

DISCUSSION DOCUMENT

THE CRIMINALISATION OF HIV IN ANGOLA



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Introduction

This brief has been prepared for Civil Society Organisations (CSOs) working on HIV and human rights in Angola, to contribute to discussions around criminalisation of HIV in the country. It sets out concerns regarding the criminalisation of HIV transmission, exposure and non-disclosure in general, based on compelling scientific developments and the position of international human rights and public health experts. It further examines the relevant laws and their application in Angola, provides alternatives to criminalisation and concludes with specific recommendations regarding the reform of such laws in the country.¹

Terminology

| | |
|----------------------------|---|
| HIV criminalisation | The unjust application of criminal laws against people living with HIV (PLHIV) based on their HIV-positive status. It includes the use of HIV-specific criminal laws, as well as the application of general criminal provisions in a way that allows for prosecution of unintentional HIV transmission, potential or perceived exposure to HIV where HIV was not transmitted, and/or non-disclosure of known HIV-positive status. |
| HIV transmission | The transfer or infection of HIV from person to person. |
| HIV exposure | Placing an individual in a situation where they are not protected from the transmission and may be infected with HIV. |
| HIV non-disclosure | The failure of a PLHIV to inform a person, who is at reasonable risk of exposure to HIV from them, of their HIV status. |

History and context of HIV criminalisation

Countries often criminalise HIV transmission due to wrong beliefs, such as:

- HIV is easily transmitted from one person to another,
- It inevitably results in a shorter life expectancy for those infected,
- There are many individuals who want to intentionally infect others,
- Women and other vulnerable groups are most at risk of such malicious, intentional transmissions, and/or
- The criminal law is the most effective way to prevent such transmissions and protect vulnerable people.

HIV criminalisation first emerged in the 1980s at a time when HIV was considered fatal because treatment was not available. In the USA, several states developed HIV-specific criminal laws, mainly due to the requirement that laws to prosecute HIV exposure or transmission had to be enacted in order to qualify for federal emergency relief grants for HIV.² Similar laws were developed in other countries in the 80s and 90s. In 2004, the Model Legislation on HIV/AIDS for West and Central Africa (also known as the "N'Djamena Model Law") was produced in collaboration with USAID. Many countries in West and Central Africa developed their laws based on this model law.³ The model law contains very broad provisions, developed without proof of any public health benefits of criminalising HIV. It came at a time when there was little or no understanding of how HIV is transmitted, insufficient access to HIV treatment, and endemic violence against women was increasing their vulnerability to HIV. The preamble to Angola's HIV and AIDS Law reflects the context of fear and ignorance regarding HIV transmission that has led to its adoption. It states:

"AIDS is currently an incurable and deadly disease that has brought the demise of thousands of people all over the world, with a tendency of accelerated spread which constitutes a threat to the socio-economic development of humanity. The fight against the AIDS epidemic requires the adoption of urgent and efficient measures, with the establishment of norms, on the one hand, aimed at controlling and preventing of infection with Human Immunodeficiency Virus (HIV) and AIDS and, on the other hand, promoting the protection of infected persons" (unofficial English translation).

However, the 2018 Expert Consensus Statement,⁴ a document authored by 20 eminent scientists and endorsed by 70 HIV-expert scientists from around the world, reveals that such fears are unfounded as:

- Antiretroviral therapies dramatically increases life expectancy and "drastically" improves the long-term health and quality of life of people living with HIV,⁵ including to the extent that life expectancy for young people with HIV commencing antiretroviral treatment now approaches that of a young person in the general population"; and that in "some sub-populations, ongoing clinical care has the potential to increase life expectancy of people living with HIV beyond that of their HIV-negative counterparts."⁶
- HIV is in fact a relatively fragile virus that is not easily transmitted from one person to another.

