

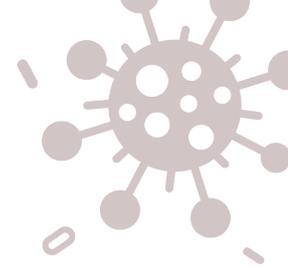


# NEGOTIATIONS ON THE CONCEPTUAL ZERO DRAFT OF AN INTERNATIONAL INSTRUMENT ON PANDEMIC PREVENTION, PREPAREDNESS AND RESPONSE

**STRIKING STORIES AND PANDEMIC TREATY  
RECOMMENDATIONS**



**HARM REDUCTION  
INTERNATIONAL**



**April 2023**

**NEGOTIATIONS ON THE CONCEPTUAL ZERO DRAFT OF AN  
INTERNATIONAL INSTRUMENT ON PANDEMIC  
PREVENTION, PREPAREDNESS AND RESPONSE**



*Striking Stories and Pandemic Treaty Recommendation*

## 1.0 INTRODUCTION

During the global pandemic (COVID-19), which claimed several lives and continues to threaten the global economy, security, and overall stability, people who use drugs (PWUD), Sex Workers, persons who identify as lesbian, gay, bisexual, transgender, and queer (LGBTQ) and other criminalised key populations who live in marginalised communities in West Africa faced additional risks and challenges than the general population.

They were especially vulnerable to COVID-19 because of underlying health issues related to drug use, sexual behaviour, stigma, social marginalisation, and increased economic and social vulnerabilities.

It was also exceedingly challenging for PWUDs, SWs, persons who identify as LGBTQ and other criminalised key populations, especially those with substance use dependence and who lived in marginalised communities, to observe the preventative measures implemented in response to the COVID-19 pandemic, such as social distancing, wearing of a mask, washing of hands and periodic lockdowns.

## 2.0 BACKGROUND

To improve pandemic prevention, preparedness, and response, the World Health Assembly agreed in December 2021 to launch a global process to draft and negotiate a convention, agreement, or other international instrument in accordance with the WHO Constitution. This international agreement was reached to prevent the spread of infectious diseases over the world.

Given their importance in pandemic prevention, preparedness, and response, Harm Reduction International (HRI) supported the West Africa Drug Policy Network (WADPN) to create an equal opportunity for civil society organisations as well as affected persons to participate meaningfully in the drafting and negotiating processes, which are governed by the Intergovernmental Negotiating Body (INB).

This is to ensure further that PWUDs, SWs, persons who identify as LGBTQ and other criminalised key populations are given special consideration because they have been disproportionately affected by COVID-19 and related measures and because they typically have few opportunities to interact with national authorities.

The recommendations and issues raised in this document were inspired by the experiences and stories told by persons, especially from criminalised communities like people who use drugs, sex workers, and LGBTQI, from all 16 ECOWAS West Africa states of how they were affected by the COVID-19 pandemic.

The key issues and recommendations in this statement lay emphasis on two areas:

- a. Inclusion (the representation and participation of affected communities), and
- b. Criminalisation and its impact on access to health.

**3.0 ABBREVIATION:**

- a. AIDS – Acquired Immunodeficiency Syndrome
- b. HIV – Human Immunodeficiency Virus
- c. INB – Intergovernmental Negotiating Body
- d. LGBTQI - Lesbian, Gay, Bisexual, Transgender, and Queer
- e. PWUD – People Who Use Drugs
- f. SW – Sex Workers
- g. WADPN – West Africa Drug Policy Network

## RECOMMENDATIONS AND STRIKING STORIES OF AFFECTED COMMUNITY MEMBERS

### 4.0 INCLUSION:

People who use drugs (PWUD), Sex Workers (SW), and the lesbian, gay, bisexual, transgender, and queer (LGBTQ) communities expressed grave concern over the lack of provisions or official channels for their representation and participation in the treaty drafting process for pandemic prevention, preparedness, and response.

They further stressed that being left out of a process that affects their health in such a fundamental way is a violation of their human rights. They wished to call the attention of the Intergovernmental Negotiating Body (INB) to the fact that the participation of marginalised groups such as PWUD, SW and LGBTQ communities is crucial to the success of any policy or programme aimed at improving their lives.

They request that the INB take steps towards formalising the representation and involvement of PWUD, SW, LGBTQI, and other criminalised key populations in West Africa in the current pandemic treaty writing and negotiations.

