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Criminalizing HIV transmission or exposure: the context of francophone West and Central Africa

Nations throughout the world are increasingly criminalizing HIV transmission or exposure.¹ This trend, already very familiar to high-income countries such as Canada, the United States of America and some European nations, takes on a special meaning in Africa, where several national HIV/AIDS laws make HIV transmission or exposure a crime.

Introduction

Although there is, to date, no evidence that criminalization is an effective tool in combating the epidemic, and numerous expert bodies, including UNAIDS, have expressed their concerns about the impact of criminalization on the rights of people living with HIV (PLWHIV) and on prevention efforts, only one African country has amended its national legislation to impose stricter limits on the use of criminal law,² and several legislatures are still considering bills that criminalize HIV transmission or exposure.

Francophone West and Central Africa are no exception to this legislative onslaught. It appears that 13 countries have already enacted national HIV legislation criminalizing HIV transmission or

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exposure.³ Côte d'Ivoire, Cameroon and the Republic of Congo are each considering legislation.

The issue of criminalization is particularly difficult in this region because the very legislation that criminalizes HIV transmission and/or exposure also makes some enormous strides in protecting PLWHIV rights. In fact, many of the bills were supported by HIV/AIDS organizations, and some were even championed by them.⁴

This article seeks to understand the objectives of the legislation and analyze its direct and indirect effects on the fight against the epidemic and on PLWHIV rights in the specific context of francophone West and Central Africa. It then provides an overview of international and national reaction to the spread of criminal legislation in the region. The analysis is guided by the comments of organizations that are combating AIDS in French-speaking Africa.

Legislating to protect the rights of HIV-positive and -negative individuals in the face of the epidemic

The willingness of francophone African countries to adopt national HIV/AIDS legislation primarily reflects their desire to take action on their international commitment to enact legislation favouring PLWHIV rights. This pledge was expressed in the *Declaration of Commitment on HIV/AIDS* by the United Nations

General Assembly in 2001⁵ and confirmed in the General Assembly's *Political Declaration on HIV/AIDS* in 2006.⁶

The N'Djamena model law contains troubling provisions on "wilful transmission" of HIV.

Against this backdrop, representatives from several West African countries assembled in September 2004 for a workshop organized in N'Djamena, Chad, by Action for West Africa Region — HIV/AIDS (AWARE-HIV/AIDS).⁷ After three days of discussions, the participants adopted a model law on HIV/AIDS that sought to protect the rights of people infected by or exposed to HIV. It was hoped that this model law would facilitate the enactment of similar legislation, adapted to each country in the region.

In reality, many countries passed laws that closely track the wording of the model law. The model law contains positive measures to combat discrimination against PLWHIV and to address testing. However, it also

contains troubling provisions,⁸ which, among other things, prohibit the "wilful transmission of HIV"⁹ and require people to disclose their HIV-positive status to their partners within six weeks.¹⁰

The national legislation, enacted in the wake of the workshop, seeks to achieve an additional, two-fold objective: to protect the rights of PLWHIV and those of people exposed to infection. The legislation is generally based on the principle that PLWHIV have duties as well as rights, including the duty not to transmit HIV to their partners.¹¹ The criminalization of HIV transmission is a product of this reasoning.

Some PLWHIV associations supported this approach. For example, Maggy Gouna, a former president of Espoir Vie Togo, an organization that pushed for the PLWHIV protection law, explained in a 2006 interview that Togo's "draft bill contained penalties for people who are knowingly HIV-positive and have unprotected sex" because "people living with HIV do not just have rights; they also have duties."¹²

Others, however, did not subscribe to this approach, since it might "insinuate that people living with HIV are careless" and therefore "reinforce their stigmatization," as noted by Jean-Marie Talom, president of REDS, an ethics, law and health network in Cameroon.¹³ Indeed, the approach seems to disregard the fact that the vast majority of PLWHIV want to pro-

tect their partners from HIV regardless of what any law might say.¹⁴

The criminalization of HIV transmission or exposure in West and Central Africa is happening in a special context, and its underpinnings can only truly be understood if this context is taken into account. First of all, the region is experiencing a major HIV epidemic¹⁵ in which the effects of prevention continue to be hampered by a shortage of resources, a lack of political will and cultural obstacles. Secondly, despite some progress in the last few years, access to treatment is still insufficient.¹⁶ Consequently, many infected persons regard AIDS as a death sentence.