Concerns with the criminalisation of HIV transmission

There is consensus among experts worldwide that HIV criminalisation is harmful to public health and violates human rights.⁷ International human rights and public health bodies have spoken up against the criminalisation of HIV.⁸ According to these experts:

They are often not in line with scientific evidence related to HIV transmission

HIV criminal laws ostensibly seek to decrease HIV infections by discouraging and punishing risky behaviour. However, many such laws target behaviour which has scientifically been shown to carry a low, or even no, risk of transmission. For example, the risk of infection is significantly reduced by the use of a condom, antiretroviral therapy (ART) or where a PLHIV has a low or undetectable viral load (i.e. the amount of virus in a blood sample). Furthermore, the risk of HIV transmission from a single act of exposure is very low, and sometimes negligible, with or without treatment.⁹ These facts are very rarely considered in the law or during prosecution.

HIV transmission risk¹⁰

| ACT | TRANSMISSION RISK |
|---|-------------------|
| A single act of vaginal or anal sex | None – low |
| A single act of oral sex | None - negligible |
| A single act of vaginal, oral or anal sex with proper use of a condom | None |
| A single act of vaginal, oral or anal sex with a person that has an undetectable viral load | None |
| A single act of vaginal or anal sex with a person that has a low viral load | None - negligible |

*Key:

- Low Transmission during a single act is possible, but the likelihood is low.
Negligible Transmission during a single act is extremely unlikely, rare or remote.
None The possibility of transmission during a single act is either biologically implausible or effectively zero.

They are a barrier to HIV testing, treatment and prevention

The increased stigma resulting from HIV criminal laws and the knowledge that the discovery of one's HIV status could result in criminal prosecution discourages many from testing or disclosing their status if they are aware of it. Furthermore, studies have shown that such laws can lead to distrust of healthcare professionals by PLHIV. This includes the fear that information may be transferred by health professionals to the police, thereby violating their right to privacy.¹¹ Consequently, they are less likely to share information with healthcare providers and to get accurate information and advice on prevention, treatment and care, or even access treatment itself. In addition, HIV criminalisation places the responsibility of preventing infection solely on PLHIV, undermining the shared responsibility between sexual partners.¹² Experts have stated that the laws should not be allowed to impede the provision of HIV prevention and care services.¹³

They increase HIV stigma and violate human rights

Prosecution of cases related to HIV transmission and exposure are often accompanied by sensationalised and inaccurate media reporting. Such reports can reinforce the stereotype that PLHIV are immoral, irresponsible and malicious, thereby increasing stigma against them. This often results in unfair and unequal treatment and discrimination and, consequently, violation of their rights to dignity, equality and non-discrimination. It can further exacerbate barriers to accessing healthcare for PLHIV, either due to discrimination by healthcare providers or self-stigmatisation. The right to health requires States to remove the obstacles to healthcare and any acts which create such barriers therefore violate this right.¹⁴ Furthermore, provisions requiring individuals to reveal their HIV status are a violation of the right to privacy and can lead to stigma, discrimination and possibly violence.¹⁵

They can be harmful to women

HIV criminal laws are often applied disproportionately against women living with HIV. In many countries, women are usually the first to know of their HIV status, often due to accessing tests during antenatal care. They are therefore more vulnerable to being blamed for bringing HIV into the relationship. Women living with HIV are also susceptible to violence and abuse in intimate relationships, and the threat of prosecution only increases that vulnerability.¹⁶ Such laws have also been erroneously applied against women for breastfeeding.¹⁷

Angola's Criminalisation of HIV Laws

In Angola, an HIV-specific law which criminalises HIV was enacted in 2004. In addition, there are provisions in the Penal Code of 2019, which can be used to criminalise HIV.

The HIV and AIDS Law 8/04 of 2004

The Law HIV and AIDS Law 8/04 of 2004¹⁸ contains positive provisions, which recognise the rights of persons living with HIV and places certain obligations on employers, health professionals and others in relation to those rights. However, it also contains concerning provisions related to the criminalisation of HIV. Most notable is section 15 of the law, which reads:

Section 15 - Transmitting

1. *The intentional transmission of HIV constitutes a crime and is punishable in terms of section 353 of the Penal Code.*
2. *A person who, through negligence, inconsideration or failure to observe regulations, infects another, is punished in terms of section 368 of the Penal Code.*

