coverage was of great importance in the management of this case⁴³⁴⁴⁴⁵⁴⁶.

In August 2020, the social worker reported that the woman and her partner were committed to treatment, complied with all medical recommendations and that their child lived with them and was HIV-negative. All charges against the woman were dropped⁴⁷.

The public defense experience of the Public Association of People Living with HIV «Ishonch va Hayot»⁴⁸, Uzbekistan

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The public defense experience of the Public Association of People Living with HIV «Ishonch va Hayot»⁴⁸, Uzbekistan

What does the organization do?

How was information about legal assistance to defendants under paragraph 4, Article 113 of the Criminal Code of the Republic of Uzbekistan (the RUz CC) disseminated?

Article 113. Transmitting Venereal Disease or AIDS

Intentional endangering another person's health by the possibility of transmitting a venereal disease – shall be punished with fine up to twenty-five minimal monthly wages or compulsory community service of up to two hundred and forty hours, or correctional labor up to one year.

Infecting somebody with a venereal disease by a person who was aware of his being diseased – shall be punished by a fine of fifty to one hundred minimum monthly wage or by compulsory community service from two hundred forty hours to three hundred sixty hours or by corrective labor for up to two years or by restriction of liberty from one to three years or by imprisonment up to three years.

Actions envisaged by paragraphs 1 and 2 of this Article committed in respect of:

- a) at least two persons;
- b) a juvenile – shall be punished by compulsory community service from three hundred sixty to four

43 <https://mr-7.ru/articles/207320/>

44 <https://paperpaper.ru/vich-polozhitelnuyu-peterburzhenku-hot/>

45 <https://moika78.ru/news/2019-11-11/316792-sud-peterburga-ne-lishil-roditelskih-prav-mat-s-vich-kormivshuyu-rebenka-grudyu/>

46 <https://mr-7.ru/articles/220192/>

47 Posted by attorney Olga Krivonos on her Facebook page

48 <http://plwh.uz/>

hundred eighty hours or restriction of liberty from three to five years, or imprisonment from three to five years. Intentional endangering another person by the possibility of transmitting AIDS or transmission thereof – shall be punished with imprisonment from five to eight years. Infection of another person with HIV/AIDS as a result of non-fulfillment or improper fulfillment by a person of his/her professional duties – shall be punished with a fine from one hundred to two hundred minimum wages or by compulsory community service from three hundred sixty to four hundred eighty hours or by corrective labor up to two years or by restriction of liberty from two to five years or by imprisonment up to five years.

In June 2020, members of “Ishonch va Hayot” learned from an article published on the website of the Tashkent City Department of Internal Affairs that under paragraph 4, Article 113 of the RUz CC, a case was opened against an adolescent boy for knowingly placing a young girl at risk of HIV transmission⁴⁹. Journalists disseminated and misrepresented this information. They wrote that the girl tested positive for HIV, and this provoked angry comments under the posts.

This story was the starting point for active work aimed at decriminalizing HIV transmission in the country. “Ishonch va Hayot” issued a statement calling on people living with HIV who are facing charges under paragraph 4, Article 113 of the RUz CC to seek legal assistance and support. This statement was followed by the first appeals from HIV-positive people. Another strategy related to finding cases was the dissemination of information through peer counselors at 14 regional AIDS centers.

In the near future, it will also be possible for HIV-positive people, charged under paragraph 4, Article 113 of the RUz CC, to apply through the organization’s website.

How HIV-positive people facing charges communicate with their lawyers

The work with the accused persons is hampered mainly by the internal stigma that exists among HIV-positive people, as well as the fear of disclosure of the diagnosis. It is easier for people to admit guilt than to defend their rights. The work of public defenders is based on the client’s request.

Communication develops in different ways and depends on the specific case. It can be a one-time consultation over the phone, a meeting with a person at the office, or personal support of the client in all institutions, including the court. Existing societal prejudices against members

of key populations and people living with HIV have not passed the lawyers by. For example, 4 out of 6 lawyers refused to defend a man accused of transmitting HIV after they come to know that he was gay.

In one case, a counsel categorically forbade a client to consent to the participation of a public defender in court. The prohibition was argued that it could negatively affect the judge and the entire proceedings.

Despite this, the peer counselor helped the defense counsel gather arguments and prove the defendant’s innocence. The peer counselor also participated in drafting motions from the AIDS Center regarding a defendant’s medical condition.

In another case, a defense counsel categorically did not want to rely on the organization’s opinion because of her professional experience, accusing a peer counselor of incompetence. However, after a meeting and a reasoned conversation with her, she considered the information of the peer counselor for the defense position.

The main barrier in working with defense counsels, as well as other participants from the law enforcement and judicial systems, is the extremely low awareness of HIV. As a rule, assigned counsels are not interested in providing quality assistance to their clients, because they have a large number of cases pending and limited resources to study the essence of the case and prepare a defense position. In such a situation, the participation of a trained public defender in the court process can have a positive impact on the outcome of the situation.

While considering retrospectively the cases of support, it is clear that HIV-positive people are victims of a discriminatory legal system. In the course of court proceedings, representatives of the authorities, law enforcement, and the judicial system do not use modern scientific knowledge; they are not aware of the changes in the science of HIV over the last thirty years.

Example of social support (or paralegals’ work) in Uzbekistan

A woman, charged under paragraph 4, Article 113 of the RUz CC, applied to the organization. The reason and basis for the criminal case was the fact that the woman works as a haircutter. This profession is included in the list of jobs prohibited for HIV-positive people in Uzbekistan.

At the first court hearing, the defense motioned for the appointment of a forensic medical examination with the involvement of a well-known infectious disease doctor with expertise in HIV. As arguments in support of the motion, the defense referred to the fact that the

49 Intentional endangering another person by possibility of transmitting AIDS or transmission thereof – shall be punished with imprisonment from five to eight years. Infection of another person with HIV/AIDS as a result of non-fulfillment or improper fulfillment by a person of his/her professional duties – shall be punished with a fine from one hundred to two hundred minimum wages or by compulsory community service from three hundred sixty to four hundred eighty hours or by corrective labour up to two years or by restriction of liberty from two to five years or by imprisonment up to five years. http://fmc.uz/legisl.php?id=k_ug_20

50 <https://uz.sputniknews.ru/analytics/20200609/14309841/Pochemu-VICH-uzhe-ne-prigovor-dlya-meditsiny-no-vse-esche-bich-dlya-obschestva.html>

investigation established that the defendant was taking ART and her viral load was zero. She did not intend to transmit HIV to any of her clients.

During the pre-trial investigation, the woman had to listen to humiliation and inappropriate remarks by an operative and some witnesses. The judge and prosecutor's competence and their interest in information about HIV and routes of HIV transmission played a big role in the case. The judge recommended that the organization would start lobbying for changes to the list of prohibited professions for HIV-positive people and raise the issue of excluding the profession of "hairstylist" from it⁵¹.

Thanks to the prepared position and the participation of the public defender, the woman avoided actual imprisonment. The judge sentenced her to two years on probation⁵².

VII. Practical recommendations of human rights activists

There are many situations where criminal charges related to the criminalization of HIV transmission have been avoided because people turned to activists in time and received simple advice in time, including advice not to testify against themselves.

Thus, if a person is required to provide information, for example, about previous sexual partners, the use of this information as evidence against him in criminal proceedings raises serious concerns in the context of a violation of the right not to testify against oneself (a principle stipulated in most legal systems of countries).

Law enforcement should not prosecute people in cases of failure to disclose a partner's HIV status or in situations of possible HIV transmission where there is no evidence of deliberate or malicious intent. The use of criminal law in cases of consensual sexual activity of adults is disproportionate and counterproductive in terms of improving public health.

Existing international guidelines on the decriminalization of HIV suggest that criminal prosecution for HIV transmission can only be justified when one person acts with the clear intent to transmit HIV to another person and does it.⁵³

Each individual case must be analyzed in light of the fact that disclosing one's HIV-positive status is often challenging, given the prevalence of stigma, discrimination, violence, and other harassment related to HIV. There are often good reasons to fear rejection and restrictions, as well as discrimination in areas, such as services, work or housing, and other areas if they disclose their status⁵⁴. People living with HIV face relationship breakdowns, violence, and other negative consequences if they disclose their status to a partner, and this is, unfortunately, a reality that a significant number of women living with HIV face⁵⁵.

When participating in criminal cases regarding HIV criminalization, it is very important to examine what evidence exists about the specific details of the intimate relationship (or other facts) between the claimant and the defendant. What acts took place? The number of them? Under what circumstances? These details will be important for a reasonable assessment of the possibility of HIV transmission. The details of the communication between the claimant and the defendant must also be

established. For example, did the defendant disclose his HIV-positive status one way or another? Was condom use suggested for certain sexual acts or not? It must be investigated whether there are other sources of evidence to confirm or disprove the fact of their meetings. There may be other evidence revealing that disclosure of status took place or that the claimant knew of the defendant's status, such as learning this information from others who knew of his/her status.

In the case of an ongoing relationship, the context and specifics of the relationship should be considered. If there is evidence, such as threats of violence, that could reasonably prevent the defendant from disclosing his or her status or offering measures to reduce the possibility of HIV transmission. It is also important to understand whether the charges are motivated by an attempt to control the partner or it is a part of threatening, intimidating, vindictive, or aggressive behavior. In addition, the fact of determining who first became HIV-positive, the claimant or the defendant, cannot be based on who was first diagnosed with HIV or who first filed a complaint with the authorities.

You should recommend lawyers for a qualified expert opinion or insist on it yourself, when necessary.

Phylogenetic analysis of HIV involves estimating the evolutionary relationships of HIV variants, for example, to investigate HIV transmission networks for public health purposes. In criminal cases, phylogenetic analysis involves investigating whether the claimant and the defendant are part of the same transmission network.

Phylogenetic analysis can be used as a forensic tool. The results can be compatible with, but cannot conclusively prove, the claim that a defendant has infected a claimant. Importantly, phylogenetic results can exonerate the defendant when the results are not compatible with the allegation that the defendant infected the claimant⁵⁶.