Lastly, the laws are being formulated at a time when violence against women has reached crisis levels, making them particularly vulnerable to HIV. Criminalization is seen as a way to remedy such violence, which is why many women's organizations in Africa continue to support the criminalization of HIV transmission.¹⁷ Criminalizing HIV transmission or exposure is also a way for countries to give the impression that they are taking action against HIV when it is considerably more difficult to fight effectively against the discrimination suffered by the most vulnerable groups (including women, sex workers and men who have sex with men) and guarantee everyone access to prevention, treatment and care.

Existing provisions criminalizing HIV transmission or exposure

The N'Djamena model law

The criminal provisions in the national laws are based on the N'Djamena model, despite the fact that UNAIDS' *International Guidelines on*

HIV/AIDS and Human Rights recommend against the creation of HIV-specific crimes.¹⁸

The model law prohibits the wilful transmission of HIV, which its French version defines as “any attempt against the life of a person by means of an inoculation of HIV-infected substances, however such substances were used or administered, and regardless of the results.”¹⁹ Both the French and English versions specify that inoculation can occur through sexual intercourse; blood transfusion or the sharing of an intravenous needle; skin-piercing instruments; or mother-to-child transmission.²⁰

Criminal law regarding HIV transmission or exposure is very broad and has serious flaws.

This definition is very broad and has severe weaknesses. First of all, the term “wilful” is not clearly defined. Based on a reading of the French version, the mere introduction of infected substances into the body could be sufficient to constitute an offence. Nothing suggests that there must be a deliberate attempt to infect another person with HIV or, at the very least, that the infectious substances be inoculated in the knowledge that it may result in HIV infection. There is nothing “wilful” about the offence.

In fact, the model law criminalizes HIV transmission without regard for (1) whether the person knew that

he was infected by HIV or that there was a risk of transmission; (2) whether there was in fact a genuine risk of transmission; (3) whether the person disclosed his condition to his partner; (4) whether he took precautions to prevent infection; or (5) whether the PLWHIV had control over the degree of risk under the circumstances (e.g. the possibility of negotiating condom use).²¹

Moreover, the French phrase that might be translated as “however such substances were used or administered” is so vague that it could be applied to transmission from mother to child, *in utero* or during labour or delivery, without regard for the precautions taken to reduce the risk of transmission, or for the actual risk involved.²²

Lastly, the very concept of “transmission” — from the phrase “wilful transmission” — is confusing because it could encompass mere exposure to HIV as well. Indeed, infected substances can be inoculated without causing contamination.

There is a significant difference between the French and English versions of the model law with respect to wilful transmission. The English version defines the phrase as “the transmission of HIV virus through any means by a person with full knowledge of his/her HIV/AIDS status to another person.” Thus, by virtue of poor drafting alone, the French versions of the criminal provisions are considerably broader in scope. If the workshop participants' intent was to punish only those who deliberately infect their partners, they appear to be dangerously off the mark.

Domestic legislation

Regrettably, the hastily enacted national legislation contains the same

flaws. As Jean-Marie Talom notes, “African countries rushed to criminalize without first debating the ethical and legal implications. This haste was facilitated by the existence of model laws, which encouraged states to fill in the blanks without considering whether the provisions were appropriate.”²³

Most of the national laws punish both transmission of HIV (i.e. contamination) and mere exposure to the virus. Some of them expressly distinguish between HIV exposure and transmission. For example, Niger’s legislation punishes “anyone who knowingly exposes a person to a risk of transmission.”²⁴

Most often, however, the fact that exposure is criminalized is deduced from the fact that the law prohibits PLWHIV from having unprotected or risky sexual relations, as is the case in Togo²⁵ and Benin²⁶ (where the person has not disclosed his HIV-positive status to his partner) or from the fact that the inoculation of infected substances is prohibited “regardless of the results,” as is the case in Guinea²⁷ and Mali.²⁸ The latter wording is from the French version of the model law.