In terms of section 15(1) the intentional transmission of HIV constitutes a crime. The section equates it to the crime of poisoning found in section 353 of Angola's pre-2019 Penal Code, and it is therefore punishable by up to 24 years imprisonment. Section 15(2) further criminalises the negligent transmission of HIV, equating it to the crime of involuntary homicide found in section 368 of the pre-2019 Penal Code, and making it punishable by up to two years imprisonment. This subsection refers to transmission due to "failure to observe regulations". While it does not specify which regulations, the preceding section 14, which sets out the duties of persons living with HIV, can be seen as an example of such regulations. It provides:

Section 14 - Duties

Persons infected with HIV shall -

- a) *Adopt a responsible sexual behaviour;*
- b) *Adopt habits and behaviour which limits the possibility of infecting others;*
- c) *Use condoms when having sexual relations;*
- d) *Inform the persons with whom they have or intend to have sexual relations of their status;*
- e) *Inform the health personnel who attend to them of their situation so that services are administered adequately and appropriate biosecurity measures are taken;*
- f) *Inform their spouses or sexual partners about their status.*

Based on this, there is a chance that a PLHIV may be subjected to prosecution if they fail to abide by these duties, even if they do not intend to transmit HIV. The HIV and AIDS Law therefore not only criminalises intentional HIV transmission but also HIV exposure and non-disclosure.

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It is further worth noting that section 22(c) of this law permits compulsory HIV testing, "when required by criminal procedure confirmed by the competent judicial authority." It is possible, therefore that an individual may be subjected to compulsory testing if accused of transmitting HIV.

The Penal Code of 2020

The Penal Code adopted in 2019 criminalises the transmission of sexually transmitted disease (section 205), serious illness (section 206) and the spread of a contagious disease (section 287). All three provisions could potentially be improperly used to criminalise HIV transmission and exposure. Section 205 provides:

Section 205

(Transmission of Sexually Transmitted Diseases)

1. *Whoever, knowing that they have a viral or bacterial disease, sexually transmitted, likely to endanger their life, has sex with another person without first notifying them of this fact, is punishable by imprisonment for up to 2 years or by a fine of up to 240 days.*
2. *If the victim is infected, the penalty is imprisonment for 2 to 4 years.*
3. *If the perpetrator has acted with the intention of infecting the victim without succeeding in doing so, the penalty shall be imprisonment for 4 to 6 years.*
4. *If the perpetrator acted with the intent to infect the victim and effectively did so, the penalty is imprisonment for 10 to 15 years.*
5. *The penalty provided for in the preceding paragraph is applicable to any person who intentionally infects another person by any other means.*
6. *The criminal procedure depends on a complaint.*

Improperly applied, this section can potentially be construed by law officers to imply that sexual intercourse with another person without informing them of one's positive HIV status (i.e. HIV non-disclosure) is punishable with up to two years imprisonment, even where there is no intention to infect the other person, and where there is no transmission. Where a person is infected, the penalty is up to four years imprisonment. Furthermore, this section provides a penalty of up to six years for malicious attempts to infect another which are not successful and up to 15 years imprisonment for intentional attempts which are successful. The penalty for deliberate infection is also applicable when infection occurs through means other than sexual intercourse. This section, therefore, criminalises not only intentional transmission but HIV exposure and non-disclosure as well.

Section 206

(Transmission of Serious Illness)

1. *Whoever, with the intention of transmitting a serious illness from which they suffer from, performs an act that is likely to infect another person, is punishable by imprisonment for up to 3 years or by a fine of up to 360 days.*
2. *If the disease is transmitted, the penalty is imprisonment for 6 to 10 years.*

Section 287

(Spread of Contagious Disease)

1. Anyone who spreads a contagious disease and thus creates an actual danger to the life or physical integrity of another person is punishable by imprisonment for 2 to 8 years.
2. If the danger is caused by the negligence of the agent, the penalty is imprisonment up to 3 years.
3. If the conduct is due to negligence, the penalty is imprisonment up to 2 years or a fine up to 240 days.

The section on the transmission of serious illness criminalises the intentional transmission of serious illness, whether or not transmission occurs, and makes it punishable by up to 3 years imprisonment for attempted transmission (exposure) and ten years imprisonment for transmission.¹⁹ The Code does not define what constitutes a serious illness. If applied improperly to HIV, it can be used to criminalise both HIV exposure and transmission.

