

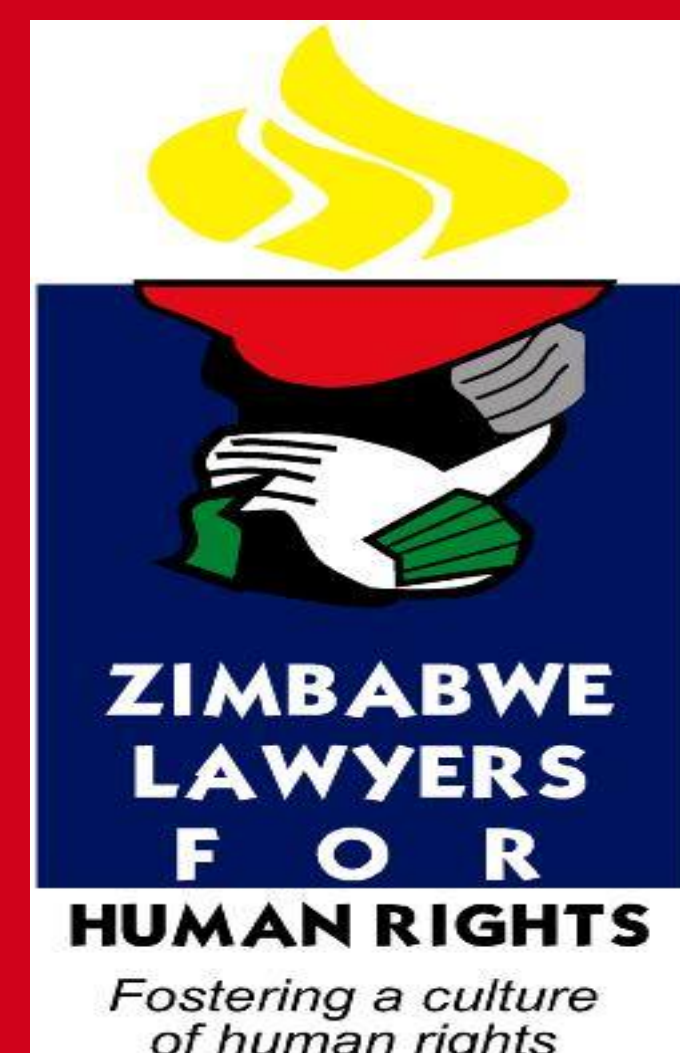
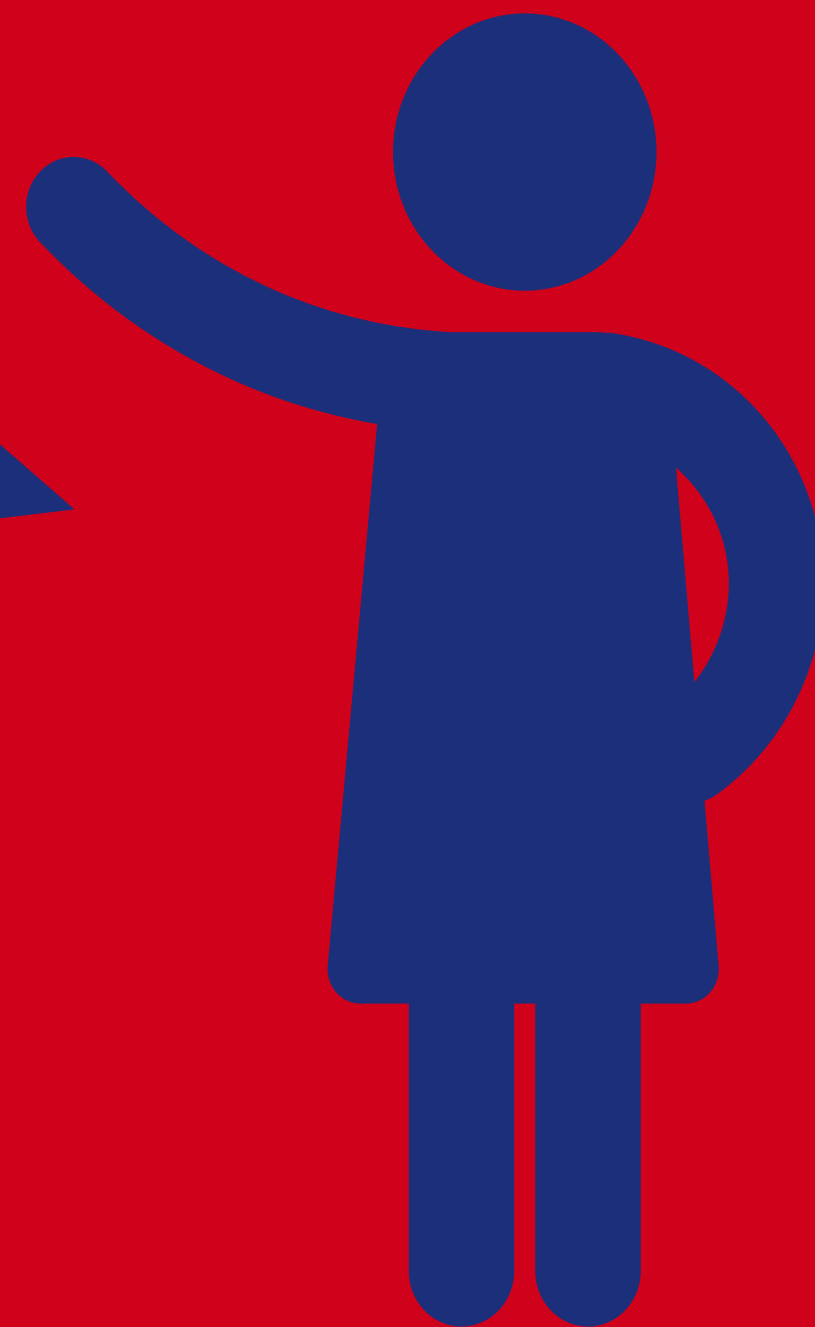
PEOPLE LIVING WITH HIV IN SUPPORT

