

# REGIONAL HIV CRIMINALISATION REPORT FRANCOPHONE AFRICA



Produced by



On behalf of  
**HIV JUSTICE  
WORLDWIDE**

Supported by a grant from



## Summary of Findings

### The Law

#### *HIV-Specific Laws*

18 African countries where French is spoken have HIV-specific laws. **16 HIV-specific laws criminalize HIV transmission or exposure** (only the HIV-specific laws of Comoros and Mauritius contain no criminal provisions in this respect).

In many cases, criminal provisions set out in national laws have been modeled on the N'Djamena Model Law. The N'Djamena Model Law was developed as part of a workshop organized in 2004 by Action for West Africa Region- HIV/AIDS (AWARE-HIV/AIDS). The model and the resulting national laws have been heavily criticized for their provisions penalizing HIV. These provisions ran counter to international recommendations that urge states to limit criminal law to cases of intentional HIV transmission. They are often extremely vague and potentially very wide in scope. In some countries, these criticisms have made it possible to amend the laws (Togo, Guinea, Niger). In others, they have led to the adoption of more restrictive HIV laws (Senegal, Côte d'Ivoire, Congo) or the abandonment of specific legislative bill penalizing HIV (Cameroon, Gabon).

The most common offense is that of voluntary, deliberate or intentional transmission (8 of the 16 specific laws penalizing HIV transmission and exposure provide for such an offense). However, the term “voluntary” is not always clearly defined and sometimes there is not much evidence that there must indeed be a deliberate intention to transmit HIV for the offense to be grounded. Lastly, the notion of “transmission” of the term “voluntary transmission” is also sometimes confusing, because it may, depending on the way in which it is defined in the legal texts, also include the only exposure to HIV (e.g. order amending the HIV law in Guinea). Other offenses include having unprotected sex, not informing a sexual partner of his or her HIV status, or transmitting HIV by negligence.

Some laws explicitly provide for grounds that exclude criminal responsibility in certain circumstances (5 out of 16). Congolese law is the one that excludes criminal responsibility in the greatest number of circumstances, in the following cases: mother-to-child transmission, no significant risk of transmission, HIV-positive partner is unaware of his or her HIV status, safe sex, disclosure of HIV status, HIV-negative sexual partner knows the status of the HIV-positive partner and non-disclosure for fear of reprisals. Other countries whose laws explicitly exclude criminal responsibility in certain circumstances are Côte d'Ivoire, Niger, Senegal and Togo.

#### *Other applicable laws*

HIV can also be directly or indirectly penalized by other legislation in a country. For example, some laws have provisions penalizing the transmission of “contagious diseases” that may be applicable to HIV (Democratic Republic of the Congo, Tunisia). Others focus specifically on HIV but are provided for in laws on sexual violence, child protection, reproductive health or in the Criminal Code (Democratic Republic of the Congo, Burkina Faso, Niger, Central African Republic). In some countries, the general provisions of the Criminal Code have been used against people living with HIV (Morocco, Congo).

### Prosecution

We have been informed of prosecutions for sexual exposure or transmission of HIV (including cases that have been discontinued or settled outside of the courts) in 11 countries – Benin,

Burkina Faso, Cameroon, Congo, Morocco, Mauritania, Niger, Central African Republic, Democratic Republic of the Congo, Togo and Tunisia.

We have filed proceedings that have resulted in a court decision in at least 5 countries: Cameroon, Congo, Morocco, Niger and the Democratic Republic of the Congo.

The number of proceedings remains thus limited. However, it is important to treat this information with care. It is very difficult to access case law and to know how many people have been charged or prosecuted for HIV exposure or transmission.

Furthermore, we found that the criminalization of HIV is of concern to all respondents who are worried that specific HIV laws can be used against people living with HIV. Some cases of prosecution threats have been identified.

Prosecution took place under HIV-specific laws but also under general provisions of the Criminal Code or other applicable laws.

In at least four cases that resulted in a court decision, the accused was a woman (Cameroon, Morocco, Niger, Democratic Republic of the Congo). In one of those cases, the accused was a sex worker who turned out to be seronegative (Cameroon).

### **Mobilization**

The level of civil society mobilization against the criminalization of HIV varies from country to country, even though we noted a great interest from all respondents for this issue. In some countries, civil society actors are actively and collectively mobilizing (advocacy calling for legislative reforms, monitoring of prosecutions, training of judicial or police actors, etc.); in others, the mobilization is rather ad hoc or less structured. Legislative reform efforts are currently underway in Niger, the Democratic Republic of the Congo and the Central African Republic.