The crime of spreading a contagious disease applies to diseases creating an actual danger to life or physical integrity. Depending on whether a court determines that HIV falls within this category, this section could be used to criminalise HIV transmission. The negligent or intentional spread of a contagious disease is punishable by up to 3 years, and 8 years imprisonment, respectively.²⁰ Subsection 3 of this provision appears to indicate that an individual can be penalised for the spread of a contagious disease, even where it was not due to their negligence. In such circumstances, the punishment is up to 2 years imprisonment.²¹

Concerns with Angola's Laws

They contain specific HIV offences for transmission

The HIV and AIDS Law contains a provision which specifically criminalises HIV transmission. This is contrary to the position of experts that States should not include specific HIV offences for transmission in public health or criminal laws, but should use general offences for such crimes.²² Such specific provisions contribute to increased stigma and potential rights violations of PLHIV, as discussed above. Angola has provisions in the Penal Code which can be used, in line with the position of international experts and scientific evidence, in cases of intentional and malicious transmission of HIV instead of the specific law.

They are overbroad

International experts have stated that any criminal offences used to punish HIV transmission should be clear and precise so that ordinary people know what types of conduct are legally permissible.²³ However, the provisions of the HIV and AIDS Law can apply to any behaviour. It is not clear what kind of behaviour may result in criminal sanction, or how criminal sanction can be avoided. Furthermore, it penalises transmission caused by inconsideration, but it is not clear what constitutes "inconsiderate" transmission.

In addition, if improperly applied to HIV, the crime of spreading a contagious disease would not meet the requirements of clarity and precision. For example, would a person still be convicted if they did not disclose their status, but used a condom? Would they evade prosecution if they disclosed their status, but did not use a condom? It is not even a requirement of these provisions that the conduct should carry a serious risk of transmitting HIV.

They criminalise more than just intentional and malicious transmission

International human rights and public health experts have also stated that only malicious and intentional transmission of HIV should be penalised.²⁴ The laws in Angola, however, penalise more than just malicious and intentional transmission. Section 15(2) of the HIV and AIDS Law criminalises negligent or inconsiderate transmission. It also appears to criminalise acts where there is no or only a low, risk of transmission.

If misapplied to HIV, provisions of the Penal Code could also criminalise negligent transmission. While the provision of spreading a sexually transmitted disease (STD) appears to require intention, it effectively criminalises sexual intercourse without disclosing one's status, which is not the same as the intention to transmit disease. It also applies even where there has been no actual transmission. Furthermore, subsection 2 of the provision on spreading contagious disease states, "*If the danger is caused by the negligence of the agent ...*" While subsection 3 states, "*If the conduct is due to negligence...*" This implies that, this provision could criminalise transmission through negligence, including when the negligence is not on the part of the person spreading the disease.

They criminalise HIV exposure in a way which is not in line with science

The crime of transmitting an STD appears to criminalise sexual and other behaviour deemed as dangerous by a person living with an STD. However, it does not take into account whether such behaviour poses a risk of transmission. As shown above, science shows that in the case of HIV, there is no or low risk of transmission where a condom is used, ARVs are taken, or through one single act. Furthermore, international human rights and public health experts have stated transmission of HIV should only be penalised where it can be shown that the specific act (e.g. sexual intercourse with the specific individual) resulted in HIV transmission to the specific person said to have been infected.²⁵ However, it is difficult to prove who infected whom, as the person who is first aware of their status is not necessarily the first person to be HIV positive. Even where it can be proven who was infected first, scientists have stated that HIV transmission between two people is not easy to establish and therefore, it is impossible to prove causality.²⁶ The application of this law to HIV transmission without taking this into account would violate rights, and contrary to principles of criminal law.

They do not provide exceptions for failure to disclose status

According to the experts, laws "should not be applied to cases where there is no significant risk of transmission or where the person:

- Did not know that s/he was HIV positive;
- Did not understand how HIV is transmitted;
- Disclosed his or her HIV-positive status to the person at risk (or honestly believed the other person was aware of his/her status through some other means);
- Did not disclose his or her HIV-positive status because of fear of violence or other serious negative consequences;
- Took reasonable measures to reduce risk of transmission, such as practising safer sex through using a condom or other precautions to avoid higher risk acts; or
- Previously agreed on a level of mutually acceptable risk with the other person."²⁷

Reasonable measures to reduce risk of transmission includes the taking of ARVs and having an undetectable viral load. The HIV and AIDS Law and the Penal Code do not contain these exceptions and both effectively make it illegal to have sexual relations without disclosing one's positive status.