The potential misuse of phylogenetics in epidemiological surveillance programs causes concern. Epidemiologists can analyze DNA data from ARV resistance assays to identify molecular or transmissible clusters to contain the virus. There are concerns that this confidential information could be used against people living with HIV, including in the criminal justice system.

53 UNAIDS & UNDP, Policy Brief: Criminalisation of HIV Transmission (2008), https://www.unaids.org/en/resources/documents/2008/20081110_jc1601_policy_brief_criminalization_long_en.pdf ; 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, UN Doc. A/HRC/14/20 (2010), <https://daccess-ods.un.org/TMP/1158059.76092815.html> ; Global Commission on HIV and the Law, HIV and the Law: Risks, Rights and Health (July 2012), www.hivlawcommission.org/report ;
54 UNAIDS, Ending overly broad criminalisation of HIV non-disclosure, exposure and transmission: critical scientific, medical and legal considerations (2013)
UNAIDS, Update: HIV-related discrimination still widespread (4 May 2020), https://www.unaids.org/en/resources/presscentre/featurestories/2020/may/20200504_hivdiscrimination.
55 Krüsi A et al., "Positive sexuality: HIV disclosure, gender, violence and the law-A qualitative study," PLoS One 2018; 13(8): e0202776, doi: 10.1371/journal.pone.0202776
56 <https://www.hivjusticeworldwide.org/wp-content/uploads/2018/07/Russian-Expert-Consensus-Statement.pdf> Expert consensus statement on the science of HIV in the context of criminal law, 2018

The following key points based on the available scientific findings should also be considered:

- HIV cannot be transmitted through saliva, even if it contains a small amount of blood;
- The probability of HIV transmission through bites ranges from negligible (in very unusual and extremely difficult circumstances) to zero;
- The likelihood of HIV transmission during a single vaginal or anal sexual contact varies from low to zero, depending on the circumstances;
- The possibility of HIV transmission during a single oral sexual act is from negligible (in very unusual and extreme circumstances) to zero;
- It is impossible to transmit HIV during a single vaginal, anal, or oral act if the HIV-positive partner has an undetectable (“suppressed”) viral load;
- The probability of HIV transmission during a single vaginal or anal sexual act, when the HIV-positive partner has a low viral load, ranges from negligible to zero;
- The possibility of HIV transmission during a single vaginal, anal, or oral sex act is excluded if a latex or polyurethane condom is used correctly if its integrity is not compromised and it is used throughout the entire sex act⁵⁷.

Particular caution is required when dealing with scientific evidence, such as phylogenetic analysis comparing two strains of HIV, or tests aimed at evaluating the likelihood of recent HIV transmission to the claimant. The limitations of this evidence must be carefully understood; such tests alone cannot prove that the defendant transmitted HIV to the claimant.

Suppression of viral load through ART prevents transmission of HIV

Whenever HIV arises in the context of a criminal case, police, lawyers, judges, and if applicable, juries must be informed by the best available scientific evidence concerning the benefits and consequences of appropriate therapy, and the individual and community advantages of maintaining such therapy⁵⁸.

Three major studies have unequivocally confirmed ART’s ability to reduce HIV viral load to undetectable levels, which statistically reduces sexual transmission of HIV to zero. The proven effect of ART has transformed the daily lives of people living with HIV. It has given rise to new and different public health campaigns, policies, and strategies around the world. This fact can and should change the law and its practice.

Inconsistency of legal prosecution if a condom was used

Criminal prosecution is not justified in cases of correct condom use because it prevents the transmission of HIV.

If the circumstances of the case include a plausible claim that a condom was used but broke, slipped off during intercourse, the prosecution must find out details about when and how this might have happened, as well as the level of risk of contact with body fluids containing HIV. A qualified expert opinion will be required to determine the possibility of HIV transmission, including a determination of the likelihood that a suppressed or reduced viral load could prevent transmission.

Maintaining medical confidentiality

The confidentiality of health data should be an essential principle of the legal systems of all countries. It is vital not only to respect patients’ privacy but also to preserve their trust in the medical corps and the health service as a whole. Without such protection, those in need of medical care may refrain from communicating personal or intimate information necessary for proper treatment, or even from seeking such care⁵⁹. Cases, when doctors or health care providers disclose patient data to law enforcement authorities without a motivated request and an existing open criminal case are contrary to the above-mentioned principles, thereby undermining the credibility of the health care system as a whole.

It is also necessary to require that law enforcement agencies, investigating an HIV-related crime, give due consideration to privacy and personal data protection, both in court and in pretrial proceedings:

- Protecting the identity of participants in procedures, use only initials or pseudonyms in procedures and any court files available to the public;
- Use only those confidential medical data in court cases that are strictly related to the facts under consideration during legal proceedings;
- Limit access to procedural documents submitted in court proceedings in order to prevent wider dissemination of the information contained therein;
- Limit the wider publication of any documents in the media, the identities of those involved in the process, or any information that might identify them;
- Keep the general public out of the courtroom, allowing access for close relatives, friends, or supporters, and only with the consent of the claimant and the defendant if their data needs to be protected as well.

Working with the mass media

Working with the mass media is important to convince the general public, which, in turn, will help form public opinion. The work with the media is closely related to information activities. It requires a clear definition of the target audience, a simple and clear presentation of the information disseminated through the media.

⁵⁷ Expert consensus statement on the science of HIV in the context of criminal law <https://onlinelibrary.wiley.com/doi/epdf/10.1002/jia2.25161>

⁵⁸ HIV and the Law: Risks, Rights and Health. Supplement - 2018. UNDP

⁵⁹ The European Court of Human Rights, *Z. v. Finland*, 25.02.1997 (No. 22009/93), p. 95

To reach the target audience, you must have access to the mass media. This requires studying the media, establishing trusting relationships with journalists most effective for covering the issue, and planning activities. The matter is to get the media interested in the issue of HIV decriminalization and to provide information that will change existing stereotypes.

The development of messages intended to influence one or more segments of society is the most creative aspect of working with the media. It requires detailed research into the audiences to be influenced so that the style and content of the messages are persuasive and motivating.

The text and arguments to be used should include points proving the usefulness and effectiveness of decriminalizing HIV, based on objective information and concrete facts that will help successfully parry the classic counterarguments.

It is important to be very careful about personal data when dealing with the media. When submitting personal data to the media, be sure to obtain consent from the data subject, preferably in writing.

While supporting people charged in cases of threat of transmission or HIV transmission, media coverage of stories can have a significant impact on the final verdict. In the St. Petersburg case of threat of HIV transmission through breastfeeding, it was the friendly media coverage of each hearing, which draws the attention of the public and the judicial system to this case.

When interacting with journalists, first of all, it is necessary to have an agreement to read the final material. If the story is transmitted live, there may be misrepresentations. Paralegals had such experience in Belarus. One of the cases was covered on TV, but the facts were misrepresented. An HIV-positive man was cast in a negative light and the case received a lot of publicity.

Journalists and media resources often inflame the situation and “demonize” people living with HIV, presenting them as criminals. Interaction with journalists, informing them about the decriminalization of HIV, the harm of criminalization, and the position of the community is an important step in the work of paralegals.

The HIV JUSTICE WORLDWIDE’s toolkit “Making Media Work for HIV Justice” (2019) is recommended for study⁶⁰.

60 http://www.ewna.org/wp-content/uploads/2019/07/HIV_Justice_toolkit_RU-Final.pdf

ANNEX 1

Expert consensus statement on the science of HIV in the context of criminal law.

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Keywords:

- human rights;
- law and policy;
- risk factors;
- policy;
- criminalization;
- criminal law;
- prosecution

Abstract

Introduction

Globally, prosecutions for non-disclosure, exposure or transmission of HIV frequently relate to sexual activity, biting, or spitting. This includes instances in which no harm was intended, HIV transmission did not occur, and HIV transmission was extremely unlikely or not possible. This suggests prosecutions are not always guided by the best available scientific and medical evidence.

Discussion

Twenty scientists from regions across the world developed this Expert Consensus Statement to address the use of HIV science by the criminal justice system. A detailed analysis of the best available scientific and medical research data on HIV transmission, treatment effectiveness and forensic phylogenetic evidence was performed and described so it may be better understood in criminal law contexts.

Description of the possibility of HIV transmission was limited to acts most often at issue in criminal cases. The possibility of HIV transmission during a single, specific act was positioned along a continuum of risk, noting that the possibility of HIV transmission varies according to a range of intersecting factors including viral load, condom use, and other risk reduction practices. Current evidence suggests the possibility of HIV transmission during a single episode of sex, biting or spitting ranges from no possibility to low possibility.

Further research considered the positive health impact of modern antiretroviral therapies that have improved the life expectancy of most people living with HIV to a point similar to their HIV-negative counterparts, transforming HIV infection into a chronic, manageable health condition. Lastly, consideration of the use of scientific evidence in court found that phylogenetic analysis alone cannot prove beyond reasonable doubt that one person infected another although it can be used to exonerate a defendant.

Conclusions

The application of up-to-date scientific evidence in criminal cases has the potential to limit unjust prosecutions and convictions. The authors recommend that caution be exercised when considering prosecution, and encourage governments and those working in legal and judicial systems to pay close attention to the significant advances in HIV science that have occurred over the last three decades to ensure current scientific knowledge informs application of the law in cases related to HIV.

Introduction

At least 68 countries have laws that specifically criminalize HIV non-disclosure, exposure, or transmission. Thirty-three countries are known to have applied other criminal law provisions in similar cases (Unpublished data, HIV Justice Network, 2018). Most prosecutions have related to perceived risk of HIV acquisition associated with sexual activity but prosecutions have also occurred for acts such as biting and spitting (Unpublished data, HIV Justice Network, 2018). These laws and prosecutions have

not always been guided by the best available scientific and medical evidence [1], have not evolved to reflect advancements in knowledge of HIV and its treatment, and can be influenced by persistent societal stigma and fear associated with HIV [2]. HIV continues to be singled out, with prosecutions occurring in cases where no harm was intended; where HIV transmission did not occur, was not possible or was extremely unlikely; and where transmission was neither alleged nor proven [1,3].

