
2014 UBRAF thematic report

Ending punitive laws

CONTENTS

CONTENTS	2
ACHIEVEMENTS.....	3
Supporting the reform of punitive laws, policies and practices	3
Strengthening the capacity of judiciary, legislature and law enforcement agencies on HIV, human rights and the law.....	4
Access to justice and legal literacy initiatives.....	4
Guidance documents, tools and knowledge products	5
MAJOR CHALLENGES AND HOW THESE WERE ADDRESSED	5
KEY FUTURE INTERVENTIONS.....	6

ACHIEVEMENTS

Supporting the reform of punitive laws, policies and practices

In the Asia and Pacific region, the Regional Inter-Agency Team on Young Key Populations organized national dialogues in 19 countries to review legal and policy barriers that limit access to services for people living with HIV and key populations. In Pakistan, this led to the passing of the Sindh Provincial AIDS Law, the first AIDS law in South Asia, and in Bangladesh, the Government issued a policy recognizing transgender persons. The United Nations Population Fund (UNFPA), United Nations Educational, Scientific and Cultural Organization (UNESCO), the Joint Programme United Nations Programme on HIV/AIDS (UNAIDS) Secretariat and partners conducted a review of legal and policy barriers that are impeding access to information and services for HIV and for sexual and reproductive health in the Asia and Pacific region. UNFPA and the International Labour Organization (ILO) provided support for the development of regulations governing working conditions and occupational safety and health in entertainment enterprises in Cambodia. ILO also supported amendments to the Mongolian Labour Code that provide protection against mandatory HIV testing for employment purposes. In the Philippines, the United Nations Children's Fund (UNICEF), UNFPA, the UNAIDS Secretariat and partners organized policy dialogues focused on legal reform for the health and rights of adolescents. UNICEF also supported efforts that led to the government of Thailand declaring that children under 18 can have access to HIV testing without parental consent.

In Latin America, UNDP supported five countries as they revised HIV laws (Costa Rica, El Salvador, Guatemala, Nicaragua and Uruguay), with laws in Costa Rica and Uruguay being presented to their respective parliaments. UNDP also supported the review of gender identity laws in El Salvador, Guatemala and Nicaragua. In the Dominican Republic, the UNAIDS Secretariat (in coordination with the United Women's Movement (MODEMU), Consejo Nacional para el VIH y el SIDA (CONAVIHSIDA) and partners) supported the development of a Bill aimed at recognizing sex work as work and providing comprehensive care for sex workers.

In sub-Saharan Africa, UNAIDS supported authorities in Nigeria to pass an anti-stigma bill, and ILO provided technical advisory support for the inclusion of HIV-related protections for workers in Kenya's Health Bill and Occupational Safety and Health Act. UNDP support resulted in the review and reform of HIV-related laws in Lesotho, Namibia, Swaziland and the United Republic of Tanzania, and in the Economic Community of West African States (ECOWAS) Secretariat drafting a minimum HIV law package for adoption by Member States. UNDP supported successful efforts to stop the adoption of new anti-homosexuality legislation in the Democratic Republic of the Congo, and in Chad, interventions by the UNAIDS Secretariat resulted in the shelving of a draft penal code provision to criminalize same-sex sexual relations. In Côte d'Ivoire and the Comoros, the UNAIDS Secretariat supported the successful adoption of HIV legislation with protective provisions for people living with HIV, while in Mozambique; UNDP supported the adoption of a new HIV law that does not criminalize HIV transmission.

In the Arab States, advocacy by UNDP led the Government of Djibouti to commit to taking steps to ratify the Arab Convention for HIV Prevention and Protection of the Rights of People living with HIV (Arab Convention). In Somalia, UNDP and the UNAIDS Secretariat provided comments on the draft Sexual Offenses Bill, which resulted in improved language being adopted.

