

WOMEN'S LEADERSHIP

**in issues of
HIV decriminalization:
experience of the EECA region**

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**HIV JUSTICE
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“The women's community keeps evolving and actively stands against HIV criminalization. This is what we intend to present in the compendium «Women's leadership in issues of HIV decriminalization: experience of the EECA region». The compendium was prepared by the team behind the project «HIV Criminalization Scan in the EECA region» of the Eurasian Women's Network on AIDS, and describes the experience of women leaders, experts, and civil society activists in HIV decriminalization and related advocacy, research and activism”.
Svitlana Moroz, chair, Eurasian Women's Network on AIDS

“The community is one step closer to removing the fear of criminal persecution for people living with HIV, towards more humane laws, and policies and programs focused on removing barriers on the way to expand access to HIV prevention, treatment and care”.
Natalia Sidorenko, project manager, Eurasian Women's Network on AIDS



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INTRODUCTION

The women's community is evolving and actively confronting HIV criminalization. This is what we intend to present in this compendium «Women's leadership in issues of HIV decriminalization: experience of the EECA region». The compendium was prepared by the team behind the project «HIV Criminalization Scan in the EECA region» of the Eurasian Women's Network on AIDS, and describes the experience of women leaders, experts, and civil society activists in HIV decriminalization and related advocacy, research and activism.

The collected materials show how HIV criminalization is a global problem today and how it is connected to gender inequality. Women's community research, documented personal stories and court sentences clearly demonstrate that HIV criminalization not only fails to protect women from HIV Infection, but, on the contrary, worsens their status in society.

The laws that criminalize HIV make women more vulnerable to increasing violence and structural inequalities due to HIV.

For example, they are more often vulnerable to loss of property, separation from their children, ostracism and discrimination in their communities and economic consequences, because:

- breastfeeding can be used as a weapon against women living with HIV;
- women with HIV in serodiscordant couples are prosecuted even if they use condoms and/or have an undetectable viral load, even if the partner knowingly agreed to sexual contact;
- confidential medical information is illegally shared with law-enforcement agencies.

HIV criminalization in the EECA region is directly connected with other types of criminalization – use and possession of drugs, sex work - that exacerbate the burden of discrimination, rights violation and violence against women living with HIV.

The mobilization of the women's community and the meaningful participation of HIV-positive women and their allies in advocacy for legislative changes, protection of rights, preparation of alternative reports to the UN Committees are essential conditions to counter HIV criminalization.

We believe that women's leadership can turn the political declarations on AIDS into reality for women living with HIV.

WHAT IS HIV CRIMINALIZATION AND HOW DOES IT HARM PEOPLE LEAVING WITH HIV AND SOCIETY IN GENERAL?

The rule of law is key to an effective and human rights-based HIV response. Public health interests should not conflict with human rights. On the contrary, it is generally accepted that in a society that respects human rights fewer people are infected with HIV, and people living with HIV are more successful in overcoming the challenges caused by the disease [1].

HIV criminalization describes the unjust application of criminal law to people living with HIV, based solely on their HIV status. It includes the use of HIV-specific criminal laws or general criminal laws to punish people living with HIV for unintentional HIV transmission, potential or perceived HIV exposure, and/or non-disclosure of known HIV-positive status. HIV criminalization is a rapidly growing, global phenomenon, which undermines not only human rights, but also public health as a whole, thereby weakening the HIV response [2].

The over-formalized interpretation and application of laws that criminalize people living with HIV is a public health problem, because it undermines existing evidence-based HIV prevention and treatment strategies, as well as care and support strategies for people living with HIV; it also ignores scientific achievements related to HIV.

Criminalization exacerbates HIV-related stigma, and portrays HIV-positive people as potential criminals, which subsequently leads to discrimination. Fear of criminal prosecution can deter many people living with HIV from seeking needed support and treatment; it can also discourage disclosure and increases people's vulnerability to violence, especially women.

Criminalization creates a false sense of security about one's health. People think that fear of criminal prosecution will force their partners to warn them that they have HIV. In reality, this rarely happens, as the very dynamics of sexual contacts, especially casual ones, leave no place for such a warning. As a result, they do not practice safer sex, as each person thinks that as their partner did not disclose their HIV status, it means that they are not infected, and they can therefore proceed without protection.

[1] - International guidelines for HIV/AIDS and human rights. UNAIDS, 2006.

[2] - HIV Justice Worldwide. Frequently asked questions. What is HIV criminalization

On the other hand, criminalization creates a false sense of effectiveness by the State, resulting in the latter distancing itself from involvement in the implementation of effective HIV awareness and prevention programmes.

Legislation in many countries establishes criminal liability for HIV transmission or HIV exposure. Nonetheless, this has not prevented the HIV and AIDS epidemic.

Along with this, experts highlight the practical difficulties involved in court cases, as well as the widespread violations of the human rights of people living with HIV during investigations.

The report of the Global Commission for HIV and the Law, “Risks, Rights, & Health” states that “...fear of prosecution causes reluctance to get tested for HIV, to participate in prevention and treatment programs, or to inform partners about one’s status”[3].

Human rights and HIV are inextricably linked. Discriminatory, coercive and punitive measures increase people’s vulnerability to HIV and exacerbate the epidemic’s impact on families and communities. In its recommendations, the Global Commission states the following:

Recommendation No.18. In countries where HIV criminalisation laws still exist, courts must require proof, to the applicable criminal law standard, of intent to transmit HIV. The intent to transmit HIV cannot be presumed or derived solely from knowledge on the part of the accused of their positive HIV status and/or non-disclosure of that status; from engaging in unprotected sex; from giving birth without taking steps to prevent mother-to-child transmission; or from sharing drug injection equipment.

Recommendation No.21. Whenever HIV arises in the context of a criminal case, police, lawyers, judges and where applicable, juries, must be informed by the best available scientific evidence on the benefits and consequences of appropriate treatment, and on the benefits of continued treatment for both the individual and the community.

Meanwhile, in EECA countries, unfortunately, HIV criminal cases often fail to take into account the other partner’s informed consent to have sexual intercourse, as well as the use of condoms for prevention and low viral load – which negates the risk of HIV transmission – and yet bites and scratches are wrongly assumed to carry a risk of HIV infection.

[3] - Global Commission on HIV and the Law, Risks, Rights & Health”. UNDP, 2012



WHY HIV CRIMINALIZATION MAKES WOMEN MORE VULNERABLE

One of the arguments for the existence of HIV criminalisation is the alleged “protection” of women in situations where their husbands or partners pass on HIV.

Yet, criminalizing HIV does not eradicate gender and other forms of violence and social inequality that lie at the heart of women's vulnerability to HIV. On the contrary, it increases the risk of violence in women's lives, and exacerbate gender inequality.

Women living with HIV can be criminalized if they engage in sexual activity or choose to breastfeed.

At the same time, patriarchal social norms violate the sexual and reproductive rights of many women. As a result, women suffer from sexual and other forms of violence, even while married. Cultural and social norms in many EECA countries create situations where women have no power over whether their male partner uses a condom, and the request to use a condom as a means to protect their health and that of their partner can lead to violence.

Women living with HIV are prosecuted for putting another person at risk of HIV, for failing to disclose their HIV status, or for transmitting HIV, as they are often the first to learn their HIV-positive status through prenatal care. At the same time, women are less likely to disclose their HIV-positive status to their partners, because they are either economically dependent, or fear violence, blackmail or other forms of retaliation.

Women in same sex relationships, sex workers, women who use drugs, and transgender women often face many barriers to accessing HIV prevention, testing and treatment, care and support. Primarily because of their pre-existing “criminalized” status, criminalization of HIV transmission for these groups of women is one of the key barriers to accessing health services and other social care services, as they risk prosecution under several articles – for “criminal behavior” and for the assumed “danger” of HIV transmission.

WOMEN-LED COMMUNITY-BASED RESEARCH

In August 2017, the Eurasian Women's Network on AIDS (EWNA) joined the international movement against HIV criminalization and conducted the research project “HIV Criminalization Scan in the EECA region” [4]. This project was a breakthrough in developing activism and building the capacity of the women's community to respond to HIV criminalization by monitoring national legislation and media reporting, documenting cases of criminal prosecution and punishment at the regional level as well as individual human rights violations of women living with HIV.

Such analysis was necessary because 15 [5] **out of 20 countries in the Eastern Europe and Central Asia region have specific criminal legislation** that criminalize concealing the source of infection, putting another person at risk of acquiring HIV and transmitting HIV to another person. Within the region, criminal codes provide for different types of punishment for HIV-positive people, ranging from community service to imprisonment for up to 15 years.

The first report “HIV Criminalization Scan in EECA” [6], prepared in 2017, provides a broad overview of existing information on HIV criminalization, as well as cases of criminal prosecution of people living with HIV in the countries of the region. Given the enormous workload of identifying HIV-related prosecutions, the focus of the project was on seven countries: Belarus, Georgia, Kazakhstan, Moldova, Russia, Uzbekistan and Ukraine, with shorter overviews for the other two countries: Tajikistan and Estonia.

The research methodology was based on the following principles:

Inclusion and Leadership. The study was led by women living with HIV and had an impressive methodology that yielded results that went far beyond identifying the evidence base. Representatives of the community of HIV-positive women acted as national coordinators and researched local legislation, documented cases of criminalization, conducted media monitoring and built the foundations of human rights organizations.

Safety. The research team prioritized the protection of community informants, since in some countries, even studying the topic of criminalization can lead to State prosecution. Therefore, in the final report, the names of some informants and the names of their organizations are withheld.

Gendered optics. Understanding gender inequality and gender-based violence led us to conclude that women are significantly more affected by HIV criminalization.

[4] - HIV Criminalization Scan in EECA was supported by the Global Network of People Living with HIV (GNP+) on behalf of HIV JUSTICE WORLDWIDE (HJWW).

[5] - Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Moldova, Montenegro, Russia, Serbia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan

[6] - HIV Criminalization Scan in EECA, EWNA on behalf of HJWW, 2018.

The research methodology included:

1. a broad overview of existing information on HIV criminalization in the EECA region;
2. development of research and reporting tools for community coordinators on the ground, as well as a media monitoring system;
3. selection of women country activists and/or community coordinators from among the EWNA participants;
4. provision of mini-grants for activities within the country, which included:
 - interviews with community representatives, review of relevant laws and legislation;
 - documentation and / or collection of data on cases using informants and requests to government agencies;
 - media monitoring for the period 2015-2017;
 - development of a database of organizations and experts / counsellors providing legal support.
5. analysis, including gender analysis, and further study of the collected data;
6. preparation of the final report in both English [7] and Russian [8];
7. dissemination of the findings through existing communication channels.