In this context, 20 HIV scientists with expertise in scientific research, epidemiology, and patient care from regions across the world developed this Consensus Statement, prompted by concern that criminal law is sometimes applied in a manner inconsistent with contemporary medical and scientific evidence: including overstating both the risk of HIV transmission and also the potential for harm to a person's health and wellbeing. Such limited understanding of current HIV science reinforces stigma and may lead to miscarriages of justice. It may also undermine efforts to address the HIV epidemic [4]. The Consensus Statement has been endorsed by additional scientists from across the globe (See Supplementary Material S1), and by the International AIDS Society, the International Association of Providers of AIDS Care and the Joint United Nations Programme on HIV/AIDS. An Executive Summary of this Statement is included as Supplementary Material S2.

This Consensus Statement aims to assist scientific experts considering individual criminal cases in which HIV non-disclosure, (perceived or possible) exposure, or transmission has been alleged. It provides expert opinion regarding individual HIV transmission dynamics (i.e. the "possibility" of transmission), long-term impact of chronic HIV infection (i.e. the "harm" of HIV), and the application of phylogenetic analysis as evidence. It describes the possibility of HIV transmission between individuals who have engaged in a specific act at a specific time under specific circumstance, as that is usually the focus of criminal cases, and aims to communicate current scientific evidence relating to HIV in a manner understandable to a non-scientific audience. The Consensus Statement has been translated into French, Russian and Spanish (See Supplementary Material S3–S5).

2 Discussion

The first part of this Statement focuses on the possibility of HIV transmission during specific acts that are commonly considered in prosecutions: sexual activity, biting or spitting [3]. It does not reference other ways HIV may be transmitted, for example, through blood transfusion, needle stick injury, injecting drugs or breastfeeding.

An initial meeting in Seattle (February 2017) decided the contents and framing of this Consensus Statement. A detailed literature review was prepared based on a search for literature published in English using the PubMed online database up to April 2017. Specific search terms relating to the possibility of HIV transmission were used, including "HIV and viral load," "HIV sexual transmission risk per act," "oral sex HIV transmission," "anal sex HIV transmission," "vaginal sex HIV transmission condom per act," "anal

sex HIV transmission condom per act,” and “anal sex HIV transmission circumcision per act.” Key articles were used to search for related articles. Preference was given to meta-analyses, reviews and important studies. Other sources were identified by the expert authors. Abstracts from scientific conferences were used as appropriate.

The authors next engaged in multiple rounds of drafting and review, considering the best available scientific and medical research data according to the following hierarchy: systematic review of randomized clinical trials; randomized clinical trials; and comparative studies (i.e. cohort studies, case-control studies and historical control studies). Two teleconferences were held to discuss a preliminary draft, followed by three rounds of redrafting via electronic correspondence by all authors. National and international legal experts, including UNAIDS staff members, were consulted on the application of the criminal law in cases involving HIV. A second face-to-face meeting was convened in Paris (July 2017) to resolve outstanding data analysis issues. Further rounds of comment and redrafting were undertaken by the authors to ensure agreement that the Consensus Statement accurately relayed current scientific research related to HIV transmission, harms and the use of scientific evidence in court.

The authors considered numerical findings and statistical estimates from all studies cited herein, including data summaries from reports presented in systematic or table form (for example, the works of Patel et al. [5]). Evidence establishing estimates of the possibility of HIV transmission through different acts varies in both type and quality; the authors factored these considerations into their assessment of the possibility associated with different acts. The authors considered that the evidence regarding transmission via different acts falls into three categories (Table 1).

Table 1. Quality scale for evidence regarding the possibility of HIV transmission

Acts for which the transmission possibility can be estimated with some degree of certainty because multiple cohort studies have been undertaken.
Acts for which transmission possibility can be estimated with less certainty from isolated case reports, biological plausibility or mathematical models.
Acts for which it is biologically implausible for transmission to occur as the conditions required for transmission are not present.

When describing the evidence, the authors aimed to use scientific concepts in ways that are helpful in the context of criminal law. For example, the statistical concept of confidence intervals is designed to address uncertainty

inherent in results derived from sampling a subset of a population. When dealing with probabilities that are or approach zero, confidence intervals take on special significance because the fact that something was not observed to happen during a study cannot prove that it could never happen. The larger the study, the more precisely the authors can estimate that the probability is zero. Consequently, a zero probability calculated from study data is associated with a confidence interval from zero to a small, positive probability. It is important that calculations of confidence intervals are not misinterpreted to exaggerate remote theoretical possibilities.

Consideration of the methodology and results of studies cited in this Consensus Statement informed the development of three descriptors located along a continuum to describe the possibility of HIV transmission during a single, specific act (Table 2).

Table 2. Defining the possibility of HIV transmission during a single, specific act

Terminology for this statement	Possibility of transmission per act
Low possibility	Transmission during a single act is possible but the likelihood is low.
Negligible possibility	Transmission during a single act is extremely unlikely, rare or remote.
No possibility	The possibility of transmission during a single act is either biologically implausible or effectively zero.

Importantly, this Consensus Statement is not intended as a public health document to inform HIV prevention, treatment and care messaging or programming. Its approach, based on individual-level risk which may be applied in criminal justice settings, differs from descriptions of population-level risks that are used in the context of public health, which often describe sexual acts as ranging from “low risk” to “high risk.” The differences between the public health descriptors and those used in this Consensus Statement reflect both history and context. First, public health definitions used to describe HIV transmission risk were developed during the early days of the HIV epidemic, before the emergence of recent evidence on HIV transmission. Second, they describe relative risk (not absolute risk) as a means to help people reduce the possibility of HIV transmission by comparing different acts.

Although the simplicity of such public health terminology was originally intended to support effective, broad-based public health education campaigns for HIV prevention, its generalized categories now pose real problems for those developing current HIV health promotion messaging based on up-to-date scientific evidence [6], including evidence of the different variables that modify risk associated with

specific acts, such as viral load. In some instances, understanding of the riskiness of certain sexual acts communicated by public health characterizations has also been misapplied in the context of criminal proceedings, for example, the Canadian case of Mabior [7, 8]. Consequently, although sexual transmission is a common form of HIV transmission at a global population level, this Consensus Statement recognizes that the possibility of HIV transmission during a single sexual encounter ranges from no possibility to low possibility, while it ranges from no possibility to negligible possibility in cases of spitting or biting. This approach to the science of HIV in the context of criminal law is similar to that used in national scientific consensus statements from Australia [9], Canada [10], Sweden [11] and Switzerland [12].

Possibility of transmission: overview

HIV is not easily transmitted from one person to another. It is a relatively fragile virus that is transmitted through specific well-described routes. It is not passed on through airborne, droplet, fomite, contact or vector-borne transmission routes and cannot penetrate intact human skin [13].

For HIV transmission to occur, certain basic conditions must exist:

- There must be a sufficient amount of the virus in particular bodily fluids (i.e. blood, semen, pre-seminal fluid, rectal fluids, vaginal fluids, or breast milk);
- A sufficient quantity of at least one of those bodily fluids must come into direct contact with sites in the body of an HIV-negative person where infection can be initiated. These are usually mucous membranes, damaged tissue or inflamed ulcers, but not intact skin;
- The virus must overcome the person's innate immune defences so that infection can be established and propagated.

Most everyday activities carry no risk of HIV transmission because these conditions are not met. Leaving aside parenteral or vertical transmission, intimate contact, such as sexual intercourse, is usually required for transmission. Even in those cases, the per-act chance of transmission is zero to low (with estimates ranging from 0% to 1.4% per act) [5].

Factors influencing the possibility of HIV transmission

The possibility of HIV transmission associated with individual acts varies according to a range of intersecting factors. When multiple intersecting factors are present, their effect is minimized or amplified to various degrees [14].

• Correct use of a condom prevents HIV transmission

Correct use of a condom (either male or female) prevents HIV transmission because the porosity of condoms is protective against even the smallest

sexually transmissible pathogens, including HIV [15]; latex and polyurethane condoms act as an impermeable physical barrier through which HIV cannot pass. Correct condom use means the integrity of the condom is not compromised and the condom is worn throughout the sex act in question. Correct use of a condom during sex means HIV transmission is not possible.

Population level studies have found that consistent condom use for anal or vaginal sex dramatically reduces the possibility of HIV transmission even when factoring in instances of incorrect use or breakage [16-21]. For example, a meta-analysis of 14 studies found that long periods of consistent use of male condoms during vaginal sex reduces the possibility of HIV transmission by at least 80% [22]. However, more recent research suggests that this may be an underestimate [23], with the meta-analysis described including non-standard data analysis methods which may have led to recruitment and other biases which could have lowered the level of prevention observed [22, 23].

Population-level research is only relevant in cases where multiple sex acts have occurred and it is not known whether condoms were correctly used in each instance. The population level estimate of 80% condom effectiveness does not exist as a stand-alone estimate of HIV transmission risk but must be applied against risk associated with different sex acts. For example, if the estimated risk of HIV transmission from an HIV-positive man to a woman during a single episode of condomless vaginal sex is 0.08% [5], then the risk of transmission when a condom is used can be understood as at least 80% lower, or 0.016% (less than 2 in 10,000) [5]. Importantly, when other risk reduction factors are present (e.g. low viral load or withdrawal before ejaculation) the possibility of HIV transmission, even in the event of incorrect condom use, is further reduced.

To reiterate, HIV cannot be transmitted in individual cases where a condom has been used correctly (i.e. it was worn through the sex act in question and its integrity was not compromised). The population-level estimates can only apply in situations where multiple instances of condom use have occurred, including occasional instances of incorrect use and breakage.

• Viral load that is low or "undetectable" significantly decreases or eliminates the possibility of HIV transmission

Soon after acquiring HIV, a person's viral load is very high but typically decreases over the first few weeks as their immune system responds. If a person does not commence treatment, their viral load remains fairly stable for some time, while the immune system is gradually depleted. In advanced HIV infection, viral load usually increases to higher levels again.