### 4.1 RECOMMENDATIONS:

- a. The INB should create a formal mechanism for the representation and participation of PWUD, SW and LGBTQI communities and other criminalised key populations in the ongoing pandemic treaty drafting and negotiating process.
- b. The INB should make sure that the PWUD, SW, LGBTQI, and other criminalised key populations are aware of and have easy access to this process.
- c. The Conceptual Zero Draft must unequivocally mention categories of all criminalised key populations, including PWUD, SW, LGBTQI etc.

## 5.0 CRIMINALISATION, HEALTH, AND HUMAN RIGHTS

### 5.1 Criminalisation

Criminalisation is the turning of actions or inaction into a criminal offence by making it illegal.<sup>1</sup>

In West Africa, the majority of small and minor nonviolent offences are criminalised. This is partly due to antiquated, colonial-era statutes that are purposely wide in reach, criminalising life-sustaining behaviours in public spaces. Evidence shows that this disproportionately impacts the poor, disadvantaged, and marginalised groups and criminalised populations, including PWUD, SW, and LGBTQ individuals, who already experience discrimination and social isolation.

An array of human rights violations, including those related to health, fair trials, freedom from arbitrary arrest, and ill-treatment, are exacerbated by criminalisation, which also perpetuates discrimination and social exclusion. Even though sentences for things like failing to pay penalties tend to be relatively short, they can have a devastating effect on an individual and their loved ones. Those who have been convicted of such crimes more than once are sometimes labelled "habitual offenders" and given harsher sentences.<sup>2</sup>

In addition to creating new difficulties and exacerbating existing ones, the prosecution of defaulters and the punitive and militarized approach in enforcing the COVID-19 virus prevention measures have had a disproportionate impact on PWUD, SW, LGBTQ communities, and other criminalised key populations.

PWUD, SW, LGBTQ groups, and other criminalised critical populations, for example, were less likely to access treatment and rehabilitation facilities, not least because they were more likely to be the objects of police surveillance and arbitrary arrest. For PWUD, SW, LGBTQ communities and other criminalised key populations, it wasn't just about preventing the COVID-19 virus, but it was also about managing HIV/AIDS, viral hepatitis etc.

#### 5.1.1 Recommendation

- a. For the pandemic preparedness and response treaty to be effective, it must take into consideration the special needs of PWUD, SW, LGBTQI communities and other criminalised key populations. Participants, therefore, call on the INB to incorporate provisions in the treaty that mandates parties to the treaty to remove criminal sanctions for petty and minor nonviolent offences, including the use

<sup>1</sup> <https://www.google.com/search?client=opera&q=criminalisation+meaning&sourceid=opera&ie=UTF-8&oe=UTF-8>

<sup>2</sup> <https://www.prisonstudies.org/news/africa-regional-campaign-decriminalise-petty-offences>

and possession of drugs for personal use, loitering, sex work, LGBTQI and vagrancy related offences from all national laws.

- b. PWUD, SW, LGBTQ communities and other criminalised critical populations should not face any type of jail sentence as a punishment for not complying with pandemic prevention, preparation, and response measures, and the treaty should stipulate this.
- c. Law enforcement agencies should be trained on international protocols like the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Africa Charter on Human and People's Rights, the African Charter on the Rights and Welfare of the Child and other soft law sources including Fair Trail Principles in Africa.

## 5.2 Harm reduction, treatment, and rehabilitation

Because of their centrality to public health protection initiatives, harm reduction, drug treatment, and rehabilitation programmes are recognised by PWUD, SW, LGBTQ communities, and other criminalised key populations as necessary components of an effective pandemic prevention, preparedness, and response pact. This includes but is not limited to, safe consumption rooms/overdose prevention centres, methadone distribution, naloxone distribution, and opioid agonist therapy.

Due to legal prohibitions and criminalisation, fewer of these initiatives exist in West African nations. In nations where these services do exist, however, the COVID-19 outbreak caused major disruption owing to a string of lockdowns and a stay-at-home order.

In countries like Sierra Leone, Nigeria, Benin, Ghana, Ivory Coast, Liberia, and Niger, people living with HIV or drug use dependence who were already scheduled for treatment, rehabilitation, or counselling programmes confirmed to WADPN that they faced significant disruption in accessing these programmes due to the lockdown and militarised punitive protective measures.

Some claimed they never tried to leave the house in search of these services because they were afraid of being arrested, and they also lacked the means to get in touch with the providers to reschedule appointments. The public transportation systems were also on pause, making it impossible for those who ventured out of their homes to seek these services to find a way to get there. Others reported being apprehended by authorities for loitering in their home jurisdictions.

Their mental health suffered, and their drug-using habits were altered because of this disruption, making them more vulnerable to relapse and fatal overdose.