They open up the risk of compulsory HIV testing

The HIV and AIDS Law further opens up the risk that an accused person may be subjected to compulsory HIV testing for a legal case, even where there is no transmission of HIV to another party. Such mandatory testing violates the right to privacy and security of person.²⁸

They are not necessary or proportional and do not meet the principle of *ultimo ratio*

The principle of legality requires laws to be necessary and proportional to achieving the stated objective. Furthermore, in terms of the *ultimo ratio* principle, criminal sanctions should be used as a last resort in combatting unwanted behaviour. In the case of HIV criminal laws, the goal of such laws is to reduce HIV infections, particularly malicious transmissions. In other words, they seek to regulate unwanted behaviour which leads to HIV infection. However, the experts have stated that HIV criminalisation laws do not serve the goals of punishing harmful conduct or preventing HIV transmission by deterring or changing risky behaviours.²⁹ Such behaviour can be regulated more effectively through other means, such as public education and awareness-raising, and guaranteeing the availability and access to relevant medical services.³⁰ The laws are therefore not necessary or proportional.

They are contrary to human rights provisions in the Constitution

Article 21 of the Constitution provides that it is the duty of the State to, "ensure fundamental rights, freedoms and guarantees";³¹ and "promote policies that will make primary health care universal and free".³² As mentioned above, HIV specific laws can result in the violation of the rights to privacy, health, dignity, as well as equality and non-discrimination. These are contained in Articles 21, 77, 31 and 23 of the Constitution of Angola respectively. Furthermore, they can impede delivery of health services for persons living with HIV. According to Article 6 of the Constitution, the Constitution is the supreme law of the land. Other laws can only be valid if they conform with it. Only the rights specifically mentioned in the Constitution can be restricted, "and these restrictions must be limited to what is necessary, proportional and reasonable in a free and democratic society in order to safeguard other constitutionally protected rights and interests".³³ The rights to privacy, health, dignity and non-discrimination are not among those that can be restricted as specified in the Constitution.³⁴ HIV specific laws are therefore unconstitutional.

Applications of the HIV criminal laws in Angola

There is little information on how the laws have been applied in Angola, particularly as information on case law and court judgements is not easily accessible in the country. Currently, such information is mainly gleaned from press releases and anecdotes. For example, in February 2020, there were reports of a man being convicted and sentenced to 22 years and 6 months imprisonment in Cabinda province for contravening section 15 of the HIV and AIDS Law. According to the reports, he was arrested in April 2019 after a police complaint was made against him by three individuals. It was alleged that he financially lured young women into having unprotected sex with him, knowing that he was living with HIV. Another case was reported in February 2020 of a man being convicted for intentional transmission of HIV to two women with whom he reportedly had sexual relations. The case took place in Bie Province, and he was apparently sentenced to 24 years imprisonment. There have also been generalised reports of alleged intentional transmissions, which do not appear to be verifiable.³⁵

Given the lack of information on the specifics of and reasons for the judgements in such cases, it is difficult to comment on the actual application of the laws. However, the media reports tend to be written in a stigmatising way, which vilifies PLHIV. In addition, they use the term intentional transmission even when all the elements of intentional transmission were not present (e.g. because the alleged perpetrator used protection, informed

the other party of their status, or was unaware of their status, or the other party was not infected). They also publicly name the accused and reveal their status. Such media reports raise concern regarding stigma, violation of human rights and the potential impact on individuals accessing HIV testing and treatment. They further raise concern regarding the application of the law in courts, particularly whether the courts ensure all elements of the crime are proved before convicting.