Antiretroviral therapy prevents HIV from replicating, thereby significantly reducing the viral load in a person's bodily fluids. When effective antiretroviral therapy is commenced, viral load usually drops to levels that are undetectable by current standard laboratory blood tests within a few weeks or months. Testing availability and lower limits of detection vary in different parts of the world, with lower limits of detection ranging from around 20 viral copies/mL to 400 copies/mL. A small percentage of people living with HIV (often referred to as long-term non-progressors) have a low viral load without taking antiretroviral therapy because their immune systems are able to control HIV [24-28].

Reduced viral load improves immune function and dramatically decreases the long-term likelihood of illness and death. It also greatly reduces the possibility of HIV transmission [29-31]. Decreases in viral load are associated with concomitant decreases in the likelihood of HIV transmission [32-35], meaning that many people on treatment cannot transmit HIV.

Recent analyses from key studies (namely, HPTN052, PARTNER and Opposites Attract) involving both heterosexual and male couples of different HIV status have not identified any cases of sexual transmission from a person with an undetectable viral load [29, 30, 36, 37]. These findings have transformed public health messaging. For example, the United States Centers for Disease Control and Prevention now describes the estimated possibility of HIV transmission from an HIV-positive person with an undetectable viral load (as a result of effective antiretroviral treatment) as "effectively no risk" [6].

In 2011, the HPTN052 trial (conducted in Botswana, Brazil, India, Kenya, Malawi, South Africa, Thailand, the United States and Zimbabwe), which investigated the impact of early treatment initiation, observed no HIV transmission from 1763 people on antiretroviral therapy who had a stable viral load below 400 copies/mL. Partners of HIV-positive participants were followed for the equivalent of 8509 person-years. The only transmission from people on treatment occurred either early in treatment (before viral load was stabilized below 400 copies) or when viral load was above 1000 copies/mL on two consecutive visits [29, 37].

The PARTNER and Opposites Attract studies found no HIV transmission from people with a viral load below 200 copies/mL after more than 75,000 acts of condomless vaginal or anal sex [18, 30, 38]. In the PARTNER study, heterosexual couples reported approximately 36,000 condomless sex acts and homosexual male couples reported about 22,000 condomless sex acts [30]. No

HIV transmission occurred between partners in the study. Eleven cases of new HIV infection did occur, however, phylogenetic analysis found that in all cases, the infection resulted from sexual contact with someone other than the person's regular sexual partner. The Opposites Attract study included nearly 17,000 condomless sex acts among men. No HIV transmission was reported between partners involved in the study, while three cases of new HIV infection resulted from sexual contact with someone other than the person's regular sexual partner [18].

A 2013 systematic review and meta-analysis also found no transmission where viral load fell below a threshold of between 50 and 500 copies/mL (depending on the study) [39]. Another study reported no transmission when viral load was lower than 400 copies/mL [40]. A number of other studies have provided evidence that low (but detectable) viral load dramatically decreases (and may eliminate) the possibility of transmission. For example, early studies involving participants who were not taking antiretroviral therapy identified no instances of transmission among couples where one partner was living with HIV and had a low but detectable viral load: below 1500 copies/mL (Uganda) [32], below 1094 copies/mL (Thailand) [33] and below 1000 copies/mL (Zambia) [34]. The Ugandan study found that the probability of transmission through vaginal intercourse where viral load was lower than 1700 copies/mL was 1 in 10,000 [41].

While short-lived, small-magnitude increases in viral load, known as "blips," occur among many individuals adhering to their antiretroviral therapy [42, 43], they are not an indication that HIV therapy is "failing;" are not considered to be clinically significant; and have not been shown to increase the possibility of HIV transmission during sex [44, 45]. Large-scale studies among couples of different HIV status have included many HIV-positive participants who experienced blips in their viral load during the course of the study. Consequently, such blips have been factored into the observed reduction in transmissions.

- **Pre-exposure Prophylaxis (PrEP)** significantly decreases the possibility of HIV acquisition

PrEP describes the use of antiretroviral medication by HIV-negative people prior to HIV exposure to prevent HIV acquisition [46-50]. One recent study has found PrEP to be up to 95% effective among adherent users [50], however, only a handful of cases of PrEP failures in adherent individuals have ever been described suggesting that it is likely that PrEP is more than 95% effective.

- **Post-exposure Prophylaxis (PEP)** significantly decreases the possibility of HIV acquisition

PEP describes short-term use of antiretroviral treatment by an HIV-negative person after an exposure to HIV. If started within 72 hours of exposure and taken for 28 days with good adherence, PEP significantly reduces the likelihood of the person becoming HIV-positive because it can stop HIV from establishing itself in a person's immune cells even after the virus has entered a person's body [51, 52]. Although PEP is not 100% effective, high rates of success have been reported [51, 53-67] (e.g. 81% among patients using older-style treatments [67] and up to 100% among patients using newer treatments [68]). The effectiveness of PEP appears to be influenced by a number of factors, with effectiveness generally increasing the sooner PEP is commenced and as the amount of HIV entering a person's body decreases [68].

- **Medical Male Circumcision** decreases the possibility of HIV transmission from women to men

Medical male circumcision reduces the possibility of HIV transmission from HIV-positive women to HIV-negative men by approximately 50% [69]. Circumcision may also decrease sexual transmission of HIV among men who have sex with men for HIV-negative men who are exclusively the insertive partner, although studies are not conclusive [70].

- **Risk reduction practices** such as withdrawal or strategic positioning decrease the possibility of HIV transmission.

Some people living with HIV use risk reduction practices such as withdrawal prior to ejaculation or strategic positioning (i.e. receptive-only anal intercourse) when engaging in condomless sex with an HIV-negative person or person of unknown serostatus [71-73]. Such actions decrease the possibility of HIV transmission during sex where a possibility exists [71]. For example, a 2010 study found that the likelihood of transmission during anal sex reduced by approximately two-thirds when the HIV-positive insertive partner did not ejaculate [73]. The possibility of transmission is also known to be lower when an HIV-positive partner is the receptive, rather than insertive, partner during anal sex [73-75].

- **Sexually Transmitted Infections (STIs)** can increase the possibility of HIV transmission in some circumstances.

The presence of some untreated STIs, particularly ulcerative STIs, in either partner has been associated with an increased likelihood of HIV transmission during sexual activity when the person living with HIV does not have a low viral load [76]. When genital ulcers are present in both partners, the risk is further increased [14]. However, the presence of an STI does not increase the possibility of transmission if the HIV-positive person is on effective antiretroviral therapy [30], or if the HIV-negative person is taking PrEP [48, 49].

The possibility of HIV transmission through sex

HIV transmission through sex usually occurs as a result of bodily fluids containing enough HIV coming into contact with mucous membranes located in: the foreskin or urethra of the penis; the cervix or vagina; the anus; or the rectum. HIV transmission is also possible through contact with oral mucous membranes but these are much less vulnerable to HIV transmission [58].

Oral sex, including oral-penile sex and oral-vaginal sex

- The possibility of HIV transmission from oral sex performed on an HIV-positive person, including when the person does not have a low viral load and/or a condom is not used, varies from none to negligible depending on the context [77, 78].

Oral sex is promoted as a safer sex option for partners of different HIV status wanting to engage in intimate sexual acts, with its practice reportedly very common.

Oral sex is known to involve a much lower possibility of HIV transmission than vaginal or anal intercourse [79, 80]. In fact, the risk of HIV transmission as a result of oral sex is so low that scientists have been unable to establish a statistically sound estimate.

The few clinical studies investigating transmission through oral sex have failed to find any cases of HIV transmission [74, 81, 82]. A study of heterosexual couples and a study of lesbian couples found no transmission resulting from oral sex [81, 82]. A third study involving men who have sex with men showed no seroconversions among participants who reported performing only fellatio (with ejaculation) on men who were HIV-positive or of unknown HIV status [74]. A statistical model applied to these findings concluded that the per-contact risk from oral sex was between zero and 0.04% (4 in 10,000) [78] and these values are used in some reports [79, 80, 83].

Given the study found no seroconversions, the upper bound of 0.04% can be understood as an upper boundary of possibility.

- There is no possibility of HIV transmission from oral sex performed on an HIV-positive person when the HIV-positive partner has a low viral load, **or** a condom is properly used, **or** the HIV-negative partner is taking PrEP [78].

While there are no studies investigating the impact of antiretroviral therapy or PrEP on the possibility of transmission during oral sex, it is our expert opinion that there is no possibility of HIV transmission associated with oral sex performed on an HIV-positive individual on antiretroviral therapy, or performed by a person taking PrEP. Similarly, correct condom use reduces the likelihood of HIV transmission to zero.

Vaginal-penile intercourse

- The possibility of HIV transmission from vaginal-penile intercourse when the HIV-positive partner does not have a low viral load **and** a condom is not used is low [84]. The likelihood of transmission decreases further if no ejaculation occurs inside the HIV-negative partner's body.

Two meta-analyses of heterosexual couples [14, 84] found the likelihood of HIV transmission during one act of vaginal intercourse is low: 0.08% (8 in 10,000) in the absence of risk cofactors [5, 14, 41, 84]. It is not clear whether the likelihood of transmitting HIV from a man to a woman during vaginal intercourse is higher than transmission from a woman to a man. Some studies have found no difference, while others suggest the possibility of HIV transmission from a man to a woman is about twice that of transmission from a woman to a man [14, 35, 83, 84].

- The possibility of HIV transmission from vaginal-penile intercourse when the HIV-positive partner has a low viral load or uses a condom or the HIV-negative partner is taking PrEP varies from none to negligible depending on the context [29, 38].

Numerous studies, as discussed above, have shown that the possibility of HIV transmission from an HIV-positive partner who has a low viral load during vaginal-penile intercourse is none to negligible [29, 37-39, 85]. There has not been a reported case of transmission through vaginal-penile intercourse from a person with an undetectable viral load in any clinical trial.

HIV cannot be transmitted when a condom is used correctly because HIV cannot pass through intact latex or polyurethane. Similarly, there is no possibility of HIV transmission when a person has an undetectable viral load.

Anal-penile intercourse

- The possibility of HIV transmission when a condom is not used **and** the HIV-positive partner does not have a low viral load is low, whether the receptive partner is male or female [86]. The likelihood is lower where the HIV-positive partner takes the receptive, rather than the insertive, role. It is also lower if the HIV-positive insertive partner does not ejaculate inside the receptive partner.