The 'scan' revealed not only a large number of previously unknown HIV criminalization cases, but also alarming practices that undermine medical interventions and public health responses. For instance, in some cases, health authorities notified the police of an HIV diagnosis, which then became the trigger for an investigation into the sexual relationship between people.

In Belarus and Uzbekistan, when considering whether to open criminal proceedings against people living with HIV, the fact that partners fully agreed to the relationship and did not consider it necessary to tell anyone is not taken into account.

Proceedings are usually initiated when health care providers learn that an HIV-negative person is having sex with someone living with HIV, or when a pregnancy occurs, or when the HIV-negative partner has previously tested positive for HIV. In Belarus, for example, it is sufficient for a person to be aware of their HIV status and to be registered with the state AIDS center to initiate a criminal case.

The study also showed that the number of criminal cases related to HIV criminalization sharply increased in Belarus since 2015 (at least 50 in one oblast, Gomel, in the first half of 2017).

[7] - Regional HIV Criminalisation Report. Eastern Europe and Central Asia. EWNA on behalf of HJWW, 2018

[8] - HIV Criminalization Scan in EECA. EWNA on behalf of HJWW, 2018

Involvement in the research enabled local organizations of people living with HIV to better understand what HIV criminalization is, how it is applied in their country and, importantly, how the community can come together to fight it.

The project fostered new partnerships and became the starting point for EWNA participation in the global movement against criminalization – the HIV JUSTICE WORLDWIDE coalition [9], – becoming the voice of the community in the EECA region.

Notably, in the process, EWNA also revealed a rift in the activist community of HIV-positive people between those who see HIV criminalization as a problem and those who do not. Going forward, EWNA is planning to facilitate community discussions on the development of a harmonized common movement to support an enabling legal environment and strengthen human rights.

Гендерный анализ в рамках исследования

One of the study's strengths was the inclusion of gender analysis. The majority of criminal prosecution cases involved heterosexual contacts, and it was found that the experience of HIV criminalization is gendered and linked to social factors. Laws were previously thought to protect women from HIV, but HIV criminalization has made women more vulnerable to violence, structural inequality and negative economic consequences.

National informants have identified many cases of women living with HIV who have been charged with placing another person at risk of HIV or who have been threatened to be reported by their partners. Women have shared incidents of violence, threats and blackmail based on fear that their HIV status would be used against them in court. Many women sought legal advice from peer-to-peer organizations, sometimes after years of threats and/or abuse.

[9] - <https://www.hivjusticeworldwide.org/ru/>



«Before EWNA's 2017 HIV criminalization scan report in EECA, we really had no idea of the extent to which this was an issue for women in the region. When we incorporated this data into HJN's global analysis[1], we found that EECA was not only the region with the highest number of unjust cases due to its many problematic HIV criminalization laws, it was also one of two regions – along with sub-Saharan Africa – where we found that women were being disproportionately affected by these unjust and unscientific laws. It is because of this uniquely women-led community-based research project – importantly viewed through a gendered lens, since so many HIV criminalization laws are thought to protect women – that

we recognized that HIV criminalization was an important human rights – and especially women's rights – issue for the region.» – Edwin J. Bernard, Global Coordinator HIV JUSTICE WORLDWIDE. [10]

The Criminalization Scan for Eastern Europe and Central Asia in 2017 is a reminder to the world of how powerful community-led research can be. Together our team of women living with HIV was able to develop a methodology methodology that worked for our communities, one that was built on mutual trust and understanding. Because of this trust, we were able to gather information that no other team had collected before. This research was based on feminist principles and consciousness raising in action – sparking an anti-criminalization movement led by the women themselves. I am proud to have been a part of that team» – Jessica Whitbread, International Community of Women Living with HIV



[10] - HIV JUSTICE WORLDWIDE <https://www.hivjusticeworldwide.org/ru/>

As a results of the study findings

The study has significantly contributed to raising awareness on the topic of HIV criminalization in the EECA region and strengthened international cooperation. It has consolidated community's capacity and led to an increase in investment for tackling HIV criminalization.

In 2018, EWNA, building on the momentum generated by the research on criminalization, launched a regional campaign "HIV is not a Crime" as part of the broader "Chase the virus, not the people" campaign.

The activists hosted webinars highlighting HIV criminalization, discussing the impact of criminalization on people's lives, as well as alternative approaches from countries that do not criminalize HIV. EWNA also provides direct support to people affected by HIV criminalization and human rights defenders at the local level.

Documenting cases of human rights violations and monitoring media publications were an important part of the project to analyze the real state of affairs. From November 2018 to September 2021, more than 340 news items were found in eight countries in the region relating to the criminal prosecution of individuals living with HIV, including 223 from Russia.

COLLECTION OF GENDER-DISAGGREGATED DATA. COMPARATIVE ANALYSIS OF COURT SENTENCES

The importance of sex-disaggregated statistics is stated in the Sustainable Development Goals – a Resolution adopted by the UN General Assembly in 2015 [11], only accurate, reliable, comprehensive thematic data will allow us to understand the problems we face and find the most suitable solutions for them.

An analysis of cases initiated against HIV-positive people related to HIV exposure and transmission, as well as an analysis of the sentences imposed in these cases, provides an indication of the real state of affairs in the country and the region.

It should be emphasized that the analysis of such data is complicated by the fact that not all countries maintain statistics disaggregated by sex. For example, Kazakhstan has provided disaggregated data since 2000, Ukraine since 2008, Russia since 2017, and Belarus since 2019. Representatives of the state do not provide answers to all the inquiries from activists on the ground, and in some countries even the mere act of submitting a request for information can have negative consequences.

According to the statistics department of the Supreme Court [12] of Russia, since 1997, 1,105 convictions have been issued under Article 122 of the Criminal Code of the Russian Federation. Between January 1, 2017 and June 30, 2021, there have been 279 convictions under the main qualifications. 185 (66.3%) of them were men, 94 (33.7%) were women. Of the 94 women convicted, 20 (21%) had children under the age of three.

In 2020, one pregnant woman was convicted, and 62 sentences were handed down under additional qualifications; there is no disaggregation for these in open sources. 52% of all people convicted are in the 30-49 age group, 46% in the 25-29 age group.

Since 2017, there has been an annual increase in the number of convictions: compared to 2017, in 2020, the number of such sentences increased by 56.6%: from 60% in 2017 to 94% in 2020.

According to the Information Center of the Ministry of Internal Affairs of the Republic of Belarus, from 2007 to June 30, 2021, 535 convictions were issued under Article 157 of the Criminal Code of the Republic of Belarus, of which 286 (53%) were for putting another person at risk of HIV transmission.

[11] - Transforming our world: the 2030 Agenda for Sustainable Development. pp. 33-34.

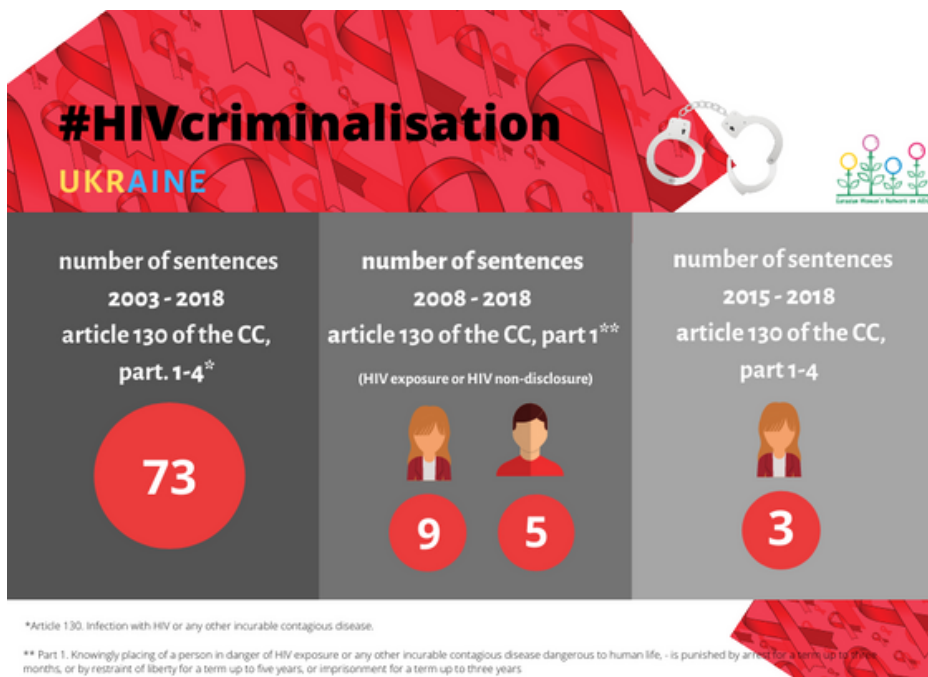
[12] - Judicial Department at the Supreme Court of the Russian Federation

Since the entry into force of the note to Article 157 of the Criminal Code of the Republic of Belarus, there has been a 72% decrease in the number of sentences passed: from 133 in 2018 to 37 in 2020. Since 2019, 92 people have been convicted under Article 157, of these 60% are women.

Corpus delicti according to the criminal code	Number of convictions by country							
	Kazakhstan (1998-2019)		Ukraine (2008-2018)		Russia (2017-2021)		Belarus (2019-6 m. of 2021)	
	women	men	women	men	women	men	women	men
HIV exposure	3	1	9	5	52	53	29	7
HIV transmission	0	2	3	7	36	95	24	25
Aggravated transmission	0	6	2	2	6	37	2	5
HIV transmission as a result of medical intervention	0	0	1	4	0	0	0	0

From the data obtained, it becomes clear that in cases related to HIV exposure, women are more likely to be convicted. In 4 countries of the EECA region, there was a total of 159 convictions related to HIV exposure, of which 93 (58.5%) were against women. Belarus especially stands out: in 2019-20, 80.6% of sentences in cases of HIV exposure were passed against women.

Example of a disaggregated infographic of sentences in Ukraine for 2003-2018:



To conclude this section, let us have a look at how cases against men and women are dealt with in Tajikistan.