Ensuring prosecution of intentional and malicious transmission

Cases of malicious and intentional transmissions are few, and the UNDP and UNAIDS have pointed out that most PLHIV who know their status take steps to prevent transmitting it to others.³⁶ To ensure prosecutions of the rare cases of malicious transmission:

- Other provisions of the general criminal laws, including those prohibiting the deliberate spread of disease or assault, can be used as long as all the elements of the crime are proven, including causality.³⁷
- Prosecutorial and sentencing guidelines, in line with human rights laws and standards, can be developed to ensure the justice sector can apply the general law to the few cases of malicious and intentional transmission that occur.³⁸
- The enactment of laws protecting women from sexual violence, discrimination based on gender and HIV status and to ensure equality of women and other vulnerable groups would better protect them from HIV exposure and transmission.³⁹
- States can contribute to preventing transmissions by providing HIV programmes which empower all, not just PLHIV, to practice safer sex.⁴⁰
- Programmes can be developed to empower PLHIV to voluntarily disclose their status in safety, rather than penalise non-disclosure.⁴¹

What should Angola do?

1. Increase access to ARVs for persons living with HIV.
2. Repeal the provision of the HIV and AIDS Law which specifically criminalise intentional HIV transmission and use general provisions of the Penal Code, as well as other legislation which protect women, to prosecute the rare cases of deliberate and malicious transmission.
3. Repeal section 15(2) of the HIV and AIDS Law which criminalise the unintentional transmission of, or exposure to HIV.
4. Ensure the crimes of transmitting an STD and spreading a contagious disease are not improperly applied to penalise negligent transmission of HIV and expand proven HIV prevention programmes to people so they can avoid exposure to HIV through practising safer behaviours.
5. Repeal or reform provisions of law which effectively make HIV disclosure to sexual partners compulsory, such as section 15(2) read together with section 14 of the HIV and AIDS Law, as well as the crime of transmitting an STD, and expand programmes supporting voluntary counselling and testing for couples, voluntary disclosure, and ethical partner notification.
6. Build the capacity of the justice sector to understand scientific advancements concerning HIV transmission, including by developing prosecutorial and sentencing guidelines to ensure cases of HIV transmission where intention and causality can be shown, are prosecuted under general criminal law provisions.