Like the N’Djamena model law, most of the national provisions punish wilful transmission, without requiring a deliberate intent to transmit the virus. In addition, most contain no limiting language and apply without distinction to PLWHIV who have taken certain precautions to protect their partner against HIV and/or have disclosed their status to their partner, to cite just two examples. Most are so vague that they could encompass mother-to-child transmission.²⁹

It is clear, from reading these provisions, that the elements of

foreseeability, intent, causation and consent are not clearly established, as recommended by the *International Guidelines*.³⁰ Consequently, the criminalization is quite sweeping and goes well beyond cases involving deliberate HIV transmission that actually causes infection.

The breadth of criminalization is particularly troubling when the statute, like the N’Djamena model law, says that an HIV-positive individual must disclose her status to her partner and that, if she does not, the medical staff must do so, without regard for the actual risks of transmission or for whether disclosure can be made without compromising her safety.

Despite the broad scope of criminal provisions, very little legal action has been initiated.

This is clearly an unwarranted violation of privacy that exposes PLWHIV to stigmatization, discrimination, violence and mistreatment.³¹ It becomes untenable if she runs the risk of being prosecuted for HIV transmission or exposure without deliberate intent and if disclosure of her status to her partner is not a bar to prosecution. This kind of mandatory disclosure could discourage people from getting tested, out of fear of being prosecuted for HIV transmission or exposure. However, we

still know little about the impact of criminalization on testing.

Certain national legislation reproduces the model law provisions imposing a general obligation on PLWHIV to disclose their status to their partner. If they do not disclose this status, the medical staff has the option or obligation to reveal the patient’s condition, depending on the law in question. National legislation regarding breaches of confidentiality is often very broad and often provides little protection for the rights of people living with HIV.³²

Legislation criminalizing HIV transmission or exposure: limited direct effects

There are currently no data demonstrating the impact of this legislation on the HIV epidemic in francophone West and Central Africa. Consequently, there is no way to tell whether it has reduced high-risk behaviours or prevented new HIV cases. Based on comments from several PLWHIV support associations in French-speaking Africa, the direct impact of this legislation will be limited at best, since the provisions are still largely unknown to the public in the countries concerned. It is therefore unlikely that the legislation will influence behaviour.³³

It would appear that almost no PLWHIV have been prosecuted in francophone West or Central Africa for transmitting or merely exposing someone to HIV, even though the scope of the provisions is often very broad. Burkina Faso reports two cases involving its national HIV legislation. It is interesting to note that both cases involved women who were initially charged with wilfully attempting to transmit HIV, but who were

ultimately prosecuted and tried under non-HIV-specific provisions. Thus, the general penal code provisions proved sufficient to punish behaviour considered to constitute an offence or crime involving HIV.³⁴ Togo has apparently recorded four criminal prosecutions and two convictions.

As we have seen, another reason that prosecutions are rare is that the legislation is little known and it is not part of the culture to file criminal complaints.³⁵

According to Brigitte Palenfo of the Burkinabe association REV+, another reason for the lack of criminal prosecution could be that most HIV-positive people do not want to make their status public. Furthermore, several associations have noted that PLWHIV continue to suffer police discrimination, which discourages them from filing a complaint.

Bintou Bamba, of ASFEGMASSI, an association of Guinean women fighting AIDS and other STDs, says that women are particularly frequent targets of discrimination and that they risk being disowned by their spouses and families if they file a police complaint. In addition, even PLWHIV support groups appear to be reticent to accompany a “victim” who wishes to file a complaint, since this would be tantamount to “turning against their own.”³⁶ This combination of factors explains why a newly infected person is unlikely to seek redress from the justice system.

A Togolese association notes that there is an absence of political will to enforce the criminal provisions related to HIV transmission and exposure. The laws were drafted to give the impression that concrete measures had been taken to combat the epidemic, without any real inten-

tion to enforce them. In fact, the implementation of certain national HIV/AIDS laws, such as Togo’s, has been delayed because the governments are slow to enact executive orders containing practical details regarding implementation.³⁷ The fact remains that criminal provisions are now part of the landscape. Thus, they can be enforced or used to pressure PLWHIV at any time.