OF (S. 53(2))
MARRIAGE BILL 2019

ENDING

HIV
CRIMINALISATION
IN ZIMBABWE

#REPEAL
SECTION 79!



HIV JUSTICE
WORLDWIDE

The law under section 79 of the Criminal Law (Codification and Reform) Act, says that it is a criminal offence for a person living with HIV to transmit HIV or expose someone to HIV. If a court finds you guilty, you can go to prison for 20 years.

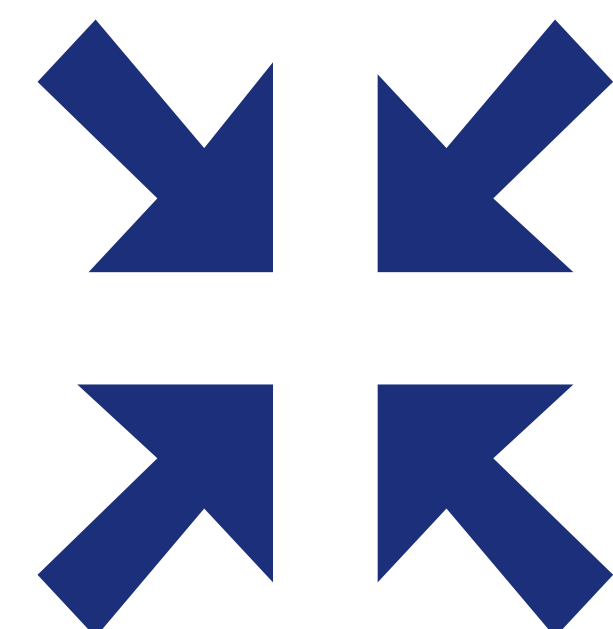
Why is this law bad?

If we all agree that preventing HIV transmission is good, why is section 79 of the Criminal Code bad? There are 6 important reasons why this law violates the rights of people living with HIV and is a barrier to HIV prevention and care.

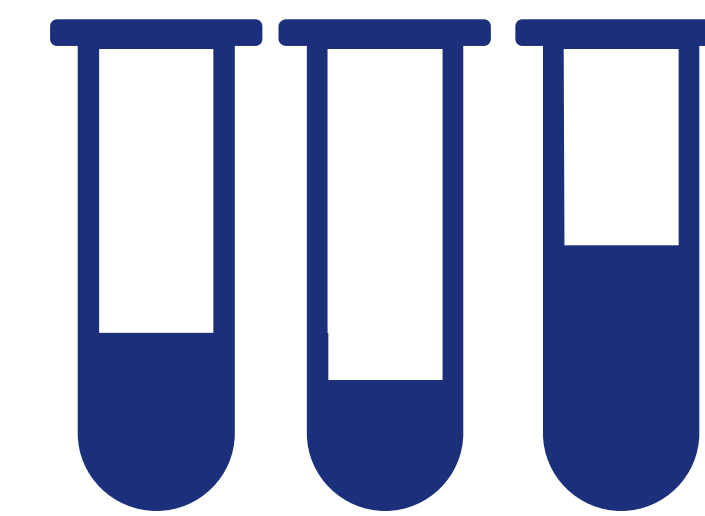
1 Section 79 is much broader than you think!

The law does not only apply to people who deliberately and with an evil intention transmit HIV to other people.

The vague language of section 79, and how it has been applied by the courts, shows us that it actually much broader.



- "Any conduct" can be a crime. It is not limited to sexual acts. Even **breastfeeding** can be a crime.
- It is still a crime, even if you don't transmit HIV. The Prosecutor does not need to prove that you transmitted HIV, only that you **exposed** someone to a risk of HIV.
- You can be convicted even if it was **someone else who transmitted HIV** to the complainant. It is scientifically very difficult to actually prove who infected whom. And the courts have convicted people even without proof that they were the one who infected the other person.



