

# Civil society statement on the proposed re-criminalisation of HIV in Zimbabwe

by the HIV JUSTICE WORLDWIDE coalition,  
the Health Law and Policy Consortium, and Sonke Gender Justice

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In 2022, the Government of Zimbabwe was celebrated nationally<sup>1</sup> and internationally<sup>2</sup> for repealing the country's HIV-specific criminal law, Section 79 of the Criminal Code.

When announcing the repeal in Parliament, Minister Ziyambi Ziyambi, Zimbabwe's Minister of Justice, Legal and Parliamentary Affairs noted: "...the global thinking now is that that law stigmatises people living with HIV and studies have shown that it does not produce the intended results. What the ministry is going to do is to repeal that section of the law and ensure that we keep up to speed with modern trends in the world."<sup>3</sup>

HIV JUSTICE WORLDWIDE is shocked, saddened and extremely disappointed that only two years later, the Ministry of Justice, Legal and Parliamentary Affairs is now proposing to re-criminalise HIV by adding HIV to the list of sexually transmitted infections (STIs) currently criminalised in Section 78 of the Criminal Code.

That they are proposing to do so as part of the *Criminal Laws Amendment (Protection of Children and Young Persons) Bill* is both cynical and unwarranted. Amendments to the Criminal Code are meant to codify the Supreme Court decision on the age of consent to sex. Amending Section 78 of the Criminal Code to re-criminalise HIV is out-of-step with the *2021 Political Declaration on HIV/AIDS* agreed on by UN Member States, including Zimbabwe.<sup>4</sup> Of note, Section 80 of the Criminal Code already provides for aggravated sentencing in cases of exposure to HIV during "sexual intercourse or performing an indecent act with a young person".

Section 78, like the repealed Section 79, criminalises anyone who "does anything or causes or permits anything to be done with the intention or realising that there is a real risk or possibility of infecting any other person with" syphilis, gonorrhoea, herpes and "all other forms of sexually transmitted diseases". It is overly broad and extremely vague.

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<sup>1</sup> *Decriminalisation of HIV transmission a milestone development*, The Herald, 21 March 2022

<sup>2</sup> *UNAIDS welcomes parliament's decision to repeal the law that criminalizes HIV transmission in Zimbabwe*, 18 March 2022

<sup>3</sup> Op cit. The Herald, 21 March 2022

<sup>4</sup> *New global pledge to end all inequalities faced by communities and people affected by HIV towards ending AIDS*, UNAIDS, 8 June 2021. "Member States agreed to a target of ensuring that less than 10% of countries have restrictive legal and policy frameworks that lead to the denial or limitation of access to services by 2025."

Adding HIV to this already problematic provision would be a retrograde and harmful step backwards for the following reasons:

- **Criminalisation does not prevent HIV or STI transmission.** Communicable diseases – including those that are sexually transmitted – are public health issues, not criminal issues and criminalisation is not an evidence-based response to public health issues. As UNAIDS noted in its 2022 press release congratulating Zimbabwe for repealing the HIV criminalisation law: “The criminalisation of HIV transmission is ineffective, discriminatory and undermines efforts to reduce new HIV infections. Such laws actively discourage people from getting tested for HIV and from being referred to the appropriate treatment and prevention services.”<sup>5</sup>
- **The criminalisation of HIV and other STIs can violate human rights.** Such laws and prosecutions threaten the rights of people living with HIV, and other STIs, to equality, freedom from discrimination, privacy, human dignity, health, liberty, and the right to a fair trial, amongst others. Based on the HIV Justice Network’s monitoring of how people living with HIV were prosecuted previously under Section 79,<sup>6</sup> we believe that the criminal justice system is not well equipped to understand the science of exposure and transmission of HIV or other STIs and would therefore be unable to uphold principles of legal and judicial fairness, including the key criminal law principles of legality, foreseeability, intent, causality, proportionality and proof. Overly broad criminalisation of HIV and STIs means people with HIV or STIs risk being prosecuted and sent to prison instead of receiving care for their medical condition.
- **The criminalisation of HIV and other STIs can increase stigma and harm public health.** This is particularly so because prosecutions are often accompanied by highly stigmatising and inaccurate media reporting. By increasing stigma and driving people away from testing and healthcare services, criminalisation may therefore also prevent or delay people from accessing testing and treatment. Effective HIV and/or STI treatment not only allows people living with HIV or other STIs to lead longer, healthier lives, but also prevents HIV and STI transmission.
- **Criminalisation harms women.** In Zimbabwe, as in many African countries, HIV criminal laws have been disproportionately applied against women living with HIV. Women are usually the first to know of their HIV status, often due to accessing testing during antenatal care. Being the first to test positive, women may be vulnerable to being falsely blamed for bringing HIV into the relationship. Women living with HIV are also vulnerable to violence and abuse in intimate relationships and the threat of prosecution only increases that vulnerability.