<p>A man (knows about his positive HIV status since 2009, it is reliably known that he transmitted HIV to two wives)</p>	<p>In 2013, R. married P. – she is his fourth wife. P. learned that she had HIV when she registered her pregnancy in 2014. P. went to the police with a statement that R. had infected her with HIV. A criminal case was initiated against R. under Part 2 of Article 125 of the Criminal Code of the Republic of Tajikistan. However, according to the court ruling of August 14, 2014, in connection with the adoption of an amnesty, the criminal case was terminated.</p>
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**A woman
(knows about her positive HIV
status since 2014, no cases of
transmission are known)**

As part of an epidemiological investigation, it was established that a woman provided sex services and was not taking ART. In May 2018, the police seized her phone and contacted the men listed in her phone contacts. The Republic's AIDS Center set up a visiting commission and all men who confirmed sexual relations with the woman were invited for examination. All men tested negative for HIV. The woman was convicted under Part 1 of Article 125 of the Criminal Code of the Republic of Tajikistan for putting someone at risk of contracting HIV. The state prosecutor demanded a sentence of 2 years imprisonment. The woman repented in court and announced that she would no longer engage in prostitution. The court took this statement into account, as well as the difficult economic situation of the defendant's family, and decided to commute the sentence. The woman was sentenced to 1 year in prison. She was serving time in a general regime colony.

In December 2018, she was released early due to poor health. In March 2019, the **criminal case was re-opened for the same episodes as in 2018, on the basis of a protest from the General Prosecutor's Office**. During the investigation, no new victims with whom she had sexual relations were identified. None of the 30 sexual partners involved in the case have been diagnosed with HIV infection. They were tested at the time of the investigation in 2018 and in 2019. However, **the court again found the woman guilty**.



CEDAW AND HIV DECRIMINALIZATION

The Committee on the Elimination of Discrimination against Women (CEDAW) [13] monitors the implementation of the International Convention on the Elimination of All Forms of Discrimination against Women.

CEDAW is a fundamental document that established women's rights as a separate category in the human rights system. It is the basis for all other documents protecting the rights of women that are adopted by the UN.

The Convention, as the main measure for the elimination of discrimination, provides for legal regulation, namely:

- establish legal protection of women's rights on an equal basis with men and ensure effective protection of women against any act of discrimination through the competent national courts and other government agencies;
- refrain from committing any discriminatory acts or actions against women and ensure that public authorities and institutions act in accordance with this obligation;
- take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- take all appropriate measures, including legislation, to amend or abolish existing laws, regulations, customs and practices that discriminate against women;
- repeal all provisions of their criminal law that discriminate against women.

States that have ratified the Convention undertake to submit every four years to the UN Secretary-General for consideration by CEDAW a report on the legislative, judicial, administrative or other measures they have taken to implement the provisions of this Convention and on the progress made in this area. Along with states, non-governmental associations also have the right to submit their report to the Committee, which is called an alternative or shadow report.

[13] - UN Committee on the Elimination of Discrimination against Women

In 2018, the Tajikistan Network of Women Living with HIV submitted the Alternative Thematic Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women concerning women living with HIV and women from affected groups (ex-prisoners, women who inject drugs, sex workers)[14]. A separate chapter of the report is devoted to HIV criminalization and access to justice for HIV-positive women and women from HIV-affected groups.

In its concluding observations on the 6th periodic report of **Tajikistan**, the Committee included the following recommendation[15]:

40. The Committee recommends that the State: [...]

e) **Decriminalize the transmission of HIV / AIDS** (article 125 of the Criminal Code) and repeal government decrees as of 25 September 2018 and 1 October 2004 prohibiting HIV-positive women from obtaining a medical degree, adopting a child or being a legal guardian.

In 2017, women activists from Central Asia received training on how to submit alternative or shadow reports to CEDAW. In 2019, with technical and mentoring support from EWNA, representatives of the community of women living with HIV, women who use drugs and sex workers from **Kazakhstan** took part in two CEDAW meetings.

The list of questions to the state was presented at the pre-session working group of CEDAW' 74th session[16], and the alternative report[17] on rights violations against women from key populations was presented at the 74th session of the Committee on October 23, 2019. The report was based on research regarding cases of rights violations registered by NGOs in 2015-2017. One of the recommendations from the civil society of the Republic of Kazakhstan was a proposal to abolish the provision that criminalize HIV exposure and to revise Article 118 of the Criminal Code of the Republic of Kazakhstan "Infection with the Human Immunodeficiency Virus (HIV/AIDS)" dated July 3, 2014 No. 226-V 3PK.

[14] - Alternative thematic report on the implementation of CEDAW concerning women living with HIV and women from the affected groups. Tajikistan HIV + Women's Network, 2018.

[15] - Concluding observations on the sixth periodic report of Tajikistan.

[16] - Page 74, Pre-Sessional Working Group (March 11 – 15, 2019).

[17] - Civil society's shadow report on discrimination and violence against women living with HIV, women who use drugs, sex workers and women in prisons. 2018.

The issue of HIV decriminalization has been raised by the HIV positive women's community in **Ukraine** since their first alternative report to CEDAW in 2017[18]. In March 2020, EWNA, in coalition with the Charitable Foundation 'Positive Women' and the Charitable Foundation Club Svitanok, prepared and submitted a list of issues on Ukraine's implementation of CEDAW concerning women living with HIV and women who use drugs[19]. These issues were discussed during the meeting of the pre-session working group of CEDAW' 77th session on March 2, 2020 as part of an informal meeting with representatives of civil society. In particular, **Olena Stryzhak**, Chair of the Board of the Charitable Foundation 'Positive Women', in her oral statement, drew the Committee's attention to the problem of HIV criminalization in Ukraine and to the fact that according to the data of the State Judicial Administration of Ukraine, in 2015–2018 under Article 130 of the Criminal Code of Ukraine “Infection with the human immunodeficiency virus or other incurable infectious disease” only women were convicted. In the same year, Olena actively participated in the preparation and holding of a meeting of the Subcommittee on Epidemiological Safety, Fight against HIV / AIDS and Social Diseases of the Committee of the Verkhovna Rada (Parliament) of Ukraine on National Health, Medical Assistance and Health Insurance in order to discuss amendments to the Criminal Code of Ukraine.

In June 2021, the Charitable Foundation "Positive Women" published its position on the decriminalization of HIV infection in Ukraine[20], in which they stated that as an organization representing the community of women living with HIV:

- We support Bill No. 5488 dated May 13, 2021[21] "On Amendments to Administrative Offenses Act of Ukraine and the Criminal Code of Ukraine on Combating Discrimination.
- We consider it expedient to further advocate for the abolition of Article 130 of the Criminal Code of Ukraine to fully decriminalize infectious diseases.

[18] - Shadow report on the situation of women who use drugs, women living with HIV, sex workers, lesbians, bisexual women and trans people in Ukraine. CEDAW' 66th Session, February 2017.

[19] - List of Issues on the implementation of the CEDAW by Ukraine related to violence and discrimination against women living with HIV and women use drugs. EWNA, 2020.

[20] - Position on decriminalization of HIV infection in Ukraine. Charitable Foundation "Positive Women", June 7, 2021.

[21] - Draft Law on Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine on Combating Discrimination No. 5488 dated May 13, 2021.

Since 2019, **Zhenya Mayilyan**, the head of the Women's Empowerment Center and the representative of EWNA in **Armenia**, has been involved in the CEDAW processes after one of the meetings at which activists shared their experience of such participation:

"At first I did not understand why people even wrote alternative reports. When I returned home, I began to study what was happening in this area. Our national organization is part of the Stop Violence against Women Coalition. In it, I again heard about CEDAW. I studied the reports to find out what was written in them about women living with HIV. Only statistics were mentioned. Another Coalition – the Coalition on Discrimination and Equality – announced a call for proposals, and we moved on to develop the Alternative Report on the situation of women living with HIV, women who use drugs and sex workers. Our application was approved."



The Coalition to Stop Violence Against Women submitted the list of issues to the 81st CEDAW Pre-Session Working Group[22], which took place in July 2021[23]. In the part on realization of the rights of various groups of women, a section on women living with HIV and women who use drugs has been inserted. Based on the experience of community-based NGO "Real World, Real People", which is represented by Zhenya Mayilyan, the Coalition recommended asking the state the following questions:

- 1. Why are the issues and problems faced by women who use drugs not addressed in the State Report?*
- 2. What steps has the state taken to comprehensively study the existence/absence of discrimination against people living with HIV in the health care system?*
- 3. What clear steps has the state taken to abolish existing discriminatory regulations at care institutions[24] according to which people living with HIV are not provided with services?*

[22] - Written Information for the Adoption of the List of Issues by the CEDAW submitted by the Coalition to Stop Violence against Women Armenia, June 2021

[23] - 81 (Virtual PSWG) Pre-Sessional Working Group (05 Jul 2021 – 09 Jul 2021)

[24] - Social institutions, nursing homes for the elderly

4. When will the state decriminalize regulations regarding the criminalization of HIV transmission?

5. How did the state measure the effectiveness of raising the level of awareness on the issues of HIV infection among the general public?

6. What steps has the state taken to ensure that women living with HIV who are victims of domestic violence have unimpeded and non-discriminatory access to support centers?

As a result, in its list of questions to Armenia in relation to its seventh periodic report, the CEDAW Committee asks the following[25]:

Health

15. [...] Please also provide information on periodic and mandatory training for health workers on women's and girls' sexual and reproductive health and rights, paying particular attention to lesbian, bisexual and transgender women and intersex persons, women with disabilities and women with HIV.

...

18. According to information received by the Committee, women living with HIV/AIDS, in particular those in prostitution or using drugs, face discrimination and social stigma in the State party. In addition, article 16 of the Law on the prevention of disease caused by HIV (1997)[26] establishes the obligation of a person with HIV or her or his legal representative to comply with measures of prophylaxis that prevent the spread of HIV, which creates additional risks for the women affected. Please indicate whether the State party is taking steps to repeal the relevant provisions of that Law. Please also provide information on awareness-raising and educational measures taken to eliminate discrimination and stigmatization against women living with HIV/AIDS and provide exit programmes and alternative income-generating opportunities for those wishing to leave prostitution and drug substitution programmes for women who use drugs.

[25] - List of issues and questions in relation to the seventh periodic report of Armenia. CEDAW, 16 July 2021

[26] - Law of the Republic of Armenia on the Prevention of Disease Caused by HIV

In June 3, 2021, a new Criminal Code was adopted in Armenia. Among other things, some of the amendments were about HIV criminalization. The Armenian government presented the first draft of the law for public comment in 2019. NGOs and government organizations provided comments and suggestions on it. Later, another draft was presented, which was posted on the website of the National Assembly of Armenia, where some comments were also made following hearings at the spring 2021 Assembly meeting. Suddenly and very quickly, a new Criminal Code was adopted[27], which was sent for signature to the President of Armenia, and which will enter into force on July 1, 2022. The new code does not contain an article on placing another person at risk of contracting HIV, and only considers cases of direct transmission of HIV to another person.

In 2020, a coalition of civil society organizations in **Kyrgyzstan**, as part of the Alternative Report for the 76th CEDAW session on the situation of women who face intersecting forms of discrimination[28], raised the issue of the existing legislation's impact on the situation of HIV-positive women.