Studies show that receptive condomless anal intercourse by heterosexual or same-sex couples is associated with a higher likelihood of HIV transmission than receptive condomless vaginal intercourse [5, 87, 88]. Individual studies have produced estimates of per-act likelihood of HIV transmission for anal sex from 0.01% (1 in 10,000) to more than 3% (300 in 10,000) [20, 75, 84, 88-91]. The likelihood of transmitting from the insertive to the receptive partner is higher than the reverse [18, 75, 84].

Two systematic reviews (2010 and 2014) report a per-act estimate of approximately 1.4% (140 in 10,000) for receptive anal sex (i.e. when the HIV-positive person is the insertive partner) [5, 86]. A 2010 prospective cohort study found that the likelihood fell from 1.43% (143 per 10,000) with

ejaculation to 0.54% (54 per 10,000) with no ejaculation [89]. Per-act likelihood of transmission was estimated to be 0.11% (11 in 10,000) when the HIV-negative person is the insertive partner [5].

- The possibility of HIV transmission through anal-penile intercourse when the HIV-positive partner has a low viral load, **or** uses a condom, **or** the HIV-negative partner is taking PrEP varies from none to negligible depending on the context. The likelihood is similar whether the receptive partner is male or female [85, 86].

There is negligible possibility of HIV transmission from an HIV-positive partner who has a low viral load during anal-penile intercourse. As discussed above, both the PARTNER study and the Opposites Attract study observed no transmission after approximately 39,000 acts of condomless anal sex when viral load was below 200 copies/mL [30, 92]. In fact, there has not been a reported case of transmission from a person with an undetectable viral load in any clinical trial.

HIV cannot be transmitted when a condom is used correctly because HIV cannot pass through intact latex or polyurethane. Similarly, there is no possibility of HIV transmission when a person has an undetectable viral load.

The possibility of HIV transmission from casual contact, spitting and biting

Casual contact

HIV cannot be transmitted via contact with an environmental surface such as a chair, bench or toilet; from food or drink; or from casual human contact such as hugging, sharing household objects or eating together.

HIV cannot survive long in air and is unable to penetrate intact skin. No case of HIV infection from contact with an environmental surface, food or drink or through casual human contact has ever been identified despite many scientific studies considering this possibility [93-98].

Biting and spitting

- There is no possibility of HIV transmission via contact with the saliva of an HIV-positive person, including through kissing, biting or spitting.

Numerous studies have considered the possibility of HIV transmission via saliva but none has found any evidence, including a 1997 study of 34,000 cases in the UK [99]. The absence of HIV transmission via saliva is attributed to two factors: saliva contains a very small amount of HIV [100], and several inhibitory components in oral secretions mean saliva acts to protect susceptible cells from HIV infection [101-106].

- There is no possibility of HIV transmission from biting or spitting where the HIV-positive person's saliva contains no, or a small quantity of, blood.

Current evidence suggests HIV cannot be transmitted even when saliva contains small quantities of blood. Despite early research suggesting a theoretical risk of transmission if saliva-containing blood enters a person's body through contact with mucosal tissue (for example, landing in an eye or mouth), no cases of HIV transmission resulting from the spitting of blood have been reported [107]. Consequently, it is our expert opinion that there is no possibility of HIV transmission from saliva containing small quantities of blood.

- The possibility of HIV transmission from biting where the HIV-positive person's saliva contains a significant quantity of blood, **and** their blood comes into contact with a mucous membrane or open wound, **and** their viral load is not low or undetectable varies from none to negligible.

Many studies have detailed a large number of cases where bites have not resulted in HIV transmission [108-112] or found transmission to be unlikely [107, 109, 113, 114].

For transmission to be plausible in the case of biting, the HIV-positive person must have blood in their mouth at the time of the bite, a sufficient amount of HIV must be present in the blood of the HIV-positive person, and the bite must be deep enough to penetrate the HIV-negative person's skin causing trauma and tissue damage [106, 107, 115]. Even when all these conditions are present, the possibility of transmission during a single bite is negligible at most.

Significant improvements in life expectancy and quality of life for people living with HIV

The second section of this Consensus Statement considers the harms of HIV because persistent misconceptions exaggerating the harms of HIV infection appear to influence application of the criminal law [3]. Criminal law takes into account the possible harms caused by a potential offence as well as the likelihood of the offence itself, thus, for example, definitions of bodily harm are distinct from grievous bodily harm, which are distinct from manslaughter or murder. Consequently, it is important to emphasize the huge changes in the outlook for people living with HIV that have been achieved over the past decades.

The natural course of untreated HIV infection varies widely from person to person [116]. If untreated, most people experience an asymptomatic phase that lasts from two to 15 years, during which the virus replicates, gradually undermining their immune system. A small percentage of people with HIV have immune systems that block replication of the virus for an indefinite period [117], but the large majority of people eventually develop AIDS if untreated (approximately half within 10 years [118]). AIDS is defined as the presence of specific laboratory markers and/or opportunistic infections and specific diseases which, if

antiretroviral therapy is not commenced, eventually result in a person's death.

Antiretroviral therapies dramatically reduce HIV-associated disease progression. Globally, treatment guidelines have been revised to recommend initiation of antiretroviral treatment immediately following diagnosis of HIV infection because most people on treatment will achieve an undetectable viral load and maintain a healthy immune system, will remain in good health, and will avoid the complications of long-term HIV infection [119, 120]. Even those who start treatment with a high viral load and adhere to therapy can expect a dramatic reduction in viral load, to a point where significant immune system recovery occurs so that they can enjoy good long-term health [121]. For many, effective treatment requires taking a single pill each day.

Studies from many countries have consistently shown that antiretroviral therapies have radically increased life expectancy, that life expectancy has continued to improve over time, and that the long-term health and quality of life of people living with HIV has drastically improved [122-141]. Life expectancy for young people with HIV commencing antiretroviral therapy now approaches that of a young person in the general population [45, 132, 134, 135, 137]. Furthermore, use of antiretroviral therapies has shifted cause of death of people living with HIV from traditional AIDS-defining illnesses to non-HIV-related causes [142, 143] similar to those affecting the general population [144]. Similarly, clinical management has shifted to include management and treatment of health issues associated with aging, including menopause and cardiovascular disease [143-150], and interventions to influence "lifestyle choices" such as tobacco smoking [151]. In some sub-populations, ongoing clinical care has the potential to increase life expectancy of people living with HIV beyond that of their HIV-negative counterparts [135].

Although HIV causes an infection that requires continuous treatment with antiretroviral therapy, people living with HIV can live long, productive lives including working, studying, travelling, having relationships, having and raising children, and contributing to society in various other ways.

Establishing proof of HIV transmission

The final section of this Consensus Statement recognizes the importance of the correct use of scientific and medical evidence in HIV-related prosecutions where proof of actual transmission from one person to another is at issue.

International guidance on HIV in the context of the criminal law recommends that "proof of causation, in relation to HIV transmission, should always be based on evidence derived from a number of relevant sources, including medical records, rigorous scientific methods and sexual history" [1].

- Medical records can provide contextual information but cannot establish transmission between a complainant and a defendant.

The circumstances of the nature and timing of a sexual relationship or other potential sources of a person's HIV infection must be central to any case where sexual transmission of HIV is alleged. When available and lawfully obtained, medical records are valuable for identifying the last HIV-negative and first HIV-positive test of the complainant and the defendant. Considering the diagnostic window period of each test, this information can be used to establish the period during which the complainant acquired HIV and whether the defendant was HIV-positive during this time. Importantly, whether the complainant or defendant was infected first cannot be based on who tested HIV-positive first or which person brought charges against the other.

Information related to HIV viral load and CD4 counts included in medical records has sometimes been presented as evidence establishing the timing of HIV infection. However, viral loads and CD4 counts show considerable inter- and intra-individual variation and therefore cannot be used to determine exactly when someone acquired HIV [152].

- Phylogenetic analysis can be used as a forensic tool. The results can be compatible with, but cannot conclusively prove, the claim that a defendant has infected a complainant. Importantly, phylogenetic results can exonerate a defendant when the results are not compatible with the allegation that the defendant infected the complainant.

Phylogenetic analysis compares the evolutionary relationship between different persons' HIV, but results must be interpreted cautiously alongside other factual and medical evidence when used in criminal cases [153]. The complexity of phylogenetic analysis arises, in part, from the fact that HIV is a fast-evolving virus. Mutations of the virus occur repeatedly so that every person living with HIV has more than one virus variant [154]. During transmission, a limited number of virus variants (one to a few) are transmitted, but these will also mutate to form new variants so that no two persons' HIV is identical [155].

Phylogenetic analysis of HIV involves estimating the evolutionary relationships of HIV variants, for example, to investigate HIV transmission networks for public health purposes. In criminal cases, phylogenetic analysis involves investigating whether the complainant(s) and the defendant(s) are part of the same transmission network. The network is represented as a phylogenetic "tree." Notably, the phylogenetic tree must be understood as an HIV gene tree, which may differ from the transmission history, because HIV variants may predate transmission or disappear after transmission [156] and because some persons in the transmission network may not have been diagnosed and/or sampled before constructing the tree.

HIV phylogenetics is very different from profiling of human DNA as, given the ongoing evolution of each person's HIV variants, phylogenetics cannot obtain an "exact match." When there appears to be a "phylogenetic match" between two individuals' HIV it means two or more variants are epidemiologically "linked", not that they are the same [155, 157]. HIV phylogenetic evidence can exonerate a defendant accused of transmitting HIV to a complainant because if the virus strains detected in the defendant and complainant are unrelated, the phylogenetic evidence conclusively contradicts the claim that the defendant was the source of the complainant's virus. [155, 158].

Recent advances in DNA sequencing and phylogenetics allow some consideration of direction and timing of transmission [159-162], but these methods are currently neither precise nor accurate enough to prove who infected whom [155, 163]. This is partly because there may always be unknown and undiagnosed individuals from the transmission network [155]. Consequently, currently phylogenetic analysis cannot eliminate the possibilities that the complainant infected the defendant, that both were infected by a third party [158, 163], or more complex scenarios of transmission that have resulted in the defendant and complainant having HIV variants that are epidemiologically linked. The fact that having HIV does not protect against a subsequent "super"-infection with a different variant adds complexity [158]. In particular, confidence about the direction of infection is undermined when a defendant and complainant have engaged in numerous sexual acts which may have facilitated multiple transmission events back and forth [155].