Endnotes

- ¹ The brief has been prepared by the Southern Africa Litigation Centre (SALC) and the AIDS and Rights Alliance for Southern Africa (ARASA) and is based on the organisations' extensive experience working on HIV criminalisation in the Southern Africa region, including in Malawi, Zambia, Zimbabwe, Mauritius, Comoros and Mozambique.
- ² US: Lawmakers fail to pass HIV modernisation bill in Florida, HIV Justice Network, <https://www.hivjustice.net/topic/lawsandpolicies/lawpolicyreform/> (accessed 27 October 2020).
- ³ P. Eba, "HIV-specific legislation in sub-Saharan Africa: A comprehensive human rights analysis" African Human Rights Law Journal, (2015) 15(2), 224-225.
- ⁴ Françoise Barré-Sinoussi Salim S Abdool Karim Jan Albert Linda-Gail Bekker Chris Beyrer Pedro Cahn Alexandra Calmy Beatriz Grinsztejn Andrew Grulich Adeeba Kamarulzaman Nagalingeswaran Kumarasamy Mona R Loutfy Kamal M El Filali Souleymane Mboup Julio SG Montaner Paula Munderi Vadim Pokrovsky Anne-Mieke Vandamme Benjamin Young Peter Godfrey-Faussett, Expert consensus statement on the science of HIV in the context of criminal law, Journal of the International AIDS Society, Volume 21, Issue 7, July 2018, <https://onlinelibrary.wiley.com/doi/10.1002/jia2.25161> (accessed 1 October 2020).
- ⁵ Expert consensus statement on the science of HIV in the context of criminal law, Ibid.
- ⁶ Ibid.
- ⁷ Ibid.
- ⁸ These include UNAIDS, WHO, the Office of the High Commissioner for Human Rights (OHCHR), the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Special Rapporteur on health), the African Commission on Human and Peoples' Rights, particularly the Committee on the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV, and the Southern African Development Community (SADC).
- ⁹ Expert consensus statement on the science of HIV in the context of criminal law, Ibid.
- ¹⁰ Ibid.
- ¹¹ Limit Cases: How and Why We Can and Should Decriminalise HIV Transmission, Exposure, And Non-Disclosure. MJ. Weait, Medical Law Review, Volume 27, Issue 4, Autumn 2019, pg. 576–596, <https://doi.org/10.1093/medlaw/fwz030>; The impact of criminalization of HIV non-disclosure on the healthcare engagement of women living with HIV in Canada: a comprehensive review of the evidence. SE. Patterson et al Int AIDS Soc. 2015; 18(1): 20572.
- ¹² Report of the Special Rapporteur on health, A/HRC/14/20, 27, para 63. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/131/18/PDF/G1013118.pdf?OpenElement>; UNDP and UNAIDS, Policy brief: Criminalisation of HIV Transmission, August 2008. Available at: <https://www.undp.org/content/undp/en/home/librarypage/hiv-aids/un-dp-and-unais-policy-brief-on-criminalization-of-hiv-transmission>.
- ¹³ See, for example, the updated and consolidated version of the Guidelines from 2006: Office of the United Nations High Commissioner for Human Rights "International Guidelines on HIV/AIDS and Human Rights" (2006), pg. 30. Available at: <https://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesen.pdf>. (accessed 15 October 2020).
- ¹⁴ Report of the Special Rapporteur on health, A/HRC/14/20; African Commission on Human and Peoples' Rights, HIV, the law and human rights in the African human rights system: Key challenges and opportunities for rights-based responses, 2017, pg. 8, para. 36, https://www.unaids.org/en/resources/documents/2018/HIV_Law_AfricanHumanRightsSystem (accessed 1 October 2020).
- ¹⁵ See, for example, Report of the Special Rapporteur on health, A/HRC/14/20, para 19.
- ¹⁶ Report of the Special Rapporteur on health, A/HRC/14/20, para 64 and 65; UNDP and UNAIDS, Policy brief: Criminalisation of HIV Transmission, pg. 4.
- ¹⁷ Report of the Special Rapporteur on health, A/HRC/14/20, para 66 & 67; African Commission on Human and Peoples' Rights, HIV, the law and human rights in the African human rights system: Key challenges and opportunities for rights-based responses, 2017, pg. 7, para. 33, https://www.unaids.org/en/resources/documents/2018/HIV_Law_AfricanHumanRightsSystem (accessed 1 October 2020) See also for example: E.L v. Malawi, High Court of Malawi, Case 36 of 2016. Available at: https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/EL-Judgment_Corrected.pdf; and Botswana: Woman from Zimbabwe faces 'deliberate HIV transmission' charge for breastfeeding neighbour's baby, Africareview, October 16, 2013, <https://www.hivjustice.net/cases/botswana-woman-from-zimbabwe-faces-deliberate-hiv-transmission-charge-for-breastfeeding-neighbours-baby/> (both accessed 30 September 2020).
- ¹⁸ The Law on the Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS), Law 8/04 of 2004.
- ¹⁹ Section 206 of the Revised Penal Code.
- ²⁰ Section 287 of the Revised Penal Code.