Recommendations from the civil society proposed the review and repeal of the discriminatory legislation, including the prohibition on adoption on basis of HIV status and the punishment for HIV transmission. At the 76th session, the Committee did not hear the reports of the participating countries due to the COVID-19 restrictions and included Kyrgyzstan for consideration at the 80th session.

In 2021, the Eurasian Women's Network on AIDS and the Women's Network of Key Communities (Kyrgyzstan) presented the Alternative report on the implementation of the CEDAW concerning women living with HIV in the Kyrgyz Republic[29], for consideration at the Committee's 80th session, which was held between October 18 – November 12, 2021. The report focused on the harms of statutory prosecutions of women living with HIV (criminalizing exposure to infection, failure to report HIV diagnosis, HIV transmission), access to health services and issues of violence, and the impact of COVID-19-related restrictive measures.

Examples of arguments and analytical information that activists used in their report (fragment):

[27] - Criminal Code of the Republic of Armenia, adopted on May 05, 2021.

[28] - Joint Submission to the 76th Precessional Working Group of the CEDAW Committee to Generate a List of Issues for the 5th Periodic Report of the Kyrgyz Republic

[29] - Alternative report on the implementation of the CEDAW concerning women living with HIV by the Kyrgyz Republic

The Criminal Code of Kyrgyzstan imposes punishment for both endangering HIV transmission and HIV transmission (Article 149. Infection with an incurable infectious disease)[30].

- a. Part 1: the punishment for “endangering another person by the transmission of life-threatening HIV or another incurable infectious disease” is a category IV correctional labor (2.5-3 years) or a category V fine (220,000-260,000 KGS, which at current exchange rates is 2600-3070 USD), or a 1st category prison sentence (up to 2.5 years).
- b. Part 2: the punishment for “infecting another person with HIV by a person who was aware of their positive status, committed through negligence” stipulates a 6th category (260,000-300,000 KGS, which at the current exchange rate is 3,070-3,540 USD) or a 2nd category prison sentence (2.5-5 years).
- c. Part 3: “HIV transmission to another person” is punishable by 2.5-7-year term of imprisonment.
- d. Note on the article: A person shall be exempt from criminal liability for an act stipulated under paragraphs 1 or 2 of the article, if another person, who was put at risk of HIV transmission, was previously informed about such infection and gave his/her voluntary consent to the act, which put him/her at such risk.

In Kyrgyzstan, there is virtually no practice of conviction under the article on HIV transmission; yet, the criminalization of HIV transmission entrenches stigma against people living with HIV and is a source of structural discrimination that affects all spheres of life. In a patriarchal environment, women are more vulnerable economically and socially and thus face discrimination more often.

Nevertheless, there is a known case where the law on the criminalization of HIV transmission was used to threaten and blackmail a migrant sex worker. Women from groups facing intersecting forms of discrimination are also exposed to the risk of an illegal application of the criminalisation of HIV transmission.

Case 1[31]. Disclosure of confidential information related to a diagnosis

In September 2017, the Osh Department of Internal Affairs (ATC) requested information from the Osh AIDS Center on the HIV status of an Uzbek citizen living in Osh. The AIDS Center gave a written response revealing the woman's status. The request from the law enforcement agency was sent outside the framework of an initiated criminal case or a court decision, which suggests that the request was unlawful. During the audit at

[30] -Criminal Code of the Kyrgyz Republic

[31] - This case was originally described in the CEDAW Coalition's Interim Alternative Report, in 2018.

the AIDS Center, it was revealed that neither the request nor the response was registered in the register of outgoing and incoming documents. Having received data from the AIDS center, the police officer forced the woman to leave the country and threatened to initiate a criminal case in case of refusal.

HIV criminalization and the repressive elements of Soviet-style health care are also reflected in the regulatory framework and practices of medical institutions. In particular, the Protocol for the Provision of HIV-Related Care contains procedures such as epidemiological investigation as the first step after confirmation of the HIV diagnosis. HIV statistics are compiled using stigma and discriminatory reporting codes.

Currently, Kyrgyzstan is undergoing a large-scale revision of legislation in connection with the introduction of the new Constitution in early 2021. At the same time, the revision of the codes was carried out in a non-transparent manner, in violation of the norms of the current legislation. According to experts, the proposed versions of the codes violate not only a number of international conventions and agreements signed by Kyrgyzstan, but also the Constitution that recently entered into force. One of the obvious threats embedded in the new codes is a rollback to totalitarian practices and a rejection of humanization. Despite open appeals and calls from experts, on July 22, 2021, the Parliament approved the proposed codes, which were to come into effect on September 1, 2021. However, on that date, the newly adopted codes were not published and there is no official information as to whether the President signed them.

The available versions of the draft law contain changes that indicate tightening of the law: the Law of Offences will be abolished and the articles of this law will become part of the Criminal Code. Thus, Article 68 of the Law of Offences “Infection with venereal disease” would be merged with Article 149 of the current Criminal Code “Infection with incurable infectious disease”, and the draft of the new Criminal Code would call these two articles “Infection with a venereal or incurable infectious disease”. This marks a throwback to archaic repressive models.

In November 2021, CEDAW held an informal briefing with NGOs from four countries, including Kyrgyzstan. The situation of women living with HIV was highlighted in a joint oral statement by the CEDAW Informal Coalition on four groups of women with intersecting forms of discrimination[32]. On 2-3 November 2021, the Committee reviewed Kyrgyzstan's implementation of the CEDAW Convention (constructive dialogue with the State Party). One of the Committee's questions was about the harm of criminalizing HIV transmission. It was noted that although the criminalisation law is not used in practice, the criminalization of HIV transmission nevertheless supports entrenched stigma and is a source of structural discrimination that affects all areas of life[33].

[32] - Women thesis, facing intersecting forms of discrimination in Kyrgyzstan. Supplements to the Alternative report for the 80th session of CEDAW

[33] - UN WebTV (record starting from the mark 53 minutes 30 seconds)

In its concluding recommendations for Kyrgyzstan's 5th periodic report, the Committee highlighted a separate subsection on the situation of women living with HIV:

Women living with HIV

[...]

43....The Committee is concerned about the criminalization of HIV transmission through consensual sex between adults, about barriers to accessing health care, discriminatory terminology, reports of children being taken away and barriers to accessing childcare for women living with HIV.

44. The Committee recommends:

- a. **Decriminalization of HIV/AIDS transmission** (article 149 of the Criminal Code) through consensual sexual relations between adults;
- b. Ensuring access to health care services, including confidential testing, antiretroviral treatment and psychological support, respecting the confidentiality of information about a women's HIV status, and imposing deterrent penalties for the disclosure of such status;
- c. Eliminating the repressive elements of the epidemiological investigation and reviewing the wording of the HIV infection articles;
- d. Ensuring that women living with HIV are not separated from their children based on their HIV status and that they have adequate access to childcare facilities, free from stigmatization;
- e. Prohibiting the practice of employers requiring an HIV certificate for access to employment and continued employment.

At the time of publication of the CEDAW's concluding observations[34], it became known that a new article would come into effect on December 1, 2021. Article 143 "Infection with a venereal or incurable infectious disease" of the Criminal Code of Kyrgyzstan punishes HIV exposure, and HIV transmission through negligence and simple unspecified exposure[35].

[34] - Middle November 2021

[35] - CRIMINAL CODE OF THE KYRGYZ REPUBLIC of October 28, 2021 No. 127

BREASTFEEDING AS A WEAPON AGAINST WOMEN LIVING WITH HIV

The World Health Organization (WHO), in its Consolidated Guideline on Sexual and Reproductive Health and the Rights of Women Living with HIV, recommends that mothers with diagnosed HIV infection and suppressed viral load should breastfeed for at least 12 months and continue breastfeeding, as is recommended for the general population, for up to two years and longer, while women are provided with all necessary support to adhere to ART [36].

There is increasing evidence that babies are much less likely to be born with HIV if the mother is on antiretroviral treatment [37]. A French perinatal cohort study found that when a mother started HIV treatment before becoming pregnant, continued treatment throughout pregnancy, had an undetectable viral load (<50 copies/ml) during labor and did not breastfeed, newborn babies did not contract HIV [38].

Evidence of HIV transmission through breastfeeding is difficult to collect, but, as with other modes of transmission, the risk of transmission through breastfeeding was much lower with ART [39]. A study in Tanzania found no vertical HIV transmission through breastfeeding among women who received medical care and had a suppressed viral load (<100 copies/ml) [40].

The international community is aware of numerous cases of women living with HIV who were reported to child protection authorities for breastfeeding. Women were also forced to conceal breastfeeding for fear of being denied services and / or fear of being reported to health authorities or the police. Women also report fear of violence or of

[36] - Recommendation B.27. Consolidated guideline on sexual and reproductive health and rights of women living with HIV. WHO 2017
[37] - Siegfried N, van der Merwe L, Brocklehurst P et al. Antiretrovirals for reducing the risk of mother-to-child transmission of HIV infection. Cochrane Database of Systematic Reviews 2011; 7:CD003510. Townsend CL, Byrne L, Cortina-Borja M, et al. Earlier initiation of ART and further decline in mother-to-child HIV transmission rates, 2000-2011. AIDS 2014; 28(7):1049-57.

[38] - Mandelbrot L, Tubiana R, Le Chenadec J, et al. No perinatal HIV-1 transmission from women with effective antiretroviral therapy starting before conception. Clinical Infectious Diseases 2015; 61:1715-25

[39] - Dunn DT, Newell ML, Ades AE, et al. Risk of human immunodeficiency virus type 1 transmission through breastfeeding. The Lancet 1992 340(8819): 585-8. Bispo S, Chikhungu L, Rollins N, et al. Postnatal HIV transmission in breastfed infants of HIV-infected women on ART: a systematic review and meta-analysis. Journal of the International AIDS Society. 2017; 20(1): 1-8. Shapiro RL, Hughes MD, Ogwu A, et al. Antiretroviral regimens in pregnancy and breast-feeding in Botswana. New England Journal of Medicine 2010; 362(24):2282-94. Flynn PM, Taha TE, Cababasy M, et al. Prevention of HIV-1 transmission through breastfeeding: efficacy and safety of maternal antiretroviral therapy versus infant nevirapine prophylaxis for duration of breastfeeding in HIV-1-infected women with high CD4 cell count (IMPAACT PROMISE): a randomized, open-label, clinical trial. Journal of Acquired Immune Deficiency Syndromes 2018 77(4): 383-92.

