

**Report to the International Committee on Economic,  
Social and Cultural Rights (CESCR)**

**Right to health of people living with HIV in Tajikistan  
September 2022**

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This report is submitted by the HIV Legal Network.<sup>1</sup> The report is based on official statistics, information from open sources, and communications with civil society activists in Tajikistan.

	Title	Pages
	Summary and Introduction	1
1	Criminalization of HIV	2
2	Discriminatory laws against people living with HIV	4
	Suggested recommendation to the Government of Tajikistan	5
Annex I	Information about the applicant	6

### **Summary and Introduction**

In 2015, this Committee noted the growing incidence of HIV and AIDS, particularly among people who inject drugs, and recommended Tajikistan to step up its efforts to combat HIV/AIDS and tuberculosis.<sup>2</sup>

In 2018, the Committee on the Elimination of Discrimination against Women noted multiple violations of human rights to women living with HIV, including the right to health, and recommended Tajikistan to decriminalize the transmission of HIV and AIDS (article 125 of the Criminal Code).<sup>3</sup>

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<sup>1</sup> Information about these organizations is annexed to this report.

<sup>2</sup> Committee on Economic, Social and Cultural Rights. Concluding observations on the combined second and third periodic reports of Tajikistan. E/C.12/TJK/CO/2-3. 2015

<sup>3</sup> Committee on the Elimination of Discrimination against Women. Concluding observations on the sixth periodic report of Tajikistan. CEDAW/C/TJK/CO/6. 2018 Para 40(e)

In 2018, the UN Committee against Torture (CAT) stated that, “The Committee is concerned at reports of several instances of death in custody, including suicides and deaths that occurred due to a high incidence of tuberculosis and HIV/AIDS among prisoners, and due to the lack of prompt screening on admission and lack of adequate medical care offered to ill prisoners, and at the large number of cases in which the penitentiary authorities have not issued reports on the causes of deaths in custody.”<sup>4</sup>

As of 2020 the number of registered people living with HIV in Tajikistan was 11, 986 (64.1% male and 35.8% female), with unprotected sex between men and women as the main route of transmission; the annual number of newly registered cases of HIV remains stable at around 1,320 in 2017-2019.<sup>5</sup> Discrimination against people living with HIV remains one of the major obstacles in the access to HIV testing, treatment, and care. Criminalization of HIV is a profound driver of such discrimination, making every person living with HIV a potential criminal due to their chronic health condition.

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## **I. Criminalization of HIV**

Article 125 of the Criminal Code of Tajikistan criminalizes both the exposure of another person to HIV transmission by a person living with HIV and the transmission of HIV from a person living with HIV to another person. The enforcement of Article 125 is driven by a strong stigma against people living with HIV.

In 2018 law enforcement officers initiated 33 criminal cases against people living with HIV under Article 125 of the Criminal Code. In 2019 law enforcement officers initiated 39 such cases.<sup>6</sup> These numbers are comparable to the number of prosecutions against people living with HIV in Russia — a country with a population more than 15 times larger than that of Tajikistan.

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<sup>4</sup> Committee against Torture (CAT). Concluding observations on the third periodic report of Tajikistan. Geneva; Office of the High Commissioner for Human Rights (OHCHR), 18 June 2018

<sup>5</sup> Government Decree No 50 of 27 February 2021. On the National HIV Program for 2021-2025. Online:

<sup>6</sup> Larisa Alexandrova. Human Rights of People Living with HIV in Tajikistan. The Foreign Policy Center. September 30, 2021. Online: <https://fpc.org.uk/%D0%BF%D1%80%D0%B0%D0%B2%D0%B0-%D1%87%D0%B5%D0%BB%D0%BE%D0%B2%D0%B5%D0%BA%D0%B0-%D0%B2-%D0%BE%D1%82%D0%BD%D0%BE%D1%88%D0%B5%D0%BD%D0%B8%D0%B8-%D0%BB%D1%8E%D0%B4%D0%B5%D0%B9-%D0%B6%D0%B8%D0%B2%D1%83/>

Civil society organizations working with people living with HIV report the following common human rights violations related to prosecutions under Article 125 of the Criminal Code:

1. Police often prosecute people living with HIV who allegedly had sexual intercourse with a victim. In the majority of cases HIV is not transmitted.
2. Police, free legal aid lawyers, judges, prosecutors, and forensic experts are very poorly informed about HIV. For this reason, the majority of criminal cases are driven by stigma, myths, and misinformation, rather than by science and human rights.
3. Often police initiate criminal cases without any complaint being made by victims. Courts sentence people living with HIV for allegedly exposing another person to HIV even when the alleged victim does not want the prosecution to take place and/or continue.
4. Doctors disclose medical information to police after a simple written request without any substantiation or the approval by the court or any other independent body. In such cases doctors act as part of the prosecutorial mechanism, severely disrupting the trust-based relationship with their clients.
5. Police often prosecute a person living with HIV for exposing a seronegative partner or spouse. The fact that the seronegative partner/spouse objects to such prosecution does not matter. For police and the courts, the very fact that a person living with HIV had unprotected sex with a seronegative person is enough to prosecute them under article 125.

*Case 1: A woman living with HIV in the city of Khujand was prosecuted for allegedly exposing her partner to HIV in 2019. During the trial, her seronegative partner stated that he did not consider himself a victim and did not want the prosecution to continue. He also stated that he was the one who insisted on sex without a condom. Nevertheless, the court convicted the woman living with HIV for exposing a victim to HIV under Article 125, part 1 of the Criminal Code.<sup>7</sup>*

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<sup>7</sup> Ibid.