Several associations argue that the legislation is out of step with the realities of local health care and justice, and is therefore often inapplicable. The fact that access to law and justice is limited has already been mentioned. The associations also note that it is a contradiction to criminalize HIV transmission and/or exposure when access to testing, treatment and prevention is far from assured.³⁸

For example, while Burkina Faso has tried to make contraception, notably the female condom, more widely available, the cost remains highly prohibitive, and many people, especially women who have no income of their own, have no access to it at all.³⁹ Moreover, pre-natal screening may often be the only time that a person is tested for HIV,⁴⁰ and this means that men might be unlikely to get tested.

The obstacles are not just practical; they are also cultural. According to an Amnesty International report, opposition to contraception, including condom use, remains widespread in Burkina Faso because it is often rooted in traditional gender roles and to the fact that children are generally considered a source of wealth.⁴¹

Additional factors make these laws difficult to implement in practice. For example, the scope of the laws is both broad and vague. The fact that the laws are poorly drafted means that it is not always possible

to identify clearly conduct that would warrant the police and justice systems investing time and resources in criminal prosecutions.

The legislation that criminalizes HIV transmission or exposure appears to have been drafted without taking these realities into account.

Provisions that criminalize HIV transmission or exposure could discourage people from getting tested.

In addition, it seems improbable that countries will have sufficient resources to prosecute HIV transmission cases. Indeed, it is particularly difficult, if not impossible, to prove with certainty that a person is responsible for his or her partner’s infection (notably in cases where a person has more than one partner).⁴² Consequently, convictions or acquittals are likely to turn solely on the credibility of the complainant or the accused.

The indirect consequences: troubling and very real

The fact that the provisions that criminalize HIV transmission or exposure appear to be difficult to implement and have been used infrequently does not mean that they have no impact on PLWHIV rights or prevention efforts.⁴³ For example, they could further discourage people from get-

ting tested, particularly where there is little access to treatment.

According to Jean-Marie Talom of REDS in Cameroon, “People who want to know their status will regard an HIV diagnosis as a weapon that can be used against them at any time.”⁴⁴ The provisions might also dissuade HIV-positive people from disclosing their status to their partners, especially if such disclosure does not lessen the risk of prosecution. They are likely to undermine the trust between doctors and patients, because patients might fear that the information they reveal will be used against them later.

Lastly, due to their broad scope and poor drafting, some of the provisions directly contradict public health messages by punishing responsible behaviour. For example, in Mali, a PLWHIV can be prosecuted even though he has taken careful measures to reduce the risk of transmission by wearing a condom. In the realm of PLWHIV rights, there is a risk that HIV-specific criminal provisions will further stigmatize PLWHIV and encourage discrimination because they feed into stereotypes that PLWHIV are immoral and portray them as potential criminals.

Impact on women

Criminal laws could also have a disproportionate impact on women, thereby increasing their vulnerability. All the associations that were questioned expressed major worries about this. Women are generally the first, if not the only, members of a couple who find out about their status, since there has been a push to incorporate HIV testing in pre-natal screening as often as possible. As a result, women would face a greater risk of prosecution. In addition, women often do not

have the means to protect themselves or their partners.

As we have noted, some women continue to experience considerable cultural pressure to have several children, particularly in rural areas.⁴⁵ This pressure makes it difficult for them to negotiate with their partners with respect to sexual relations and the use of contraception, including condoms. Some HIV-positive women also risk violence, abuse or abandonment if they reveal their status to their partner. Under such conditions, it is impossible for them to ask their partners to wear a condom.

Many women are also victims of domestic violence (including sexual violence), which is yet another way in which they are deprived of decision-making power over their sexuality.⁴⁶ These are just a few examples that show the extent to which criminal law can be turned against women instead of protecting them,⁴⁷ especially where the law, expressly or by implication, punishes mother-to-child transmission of HIV.⁴⁸

Finally, the ability of medical staff to disclose a female patient’s HIV-positive status to her spouse or partner must be examined having regard to the special situation of women. If there are not enough rules limiting the exercise of this option, it can be dangerous if the safety of HIV-positive women is not guaranteed.