[40] - Luoga E, Vanobberghen F, Bircher R, et al. Brief report: no HIV transmission from virally suppressed mothers during breastfeeding in rural Tanzania. Journal of Acquired Immune Deficiency Syndromes 2018; 79(1): e17-20. The study included 186 infants. Two infants contracted HIV, and in both cases the mother had a detectable viral load.

judgment by family members for not breastfeeding in cultures where breastfeeding is the norm and is considered an indicator of good motherhood. Bottle-feeding can indicate that a woman is HIV-positive, which can also trigger violence and / or rejection due to the stigma associated with HIV.

Reasons why HIV positive women choose to breastfeed their babies:

- in many countries breastfeeding is culturally appropriate;
- fear of disclosing her HIV status – if a woman refuses to breastfeed, her relatives may suspect that she is sick and this will cause her other problems;
- some countries do not have programs for providing women with breast milk substitutes (BMS); even if such programs exist, they cannot provide all newborns with BMS throughout the required period, and many women cannot afford to buy BMS;
- access to clean drinking water is difficult;
- emergency, natural disaster, conflict;
- women believe that breastfeeding enhances bonding, is beneficial for the baby, and it is their choice.

Despite WHO guidelines recommending breastfeeding for HIV-positive women, in the Russian Federation and several other countries, a woman living with HIV who breastfeeds her baby may be prosecuted.

Example of social support in connection with criminal proceedings in Russia

In May 2019, an HIV-positive woman in St. Petersburg breastfed her newborn baby in a maternity hospital. The administration of the maternity hospital reported this fact to the child protection services and the police. The woman was charged under Article 122 of the Criminal Code of the Russian Federation for endangering another person with HIV infection, and was separated from her child. Child protection services initiated proceedings to terminate the woman's parental rights. The woman was not married to the child's father, therefore, from a legal point of view, paternity was not confirmed. For this reason, the child, after being separated from his mother, remained in the children's hospital and orphanage. It was not until September 2019 that paternity was established in court and the father's demand to surrender the child to him was satisfied. In November 2019, the court decided not to terminate the woman's parental rights, but all charges against her were only dropped in June 2020. The defense proved that there was no direct intent and that she did not want to infect her child with HIV. The criminal case was dropped for lack of *corpus delicti*.

Behind this story lies the work of a whole team of people: peer counsellors of the E.V.A. Association[41], lawyer Olga Krivonos, and the AIDS Center's psychologists and medical workers.

The woman contacted the project "Peer to Peer" after the prosecutor's office opened the case and the child was taken into the care of the state. Social support from the project was agreed and a social, psychological and legal plan was drawn up for her, including issues around adherence to ARV therapy. Thanks to joint efforts, the woman was given access to her child and was accompanied by the project specialists through all stages of negotiations with child protection services. Together with the lawyer, the peer-counsellors helped prepare and collect all the necessary documents for a fair trial.

In this case, timely coverage of important court hearings in the media[42] played a crucial role. At present, the woman and her partner live together with the child as a family. They follow all the doctors' recommendations and the child is HIV-negative.

An example of participation in policymaking in Ukraine

In 2021, for the first time, representatives of the community of women living with HIV participated in the preparation of clinical evidence-based guidelines "Prevention of mother to child HIV transmission" as part of a working group established by the State Expert Center and the Center for Public Health of the Ministry of Health of Ukraine[43].

The purpose of developing the adapted clinical guidelines is to help the clinician, the multidisciplinary team, and the woman living with HIV make an informed and rational decision to implement effective interventions to prevent mother-to-child transmission of HIV (PMTCT) in specific clinical settings.

The Clinical guidelines incorporate updated international evidence-based best practices and modern approaches to the provision of quality comprehensive health care for PMTCT. With the help of these Guidelines, healthcare professionals will be able to professionally use the world's best practices for the prevention of HIV infection in newborn children and to improve their level of proficiency in PMTCT issues.

In Ukraine, bottle-feeding of babies born to HIV-positive mothers is considered the safest and most common way of preventing HIV vertical transmission.

[41] - Website of the E.V.A. Association

[42] - <https://mr-7.ru/articles/207320/>, <https://paperpaper.ru/vich-polozhitelnuyu-peterburzhenku-hot/>, <https://moika78.ru/news/2019-11-11/316792-sud-peterburga-ne-lishil-roditelskih-prav-mat-s-vich-kormivshuyu-rebenka-grudyu/>, <https://mr-7.ru/articles/220192/>

[43] - As of November 2021, the final version of the guideline has not been approved or published in the official sources.

At the same time, unlike in previous years, the new guidelines include a new option – the right of the woman to choose breastfeeding (based on the experience of the British HIV Association).[44]

We view this right to choose as a great achievement for women living with HIV in Ukraine.

Recommendation 9.4.4 – **Choosing to breastfeed:**

- Women who have achieved viral suppression on ART with good adherence and have chosen to breastfeed should be supported to do so, but should be informed about the low risk of transmission of HIV through breastfeeding in this situation and the need for additional maternal and infant clinical monitoring.
- When a woman decides to breastfeed, she and her infant should have monthly check-ups at the clinic for viral load testing during the breastfeeding period and for 2 months afterwards.
- Maternal ART (rather than infant pre-exposure prophylaxis [PrEP]) is advised to minimise HIV transmission through breastfeeding and safeguard the woman's health.

Recommendation 9.5.2 – **Breastfed infants:**

9.5.2.1 Molecular diagnosis for HIV infection should be performed on the following occasions:

- During the first 48 hours and prior to hospital discharge.
- At 2 weeks of age.
- Monthly for the duration of breastfeeding.
- At 4 and 8 weeks after cessation of breastfeeding.

9.5.2.2 Antibody testing:

- If the mother's HIV status is not documented, an HIV antibody test should be carried out on the newborn.
- HIV antibody testing for seroreversion should be checked at age 22–24 months, or at least 8 weeks after cessation of breastfeeding, if this is later.

[44] - British HIV Association guidelines for the management of HIV in pregnancy and postpartum 2018 (2020 third interim update)

At the same time, activists strongly criticized the working group's comment aimed at intimidating mothers:

The mother's decision to breastfeed and the failure to comply with the requirements of additional clinical and laboratory monitoring of the mother and the child, in which she exposes the child to the risk of HIV infection, is seen as a situation requiring the involvement of social services and child protection services.

This comment was perceived by the community's representatives as putting pressure on women and as being non-compliant with progressive international recommendations on human rights. Instead, an alternative wording was suggested:

The mother's decision to breastfeed the child and the failure to comply with the requirements of additional clinical and laboratory monitoring of the mother and the child is considered as a situation requiring social support and "peer-to-peer" counseling.

DOCUMENTING BLACKMAIL CASES AGAINST HIV POSITIVE WOMEN USING CRIMINAL LAW: EXAMPLES OF MEDIATION

In 2021, activists from Russia began documenting cases of blackmail and intimidation with charges under Article 122 of the Criminal Code of the Russian Federation. In just a few months, they documented eight cases. These cases have once again confirmed the vulnerability of women living with HIV, in particular to partner violence. The case descriptions also include examples of mediation and advocacy for the rights and interests of women living with HIV (who may have suffered from criminal prosecution) by peer counselors and friendly non-governmental organizations. See some examples below:

Case No. 1

During their divorce, the partner threatened his wife that he would press charges against her under Article 122 of the Criminal Code of the Russian Federation. The woman discovered her HIV-positive status earlier than her partner. The issue was resolved through counselling with an NGO employee, a member of the working group on decriminalizing HIV transmission in Russia. The man was informed of the level of costs associated with litigation and about legal assistance provided to the woman by the NGO. He was also reminded that according to the footnote to Article 122 of the Criminal Code of the Russian Federation, the article could not be applied in their case, since he had lived with the woman for over four years, knowing her status.

Case No. 2

The woman met a man on social media. They started dating, she told the man she and her son had HIV. “So what, it’s not scary,” were his words. The partner refused to be tested and kept repeating that he loved her. The woman got pregnant and decided to keep the baby. Throughout her pregnancy, her partner was jealous. He physically and psychologically abused her. One evening, the partner, while in a state of alcoholic intoxication, beat the woman severely, shouting that she had infected him. She went to a shelter. Her partner asked for forgiveness and said this would not happen again. After the woman returned home, everything continued. When the child was born, she would run away from home at night and hide in the street, and when the child was 18 months old, the woman once again left her husband to go to her parents. The man died of a drug overdose. Throughout this time, the woman was constantly threatened by her partner that he would kill her or prosecute her under Art. 122 of the Criminal Code of the Russian Federation.

Case No. 3

A woman and a man had been living together for a long time. When the woman decided to leave her partner, he began to threaten her that he would prosecute her for infecting him with HIV. In addition to blackmail, he also physically abused her; the woman filed a complaint with the police and turned to an NGO for help. A peer consultant from the NGO, who was also a member of the working group on decriminalizing HIV transmission in Russia, met with the client's partner, asked if he had a positive confirmatory test, and reminded him that in his presence it had been repeatedly stated that the client was living with HIV. The consultant explained that according to the footnote to Article 122 of the Criminal Code of the Russian Federation, the woman would not incur any liability. She also offered the man HIV testing, but he refused. Due to the physical abuse, the woman underwent a medical examination and documented the beatings but refused to proceed further to defend her rights.

THE ROLE OF THE MEDIA IN DEMONIZING HIV POSITIVE WOMEN: THE CASE OF TAJIKISTAN

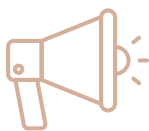
Tajikistan became one of the few countries in the world (and the first in the ECEA region) to receive a recommendation from the UN CEDAW Committee dated November 09, 2018 to: “Decriminalize HIV / AIDS transmission (article 125 of the Criminal Code), and repeal the government decrees dated September 25, 2018 and October 1, 2004, prohibiting HIV-positive women from obtaining a medical degree, adopting a child, or being a legal guardian.”

Following this, on January 2, 2019, Tajikistan President Emomali Rahmon signed a number of laws, including those aimed at “strengthening the responsibility of doctors, employees of beauty salons, hairdressing salons and service industries, who, because of non-compliance with safety, hygiene and epidemiological regulations and standards have become the cause HIV infection.”

Since then, numerous publications in Tajikistan have not only illustrated the widespread awareness among Tajikistan’s citizens of the regulations being implemented, but also reported increasingly on HIV-related criminal proceedings.

According to the results of EWNA media monitoring, in 2019-2020, 25 articles on the topic of HIV criminalization were recorded in Tajikistan’s online media. They fell into two topics equally divided – one was general information on liability for HIV-transmission and statistics, the other articles reported on women being accused.