*Case 2: A woman living with HIV in Khatlon Province was convicted twice for the same offence. In 2018, the district court convicted her for HIV transmission (Article 125, part 2) and sentenced her to a year of imprisonment, despite the fact that no actual transmission was ever proved during the trial. After serving nine months in prison in 2019, the woman was released due to poor health. However, later in 2019, she was again prosecuted for the very same offence but under part 1 of Article 125 for the exposure to HIV.<sup>8</sup>*

The negative effect of the broad HIV criminalization is well documented and reported internationally.<sup>9</sup> The discriminatory criminal laws prevent people living with or at risk of contracting HIV from seeking testing and treatment. According to General Comments No 22 of the Committee on Economic, Social and Cultural Rights, HIV criminalization impedes the exercise of the right to sexual and reproductive health.<sup>10</sup> UNAIDS and civil society call to end HIV-specific criminalization and limit the application of general criminal laws to cases of intentional HIV transmission (e.g. where a person knows their HIV status, acts with the intention to transmit HIV, and does in fact transmit the virus); such application shall be informed by the best available scientific and medical evidence about HIV and modes of transmission, prevention and treatment. According to UNAIDS, the harm of HIV non-disclosure or potential or perceived exposure, without actual transmission, is not sufficient to warrant prosecution and should not be criminalized.<sup>11</sup>

## **II. Discriminatory laws against people living with HIV**

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<sup>8</sup> How to save 14 thousand of Tajik people from the threat of prison and a country from the epidemic. Asia-Plus. 14.04.2020. Онлайн: [https://www.asiaplustj.info/ru/news/tajikistan/society/20200414/kak-spasti-14-tisyach-tadzhikov-ot-ugrozi-tyurmi-a-stranu-ot-epidemii?fbclid=IwAR3V4C1QPfr5wLIR7S19f-Gzc8m5d-x50gVwOMI5-wanm2\\_MLWcNxG9ZdTIhttps://www.asiaplustj.info/ru/news/tajikistan/society/20200414/kak-spasti-14-tisyach-tadzhikov-ot-ugrozi-tyurmi-a-stranu-ot-epidemii?fbclid=IwAR3V4C1QPfr5wLIR7S19f-Gzc8m5d-x50gVwOMI5-wanm2\\_MLWcNxG9ZdTI](https://www.asiaplustj.info/ru/news/tajikistan/society/20200414/kak-spasti-14-tisyach-tadzhikov-ot-ugrozi-tyurmi-a-stranu-ot-epidemii?fbclid=IwAR3V4C1QPfr5wLIR7S19f-Gzc8m5d-x50gVwOMI5-wanm2_MLWcNxG9ZdTIhttps://www.asiaplustj.info/ru/news/tajikistan/society/20200414/kak-spasti-14-tisyach-tadzhikov-ot-ugrozi-tyurmi-a-stranu-ot-epidemii?fbclid=IwAR3V4C1QPfr5wLIR7S19f-Gzc8m5d-x50gVwOMI5-wanm2_MLWcNxG9ZdTI)

<sup>9</sup> Human rights and HIV/AIDS. Report of the United Nations High Commissioner for Human Rights. A/HRC/50/53. May 2022. Online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/337/67/PDF/G2233767.pdf?OpenElement>

<sup>10</sup> General Comment 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/GC/22), 2016.

<sup>11</sup> UNAIDS. HIV Criminalization. Human Rights Fact Sheet, Series 2021. Online: [https://www.unaids.org/sites/default/files/media\\_asset/01-hiv-human-rights-factsheet-criminalization\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/01-hiv-human-rights-factsheet-criminalization_en.pdf)

According to the Governmental Decree № 475 of 25 September 2018, people living with HIV cannot study in medical educational institutions,<sup>12</sup> adopt children, or be guardians for children.<sup>13</sup>

Article 14 of the Family Code calls for mandatory HIV testing for people wanting to marry. This law also mandates that all people living with HIV disclose their status to their sexual partners. Such obligations are unreasonable and excessive. Safe sex is a responsibility of all sexual partners, not just people living with HIV. Promotion of condom use, access to voluntary HIV testing, and ART medications for those living with HIV are public health measures that have proved to be more effective than discriminatory laws.

These discriminatory laws promote HIV-related stigma against people living with HIV, driving them further from health and social services.

### **Suggested recommendation to the Government of Tajikistan with respect to people living with HIV**

*Apply a human rights– and health–based approach to people living with HIV and in particular:*

- (a) End HIV-specific criminalization by repealing article 125 of the Criminal Code, and create an environment that enables people to seek testing, support, and treatment, and to safely disclose their HIV status as an alternative to a punitive approach to HIV prevention;*
- (b) Limit possible application of general criminal law to only cases of intentional HIV transmission (e.g. where a person knows their HIV status, acts with the intention to transmit HIV, and does in fact transmit the virus), informed by the best available scientific and medical evidence about HIV and modes of transmission, prevention, and treatment. The harm of HIV non-disclosure or potential or perceived exposure,*

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<sup>12</sup> Decree No 475 of 25 September 2018 On the List of health conditions that do not give a right to study in medical educational institutions. Online: [https://ntc.tj/images/Downloads/post\\_perechen\\_zabolevaniy.pdf](https://ntc.tj/images/Downloads/post_perechen_zabolevaniy.pdf)

<sup>13</sup> Decree No 406 of 1 October 2004 On the List of health conditions preventing a person from adopting a child or becoming a guardian.

*without actual transmission, is not sufficient to warrant prosecution and should not be criminalized; and*

*(c) Repeal laws that discriminate against people living with HIV in child adoption, marriage, labour relations, and the access to health services.*

## **Annex I. Information about the applicants**



The HIV Legal Network promotes the human rights of people living with HIV or AIDS and other populations disproportionately affected by HIV, punitive laws and policies, and criminalization, in Canada and internationally. We do this through research and analysis, litigation and other advocacy, public education, and community mobilization.

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