International response

Countries are increasingly resorting to criminal law to deal with HIV transmission and exposure. Faced with this trend, UNAIDS, which had already recommended against HIV-specific offences in order to prevent the increased stigmatization of PLWHIV,⁴⁹ issued a policy brief on HIV criminalization. The document

“urges governments to limit criminalization to cases of intentional transmission i.e. where a person knows his or her HIV positive status, acts with the intention to transmit HIV, and does in fact transmit it.”⁵⁰

In relation to the N’Djamena model law in particular, and, by implication, national HIV statutes enacted in sub-Saharan Africa, UNAIDS has published a document proposing amendments to certain problematic articles of the model law. As far as the criminal sanctions are concerned, the proposed amendments acknowledge the fact that most legislators want to punish HIV transmission or exposure.

Criminal laws could impact on women disproportionately and subject them to a greater risk of prosecution.

The intent of the document is to limit the negative effects of such provisions. For example, UNAIDS recommends amendments stating that cases involving protected sex, cases involving prior disclosure of HIV-positive status to the partner, cases where the HIV-positive individual is unable to disclose his or her status out of fear of abuse or violence, and cases of mother-to-child transmission are to be excluded from the ambit of criminal law.⁵¹

At the same time, UNAIDS supported workshops in several of the region's countries in order to encourage the implementation of its recommendations.

Also, considerable emphasis was placed on the debate regarding the criminalization of HIV transmission and exposure at the XVII International AIDS Conference held in Mexico City in 2008.

Domestic responses

The role of francophone West and Central African civil society in the debate regarding the criminalization of HIV transmission and exposure differs, depending on the country. The positions of PLWHIV support groups and organizations that combat HIV/AIDS vary as well. Some of these groups actually spearheaded legislative reforms seeking to criminalize HIV transmission and/or exposure, while others supported such reforms, hoping they would improve the status of women. Some opposed such reforms.

However, based on the comments obtained, it seems that the vast majority of associations that provide support to PLWHIV in the region were not really engaged in the debate regarding criminalization because their focus was mainly on more urgent requirements (such as anti-discrimination provisions) in national legislation. Moreover, it seems that the associations were not sufficiently informed or equipped to understand all the implications of criminalization, or to get involved in the legislative reform processes.⁵² In addition, several associations said they found it difficult to achieve internal consensus on the issue of criminalization.⁵³

However, some associations were heavily involved in HIV-related

legal reforms, notably with respect to criminalization. For example, the Cameroonian organization REDS sought to stimulate a debate with other associations about the national HIV bill. This resulted in a 2008 draft bill, endorsed by Cameroonian civil society, in response to the draft bill proposed by the Ministry of Health.⁵⁴ Interestingly, this draft bill addresses HIV based on a human rights/responsibilities model. It also criminalizes HIV transmission and exposure. Thus, Cameroon's civil society, including PLWHIV, clearly expressed support for criminalization.⁵⁵

Some francophone African countries are now moving to limit the reach of criminal law in HIV transmission or exposure cases.

However, the sentences that the civil society draft bill would impose are much less harsh than what the government would impose and the offence of wilful transmission requires a more demanding degree of intent.⁵⁶ In 2009, the draft bill was significantly improved by civil society with the support of REDS. It now incorporates the "alternative language" proposed by UNAIDS with regard to the criminalization of HIV transmission and the disclosure of HIV-positive status to

spouses and partners by health care professionals.⁵⁷

The bills drafted in countries that have not yet passed HIV legislation appear to have benefited from the international debate regarding the implications and challenges posed by the criminalization of HIV transmission and exposure, and from the increased participation of civil society. For example, the Association des jeunes positifs du Congo (AJPC), an HIV+ youth organization, was very much involved in the 2009 revision of the HIV bill through a broader national PLWHIV network called RENAPC.