Phylogenetic analysis is complex, and consequently it is important that HIV phylogenetics for forensic purposes is performed and interpreted by experts who fully understand the limitations of the technique and explicitly state these limitations in written reports and oral testimony. Interpretation of phylogenetic results for forensic purposes requires expertise about phylogenetics and the distinction between virus evolutionary trees and transmission histories. This is not straightforward and methodologies have not yet been standardized [155]. The reliability of evidence derived from phylogenetic analysis depends on a number of methodological factors including use of adequate "local controls" [164-166] and database sequences [167-169] which must be selected using consistent selection criteria [155]. International research shows that phylogenetic evidence used in criminal trials has not always satisfied these requirements [155].

Conclusions

Given the evidence presented in this document, we strongly recommend that more caution be exercised when considering criminal prosecution, including careful appraisal of current scientific evidence on HIV-related risks and harms. This is instrumental to reduce stigma and discrimination and to avoid miscarriages of justice.

In this context, we hope this Consensus Statement will encourage governments and those working in the legal and judicial system to pay close attention to the significant advances in HIV science that have occurred over the last three decades, and make all efforts to ensure that a correct and complete understanding of current scientific knowledge informs any application of the criminal law in cases related to HIV.

Competing interests

Peter Godfrey-Fausset works at the London School of Hygiene and Tropical Medicine and is on full-time secondment to UNAIDS. All of the other authors declare that they have no competing interests to declare.

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ANNEX 2



**World Health
Organization**

20, AVENUE APPIA – CH-1211 GENEVA 27 – SWITZERLAND – TEL CENTRAL +41 22 791 2111 – FAX CENTRAL +41 22 791 3111 – WWW.WHO.INT

Tel. direct: +41 22 791 2172
Fax direct: +41 22 791 4171
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The Minister of Health of the Republic
of Belarus
Ministry of Health
Miasnikova, 39
220048 Minsk
Belarus

In reply please
refer to: HIV/EMTCT/MN Syphilis/
EMTCT MT (Belarus)

Your reference:

1 0 SEP 2019

Sir,

One year response to GVAC recommendations subsequent to the maintenance of elimination of mother-to-child transmission of HIV and syphilis review in Belarus

The World Health Organization (WHO) wishes to express its gratitude for the information provided in response to its request for additional information and clarifications subsequent to the maintenance of elimination of mother-to-child transmission of HIV and syphilis (EMTCT) review for Belarus on 01 June 2018. The responses were reviewed on 12 June 2019 by the Global Validation Advisory Committee (GVAC) – an independent expert committee convened to advise WHO on validation of EMTCT of HIV and syphilis.

WHO is pleased to see the tremendous progress made on several important issues raised during validation and would like to applaud Belarus for its commitment and willingness to implement changes to strengthen Belarus EMTCT of HIV and syphilis services.

WHO was particularly impressed with the recent adoption of the RPR test for syphilis testing. The first quarter test results from the external quality assessment (EQA) programme were very encouraging and WHO urges Belarus to continue participation in this important programme. Furthermore, WHO congratulates Belarus for efforts made in the inclusion of civil society in the evaluation of the legal environment in relation to people living with HIV.

WHO was also impressed with the progress made in changing and/or reducing the impact of laws criminalizing HIV transmission in Belarus. However, the recent report of the prosecution and conviction of a person living with undetectable HIV for “exposure” is of grave concern. WHO would very much appreciate receipt of a full report on any other similar prosecutions and in addition, further progress made in rescinding the laws criminalizing HIV transmission in June 2020, when Belarus will be reviewed for maintenance of validation.

cc: The Minister of Foreign Affairs of the Republic of Belarus, Minsk
The Permanent Representative of Belarus to the United Nations Office and other
International Organizations at Geneva
The WHO Representative and Head of Country Office, Minsk

The Minister of Health of the Republic of Belarus, Minsk

Page 2

The second edition (2017) of the Global Guidance on Validation of EMTCT of HIV and syphilis (“Orange Book”), outlines the call for countries to be evaluated every two years to ensure validation criteria have been maintained. WHO looks forward to reviewing Belarus for the maintenance of validation at that time.

Please accept, Sir, the assurance of our highest consideration.



Dr Peter Salama
Executive Director
Universal Health Coverage (Life course)



Dr Ren Minghui
Assistant Director-General
Universal Health Coverage/Communicable
and Noncommunicable Diseases

ANNEX 3**The Global Validation Advisory Board (GVAC) recommendations and requests for additional information from Belarus:****Please provide responses to recommendations by June 2019**

- 1.** The GVAC recommends that Belarus adopt the WHO congenital syphilis case definition for identifying congenital syphilis cases (please see page 7 of the Global Guidance Criteria and Processes for Validation of EMTCT of HIV and syphilis: <http://www.who.int/hiv/pub/emtct-validation-guidance/en/> / The current case definition used by the national program may miss cases of congenital syphilis.
- 2.** External quality assurance (EQA) is an important laboratory programme requirement for validation and maintenance of validation. The GVAC is pleased to learn that both the treponemal and non-treponemal test used in Belarus have been enrolled in the CDC syphilis laboratory proficiency program. However, it is strongly recommended that Belarus adopt the use of RPR as the non-treponemal test and discontinue use of the MPR as the sensitivity of that assay is extremely low (scored 54 on the 2nd quarter proficiency testing). The GVAC would like to review the results of the treponemal and non-treponemal proficiency testing results in June 2019.
- 3.** The GVAC would like to review the syphilis diagnosis and treatment algorithms for pregnant women, which are pending approval by the Ministry of Health. Specifically, the GVAC would like to review the national syphilis treatment recommendations based on the treponemal and non-treponemal test results in pregnant women.
- 4.** Please provide an update on revoking laws criminalizing HIV transmission. In June 2018 Belarus reported the following:
“An official letter on behalf of the Ministry of Health of the Republic of Belarus on the need to amend Article 157 of the Criminal Code was sent to the Commission on Health, Physical Culture, Family and Youth Policy of The House of Representatives of the National Assembly of the Republic of Belarus (in accordance with the protocol No. 63 of the meeting of the CCM held on December 5, 2017). Currently, the draft law “On Amending Article 157 of the Criminal Code” is being prepared for consideration in the House of Representatives of the National Assembly of the Republic of Belarus.”
- 5.** The GVAC would like to review the contents of the letter requesting amendment of Article 157 of the criminal code that was sent to the Commission on Health, Physical Culture, Family and Youth Policy of The House of Representatives of the National Assembly of the Republic of Belarus. Further, please provide confirmation that the letter has been presented to the parliament and what progress has been made in rescinding this law.
- 6.** Please provide an update on revocation of law #345 on mandatory HIV testing and an update on efforts to increase involvement of civil society in EMTCT programmes.

ANNEX 4

WHO response dated 11 October 2017 confirming that HIV is no more a fatal disease**FROM:**

WORLD HEALTH ORGANIZATION,
REGIONAL OFFICE FOR EUROPE

Head office:

UN City, Marmorvej 51,
DK-2100 Copenhagen, Denmark
Tel: +45 45 33 7000,
Fax: +45 45 33 7001

Email: contact@euro.who.int

Website: <http://www.euro.who.int>

Our reference:

TO: Republican Public
Association "Belarusian
Community of PLHIV"

№284

The Council's Chairperson
of the Republican Public
Association "Belarusian
Community of PLHIV"

The Country Office of the World Health Organization (WHO) has carefully reviewed your request. On the subject matter in your question, we would like to explain the following.

Due to the progress achieved in treatment, HIV infection has indeed ceased to be a fatal disease, provided timely and regular therapy. Understanding this, the WHO Regional Office for Europe emphasized in the foreword to the guide "HIV/AIDS Treatment and Care: Clinical Protocols for the WHO European Region" back in 2007 that the prognosis for most people living with HIV is life with a "manageable" chronic disease.

In 2016, the World Health Organization (WHO) confirmed the elimination of mother-to-child transmission of HIV and syphilis in the Republic of Belarus. At the same time, the country received the recommendations of the Global Validation Advisory Committee, the implementation of which affect the maintenance of the validation status in Belarus. The recommendations were sent to the Ministry of Health of the Republic of Belarus.

One of those recommendations is about changing the articles of the Criminal Code of the Republic of Belarus that admit ambiguous interpretation, which is especially important for serodiscordant couples (when one partner is HIV-infected and the other is not). Below you can see this recommendation in full:

"Review Articles 157 and 158 of the Criminal Code regarding the criminalization of transmitting and placing the other person at risk for HIV and STIs transmissions to clarify the language and eliminate its ambiguous interpretation."

Sincerely,

WHO Representative in the
Republic of Belarus

Berdyklychev B.A.

ANNEX 5

Appeal to a defense counsel to involve a public defender in consideration of the case

TO A SOLICITOR/BARRISTER _____ _____
FROM THE DEFENDANT _____ _____

Dear _____
[name and patronymic of a counsel]

I am writing to you as my assigned solicitor/barrister in connection with your defense in a criminal case. In order to best protect my rights and legitimate interests, I ask you to interact with XXXXXXXXXXXXXXXXXXXXXXXXXXXX, year of birth, passport number, who has rich experience in social support of people living with HIV and has practical knowledge and skills that may be useful to you for my defense. In particular, I ask you to coordinate your position with the person mentioned above to assist his/her in access to the criminal proceedings as a public defender on the basis of paragraph 2 of Article 49 of the RF CPC, getting acquainted with copies of all materials of the criminal case, filing motions at his/her request, and receiving the evidence offered by his/her in my defense.