Participants also noted that healthcare employees who provide harm reduction, drug treatment, and rehabilitation services were not regarded as essential health workers and are not afforded the same rights and safety precautions as their colleagues in the field. In addition, the laws of the vast majority of West African nations see harm reduction programmes and service providers as criminal enterprises, punishing violators with lengthy prison terms. When asked about providing their services during the COVID-19 epidemic, most service providers indicated they were not willing to risk being detained.

### **Striking story of relapse and overdose:**

**By: Oluwale Alade**

*I earned a diploma in electrical engineering and computer science in 2015 and 2016, respectively, from the University of Legos. In 2018, I was employed as an electrical engineer for a GSM company in Lagos. My struggle with heroin addiction started way back in 2015, towards the end of my first diploma. And in 2019, a year after my employment, this struggle became obvious to my employer due to my regular absenteeism, low performance etc. My employer became concerned and began to ask questions.*

They were disappointed when they realised I was doing drugs, but they promised to help me conquer my addiction if I was ready. As a result, in July 2019, I gladly agreed with the employer to spend a portion of my pay to support my treatment and rehabilitation at a respected facility in Lagos.

*Six months into my rehabilitation, in December 2019, I was well on my way to recovery, and my performance had begun to improve. The stay-at-home pandemic prevention strategy did not only stop this progress, but it also cost me my job. Even if my recovery services were to continue, I couldn't afford the cost.*

#### **5.2.1 Recommendations:**

- a. Participants recommended that to develop an effective pandemic preparedness, prevention and response treaty, the treaty must have provisions that mandate and make binding on parties, especially West African countries, to decriminalise drug/HIV treatment and rehabilitation programmes, as well as harm reduction programs such as Opioid Agonist Therapy (OAT), Needle and Syringe distribution Programmes (NSPs), administration of methadone and naloxone, and the introduction of safe consumption rooms/overdose

prevention sites as a major step to an effective pandemic prevention and response intervention.

- b. The INB should recommend that parties to the treaty, especially West African countries, should incorporate these drug treatments and rehabilitation and harm reduction programmes into their national HIV strategy as a pre-requisite to be a party to the treaty.
- c. The treaty must emphasise that in planning, preparing, and responding to pandemics, parties, especially West African countries, must prioritise the allocation of adequate funds for drug/HIV treatment, rehabilitation, and counselling programs/services for people with HIV or substance use dependence.

### 5.3 Arbitrary arrest and torture

Participants observed that the militarised enforcement of the COVID-19 pandemic protection measures such as social distancing, stay-at-home and wearing of masks, as well as imposing harsh criminal sanctions, including long-term custodial sentencing, on offenders, was common in their different countries. They further highlighted that the approach only worsened the well-being and welfare of PWUD, SW, LGBTQI, and other criminalised key populations, especially those who were homeless and unemployed.

In the case of homeless and unemployed PWUD or SW or other criminalised key populations, it was an issue of livelihood – principally food, clothing, medicine, and shelter. For them, it was a daily survival which made it challenging for them to comply with these measures. For instance, sex workers presented diverse challenges they faced during this period, including economic hardship, homelessness, stigma, discrimination, and ill health. As a result of the stay-at-home order and general restrictions on movement, sex workers noted that both they and their clients couldn't step out to meet at their regular hangouts for fear of being arrested. This challenge was further compounded in countries where sex sales and procurement were criminalised hence making it difficult for sex workers to make a living and take care of themselves and their families.

It was also noted that during the COVID-19 pandemic, most sex workers and PWUDs became homeless either due to their inability to renew their rent or were thrown out by their landlords for inviting their clients to their apartments without prior notice of the landlord and other tenants. According to them, this was a common occurrence in the sub-region, which forced most of them out in the street, exposing them to arbitrary arrest, knowing that police officers would never trust their story. However, given the fact that their reason for being out in the street had some legitimacy, they felt telling their story would attract some compassion and consideration from the police.

Unfortunately, it only worsened the situation. In most cases, they were not given the opportunity to express themselves, and when they insisted on doing so, the officers regarded them as deviants, which justified the use of force that often amounted to abuse and torture.

Most poor, vulnerable, and unemployed persons who use drugs, including sex workers and other criminalised key populations who lived in abandoned buildings and drug consumption joints in marginalised communities due to homelessness, also reported regular police raids during the lockdown. They were arrested either for not keeping social distance or wearing a mask or for public nuisance and riotous conduct. According to these communities' occupants, many often sustained injuries to flee these unannounced violent, militarised invasions.

