Together, we can change the course of the HIV epidemic...one woman at a time.

#onewomanatatime

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What Is HIV Criminalization?

• **No one should be punished simply because they have a health condition**
  
  – But many areas of the world have laws and practices that *unfairly punish people living with HIV*

• This is often called **HIV criminalization**
What Is HIV Criminalization?

• 75 countries (103 jurisdictions including Nigerian and US states) have HIV-specific criminal laws (as of May 2019)

• Some areas do not have HIV criminalization laws
  — At least 39 countries and 26 US states have used general criminal laws to punish people, or increase charges, due to HIV-positive status

• People with HIV can face criminal charges for engaging in acts not considered criminal if done by someone not living with HIV
  — Eg: consensual sex with another adult
**HIV CRIMINALIZATION IN THE UNITED STATES**

An overview of the variety and prevalence of laws used to prosecute and punish people living with HIV (PLHIV) in the US.


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What Is HIV Criminalization?

Most known HIV criminalization cases are not about HIV transmission

• Focused on alleged HIV non-disclosure (one person claims their partner did not tell that they had HIV)
  — Pits the word of two partners against one another
  — Almost impossible to truly prove

• Some cases involve acts that pose zero risk of HIV transmission or risk so low it is basically zero
  — Ex.: spitting, biting, scratching, oral sex, sex using proven prevention methods

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Where Do These Laws Come From?

- Laws were originally based on myths and misconceptions about HIV transmission.
- When they are applied, they reinforce:
  - *Fear, discrimination, and stigma* against people living with HIV.
  - *Dangerous misinformation* about how HIV is transmitted -- and can be prevented.

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Where Do These Laws Come From?

• World’s first HIV-related prosecutions and laws happened in the mid-late 1980s
  – At that time, HIV was truly a death sentence for millions
  – Laws were an attempt to control a raging epidemic that virtually no one understood

• Spread the myth that people with HIV were dangerous "monsters," and that risk of "intentional infection" was high

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Where Do These Laws Come From?

- Effective HIV drugs now extend and improve the lives of people living with HIV, reduce transmission risk to effectively zero.
- However, the trend of HIV criminalization has increased in recent years.
- This fact makes it even clearer that these laws are based on irrational fears, not current scientific knowledge about HIV.

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What Is the Impact of These Laws?

- No evidence of *any public health benefit*
- Increase stigma and discrimination
- Make it harder for people to be tested, trust health professionals, get treatment if needed
- Most laws only require that a person knew they were living with HIV in order to prosecute them
  - Punishes people for healthful behavior of getting tested
- Especially true of whoever in a relationship knew their HIV status first (most often the woman)
Do These Laws Help Women?

• Common argument for HIV criminalization laws:
  — “They protect women from partners who might be dishonest about their HIV status -- or violent towards them, increasing their HIV vulnerability”

• These laws do not promote honesty, heal violence, or address epidemic of gender-based violence and uneven power dynamics
  — More often used as tools of abuse, harassment, or coercion

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Do These Laws Help Women?

- Women who are prosecuted, or even accused, in HIV criminal cases may lose housing, child custody, access to services, and much more
  - E.g. US state of Louisiana, a person must register as a sex offender -- makes it difficult to rebuild her life

- Communities already subject to over-policing and incarceration bear highest burden of HIV charges
  - E.g. sex workers (or those perceived to be engaging in sex work), communities of color

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FAQs About HIV Criminalization

What about people who "intentionally infect" others with HIV? Shouldn't they be punished?

• Cases of specific intent to harm by transmitting HIV almost never happen
• Not disclosing one's HIV status does not = "intentionally infecting" someone with HIV
  — Sex or contact with a person with HIV does not automatically = transmission
  — Saying "I have HIV" is not always a safe option
• Opposing stigmatizing HIV laws helps counter stigma and make HIV disclosure safer

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What if someone living with HIV, including a partner, rapes or molests someone else?

- Laws against sexual violence ought to be enforced in these cases
  - Often poorly enforced, especially when rape happens within marriage
- Criminalizing people because of their HIV status does not protect women from sexual assault
  - *Rape is a crime; HIV is not a crime*
My partner didn't tell me he had HIV; now I have it. Isn’t sending him to jail my only option?

• Understandable to be angry if dishonesty was part of how you acquired HIV. **However:**
  — Having HIV does not have to be a death sentence; prosecuting someone could be
  — If you file a complaint and then change your mind, that may not stop a prosecution

• Need more non-punitive approaches to healing the perceived harm of HIV transmission

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FAQs About HIV Criminalization

How can we use "Undetectable Equals Untransmittable" to fight these outdated laws?

• Important to share current scientific information about HIV when fighting these laws
  – U=U helps show why removing barriers to HIV care and treatment – including stigmatizing laws – is key

• Be careful not to spread false idea that, without HIV drugs and an undetectable viral load, legal punishment of people with HIV is acceptable
  – HIV criminalization is harmful to public health
  – Never appropriate, no matter what the person's viral load
How can we use "Undetectable Equals Untransmittable" to fight these outdated laws?

• **Worth noting:** Women may have a harder time getting their viral loads to undetectable
  – More likely to be diagnosed later in life than men
  – Prioritize health of others over their own
  – Higher rates of violence, poverty, and the instability that comes with them
  • Can make it hard to be consistent with medication
What if someone brings charges against me for HIV nondisclosure?

- **Know your rights:** In the U.S., you are not required to speak with anyone without a lawyer present.
- **Get help:** You must be represented by people who understand HIV and HIV criminalization.
  - Contact your local HIV organization or legal clinic.
  - Contact U.S. or international anti-criminalization orgs.
- **Know that you are not alone:** Many people have faced these unfair charges; there is a growing global movement to fight them.

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Organizations That May Help

- Sero Project: [www.seroproject.com](http://www.seroproject.com)
- Center for HIV Law and Policy: [www.hivlawandpolicy.org](http://www.hivlawandpolicy.org)
- Lambda Legal Defense: [www.lambdalegal.org](http://www.lambdalegal.org)
- American Civil Liberties Union (to find your local ACLU chapter): [www.aclu.org](http://www.aclu.org)
- HIV Justice Worldwide: [www.hivjusticeworldwide.org](http://www.hivjusticeworldwide.org)
• To learn more, and for links to articles featuring more details, please read the full fact sheet:
  – HIV Criminalization and Women

• For more fact sheets and to connect to our community of women living with HIV, visit:
  – www.thewellproject.org
  – www.facebook.com/thewellproject
  – www.twitter.com/thewellproject