With the support of UNAIDS, these organizations managed to convene a workshop yielding a new bill that contains significant improvements, notably with regard to HIV criminalization, which is now limited to the "intentional and deliberate" transmission of the virus. Moreover, and in accordance with UNAIDS' recommendations, the bill lists the circumstances in which criminal law cannot be applied,⁵⁸ just as Côte d'Ivoire's national bill has done.⁵⁹

Thus, the debate regarding the criminalization of HIV transmission is not in vain, and progress is possible, as exemplified by Guinea, where the HIV law has been amended in order to limit the reach of criminal law in HIV transmission or exposure cases, as recommended by UNAIDS.⁶⁰

Togo has also begun a review of its HIV legislation. Several amendments were endorsed at a workshop held in Kpalimé in August 2008 with the support of UNAIDS and the involvement of PLWHIV associations, PLWHIV support groups and physicians. The new bill adopted by the government contains signifi-

cant improvements. For example, it strictly limits the option of health providers to disclose their patients' status to their patients' partners. It also provides that a PLWHIV will not be prosecuted for wilful transmission if they have taken measures to reduce significantly the risks of transmission, notably by using a condom or by disclosing their status to their partner and obtaining free and informed consent to an act involving an actual risk of transmission.⁶¹

The progress is real, and it can be seen that certain UNAIDS recommendations have been taken into account. However, it is unfortunate that the new bill does not rule out prosecution for mother-to-child transmission.

Conclusion

Legislators and several associations that provide support to PLWHIV in francophone West and Central Africa continue to favour the use of criminal law to penalize HIV transmission, despite the fact that it is largely unsuited to local realities and that there is no evidence of its effectiveness in combating the epidemic.

HIV-related criminal provisions in force in the region are little known to the public and are infrequently used. However, given their broad scope, they could have a big impact. In addition, they could have extremely negative effects on PLWHIV rights (especially women's rights) and on prevention.

It is therefore essential to encourage national authorities and members of civil society to continue reviewing and discussing the merits of criminalizing HIV transmission. Additional research still needs to be done to identify the reasons behind the desire to criminalize, the needs of HIV-

positive and HIV-negative people in the face of HIV, and the appropriate ways to respond to the epidemic without necessarily resorting to criminal law. At the same time, the review of existing or proposed legislation should continue so that the scope of HIV-related criminal law can be limited to the greatest extent possible and so that people infected or affected by the virus, especially women, who remain extremely vulnerable in the face of the epidemic, are afforded more protection.

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Ghana but active throughout West Africa. The project receives funding from the United States Agency for International Development (USAID). It is implemented by Family Health International with additional funding from U.S.-based organizations such as Population Service International and the Constella Futures Group.

⁸ Canadian HIV/AIDS Legal Network, *A human rights analysis of the N'Djamena model legislation on AIDS and HIV-specific legislation in Benin, Guinea, Guinea-Bissau, Mali, Niger, Sierra Leone and Togo*. September 2007.

⁹ Article 36 of the *Model Legislation on HIV/AIDS* ("the N'Djamena model law"). French version available at <http://rds.refer.sn/sites/rds.refer.sn/IMG/pdf/LOITYPESIDANDJAMENA.pdf>

¹⁰ The English version of Article 26 of the N'Djamena model law requires all PLWHIV to disclose their status to their "spouse or regular sexual partner" as soon as possible after the diagnosis, "provided that the period does not exceed six weeks." There is no penalty for contravening this provision.

¹¹ For example, see Section 1 of Cameroon's draft bill establishing the rights and obligations of persons living with HIV/AIDS (2002).

¹² "Afrique: les séropositifs, des criminels potentiels?" (supra). According to Espoir Vie Togo's current president, only the intentional transmission of HIV should be criminalized, since the vast majority of PLWHIV have no desire to transmit the virus.

¹³ Ibid.

¹⁴ The available data show that most PLWHIV who are aware of their status take the necessary measures to prevent transmitting HIV. See R. Bunnell et al., "Changes in sexual risk behaviour and risk of HIV transmission after antiretroviral therapy and prevention interventions in rural Uganda," *Aids* 20 (2006): pp. 85-92.

¹⁵ According to UNAIDS, in 2008, sub-Saharan Africa accounted for 67% of HIV infections worldwide, and 72% of recorded deaths caused by AIDS. UNAIDS, *2009 AIDS Epidemic Update*.

¹⁶ According to the most recent UNAIDS data, the coverage of anti-retroviral therapy in West Africa is 30%. Ibid.

¹⁷ C. Sasman, "Michaela Clayton on the Criminalization Debate and Other Issues," *Openspace* 2(5) (October 2009); W. Brown et al., "Criminalizing HIV transmission: punishment without protection," *Reproductive Health Matters* 17(34) (2009): pp. 119-126. It is worth noting that the Rwandan provision permitting the punishment of HIV transmission is part of a law on gender-based sexual violence (Section 30).