The irony of militarised approach to pandemic prevention, preparedness, and response measures enforcement is that it does not only put their victims at risk, but it kind of absolves enforcing agents from non-compliance. For instance, in most cases, participants said they observed that it was almost impossible, under these circumstances, for enforcement agents themselves to observe the mandatory social distance among themselves or with offenders even though they tried to keep their masks on. And when offenders were arrested in their mass for not keeping social distance, they were all clustered again together and taken into some detention facility to be joined with other occupants without being tested for the virus or any other communicable disease.

As essential as the wearing of masks and regular sanitisation or washing of hands was to the prevention of the COVID-19 virus, it became not just an economic burden on the poor, vulnerable and unemployed but also a pressure in coping with the increasing demands of the new social and cultural practices.

While we acknowledge that public health protection is key, participants are concerned that the punitive and militarised enforcement of public health protection measures – in the case of the COVID-19 pandemic – was counterproductive because it exposed many, especially PWUD, SW, LGBTQI and other criminalised key population in many ways to the violation of their human rights.

***Striking story:***

*Ghana – Abigail Mensah (not real name): I found out I was three months pregnant in March 2020, the same month Ghana and the rest of the globe instituted the stay-at-home lockdown COVID-19 pandemic control mechanism. My drug-using roommates and a few of my sex workers urged me to be checked out at the hospital when I began experiencing various strange symptoms, such as nausea, vomiting, strong headaches, and a high temperature. The next day around noon, I was accompanied by another female drug user, and we both made sure to wear our masks. A vehicle full of police officers stopped 200 metres away, questioned us, and*

*ultimately detained us both. They wouldn't let us go for any reason, we stated. Their impression of us clearly influenced their choice to keep us in jail. Officers (male) searched and accused us of taking narcotics even though they found none with us; my female friend, who was with me at the time, wore dreadlocks, which did not help matters. We were forcibly taken to the local police station, where we remained locked up for three days without access to food, drink, or medicine.*

### 5.3.1 Recommendations:

- a. As part of the COVID-19 prevention regulation in some West African countries, it was mandatory for every member of their community to notify and disclose relevant personal details and purpose of visit (if known) of any persons they found to be strangers or non-members of their community to a designated authority in their community. The information was deemed to be used by authorities for contact tracing as and when it was necessary. Like other COVID-19 prevention measures and regulations, non-compliant (knowing and failing to report) with this mandate attracted harsh criminal sanctions. Such mandates disproportionately affected PWUD and SW as long as drug use and sex work remained criminalised. It was impossible, especially for sex workers, to provide relevant personal details of or announce the visitation and its purpose of their clients to a third party, not necessarily because they may not have those details but because the purpose of the visit itself may have been illegal.
- b. Contact tracing proved to be one of the credible interventions in breaking most communities' COVID-19 virus transmission chain during the pandemic. It, therefore, should be considered an essential component of the pandemic prevention, preparedness, and response intervention. To enable PWUD and SW to comply with this mandate and participant in community surveillance as an effective pandemic prevention, preparedness, and response strategy, it will be necessary for the treaty to strongly recommend the decriminalisation of drug use and sex work in the sub-region.
- c. Notwithstanding, failure to comply with such a mandate should not attract criminal sanctions, especially for already marginalised groups such as PWUD, SW, and LGBTQ communities.
- d. To reduce the economic burden on PWUD, SW, LGBTQI and other criminalised key populations who are often poor, vulnerable, unemployed, and live in marginalised communities, the World Health Organisation should ensure that such communities are fully

equipped with personal protective equipment at a minimal or no cost at all.

- e. The treaty should outline an incremental accountability mechanism at the national, regional, and global levels where victims of human rights violations, because of pandemic prevention, preparedness, and response measures enforcement, can seek redress before, during or after the pandemic.
- f. Most detention facilities in the sub-region are reported to be overcrowded and pose a greater risk of outbreaks, especially of communicable diseases. It is, therefore, recommended that screening kits should be readily available to enable administrators of detention facilities to test their occupants for any form of the virus before admitting them.

#### 5.4 Availability and accessibility of social amenities and services

People who use drugs and other criminalised key populations from marginalised communities are medically at high risk and frequently have poorer physical and mental health than the general population. They are often exposed to substandard environmental conditions and experience problems accessing health care and basic services. They may live close to environmental or contamination hotspots and/or dwellings made from nondurable materials.<sup>3</sup>

A community's health and prosperity are closely tied to its access to necessities, including food, housing, clothing, clean water, personal hygiene, and clean public spaces. To guarantee that communities follow pandemic preparedness, prevention, and response strategies, their accessibility and availability are key.