I ask you to consider this request in the framework of the provisions of Federal Law No. 63-FZ of May 31, 2002, "On Solicitor's/Barrister's activity and the Bar in the Russian Federation", under which a solicitor/barrister must honestly, reasonably, and fairly defend the rights and lawful interests of clients by all means except those prohibited by law, and also observe the code of solicitor's/barrister's professional ethics, under which a solicitor/barrister has no right to take a position in the case, contrary to the position of the principal, and act against his/her will while providing legal assistance for free assigned by an investigative authority, preliminary investigation agency or court as if the performance of duties takes place when providing legal assistance for a fee.

Please contact XXXXXXXXXXXXXXXXXXXXXXXXXXXX by telephone _____ or by e-mail XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX, and notify me thereafter.

Date: « ____ » _____ 20 ____ г.

Signed _____

Received _____

by Solicitor/Barrister _____

ANNEX 6

Petition for admission of a public defender to legal proceedings

_____ district court of the city of
XXXXXXXXXX

From the defendant:

Petition
On admission of a defender as provided for by p. 2, Art. 49 of the RF CPC

I request to admit XXXXXXXXXXXXXXXXXXXX, ...year of birth, passport's series ... number ... issued by date..... as my defender along with a counsel based on paragraph 2 of Article 49 of the RF CPC and paragraph 1 of Article 50 of the RF CPC.

According to the Decision of the Constitutional Court dated 22 April 2005 N 208-O "On refusal to accept for consideration the complaint of the citizen Korkovidov A.K. about violation of his constitutional rights by paragraph 2 of Article 49 of the RF CPC", access of a person who is not a lawyer to the defense in the case cannot be recognized as a circumstance preventing the participation of a professional lawyer, since neither the Constitution of the Russian Federation nor the criminal procedure law limits the number of counsels for the defense that can participate in the case, and since paragraph 2 of Article 49 of the RF CPC, the participation of a lawyer in the case shall be recognized as a condition for access of other, alongside with the lawyer, person for the defense.

The admission of XXXXXXXXXXXXXXXXXXXX is due to the fact that she is a social worker and has been engaged in my social support since _____ 20__ on the basis of a social support contract. I signed a power of attorney to represent and protect my legal interests in the name of XXXXXXXXXXXXXXXXXXXX, which indicates that there is a relationship of trust between me and XXXXXXXXXXXXXXXXXXXX. XXXXXXXXXXXXXXXXXXXX is well aware of my health condition, my life situation; I can fully inform only her about many circumstances related to the criminal case and it is only her I can fully trust in my defense. XXXXXXXXXXXXXXXXXXXX has medical and psychological education and long experience in working with people living with HIV, including women and adolescents. She possesses special knowledge and skills the assigned counsel does not have. The appointment of XXXXXXXXXXXXXXXXXXXX is not only in the interest of my defense but also in the interest of justice in the case.

No circumstances are preventing the admission of XXXXXXXXXXXXXXX for the defense; she is not a witness in the case.

Based on the foregoing and guided by Article 49 of the RF CPC, I ask to admit XXXXXXXXXXXXXXX as a defender for the defense along with a counsel.

Annex:

A copy of the passport of XXXXXXXXXXXXXXXXXXXX

A copy of the resume of XXXXXXXXXXXXXXXXXXXX

ANNEX 7**Agreement of social support on a free-of-charge basis****Agreement of social support
on a free-of-charge basis**

City
« » _____ 20 ____ года

Parties

Contractor
Name
Address

Client
Full name, address (optional), place of residence
(optional), telephone, e-mail.

The subject of the agreement

This agreement regulates the relations between the parties in the framework of social support in order to eliminate violations of the client's rights by the migration service, in connection with the refusal to provide permission to enter and reside in the Russian Federation.

Rights and obligations of the parties

Social support is carried out in the interests of the client. The contractor undertakes, in the framework of social support, to always act according to the interests of the client and in agreement with the client. In his/her work, the Contractor is guided by the goals of protecting and promoting human rights and restoring social justice. To solve the problems within social support, the Contractor has the right to apply in the interests of the client and on his/her behalf to the authorities for the protection of human rights in the Russian Federation, as well as to international bodies for the protection of human rights, including the European Court of Human Rights and UN structures. The Client undertakes to inform the Contractor about changes in the circumstances of his/her case. To facilitate the work of the Fund under this agreement, as well as representing the interests of the client in judicial and other bodies, the client has the right to issue a power of attorney for the representative of the Contractor - a case manager. The Contractor does not have the right to demand from the client any remuneration or other payments under this agreement, as well as coverage of the Contractor's costs associated with possible appeals in the interests of the Client to the authorities (refund of duties, other mandatory payments). The Client does not have the right to demand from the Contractor any remuneration or compensation under this agreement.

Case-related information

The Client authorizes the Contractor to involve the media, Internet resources (including the website of the Contractor and other similar organizations), in order to draw public attention to issues related to public health problems and the observance of human rights. To do this, the client allows using materials of interviews with him, as well as other information about the protection of his rights, posting on the website of the Contractor, appealing to national and international institutions for the protection of human rights, and the media. The specified materials can be published by the client's name.

Duration of the agreement

The agreement is concluded without specifying the term. If necessary, the agreement can be terminated unilaterally by the parties with mutual notification of each other about this in any form.

Signatures of the parties:

On behalf of Contractor

Client

ANNEX 8**Petition for familiarization with the materials of the case**

**To the District Court of district
City**
From the accused person
Full name
On Criminal Case No ...

Petition

On taking copies of the materials of the criminal case at my own expense

I would like to request the opportunity to take, at my own expense, copies of the materials of my criminal case by means of photocopying, based on paragraph 13 of Article 47 of the RF CPC.

Day, month, year

Full name

Signature

ANNEX 9

Uzbekistan position in defense

During the first court session, it is possible to file a petition for the appointment of a forensic medical examination with a proposal to involve a well-known infectious disease doctor with experience in HIV as an expert. As a justification for the petition, one can refer to the fact that the investigation found that the defendant has HIV in remission on ART. It is necessary to establish the viral load and, based on the results of the estimate, answer the question: What is the probability of HIV transmission from the accused to another person, providing a list of the main factors influencing the possibility of HIV transmission?

Comment by E. Korotkova: After the NGO's employee appeared as a witness for the defense, the judge received exhaustive information about HIV and routes of HIV transmission. In view of this, the petition to involve an infectious disease doctor was rejected.

From a legal point of view, the circumstances of the cases established by the investigation indicate the absence of intent to transmit HIV in the actions of the accused person. The indictment indicates that the accused, to prevent HIV infection in third parties, did not work with cutting tools, but instead used a machine. That is, the defendant by her actions tried to protect her clients from HIV transmission. There was no intent in her actions to place anybody at risk of HIV transmission.

Unlike the criminal codes of other EECA countries, the RUz CC is more advanced in terms of forms of guilt, since the RUz CC explicitly states that crimes that do not involve socially dangerous consequences can be committed only with direct intent.

Article 21. Intentional crime.

A crime, completion of which is determined by an Article of this Code as a moment of execution of a socially dangerous act, shall be recognized intentional, if a person, who committed it, was aware of its dangerous nature and desired its commission.

A crime, completion of which is determined by an Article of this Code as a moment of emergence of socially dangerous consequences, may be committed with direct or indirect intent.

A crime shall be recognized as committed with direct intent, if a person who committed it, was aware of its socially dangerous consequences and desired their emergence.

A crime shall be recognized as committed with indirect intent, if a person who committed it, was aware of its dangerous nature and its socially dangerous consequences and intentionally allowed their emergence.

According to the definition of guilt given in the Criminal Code of Uzbekistan, a crime, the completion of which is defined by the article of the present Code as a moment of execution of a socially dangerous act, is recognized as intentional, if a person, who committed it, was aware of its dangerous nature and desired its commission.

In order to commit a crime under Article 113 of the RUz CC, a person's intention must include the sign of intent, i.e. the accused person must intentionally endanger another person by the possibility of transmitting. The investigation established and recorded in the indictment that the accused person did not intend to put her clients in danger of transmission. There is no evidence of willfulness in her guilt - a desire to put someone in danger of being infected. On the contrary, it was established within the case that she was taking ART and she had an undetectable viral load; she also took measures to prevent cuts - she did not use cutting tools, but used a machine.

ANNEX 10

Power of attorney to assign a public defender**Power of Attorney**

I, XXXXXXXXXXXXXXXXXXXXXXXXXXXX _____

by this Power of attorney hereby authorize

Ivan Ivanovich Ivanov, a citizen of the Russian Federation, _____

Be my counsel for the defense in accordance with paragraph 2 of Article 49 of the RF CPC, my representative of the victim, to conduct my cases in all bodies, enterprises and organizations (state and non-state), courts, including courts of general jurisdiction, preliminary investigation, magistrates' courts, (including cassation, supervisory, and appeals instances), the Constitutional Court of the Russian Federation, administrative, law enforcement, prosecution bodies, offices of the Federal Bailiff Service, bodies of inquiries, bodies of the investigative committee, the Ministry of Internal Affairs, the Department of Internal Affairs, the FSB, the traffic police, the customs authorities of the RF, bodies and institutions of the Federal Penal Correction Service, tax authorities, civil registry offices, healthcare, insurance authorities, institutions, organizations and other institutions and organizations, on cases regarding civil, administrative, and criminal proceedings in my interests, including those under the Civil Procedural Code, the Arbitration Procedure Code, the Criminal Procedural Code, the Administrative Offenses Code, the Tax Code, the Code of Administrative Procedure, and in cases of administrative offenses and cases of private prosecution, exercising the rights granted by law to the claimant, defendant, third party and the victim, applicant, recoverer, debtor, the person in respect of which the proceedings on administrative offenses, to be my defender or representative, including the right to transfer the dispute to the arbitration court, presentation of counterclaim, full or partial rejection of claims, reducing their size, admitting the claim, change the amount, basis or subject of the claim, concluding a settlement agreement, concluding an agreement on actual fact, appealing against the court decision and actions (inaction) of the bailiff, appealing against a judicial act, filing a writ of execution and a court order for collection and withdrawal of the enforcement document, refusal of the recovery according to the enforcement document, entering into a settlement agreement in the framework of enforcement proceedings, without the right to receive the awarded property or money.