Here are examples of some of the titles of these publications:



27-year-old woman suspected of deliberately transmitting HIV/AIDS [45]

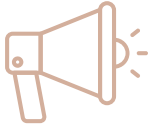
Two women in Northern Tajikistan convicted of transmitting HIV [46]

Woman of easy virtue convicted for deliberately infecting someone with the AIDS virus [47]

[45] - <https://novosti.tj/novosti-tadzhikistana/27-letnyaya-zhenshhina-podozrevaetsya-v-prednamerennom-zarazhenii-vich-spida.html>,
<https://akhbor-rus.com/-p1598-121.htm>

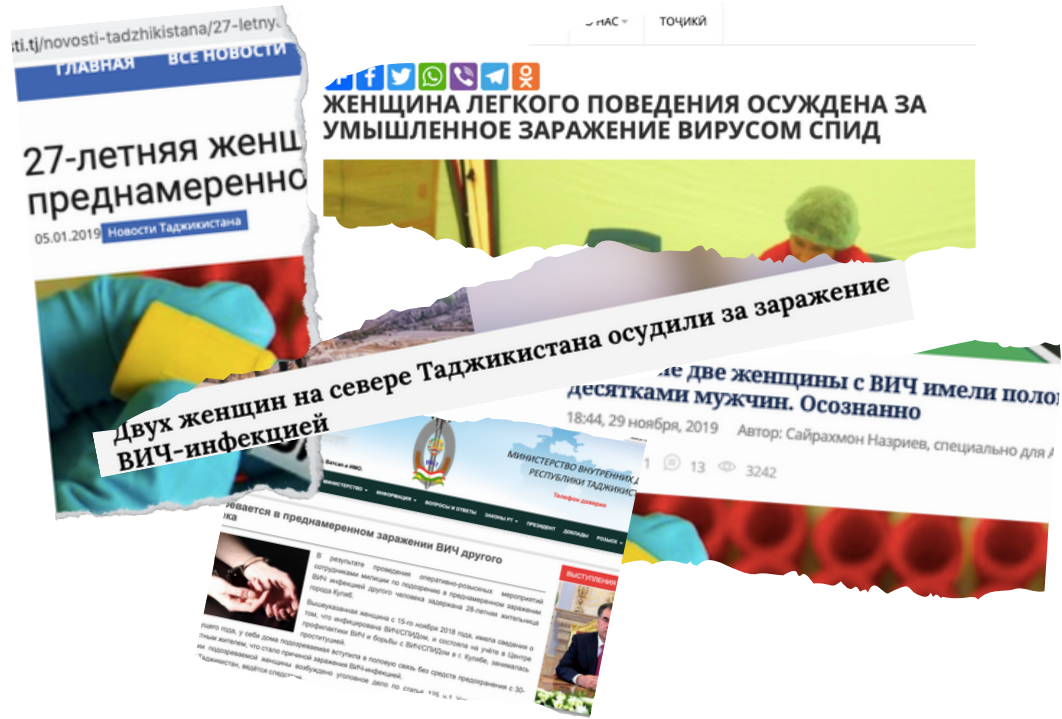
[46] - <https://fergana.agency/news/105686/>

[47] - <https://akhbor-rus.com/-p1931-121.htm>



Woman of Kulob, Tajikistan, suspected of deliberately transmitting HIV[48]

In Khatlon, two women with HIV had sex with dozens of men. Deliberately [49]



Among these publications, there is not a single one describing individual cases related to men.

[48] - <https://tajika.tj/ru/news/zhitelnitsa-kulyaba-tadzhikistana-podozrevaetsya-v-prednamerennom-zarazhenii-vich>, <https://akhbor-rus.com/-p2296-96.htm>, <https://vkd.tj/index.php/ru/sobytiya/23939-didayu-donista-siroyat-kardan-bo-virusi-norasoi-masuniyati-odam-inoyat-ast-2>

[49] - <https://asiaplustj.info/ru/news/tajikistan/society/20191129/v-hatlone-dve-zhentshini-s-vich-imeli-polovie-otnosheniya-s-desyatkami-muzhchin-osoznanno>

There is no publicly available statistical data on the number of cases initiated under Article 125 of the Criminal Code of the Republic of Tajikistan (RT), "Infection with HIV" [50]. In 2018, 33 criminal cases were initiated against 26 HIV-positive persons, and in 4 months in 2019, at least 39 more criminal cases against 32 persons were added to this number. This information was made public by Khabibullo Vohidov, Khujand prosecutor, from the coordination council of law enforcement agencies of Sughd region on May 2, 2019 [51].

There has been an increasing number of convictions in cases involving HIV transmission and HIV exposure. The Criminal Code of the Republic of Tajikistan provides for criminal liability both for deliberate HIV transmission and for knowingly placing another person at risk of contracting HIV. Statistical data disaggregated by sex would be particularly important in view of the state's arguments for the protection of women.

From the alternative shadow report of the Tajikistan Network of Women Living with HIV presented at the 71st CEDAW session in November 2018 [52]:

"When their rights are violated, women turn to no one. In the course of the study of the situation when writing this report, violations of the rights of women living with HIV and women from the affected groups were identified, and only a few decided to defend their rights – because they were provided with a lawyer covered by the project's funds. This behavior stems from a variety of reasons. One of the main reasons is the lack of funds to pay for the lawyer's services. Secondly, many women living with HIV and women from HIV-affected groups have low legal literacy; they do not have information about whom to turn to on a particular issue. Third, self-stigmatization and fear of breach of their confidentiality also prevent women living with HIV and women from the HIV-affected populations from defending their rights."

It is clear from the report that women do not defend their rights, especially on such sensitive issues, out of fear of experiencing even more judgmental attitude and becoming more vulnerable. In addition, in Central Asian countries, families follow the tradition whereby a daughter-in-law must tell her husband or her mother-in-law where she is going and what she is going to spend or has spent money on (this makes paying for the lawyer's services even more problematic). Women are dependent on other family members and often do not have their own money.

Unfortunately, Tajikistan's media[53] write very few, if any, high-quality analytical materials about women's vulnerabilities and the harmful consequences of HIV criminalization.

[50] - Report "Analysis of legislation and practice in criminal cases related to the conviction of people living with HIV, under Article 125 of the Criminal Code of the Republic of Tajikistan, for compliance with international standards and recommendations." Abdullaev T.V., 2020

[51] - In Tajikistan, the number of criminal cases for deliberate HIV infection has increased. Dialog. 03 May 2019.

[52] - AAAlternative thematic report on the implementation of CEDAW for women in relation to women living with HIV and women from affected groups. Tajikistan HIV + Women's Network, 2018

[53] - How to save 14 thousand Tajiks from the threat of prison, and the country from the epidemic? ASIA-plus, April

HIV-positive women, persecuted by the state in connection with HIV, seek help from the Tajikistan Network of Women Living with HIV and the NGO “Center for Human Rights”. There are practically no lawyers in the country who are ready to represent the interests of HIV-positive women in court and fight for their rights.

In Uzbekistan, NGOs' intervention has led to a change in tabloid headlines. The media published a small article about a woman who allegedly infected another person with HIV. But, in fact, there was no HIV transmission, and the journalists "mixed up" parts of the article of Uzbekistan's Criminal Code. After activist Evgenia Korotkova contacted the AIDS Center for support, its staff contacted the journalists and had them change the headlines in the press.



“Unfortunately, the media often negatively impact public opinion, including when they report another case of HIV transmission. In fact, the vast majority of people living with HIV are aware of the possibility of HIV transmission and do not want to infect anyone. Moreover, now, if a person adheres to antiretroviral therapy available for free at AIDS centers, the risk of sexual transmission of the virus is zero,” **Evgenia Korotkova, EWNA representative in Uzbekistan.**



HIV AND LABOR LAW: THE CASE OF UZBEKISTAN

In addition to Article 113 "Spread of venereal disease or HIV/AIDS" of the Criminal Code of Uzbekistan^[54], there is also a list of professional activities prohibited for people living with HIV, approved by order of the Minister of Health (registered by the Ministry of Justice on May 7, 2014, No. 2581)

For example, people living with HIV are prohibited from:

- Sampling and processing blood and blood products;
- collecting blood samples and blood products, semen and breast milk;
- carrying out blood transfusions;
- carrying out medical procedures (injections, dialysis, venesection, catheterization);
- practicing cosmetic and plastic surgery;
- carrying out dental procedures;
- assisting in childbirth;
- practicing abortions and other gynecological operations; and
- giving haircuts and shaving, piercing, manicure, pedicure and tattooing.

Inter-agency documents promoting criminalization of HIV-positive people should also be mentioned:

Order No.54-n of April 5, 2019, adopted by the Republic's AIDS Center to strengthen preventive measures against the spread of HIV through sexual intercourse, in cases of detection of criminal acts under Article 113 of the Criminal Code.

Decree of the Ministry of Internal Affairs and the Ministry of Health of the Republic of Uzbekistan No.66 of 20.08.2019 "On approval of the Instruction on the procedure for cooperation between internal affairs bodies and medical institutions to combat the spread of human immunodeficiency virus among the population".

In 2020, an HIV-positive woman was charged under Part 4 of Article 113 of the Criminal Code of Uzbekistan. The grounds for the criminal case was her work as a hairdresser, which is included in the list of prohibited jobs for HIV-positive people.

[54] - Criminal Code of the Republic of Uzbekistan

[55] - Перечень видов профессиональной деятельности, запрещенных для лиц, зараженных вирусом иммунодефицита человека

From a scientific point of view, there is no chance of transmitting HIV to another person by cutting hair[56]. From a legal point of view, the circumstances established by the investigation indicated that the woman's actions did not involve the intent to transmit HIV. In Uzbekistan, a crime can be considered intentional only if the perpetrator was aware of the socially dangerous nature of the act, foresaw its socially dangerous consequences and wished them to occur.

The investigation established and recorded in the indictment that the accused did not want to put her clients at risk of infection. On the contrary, it was found that she was taking ART and had an undetectable viral load; took measures to make cuts impossible – she used no cutting tools, she used a trimmer instead. The case against the defendant should have been dismissed for lack of *corpus delicti* in her actions. This position was defended by a lawyer and a witness (a community activist) in the court proceeding. The defense's arguments were not enough to exonerate the woman, but she did not face actual imprisonment – the judge sentenced her to two years' probation.

Evgenia Korotkova shared her experience as public defender:[57]

“This was my first experience of participating in court hearings. But I was aware how important and responsible it was for us, women and men, girls and boys living with HIV. Because of the myths and stereotypes about HIV that exist in modern society, we have become hostages to stigma and discrimination. Our society is very sympathetic to others' pain and is ready to help those in need, but the stereotypes about HIV transmission are such that people want to condemn the perpetrator, punish them, make them public as a lesson to everybody else. At the same time, for engaging in risky behaviors HIV-negative people bear no responsibility whatsoever.