Since many drug users and other members of criminalised key populations in marginalised communities live in poverty and lack access to running water and sanitation facilities, they have difficulty complying with public health protection measures such as staying home and washing hands frequently. For instance, they often find themselves in “ghettos”, which remain congested with the homeless and recreational drug users despite restrictions on movement and public gatherings.

In addition, because drug possession and usage are illegal in nearly all countries in the sub-region, recreational drug use occurs in secret yet often crowded settings where the exchange of drugs and drug-use equipment among PWUD is prevalent. This looks unlikely to change no matter how severe the pandemic gets.

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<sup>3</sup> [https://www.euro.who.int/\\_data/assets/pdf\\_file/0005/458780/homelessness-COVID-19-factsheet-eng.pdf](https://www.euro.who.int/_data/assets/pdf_file/0005/458780/homelessness-COVID-19-factsheet-eng.pdf)

## Striking story

By: Mohamed Koroma

*In 2019, my parents and relatives found out I was doing drugs, and they disowned me and threw me out of the house in the middle of the night. My only option was to stay with a friend who, two months before I moved in, was also evicted from her home for the same reason.*

*Together, we relocated to an unfinished building that housed a community of drug users and sex workers but lacked basic amenities like running water, electricity, and sanitary facilities. As if that wasn't bad enough, the police regularly conducted surveillance and raids of the area, detaining at least three of us on each occasion. We had to risk jail by going outside during lockdown to get these social necessities since we didn't have them.*

### 5.4.1 Recommendations:

- a. The social needs of underserved populations and their communities, especially drug users, sex workers, and other criminalised key populations, must be considered and guaranteed by governments in the sub-region in pandemic prevention, preparedness, and response.

## 5.5 Stigma and Discrimination

Stigma is defined as the experience of being “deeply discredited” or marked because of one’s “undesired differentness.” To be stigmatised is to be held in contempt, shunned, or rendered socially invisible because of a socially disapproved status.<sup>4</sup> They can further be set of negative attitudes, stereotypes and even the use of language, which impact their health and well-being in numerous ways.<sup>5</sup> Criminalised communities are seen as people who are more worthy of blame and punishment.

Stigma and discrimination can hinder various opportunities and rights, including the right to health, for PWUD, SW, LGBTQI, and other criminalised key populations from marginalised communities. These individuals face stigma and discrimination from all segments of society, including family, friends, neighbours, and healthcare providers, right when they need their support the most.

Many participants said they were given derogatory names because of the widespread belief that their drug use, sex work, and related activities result from their own free will. Participants acknowledged that the criminalisation of people who use drugs, sex workers, LGBTQI activities, and other key populations from marginalised communities is a major factor contributing to the widespread discrimination and stigma that these

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<sup>4</sup> [https://drugpolicy.org/sites/default/files/DPA\\_Fact\\_Sheet\\_Stigma\\_and\\_People\\_Who\\_Use\\_Drugs.pdf](https://drugpolicy.org/sites/default/files/DPA_Fact_Sheet_Stigma_and_People_Who_Use_Drugs.pdf)

<sup>5</sup> <https://nida.nih.gov/research-topics/stigma-discrimination#language>

populations face. Because of this, people look down on us and consider us to be dangerous social misfits and criminals, they complained.

Aside from the elevated danger presented by homelessness and drug use, the stigmatisation of particularly problematic drug users during the COVID-19 epidemic was quite alarming. Participants acknowledged that their drug use and sexual behaviours made them more susceptible to getting and spreading not just the COVID-19 virus but also other blood-borne illnesses, including HIV, Hepatitis, Tuberculosis, etc. It was also difficult for them to ask for help from society when they were in need because society would not give aid without assigning guilt.

### **5.6 Recommendations:**

- a. Because criminalisation generates a bad public view, it can be difficult to reduce stigma, especially towards criminalised populations. As a result, it was suggested that the Treaty require its parties, particularly in West Africa, to provide specialised and intensive training for health care providers, family members, and communities so that they may treat drug dependence and other marginalised populations with the respect and dignity they deserve.
- b. The treaty should push for the decriminalisation of the actions of marginalised and criminalised communities and the recognition of their place in society. This is especially important in West African countries.

## **6.0 CONCLUSION**

Civil Society Organizations, people who use drugs and other criminalised key populations, including sex workers and LGBTQI, are uniquely qualified to inform pandemic prevention, preparedness, response, and disaster risk mitigation to respond appropriately to the specific needs of the criminalised population. The lessons learned and shared by criminalised populations during the COVID-19 pandemic have important implications to improve future pandemic prevention, preparedness and response for people who use drugs and other criminalised key populations.