For this purpose, I give the right to sign on my behalf, sign any complaints, including cassation, appeal, supervision complaints to the Constitutional Court of the Russian Federation; to submit on my behalf statements, including statements of claim, with the right to sign them and submit them to court, submit applications to secure the claim, have the right to sign a response to the statement of claim, sign applications to review the case on newly discovered circumstances, refer the case to the arbitration court, receive the necessary certificates and documents, including documents containing medical and other information falling under the concept of medical secrecy, as well as other information containing my personal data; receive postal correspondence, receive court decisions (rulings) and other documents; familiarize with case materials, make copies, present evidence, participate in the examination of evidence, file motions, give oral and written explanations to the court, present arguments and considerations on all issues arising during the court proceedings, object to motions, arguments and considerations of other persons participating in the case, introduce objections, and perform all actions and formalities related to the implementation of this assignment.

The power of attorney is valid for three years.

The signature of the principal is authenticated by

ANNEX 11

Timeline for the V.M. case, the Russian Federation

- 1.** In April 2017 a criminal case was initiated on the grounds of a crime under paragraph 1 of Article 122 of the RF CC. The reason for the initiation was the appeal of citizen F (man, 31 years old) to the police. In his statement, he indicates that in June 2016 he got acquainted with a girl V.M. using a social network. During sexual contact, she did not inform him that she lives with HIV. They did not use the means of contraception. After several days of meetings, V.M. started hinting that she had an HIV-positive girlfriend. V. M. was afraid to tell him about her disease directly. At the time they met, she was 17 years old and lived in a children's home. Citizen F. was tested for HIV. The result was negative. V. M. was also tested on his request. Citizen F. found out that he was at risk of HIV transmission and went to the police. On August 31, 2017, the case was taken to court.
- 2.** September 12, 2017. The first court hearing. The hearing was attended by the justice of the peace, the state prosecutor, the assigned counsel, and the clerk to the court. The court hearing was postponed due to the non-appearance of the accused and the victim.
- 3.** September 18, 2017. The second court hearing. The hearing was attended by the justice of the peace, the state prosecutor, the assigned counsel, the clerk to the court, the representative of the accused (because she was under 18 at the time of the criminal case), the social pedagogue, the victim F., and the accused V.M. The victim and accused were interviewed; witnesses were testified. They could not make a judicial decision about the case and postponed it to the next session.
- 4.** September 27, 2017. The third court hearing. The hearing was attended by the justice of the peace, the state prosecutor, the assigned counsel, the clerk to the court. The court hearing was postponed by mutual agreement of the state prosecutor and the counsel because of the non-appearance of the accused, for unclear reasons, and the victim, as well as witnesses in the case (as it turned out later, no one received summons).
- 5.** October 5, 2017. The fourth court hearing was postponed because the accused person's legal representatives (social pedagogues) did not appear in the courtroom.
- 6.** October 11, 2017. The fifth court hearing was attended by the justice of the peace, the state prosecutor, assigned counsel, clerk to the court, accused person V.M., the accused person's representative, the social pedagogue, the victim F., and a witness for the victim's side. Due to the absence of some witnesses, the verdict was not voiced.
- 7.** October 13, 2017. The sixth court hearing was postponed because the victim wrote a statement that the case could be heard without his presence. The defense did not agree to this.
- 8.** October 18, 2017. The seventh court hearing. The hearing was attended by the justice of the peace, the state prosecutor, assigned counsel, clerk to the court, accused V.M., the accused person's representative, the social pedagogue, the victim F. and a witness for the victim's side. The accused stated in court that her rights were violated - enquirers questioned her without the presence of adults (legal representatives), even though it was indicated in the case file that they were present. Some of the facts that V.M. said during the interrogation were absent from the materials of the case (for example, her words that she offered to use a condom). The prosecutor stated to postpone the trial and summon the inquirers to the next meeting.
- 9.** November 2, 2017. The eighth court hearing was conducted in the same composition. One of the inquirers came and testified. The second inquirer was on sick leave and then on vacation leave. The hearing was postponed to December 19.
- 10.** December 19, 2017. The ninth court hearing was attended by the justice of the peace, state prosecutor, assigned counsel, and legal representative of the accused person, accused person V.M., victim-citizen F. The defense has declared a petition to bring to the hearing, as a representative of the accused, the public defender Elena Titina. The court granted the petition. The victim, the legal representative of the accused, the accused person herself, and witnesses were questioned. The counsel proposed a settlement agreement. The victim refused such a settlement. The public prosecutor stated that it was possible to impose punishment in the form of a year of deprivation of freedom. The public defender spoke and voiced the position of defense; the characteristics and the social-psychological profile of the children's home graduate were also read out. The justice of the peace pronounced the sentence: *"To find V. M. guilty of committing a crime under paragraph 1 of*

Article 122 of the RF CC and to mete out a punishment in the form of two months of deprivation of freedom with the following restrictions: not to leave the place of permanent residence from 10:00 pm until 06:00 am of the next day, not to change the permanent place of residence, and not to leave the city district without the consent of supervisory authorities”.

11. January 9, 2018. A petition for appeal was drafted and filed. Based on the arguments of the defense position given above, V.M. appeals against the sentence. The appeal was denied. After the denial of the appeal, a cassation appeal to the Supreme Court of the Russian Federation was drafted.

12. November 30, 2018. The Supreme Court decided to transfer the cassation appeal for consideration to the Presidium of the Samara Regional Court. The Supreme Court referred to the fact that in accordance with paragraph 2 of Article 87 of the RF CC to juveniles who have committed crimes may be applied coercive measures of educational influence or they may be sentenced, and if released from punishment by the court, they may also be placed in a special educational institution of the closed type⁶¹. At the time of sentencing, V.M. was eighteen years old, however, under the law, Article 96 of the RF CC specifies coercive educational measures can also be applied to persons between the ages of 18 and 20. The court in its verdict did not express any opinion on this issue and did not motivate its position. Thus, the Supreme Court did not take into account the absence of direct intent in V.M.'s actions and, as a consequence of guilt, on which the defense position was based.

13. On January 24, 2019, the Presidium was held in the Samara Regional Court. V.M. was not present at the court hearing; the public defender Elena Titina was allowed to be present in the courtroom as a listener. Five minutes before the hearing, it was possible to get acquainted with the assigned counsel and acquaint her with the position of the defense. The Presidium decided to transfer the complaint to the Syzran City Court for consideration in the appeals instance.

14. On February 26, 2019, a hearing was held in the Syzran City Court to consider the appeal. Since the victim did not appear, the hearing was postponed.

15. On March 13, 2019, there was a change of prosecutor at the court hearing. The assistant prosecutor applied for a postponement of the case due to the need to learn it⁶². The hearing was postponed.

16. March 27, 2019. The court hearing was held, as a result of which the sentence was reversed, for the reason the Supreme Court recognized, and the criminal case was transferred for a new hearing in the court of the first instance to the justice of the peace in the city of Syzran, the Samara region. *This was a return to the beginning.*

17. The new trial was scheduled for April 30, 2019. V. M. refused to go to the hearing. The hearing was postponed.

18. On May 16, 2019, there was a hearing on V.M.'s case. The session lasted almost 4 hours. A social pedagogue from the children's home was present and she claimed that V.M. was interviewed and all risks were explained to her. There were no answers to the direct questions of the defense as to whether the pedagogue themselves were aware of HIV infection and whether they were qualified to counsel people living with HIV. There was no time to question all the witnesses, so another day of the hearing was scheduled.

19. June 4, 2019. The court ordered: **In respect of minor V.M. accused of committing a crime under paragraph 1 of Article 122 of the RF CC, to terminate the criminal case (criminal prosecution), releasing her from criminal responsibility and apply to her a compulsory measure of educational influence in the form of a warning. The measure of procedural coercion - the obligation to appear – shall be canceled.**

20. Nevertheless, she was found guilty, only guided by the recommendations of the Supreme Court, the punishment was changed. V.M. cried in the courtroom, having understood that her criminal punishment was canceled.

⁶¹ According to the explanations specified in paragraph 31 of the Resolution of the Plenum of the Supreme Court dated 01.02.2011 № 1 (amended 29.11.2016) "On judicial practice of the application of the legislation regulating the specifics of criminal responsibility and punishment of minors," the courts should not impose criminal penalties on minors who committed crimes of small or medium gravity, if their reformation can be achieved through the use of coercive measures of educational influence, provided by Article 90 of the Criminal Code.

⁶² Annex 8. Petition for familiarization with the materials of the case

ANNEX 12

Recommended terminology for the decriminalization of HIV

Recommended term	Not recommended term	Commentary
HIV transmission	HIV infection	The use of the term "infection" is stigmatizing and creates negative attitudes towards people living with HIV.
HIV transmission	AIDS infection	Such obsolete terms are used in the legislation of some countries (for example, Moldova). This term is incorrect because it is impossible to transmit AIDS (acquired immune deficiency syndrome), but it is possible to transmit HIV (human immunodeficiency virus).
The possibility of virus/ HIV transmitting or The situation with possible HIV transmission	A threat to infect A situation that causes a risk of infection	It is an obsolete term that created a double stigma – "infection" has a negative connotation; "threat" creates a dangerous image of people living with HIV and an inherent misunderstanding of responsibility (one person poses a threat and is more responsible for transmission than the other, but responsibility for the health is divided equally between partners).
HIV positive/ people living with HIV	HIV-infected, victims of AIDS, AIDS-infected	The use of the word "victims" is highly undesirable. "AIDS-infected" is an incorrect variant, because AIDS is a syndrome, and the word "infected" has a negative connotation.
Sexual partner	Intercourse partner	Obsolete wording.
Vertical transmission of HIV	Mother-to-child transmission of HIV	The term has accusatory connotations toward the mother.
*** was diagnosed with HIV	*** was infected with HIV	Do not use stigmatizing language and it is important not to mention the source of HIV transmission as a confirmed one. The phrase "N was infected with HIV" implies that this fact has been proven or such a phrase cannot be used.
Sex without a condom and without the use of pre-exposure prophylaxis Sex without a condom	Unprotected sex	When describing the types of exposure and possibility of HIV transmission, the types of exposure and the degree of HIV transmission need to be clearly indicated.