For me, as a person who participated in the trial for the first time, this process was depressing and uncomfortable. When you see a woman on trial, her state and how she is coping with all these events, you realize that it is women who are much more likely to be stigmatized by HIV criminalization and that they need help and support. During the trial, the woman had to listen to humiliating and discriminatory speeches aimed at her from a police operative and some witnesses. In my opinion, the woman has suffered from the discriminatory provisions of the legislation.

My experience has been writing petitions, speeches for litigation, letters and inquiries to the AIDS Service, WHO, the country's chief infectious disease specialist. We were supported by the Republican AIDS Center and the AIDS Center of Tashkent. However, we were disappointed that the WHO National Office ignored our appeals. In my opinion, they should have been among the first to support the community of people living with HIV and send their recommendations.

[56] - Statement of expert consensus on scientific data on HIV in the context of criminal law. 2018

[57] - Experience of public protection in court in Uzbekistan

We felt the support from the communities at the international level. Our consultations with regional and international networks, with the Belarusian organization "People Plus" – were a model of real work and support!

The judge's and the prosecutor's competence and interest in the details, in information on HIV and its modes of transmission played a key role in resolving the case. It is worth noting that the judge recommended that our organization start lobbying for a revision of the list of prohibited professions for HIV-positive people."

Our client is a heroine. Unfortunately, we could not get the charges against her dropped, but she was spared actual imprisonment, and the judge sentenced her to two years' probation.

We plan to continue working to establish and develop contacts with stakeholders, the authorities and the media in order to decriminalize HIV transmission."

This case was the starting point for the work of a group of civil society activists to exclude HIV from Article 113 of the Criminal Code of Uzbekistan. On July 17, 2020, the round table "Liberalization of the judicial, legal and penitentiary systems: national and international experience" was held, during which the issue of revising part 4 of Article 113 of the Criminal Code of Uzbekistan was also discussed. As a result, the proposals on reforming the legislation were submitted to the country's Prosecutor General. On December 7, 2021, a round table on "Legal Dialogue" was held, during which approaches to further improve the criminal law system and effectively fight against HIV infection were discussed. The event resulted in concrete steps to decriminalize HIV in Uzbekistan, including training for law enforcement officials and judges.



ACTIVISTS PARTICIPATION IN JUDGES FORUMS

In its report “Risks, Rights & Health”[58] and the 2018 Supplement[59], the Global Commission on HIV and the Law acknowledged that laws alone are not enough to stop HIV transmission, and that the legislation cannot shift the blame when the response to epidemic is poor. However, the Global Commission found that the legal environment can play a powerful role in ensuring the well-being of people living with HIV and those vulnerable to the virus. Without the judiciary involvement in the fight against HIV and related diseases, significant changes in public, legal and medical perceptions of HIV are unlikely to be achieved.

In response to the Global Commission's recommendations, UNDP facilitated the work of the African Regional Judicial Forum on HIV and AIDS, whose sixth meeting took place in 2019. As the Forum proved to be an important platform for sharing experiences, raising awareness and changing the attitude of judges on HIV and key populations, in 2018 and 2019 UNDP supported the participation of judges from the EECA region in the African Judicial Forum meetings and these judges confirmed the need to bring this experience to the EECA region.

The first meeting of the East European and Central Asian Regional Forum of Judges on HIV, Human Rights and Legislation was held in Chisinau (Moldova) on October 3-4, 2019. The second meeting of the Forum was held in Dushanbe (Tajikistan) on October 15-16, 2020. The meeting, which focused on the criminalization of HIV transmission, exposure and non-disclosure, was attended by 88 participants. Based on its conclusions, the next steps were identified, including a decision to hold the third meeting in 2021 in Ukraine, with the first day of the meeting focusing on criminal law, and the second on civil law.

Tajikistan. EECA Regional Forum

Takhmina Khaidarova, a representative of the community of women living with HIV, spoke at the opening of the second meeting of the Eastern European and Central Asian Regional Forum of Judges on HIV, Human Rights and Legislation in Dushanbe, Tajikistan, in October 2020.

[58] - Global Commission on HIV and the Law, Risks, Rights & Health, 2012.

[59] - Global Commission on HIV and the Law, Supplement, 2018.

“HIV criminalization undermines women's rights and weakens the response to HIV. Practice shows that investigations related to HIV criminalization fail to take into account women's dependence on men, the fear of public condemnation, the high risks of violence faced by women, and ignore the fact that women cannot safely disclose their status or are unable to demand that their partner use a condom. The legislation criminalizing HIV does not take into account the use of condoms as a means of safety during sexual intercourse, undetectable viral load and a partner's voluntary informed consent,” said **Takhmina Khaidarova**, head of the Tajikistan network of women living with HIV.



Alexandra Volgina, Manager of the Global Network of People Living with HIV, also presented her report at the event. In her presentation, the activist drew the participants' attention to the root of the problem in the context of HIV criminalization and the peculiarities of litigation in the EECA region, as well as to the Expert Consensus Statement on HIV Science in the Context of Criminal Law[60] and to UNDP Guidance for prosecutors on HIV related criminal cases[61].

Ukraine. National Forums

Community activists participated in the National Forum of Judges on HIV/AIDS, Tuberculosis and the Right to Health for the first time in November 2019. The aim of Forum is to share best practices in protecting the rights of people living with HIV and vulnerable groups, and to provide guidance to judges on how to implement European / International standards more effectively in the national practice. At UNDP's invitation, **Olena Stryzhak** and **Vira Varyga** from NGO Positive Women participated in the forum.

[60] - Statement of expert consensus on scientific data on HIV in the context of criminal law. 2018

[61] - [UNDP Guidance for Prosecutors on HIV Related Criminal Cases. 07 June 2021](#)

In August 2021, a representative of the community of women living with HIV participated in a seminar for judges “Problematic aspects of criminal proceedings under Articles 130 and 132 of the Criminal Code of Ukraine. Protecting the rights of people living with HIV and of people living with other incurable infectious diseases”, under the aegis of UNDP and the National School of Judges of Ukraine. **Svitlana Moroz** presented a report entitled “Women living with HIV and the current situation regarding their access to treatment, public life, and justice: life stories.”

Consequences of HIV criminalization in Ukraine

Criminalization of HIV transmission is a barrier to ensuring the rights of women living with HIV in Ukraine. Criminalization discredits evidence-based strategies for HIV prevention and treatment, care, and support for HIV, and ignores scientific advances regarding the risk of HIV transmission.

The criminal legislation of Ukraine is not in complete alignment with current practice of legal provisions on HIV and is internally contradictory and discriminatory for discordant couples.

The existence of criminal penalties for unintentional transmission of HIV increases stigma and discrimination. Criminalization portrays HIV-positive people as potential criminals, which in turn increases discrimination

Criminalization of HIV transmission hinders early detection of HIV, restricts access to treatment, creates one of the barriers to eliminating mother-to-child transmission in Ukraine, and increases the risk of violence and gender inequality in health care, society, and family.

During the seminar, the following issues were raised:

- criminal liability for infecting or deliberately placing another person at risk of contracting HIV or other life-threatening and incurable infectious disease: problematic aspects of law enforcement;
- specifics of the qualification of criminal offenses regarding the disclosure of information about a medical examination for the detection of the human immunodeficiency virus or other incurable infectious diseases. Criminal proceedings under Article 132 of the Criminal Code of Ukraine;
- presentation entitled “Analytical compendium of judicial practice in the field of HIV, AIDS, and tuberculosis in Ukraine”;
- protecting the right to health and international standards;
- HIV and TB patients' needs: treatment, care, and support;
- Regional Forum of EECA Judges. Previous experience and lessons learned. Preparations for the upcoming EECA Regional Forum of Judges in Ukraine.

Ukraine. EECA Regional Forum

In 2021, Ukraine hosted the Forum of Judges.

Alexandra Volgina, an HIV-positive civil society activist, was invited to give an overview of administrative prosecutions related to HIV status. The report focused on an overview of legislation and its implementation in **Russia, Tajikistan, and Uzbekistan**.

In **Russia**, Article 6.1 of the Code of Administrative Offenses "Concealment of the source of HIV infection, venereal disease and contacts that pose a risk of infection"[62] is widely used; the sanction for violation of this article is a fine of five hundred to one thousand rubles.

There are two articles in **Tajikistan** – article 119 of the Administrative Code "Evasion of compulsory medical examination and preventive treatment of people with infectious diseases, HIV infection"[63], violation of which is punishable by a fine of 150-180 USD, and article 120 of the Administrative Code "Concealment of the source of HIV infection, infectious disease, and contacts posing a risk of infection"[64], which carries the sanction of a fine of USD 60-120. The fines are significant for HIV-positive people in Tajikistan. It should be noted that the articles are not widely applied in the country.

Article 14 of the Family Code of Tajikistan "Circumstances preventing marriage" states that marriage is not allowed if people have not undergone the compulsory medical examination,[65] which includes HIV testing. If HIV is detected, the positive person must inform his or her sexual partner, and can only get married with the consent of their partner. There is no direct prohibition in the legislation, but employees of the registry office believe that the mere fact of getting married when HIV positive can be considered as deliberately putting another person at risk of infection. It is also worth mentioning that there is no consensual marriage registration procedure.

Even when the HIV status has been disclosed and there is adherence to ART, the state does not support marriage between discordant couples, since no state organization involved in the medical examination of people wishing to register a marriage will provide a certificate allowing them to get married. Without such certificate, the registry office will not register the marriage. Thus, the rights of people living with HIV and their partners to get married, respect for privacy and family life, the right to respect for human dignity and other fundamental rights and freedoms are violated.

[62] - Administrative Code of the Russian Federation Article 6.1. Concealment of the source of HIV infection, venereal disease and contacts that pose a risk of infection

[63] - Administrative Code of the Republic of Tajikistan Article 119 Avoidance of mandatory medical examination and preventive treatment of persons with infectious diseases, HIV infection

[64] - Ibid.

[65] - Family Code of the Republic of Tajikistan Article 14 Circumstances preventing marriage

Civil society organizations have noted a decrease in the number of officially registered marriages among discordant couples since the introduction of mandatory medical examinations. Many HIV-positive people, who try to hide their diagnosis, enter a religious marriage (not officially registered). Often, such marriages are initiated by HIV-positive men who, for various reasons, are not registered with the AIDS center and do not take ART. Women in such marriages, in addition to the threat of HIV transmission, are exposed to various types of violence.

In **Uzbekistan**, there are Article 57 of the Administrative Code “Concealing the source of infection with a sexually transmitted disease or HIV / AIDS”[66] and article 58 of the Administrative Code “Evasion of patients with sexually transmitted diseases or HIV/AIDS from examination”[67], but they are rarely used by law enforcement agencies.

There were discussions at national level on the application of Article 45 of the Law on the Health of Citizens “Medical Confidentiality”[68] and Article 46 of the Code of Administrative Offenses “Violation of Privacy”[69], which enable people living with HIV to protect confidentiality of their diagnosis.