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<sup>5</sup> Op cit. UNAIDS 18 March 2022

<sup>6</sup> As of April 2021, there had been at least 18 HIV criminalisation cases, giving Zimbabwe the highest known rate of HIV prosecutions in Sub-Saharan Africa. Over time, it had become apparent that Zimbabwe’s HIV-specific criminal laws do not protect women. Numerous cases have involved alleged sexual transmission of HIV, with many of the accused being women, including in cases where it is likely the woman was infected by her accuser spouse (although she was diagnosed first) and where men have made allegations as revenge for complaints about domestic violence. <https://www.hivjustice.net/country/zw/>

**Rather than adding HIV to Section 78, this provision should be repealed.** This would contribute to enhancing Zimbabwe's HIV and STI response in line with a human rights-affirming approach to health that is mandated by the Constitution and recommended by public health and human rights experts internationally and regionally.

**The Health Law and Policy Consortium (HLPC) agrees with the HIV JUSTICE WORLDWIDE (HJWW) coalition:**

Reintroducing the punitive criminalisation of HIV transmission is counterproductive as it undermines national health objectives and the global target of ending HIV and AIDS by 2030. It will be tantamount to re-enacting state endorsed stigma that will inevitably flow from the criminalisation. This amendment not only jeopardises the progress made through the successful repeal of Section 79 of the *Criminal Law Codification and Reform Act*, it threatens current efforts underway to prevent the spread of HIV as it reintroduces a driver for new infections of HIV. The proposed amendment creates a formidable legal barrier that will severely undermine full access to essential healthcare services. It will deter individuals from seeking regular HIV testing, adhering to HIV treatment and medication, and disclosing their HIV status to enable their sexual partners to take preventive measures such as PrEP.

**Sonke Gender Justice also agrees with the above and adds the following:**

It is Sonke's considered view that the re-introduction of the impugned provisions providing for the criminalisation of HIV in Zimbabwe will harm rights of women. The amendment of Section 78 of the Criminal Code on sexually transmitted diseases to include HIV will bring back the narrative of unjust arrests and prosecutions. Under this new provision, women tested as HIV-positive will face prosecution and eventual violence. Criminalisation of HIV reinforces gender barriers to accessing treatment, care and support for women who test HIV-positive, driving them underground, unable to disclose their status to the detriment of family health resulting in infant HIV acquisition, ART non-adherence for both the mother and infant. Criminalisation of HIV impairs public health goals that seek to promote health rights of women leading to poor health outcomes and HIV-related health disparities.

**HJWW, HLPC and Sonke conclude that re-criminalising HIV, as well the existing criminalisation of STIs, is a threat to Zimbabwe's HIV and SRHR response and to the rights, security and dignity of people living with HIV, particularly women living with HIV.**

Section 78 is vague and overly broad and risks being applied in a way that is unjust and discriminatory. It will not prevent HIV or STI transmission, instead perpetuating stigma and misinformation, risking driving people away from HIV and STI testing and treatment, and filling prisons.

*About the authors of this statement*

**HIV JUSTICE WORLDWIDE (HJWW)** is a coalition of 16 global and regional civil society networks and human rights defenders working to end HIV criminalisation.

**Health Law and Policy Consortium (HLPC)** is a health policy advocacy organisation leveraging a network of experts across various disciplines. HLPC aims to facilitate rights-based policy formulation, implementation, and monitoring within Zimbabwe's public health system.

**Sonke Gender Justice** is a South African-based non-profit organisation working throughout Africa. Sonke believes women and men, girls and boys, can work together to resist patriarchy, advocate for gender justice, and achieve gender transformation.

## HIV JUSTICE WORLDWIDE



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