¹⁸ UNAIDS, *International Guidelines on HIV and Human Rights: 2006 Consolidated Version*, Guideline 4, paragraph 21 (a), available at www.unaids.org.

¹⁹ Articles 1 and 36 of the N'Djamena model law.

²⁰ Ibid.

²¹ Canadian HIV/AIDS Legal Network (supra).

²² Ibid.

²³ "Transmission du VIH : la pénalisation dans tous ses États," *Journal du sida* (August 2007).

²⁴ Article 39 of the *Law on the Prevention, Care and Control of the Human Immunodeficiency Virus (HIV)* (No. 2008-08 of 30 April 2007).

²⁵ Articles 13 and 53 of the *Law on the Protection of People with Respect to HIV/AIDS* (No. 2005-12).

¹ Criminalization can occur through the use of existing general provisions (as it has in Canada, France and the United Kingdom) or through the enactment of HIV-specific criminal provisions.

² Republic of Guinea, *Order No. 0561/2009/PRG/SGG Respecting the Prevention, Care and Control of HIV/AIDS and Amending Law L/2005/025/IAN of 22 November 2005 on the Prevention, Care and Control of HIV/AIDS* (26 October 2009).

³ Burundi, Guinea, Togo, Benin, Mali, Djibouti, Equatorial Guinea, Niger, Chad, Democratic Republic of the Congo (DRC), Burkina Faso, and Senegal. At the time of writing the Senegalese law had not yet been published. The Central African Republic has apparently also enacted a law criminalizing HIV transmission and exposure.

⁴ In Togo, the *Law on the Protection of People Related to HIV/AIDS* was championed by a PLWHIV association called Espoir Vie Togo. See "Afrique : les séropositifs, des criminels potentiels?" *Transversal* 29 (2006): pp. 16-21.

⁵ *Declaration of Commitment on HIV/AIDS*, United Nations General Assembly, A/Res/S-26/227, June 2001.

⁶ *Political Declaration on HIV/AIDS*, United Nations General Assembly, A/Res/60/262, 2 June 2006.

⁷ AWARE –HIV/AIDS, *Regional workshop to adopt a model law for STI/HIV/AIDS for West and Central Africa: general report* (2004). AWARE-HIV/AIDS is based in

²⁶ Article 27 of the *Law on the Prevention, Care and Control of HIV in the Republic of Benin* (No. 2005-31 of 5 April 2006).

²⁷ Articles 1 and 37 of *Order No. 056/2009/PRG/SGG*.

²⁸ Articles 1 and 37 of the *Law Establishing Rules Relating to the Prevention, Care and Control of HIV/AIDS* (No. 06-028 of 29 June 2006).

²⁹ This is the case in Burkina Faso, Burundi, Mali, Niger, the DRC, Republic of Congo, Chad and Togo, for example. However, the Guinean statute has been amended to preclude prosecution for mother-to-child transmission (section 37 of *Order No. 056/2009/PRG/SGG*).

³⁰ *International Guidelines on HIV and Human Rights* (supra), Guideline 4, paragraph 21 (a).

³¹ R. Pearshouse, "Legislation contagion: the spread of problematic new HIV laws in Western Africa," *HIV/AIDS Law and Policy Review* 12(2/3) (2007): pp. 1, 5-11.

³² Canadian HIV/AIDS Legal Network (supra); R. Pearshouse, "Legislation contagion: building resistance," *HIV/AIDS Law and Policy Review* 13(2/3) (2009): pp. 1, 5-10.

³³ On the contrary, existing general data show that the criminalization of HIV has no influence on behaviour: See S. Burris, "Do Criminal Laws Affect HIV Risk Behaviour? An Empirical Trial," *Arizona State LJ*, 39 (2007): pp. 467-517.

³⁴ Neither case involved HIV transmission or exposure through sexual contact. For more information, see P. Sanon et al., "Advocating prevention over punishment: the risks of HIV criminalization in Burkina Faso," *Reproductive Health Matters* 17(34) (2009): pp. 146-153.