Evgenia Korotkova, an HIV-positive activist from Uzbekistan, leader of the “Positive Women of Uzbekistan” initiative group, spoke at the Forum with examples of specific cases.

According to the Law “On Counteracting the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV Infection),”[70] medical examinations for HIV are mandatory for people getting married under the age of fifty. Uzbekistan guarantees the protection of such institutions as marriage, family, motherhood, fatherhood and childhood[71].

In Uzbekistan, when one partner is HIV-positive and the couple decides to marry a written acknowledgement submitted to the registry office and the AIDS service centre does not actually affect the authorities’ final decision. According to internal orders from the Ministry of Health, the decision is up to the spouses’ parents. Discordant couples have been known to be refused permission to marry.

In April 2021, an HIV-positive man contacted the NGO “Ishonch va hayot”[72] with the problem of determining visitation times with a young child, who at that time was 1 year 7 months old.

[66] - Administrative Code of the Republic of Uzbekistan Article 57 Concealment of the source of infection with venereal disease or HIV / AIDS.

[67] - Ibid.

[68] - Law of the Republic of Uzbekistan on the health of citizens. Article 45. Medical Confidentiality.

[69] - Administrative Code of the Republic of Uzbekistan Article 46 Violation of privacy.

[70] - Law of the Republic of Uzbekistan “On counteracting the spread of the disease caused by the human immunodeficiency virus (HIV)” dated 22.08.2013».

[71] - Family Code of the Republic of Uzbekistan Article 4. Protection of family, motherhood, paternity and childhood.

[72] - Community of people living with HIV.

The discordant couple had entered a consensual marriage, and a child was born of the union. A few months after the birth of her son, the wife filed for divorce and stopped her husband from having any contact with the child. The man went to court, which ruled the father was allowed to visit the child at a scheduled time. The wife challenged the decision made by the first instance, and the court again reduced visitation time because of the man's HIV status and the child's age. Subsequently, the higher court ruled to allow the man to see the child in accordance with the established procedure, arguing that the man paid alimony for the maintenance of the child and his ex-wife, and HIV was not a sufficient argument to limit the father's visits to the child.

Along with the activists, an HIV-positive woman from Uzbekistan who suffered from criminalization, and whose case was described above, also took part in the Forum.[73]

[73] - See Section 'HIV and Labor Law'.



ELIMINATION OF VERTICAL TRANSMISSION AND DECRIMINALIZATION OF HIV

In July 2019, at the invitation of the WHO Regional Office for Europe, Svitlana Moroz, head of the Eurasian Women's Network on AIDS, became a member of the Regional committee for validation of elimination of mother-to-child transmission of HIV and/or syphilis in the WHO European Region[74] (RVC) as a community representative [75].

The main purpose of the RVC is to advise the Regional Validation Secretariat as to whether a candidate country has successfully achieved the EMTCT targets of HIV and syphilis.

This allows an RVC member to request additional information from National Validation Committees (NVCs) to clarify the information contained in country reports, monitor the current legal and policy context and practices, and offer recommendations and suggestions on areas for improvement if any of the candidate countries does not meet regional and global validation criteria.

One of the key aspects of validation of the elimination of mother-to-child transmission (EMTCT) of HIV and/or syphilis is the implementation of measures in line with international, regional and national human rights standards.

In 2017, WHO prepared a tool and checklist entitled "Human Rights, Gender Equality and Engagement of Civil Society in the EMTCT Process"[76], designed to provide data for the purposes of evaluating whether a PMTCT programme has met the requirements of global minimum criteria 4: "Validation criteria must have been met in a manner consistent with gender equality and basic human rights considerations." This tool provides guidance for assessing the following components of the validation process:

- human rights;
- gender equality; and
- civil society and community involvement

[74] - Regional committee for validation of elimination of mother-to-child transmission of HIV and/or syphilis in the WHO European Region

[75] - Letter from WHO as of 05 July 2019.

[76] - Tools for validation. Human rights, gender equality, and engagement of civil society in the EMTCT process

Checklist questions related to HIV criminalization:

	Yes	No	Unable to verify	Comments
Non-criminalization of HIV/syphilis transmission				
Are there laws that criminalize any of the following acts?				
a) potential or perceived exposure to (1) HIV? (2) syphilis?				
b) Are there specific laws or judicial precedents that criminalize non-disclosure of HIV/syphilis status to sexual partners?				
c) Are there prosecutions for non-disclosure, exposure or transmission of (1) HIV? (2) syphilis?				

In May 2020, Svitlana participated for the first time in the RVC's online meeting, to discuss the application of a new country, Kazakhstan, for a validation certificate. Previously, the summary of the RVC Recommendations on the submitted country report "Elimination of Mother-to-Child transmission of HIV: National Validation Report for Kazakhstan"[77] noted the absence of information on human rights, gender and engagement of civil society, as well as the lack of analytical information or evaluation of legislation, policies and their implementation in the country. Information on the criminalization of key populations was also missing.

In a discussion with the representatives of Kazakhstan, the activist drew attention to the criminalization of HIV, in particular the existence and application of Article 118 of the Criminal Code of Kazakhstan[78]. She also recommended strengthening the preparation of the report with the participation of the community of people living with HIV, highlighting the government's efforts to prevent gender-based violence, informing about access to substitution maintenance therapy (SMT) in pregnant women and in maternity hospitals.

[77] - RVC Summary Recommendations on the country report "Elimination of Mother-to-Child transmission of HIV: National Validation Report Kazakhstan". WHO Regional Office for Europe, 09.07.2019

[78] - Criminal Code of the Republic of Kazakhstan Article 118. Infection with the human immunodeficiency virus (HIV)

As a result, Kazakhstan's country report for EMTCT validation included explanations and conclusions on Article 118 of the Criminal Code of the Republic of Kazakhstan[79] in the section on human rights:

“This validation report identifies a glaring legal gap that will need to be addressed about the existence of a legislation providing for criminalization of HIV transmission. The legislation can contribute to increased violence against women, increase risk to HIV infection and negatively impact on access to HIV services”.

This section also looked at examples of stigma and discrimination against women from key populations using the CEDAW alternative report, the Domestic Violence Act[80] and the standard for providing special social services to survivors of violence[81], as well as capacity building activities for women. The report notes the contributions of people living with HIV, both in the evaluation of services provided for the prevention of HIV vertical transmission (focus groups for women), and in national EMTCT mechanisms[82]:

«...On EMTCT, the Kazakhstan National Validation Committee (NVC) actively includes and involves people living with HIV. Currently the NVC has three members representing the community of People Living with HIV. The three representatives are:

1. **Nurali Amanzholov**, President of the Central Asia Association of PLHIV who is also the deputy chairman of the CCM
2. **Lyubov Vorontsova**, Central Asia Association of PLHIV, Member of the Eurasian Women's Network on AIDS, member of the New Generation of Human Rights Defenders Coalition of Kazakhstan, human rights defender focusing on right to health, gender-based violence, rights of women living with HIV and key populations.
3. **Elena Bilokon**, director of the Kazakhstan Network of Women Living with HIV, Country representative of the Eurasian Women's Network on AIDS, human rights defender focusing on gender-based violence, rights of women living with HIV and women from key populations.»

[79] - Chapter 8.1. Legal framework, laws and treaties on human rights.

[80] - On the prevention of domestic violence. Law of the Republic of Kazakhstan dated December 4, 2009 No. 214-IV.

[81] - Order of the Minister of Health and Social Development of the Republic of Kazakhstan dated December 21, 2016 No. 1079

[82] - Chapter 8.7. Community involvement.

In June 2020, at a meeting of the Global Validation Advisory Committee (GVAC), the issue of maintenance the EMTCT validation certificate for Belarus[83], first received by the country in 2016, was considered.

In 2019, GVAC[84] and WHO[85], in their letter, drew the attention of Belarus' key ministries to the increased number of cases of criminalization and expressed serious concern about the criminal prosecution of HIV-positive people with undetectable viral load for “putting someone at risk of infection”.

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

Tatiana Zhuravskaya, Head of the Board of the Republican Public Association “People Plus” in Belarus, had extensive experience of working directly with victims of HIV criminalization, under Article 157 of the Criminal Code of the Republic of Belarus[86]. Together with her colleagues, she gathered scientific evidence and institutions that could help protect the rights of people in relation to criminalization.

One of the arguments was recommendations from the EMTCT Validation Committee for Belarus regarding changes to the legislation. The organization worked closely with the WHO Country Office to promote these changes and submitted monitoring information with description of cases of human rights violations. It was WHO's initiative that enabled the activist to speak on behalf of the community at the June 2020 GVAC meeting.

[83] - WHO validates elimination of mother-to-child transmission of HIV and syphilis in Armenia, Belarus and the Republic of Moldova, WHO, 07 June 2016.

[84] - The Global Validation Advisory Board (GVAC) recommendations and requests for additional information from Belarus.

[85] - Letter from WHO as of 10 September 2019.

[86] - Criminal Code of the Republic of Belarus Article 157. Infection with the Human Immunodeficiency Virus.

In 2019-2020, **Olena Stryzhak**, a representative of the International Community of Women living with HIV (ICW), participated in GVAC as an observer. In preparation for the committee meeting in June 2020, she and Svitlana Moroz actively consulted with civil society activists about the situation in Belarus and submitted statistical data and case-studies on the criminal prosecution of people living with HIV in Belarus to the other GVAC members, emphasizing the importance of the community's voice in all committee discussions.



“Speaking to the the global validation committee was a very significant event for us, we reached a new level. I was personally invited, as a representative of the community, to become a member of the national validation committee in the country. I fully participate in it, I have access to information and I believe that the committee is committed to the idea of decriminalizing HIV in Belarus and implementing the developed roadmap,” **Tatiana Zhuravskaya, head of the board, RPA “People Plus”**.



The Global Network of People Living with HIV (GNP+), a network for people living with HIV, run by people living with HIV. We engage with and support national and regional networks of people living with HIV this ensures that our global work is grounded in their local experiences and priorities. The meaningful involvement of people living with HIV is at the heart of all that we do. We work with communities that are both geographic and identity based. We build broad partnerships with individuals, organisations and institutions to increase our influence. Using the power of evidence-based advocacy, we challenge governments and global leaders to improve access to quality HIV prevention, treatment, care and support services.

Eurasian Women's Network on AIDS brings together women leaders in Eastern Europe and Central Asia region where it and is the only organisation in the region uniquely dedicated to protecting the rights of women living with and vulnerable to HIV – developing and strengthening their potential, and making women's stories visible and voices audible visible and meaningful, including in decision-making processes at multiple levels.



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