

STATEMENT of the AIDS and RIGHTS ALLIANCE FOR SOUTHERN AFRICA (ARASA), the SOUTHERN AFRICAN LITIGATION CENTRE (SALC), The COALITION OF WOMEN LIVING WITH HIV AND AIDS IN MALAWI (COWLH), the WOMEN'S LAWYER'S ASSOCIATION MALAWI (WLA), the CENTRE FOR HUMAN RIGHTS EDUCATION ADVICE AND ASSISTANCE (CHREAA), the CENTRE FOR THE DEVELOPMENT OF PEOPLE (CEDEP), and THE ZAMBIA NETWORK OF RELIGIOUS LEADERS LIVING WITH OR PERSONALLY AFFECTED BY HIV AND AIDS (ZANERALA+) at the 61ST Ordinary Session of the AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS, Banjul, the Gambia, 1-15 November 2017

Honourable Chair, Honourable Commissioners, State Delegates, Representatives of National Human Rights Institutions, members of civil society organisations, distinguished participants, all protocols duly observed.

The ***AIDS and Rights Alliance for Southern Africa***, a partnership of 115 organisations working in 18 countries in Southern and East Africa, welcomes this opportunity to address the Commission, and is presenting this statement further on behalf of

- the *Southern African Litigation Centre (SALC)*,
- the *Coalition of Women Living with HIV and AIDS in Malawi (COWLHA)*,
- the *Women's Lawyer's Association Malawi (WLA)*,
- the *Centre for Human Rights Education, Advice and Assistance (CHREAA)*,
- the *Centre for the Development of People (CEDEP)*, and

- *the Zambia Network of Religious Leaders Living With or Affected by HIV and AIDS (ZANERELA+)*

As civil society organisations working on HIV and human rights, we would like to bring the disturbing trend of repressive HIV specific laws to the commission's attention. Such laws often contain provisions that criminalise HIV transmission, non-disclosure and exposure, and these measures – at times - included compulsory HIV testing and involuntary partner notification.

In a majority of cases, these provisions are overly broad and disregard the best available scientific evidence. They fail to pass the human rights test of necessity, proportionality and reasonableness; rather, they have the effect of consecrating stigma, discrimination and prejudice concerning people living with HIV. As a result, Honourable Chairperson, these measures undermine both an effective response to the HIV epidemic, as well as the human rights of people living with HIV.

In sub-Saharan Africa, while there were no HIV-specific criminal laws at the start of the 21st century, by now 31 countries have enacted overly broad or vague HIV-specific criminal statutes. These laws and policies provide, *inter alia*, for the criminalisation of HIV transmission, exposure and non-disclosure, while already having in place existing penal provisions which cover those rare cases of intentional HIV transmission. We note that the number of prosecutions continues

to rise at an alarming rate in countries that are promulgating regressive laws and policies. To date, prosecutions have been documented in 16 countries.¹

However, we acknowledge that the continent has made strides in the fight against HIV, but remains concerned that the current advancements are being threatened by the misguided use of criminal sanctions by States, to - as they argue - “control the spread of the HIV epidemic”. These laws, policies and practices violate the rights of people living with HIV and of healthcare users’ to informed consent, to bodily integrity, dignity, freedom from inhuman and degrading treatment, and fair trial rights, amongst others. The protection of these rights is adequately provided for in Article 4 (bodily integrity), Article 5 (dignity), Article 7 (fair trial), and Article 16 (right to health) of the African Charter.

In addition to being placed under the spotlight of these laws which criminalise HIV transmission, exposure and non-disclosure, women living with HIV face surveillance and state control in terms of their reproduction, family planning, childbirth, child feeding, and child raising choices. In many contexts, HIV criminalisation laws, policies, and practices have a disproportionately punitive effect on women, as evidenced by recent cases. For example, in Malawi a woman living with HIV was prosecuted for breastfeeding. In addition, there are numerous examples of prosecutions of people living with HIV in Zimbabwe, Uganda, and Nigeria, particularly women. In our patriarchal societies, it is women who already disproportionately face the burden of the HIV epidemic due to their inability to

¹ HIV Justice Network et al (2016) *Advancing HIV Justice 2: Building Momentum Towards Advocacy Against HIV Criminalisation*, available at: <https://hivlawcommission.org/wp-content/uploads/2017/06/312008825-Advancing-HIV-Justice-2-Building-momentum-in-global-advocacy-against-HIV-criminalisation-1.pdf>.

negotiate protective sexual intercourse in relationships, and are often the first to be tested for HIV.

We, however, would like to recognise the positive developments made by some African countries due of consistent advocacy. Two countries have strongly rejected HIV criminalisation: Mauritius in 2007 and Comoros in 2014.

Furthermore, Mozambique revised its HIV law in 2014 to remove HIV criminalisation, and in Kenya the High Court recently has ruled that section 24 of HIV Prevention and Control Act of 2006, which forced people with HIV to disclose their status to any “sexual contacts”, was found to contravene the Kenyan constitution that guarantees the right to privacy.

As HIV and human rights organisations working with civil society organisation, national human rights institutions, the judiciary, members of parliament, and other key influencers; we acknowledge that there will be no end to the HIV epidemic in Africa by 2030 if we do not prioritise efforts which promote an enabling legal and policy environment for people to access HIV prevention, treatment and care services.

We commend the African Commission, and the mandate of the HIV Committee for the leadership shown in adopting its first-ever General Comment in relation to Article 14(1)(d) and (e) of the Maputo Protocol, which relate to sexual and reproductive health, including HIV. Through this General Comment, the Commission enjoins States to take appropriate measures towards eliminating stigma and discrimination in relation to sexual and reproductive health. This includes steps to end the feminisation of HIV criminalisation. We equally welcome

the passing of Resolution 260 on Involuntary Sterilisation and the Protection of Human Rights in Access to HIV Services, in 2013, which reinforced the General Comment, and condemns all forms of discrimination and human rights violations relating to access to adequate health services; including of the systematic kind.

As such we call on the Commission to continue its work and to take leadership in protecting the rights of people living with and affected by HIV, including women living with HIV by

- Encouraging and reminding member states about their obligations under the African Charter and the Maputo Protocol, including Resolutions adopted by the Commission;
- Reminding states of their duties and mandates to protect and promote the rights of people living and affected by HIV, including women and girls who are the vulnerable populations to HIV, by prioritising the urgent needs for access to justice, bodily integrity, autonomy, and health; and
- Calling on states to repeal laws that unjustly criminalise HIV exposure, and non-disclosure

I thank you, Honourable Chairperson and Honourable Commissioners, for your attention.

[ENDS]

Signed:

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Coalition of Women Living with HIV in Malawi

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Women Lawyers Association of Malawi

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Centre for Human Rights Education, Advice and Assistance

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Centre for the Development of People

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Zambia Network of Religious Leaders Living With or Affected by HIV and AIDS

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