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- ²¹ Section 287(2) penalises spread of a contagious disease 'by the negligence of the agent', whereas section 297(3) penalises the spread of a contagious disease, 'if the penalty is due to negligence'.
- ²² The updated and consolidated version of the Guidelines from 2006: Office of the United Nations High Commissioner for Human Rights "International Guidelines on HIV/AIDS and Human Rights" (2006), pg. 29; UNDP and UNAIDS, Policy brief: Criminalization of HIV Transmission, pg. 6; and Report of the Special Rapporteur on health, A/HRC/14/20, para 76(c).
- ²³ The updated and consolidated version of the Guidelines from 2006, pg. 82.
- ²⁴ Report of the Special Rapporteur on health, A/HRC/14/20, para 74 and 76(c); UNDP and UNAIDS, Policy brief: Criminalization of HIV Transmission, pg. 1; and African Commission on Human and Peoples' Rights, HIV, the law and human rights in the African human rights system: Key challenges and opportunities for rights-based responses, 2017, pg. 75, para. 39.
- ²⁵ The updated and consolidated version of the Guidelines from 2006, pg. 29; and African Commission on Human and Peoples' Rights, HIV, the law and human rights in the African human rights system: Key challenges and opportunities for rights-based responses, 2017, pg. 74, para. 36.
- ²⁶ Expert consensus statement on the science of HIV in the context of criminal law, pg. 7.
- ²⁷ Report of the Special Rapporteur on health, A/HRC/14/20, para 74, UNDP and UNAIDS, Policy brief: Criminalisation of HIV Transmission.
- ²⁸ African Commission on Human and Peoples' Rights, HIV, the law and human rights in the African human rights system: Key challenges and opportunities for rights-based responses, 2017, pg. 70, para. 15; UNDP and UNAIDS, Policy brief: Criminalisation of HIV Transmission, August 2008.
- ²⁹ Report of the Special Rapporteur on health, A/HRC/14/20, para 62 and 73; UNDP and UNAIDS, Policy brief: Criminalization of HIV Transmission; African Commission on Human and Peoples' Rights, HIV, the law and human rights in the African human rights system: Key challenges and opportunities for rights-based responses, 2017, pg. 8, para. 36.
- ³⁰ Projeto Regional Para A Redução Do Risco De VIH E A Melhoria Da Saúde Sexual E Reprodutiva Das Populações Chave Jovens Em África Austral: Relatório Nacional Consolidado Da Avaliação Do Ambiente Jurídico Em Angola (Regional Project to Reduce HIV Risk and Improve Sexual and Reproductive Health of Key Young Populations in Southern Africa: Consolidated National Report on the Assessment of the Legal Environment in Angola), Luanda, 15 de Novembro de 2018., pg. 74 <https://hivlawcommission.org/wp-content/uploads/2019/10/UNDP-Reports-LegalEnvironmentAssessments-Angola.pdf> (accessed 21 September 2020).
- ³¹ Article 21(b) of the Constitution.
- ³² Article 21(f), Ibid.
- ³³ Article 57(1) of the Constitution.
- ³⁴ Article 205 of the Constitution allows for the restriction, in certain strict circumstances, of the right to stand for election and the exercise of the rights of expression, meeting, demonstration, association and petition and other similar rights for serving national security agents, namely military personnel, police officers and agents. Other restriction clauses include Article 40(3) in respect of freedom of expression, Article 46(1) in respect of freedom of residence, movement and emigration, and Article 48(4) in respect of freedom of association.
- ³⁵ See for example: Cases of intentional HIV transmission detected, Angop, 9 July 2010, http://www.angop.ao/angola/en_us/noticias/saude/2010/6/27/Cases-intentional-HIV-transmission-detected,66eb213c-8402-4c58-9025-cb13bb0e81c4.html; Dez pessoas por dia são infectadas de forma criminosa com o vírus HIV-Sida, Jornal de Angola, 25 July 2018, http://jornaldeangola.sapo.ao/reportagem/dez_pessoas_por_dia_sao_infectadas_de_forma_criminosa_com_o_virus_hiv-sida; and Aumenta os casos de transmissão dolorosa do HIV em Angola, AngoNotícias, 17 April 2009, <https://www.angonoticias.com/Artigos/item/21971/aumenta-os-casos-de-transmissao-dolorosa-do-hiv-em-angola> (all accessed 1 October 2020).
- ³⁶ UNDP and UNAIDS, Policy brief: Criminalization of HIV Transmission, pg. 2.
- ³⁷ The updated and consolidated version of the Guidelines from 2006, pg. 29; UNDP and UNAIDS, Policy brief: Criminalization of HIV Transmission, pg. 6; and Report of the Special Rapporteur on health, A/HRC/14/20, para 76(c).
- ³⁸ UNDP and UNAIDS, Policy brief: Criminalization of HIV Transmission, pg. 1; and Report of the Special Rapporteur on health, A/HRC/14/20, para 75.
- ³⁹ UNDP and UNAIDS, Policy brief: Criminalization of HIV Transmission, pg. 5. See also, African Commission on Human and Peoples' Rights, HIV, the law and human rights in the African human rights system: Key challenges and opportunities for rights-based responses, 2017.
- ⁴⁰ UNDP and UNAIDS, Policy brief: Criminalization of HIV Transmission, pg. 2; and updated and consolidated version of the Guidelines from 2006, pg. 26.
- ⁴¹ UNDP and UNAIDS, Policy brief: Criminalization of HIV Transmission.