³⁵ Information obtained from K. Eugène Novon of Aide Médicale et Charité, an association based in Togo.

³⁶ Comments by Brigitte Palenfo of REV+, an association in Burkina Faso.

³⁷ "Togo : Protéger les personnes vivant avec le VIH, une obligation légale," 5 September 2006, on-line: <http://osi.bouake.free.fr>.

³⁸ Information obtained from Bintou Bamba of ASFEGMASSI, a Guinean association.

³⁹ Amnesty International, *Giving Life, Risking Death: Maternal Mortality in Burkina Faso*, May 2009.

⁴⁰ Information obtained from Bintou Bamba of the Guinean association ASFEGMASSI.

⁴¹ *Giving Life, Risking Death: Maternal Mortality in Burkina Faso* (supra), p. 33.

⁴² E. Bernard et al., "The use of phylogenetic analysis as evidence in criminal investigation of HIV transmission" (2007), on-line: www.aidsmap.com.

⁴³ R. Jurgens et al., "Ten reasons to oppose the criminalization of HIV exposure or transmission," *Reproductive Health Matters* 17(34) (2009): pp. 163-172; UNAIDS/United Nations Development Programme, *Policy Brief: Criminalization of HIV Transmission*, August 2008, on-line: http://data.unaids.org/pub/BaseDocument/2008/20080731_jc1513_policy_criminalization_en.pdf.

⁴⁴ "Afrique : les séropositifs, des criminels potentiels ?" (supra).

⁴⁵ *Giving Life, Risking Death: Maternal Mortality in Burkina Faso* (supra).

⁴⁶ Information obtained from Brigitte Palenfo of REV+ in Burkina Faso.

⁴⁷ J. Kehler et al., "Ten reasons why criminalization of HIV exposure or transmission harms women" (2009), on-line: www.athenanetwork.org.

⁴⁸ J. Csete et al., "Vertical HIV transmission should be excluded from criminal prosecution", *Reproductive Health Matters* 17(34) (2009): pp. 154-162.

⁴⁹ *International Guidelines on HIV and Human Rights* (supra); UNAIDS, *Criminal Law, Public Health and HIV Transmission: A Policy Options Paper* (2002).

⁵⁰ *Policy Brief: Criminalization of HIV Transmission* (supra).

⁵¹ UNAIDS, *Recommendations for alternative language to some problematic articles in the N'Djamena model legislation on HIV (2004)* (2008), on-line: http://data.unaids.org/pub/Manual/2008/20080912_alternativelanguage_ndajema_legislation_en.pdf.

⁵² Information obtained from Tété Koffi Wilson of the Ivorian association RAP+AO and from other sources.

⁵³ Information obtained from Brigitte Palenfo of REV+, an association in Burkina Faso. In addition, see the comments of Mohamed Toure of Kéné Dougou Solidarité in Mali, *Transversal* (supra).

⁵⁴ REDS, *Sida : droits de l'homme et santé publique*, Bulletin d'information du projet no 3 (June 2008)

⁵⁵ Information obtained from Jean-Marie Talom of REDS.

⁵⁶ Article 20 of the bill; see *Global Criminalization Scan*, on-line: www.gnppl.us.net/criminalisation.

⁵⁷ Information obtained from Jean-Marie Talom of REDS. In November 2009, REDS met with parliamentarians to present to them the last version of the Cameroon civil society draft bill.

⁵⁸ Sections 44 and 45 of the Draft bill to protect people living with HIV/AIDS. We are unaware whether there has been any progress on adopting such a bill.

⁵⁹ See *Global Criminalization Scan*. The draft bill was discussed at a workshop held by the Ministry of Justice and Human Rights, with support from UNAIDS, at the Cocody headquarters of Transparency, an NGO, in February 2009. "Côte d'Ivoire : Bientôt une loi pour protéger les séropositifs," 18 February 2009, on-line: www.allAfrica.com. At the time of writing, the bill had not yet been tabled in the Ivorian parliament.

⁶⁰ Articles 1 and 37 of *Order No. 056/2009/PRG/SGG*.

⁶¹ Article 61 of a bill to amend the *Law (2005-012) on the Protection of People in Relation to HIV/AIDS*. At the time of writing, the bill had apparently not yet been passed.