- Even **accidental** or **unintentional exposure** or transmission of HIV can be a crime.
- You can be convicted even if there was actually **no risk of transmission**, for example, if you had an undetectable viral load or used a condom during sex.
- Even **people who don't know that they are HIV-positive** can be convicted under section 79.

2 Section 79 violates human rights and increases HIV stigma

Section 79 implies that people living with HIV are dangerous and bad. It makes us vulnerable to being sent to prison even for innocent things we do in our daily lives. The law discriminates against people living with HIV and increases HIV stigma.

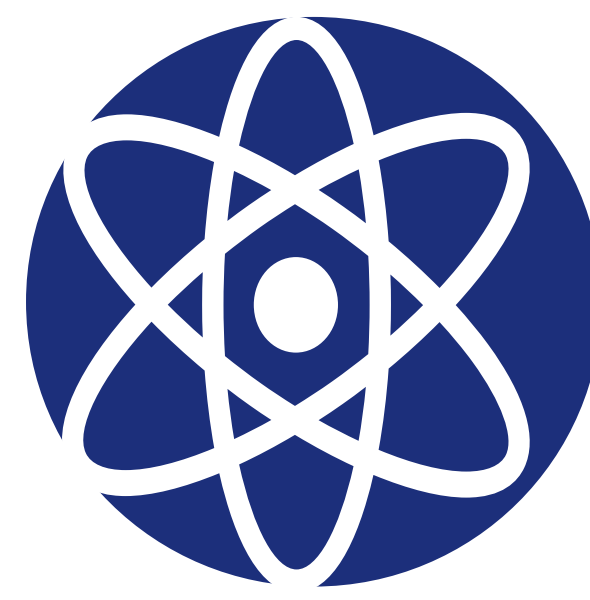


Because the law is so vague and broad, it makes people living with HIV vulnerable to unfair prosecutions and to violations of our right to a fair trial.



The media also often report on cases in ways that lead to people's HIV status being made public, and in ways that fuel stigma and spread wrong information about HIV.

3 Section 79 is unscientific



In Zimbabwe, people accused of crimes often can't afford a lawyer to defend them. Judges, lawyers and prosecutors also often do not understand how HIV is transmitted and have not used expert evidence in these cases. Because of this, the criminal justice system often applies ideas about HIV transmission and prevention that aren't accurate or true.

4 Section 79 does NOT prevent HIV



There is no proof that laws like this stop people from doing things that are likely to spread HIV.

Criminalising HIV simply does not work.

5 It actually makes HIV testing, treatment and prevention harder



Studies show that laws like this drive people away from accessing voluntary HIV-testing. This is because of how the law makes HIV stigma worse and because some people believe that if they don't know their status, they can't be prosecuted.



Research also shows that these kinds of laws make it harder for patients to trust healthcare workers and access the right advice and support. This is because people may be scared their healthcare workers will report them to the police.



Because these laws increase stigma and stop people from getting tested and accessing healthcare services, section 79 may also prevent or delay people from accessing HIV treatment. Effective HIV treatment not only allows people living with HIV to lead longer, healthier lives, but also prevents HIV transmission.

6

Section 79 targets women



While some people believe that section 79 protects women from HIV, it is actually women who are most unfairly targeted by this law for arrests and prosecutions in Zimbabwe.

This is because women are usually the first to know of their HIV status and are vulnerable to being falsely blamed for bringing HIV into the relationship.



Women living with HIV are also vulnerable to violence and abuse from their partners who use the threat of reporting them to the police under section 79 against them.

A real life example: Samukelisiwe Mlilo

Samukelisiwe Mlilo found out she was HIV-positive during her pregnancy. Her husband was abusive and even though this made it difficult for her to disclose her status, she told him and they agreed she would take medication to prevent transmitting HIV to her baby.

The next year, her husband's abuse got worse. Ms Mlilo left him. She reported him to the police and asked for a protection order. Her husband was angry and accused her of cheating on him. He then went to the police and laid charges of "deliberate transmission of HIV" to him. He claimed that she had never disclosed her status.

Ms Mlilo did not have a lawyer to defend her during her trial. She was convicted of deliberate transmission and sent to prison, leaving behind her baby and other children. ZLHR has assisted Ms Mlilo to appeal her conviction and sentence.

What can you do about this law?

In section 53(2) of the Marriage Bill 2019, the Government is proposing to repeal section 79 of the Criminal Code.

This will help to protect the Constitutional rights of people living with HIV and improve HIV testing, treatment, and prevention in Zimbabwe.

Call on members of parliament to pass section 53(2) of the Marriage Bill to end HIV criminalisation in Zimbabwe!