In eastern Europe and central Asia, UNDP and the UNAIDS Secretariat supported the work of the Eurasian Coalition on Male Health in engaging governments to stop the development and adoption of homophobic laws. A dormant homophobic bill on so-called gay propaganda was removed from the Ukrainian parliament due to interventions by the UN Joint Team. Abusive police actions targeting sex workers in Kyrgyzstan and Tajikistan also have been discontinued due to advocacy by UNDP, UNFPA and the UNAIDS Secretariat.

Strengthening the capacity of judiciary, legislature and law enforcement agencies on HIV, human rights and the law

UNFPA convened a consultation involving police and key populations in China and Ghana to promote rights-based policing and to reduce arbitrary arrest, discrimination and barriers that impede sex workers from accessing HIV services.

UNDP supported the establishment of the Africa Regional Judges' Forum on HIV, Human Rights and the Law, which comprises judges from eight countries in eastern and southern Africa. The Forum will now serve as an expert group for judicial sensitization on related issues. ILO provided training to approximately 300 judges in Brazil and Portugal on the labour rights of people living with HIV and key populations. This led to a judgment in a Brazilian labour court in favour of a worker dismissed due to HIV status.

UNDP, UNFPA, the United Nations Office on Drugs and Crime (UNODC), the World Health Organization (WHO), and the UNAIDS Secretariat cosponsored a global dialogue on police and HIV, which was convened in Amsterdam by the Law Enforcement and HIV Network (LEAHN) and the International Development Law Organization (IDLO). At the International AIDS Conference 2014 in Melbourne, UNDP, the UNAIDS Secretariat and the Inter-Parliamentary Union convened a global meeting for 70 parliamentarians to share best parliamentary practices in responding to HIV.

Access to justice and legal literacy initiatives

In collaboration with UNDP and UNAIDS, ILO supported the development of a manual on the rights of lesbian, gay, bisexual and transgender (LGBT) workers, which was published in 2014.

UNDP and UNFPA held a technical experts global consultation to advance the recommendations on sex work of the Global Commission on HIV and the Law. The results of this consultation have set the agenda for the UNAIDS Sex Work Steering Committee, including prioritizing the removal of punitive laws and the decriminalization of sex work.

UNDP supported a regional HIV legal network providing people with HIV and key populations in eastern Europe and central Asia with access to quality free legal aid. From January–September 2014, more than 1200 requests for HIV-related legal assistance were processed.

The UNAIDS Secretariat filed amicus curiae briefs in a case before the High Court of Malawi relating to the constitutionality of laws criminalizing homosexuality and in a matter before the European Court of Human Rights challenging the ban on opiate substitution therapy (OST) in Russia.

Guidance documents, tools and knowledge products

To advance the findings and recommendations of the Global Commission on HIV and the Law, UNDP developed guidance documents on how to undertake legal environment assessments and national dialogues. UNDP developed and released a guidance document for United Nations staff entitled Preventing and responding to HIV-related human rights crises in partnership with the Office of the United Nations High Commissioner for Refugees (UNHCR), UNICEF, UNFPA, UNODC, ILO, the UNAIDS Secretariat and the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund). The UNAIDS Secretariat also published the Gap report, which focused on key populations left behind in the HIV response.

MAJOR CHALLENGES AND HOW THESE WERE ADDRESSED

Stigma and discrimination against key populations remain the greatest barriers to effective HIV responses worldwide. Despite commitments made by United Nations Member States in the 2011 United Nations Political Declaration on HIV and AIDS, an increasing number of developed and developing countries are debating and introducing punitive laws, policies and practices. In many countries, punitive laws remain in place against sex workers, men who have sex with men, and people who inject drugs. A lack of domestic resources, limited quantitative data and an insufficient focus on key population programming perpetuates this discrimination and limits the effectiveness of responses. Laws and policies must be continuously monitored, because positive changes can be reversed from societal pressure or when new political leadership gains power.

By succinctly laying out the evidence and advancing the rationale for legal reform, the Report of the Global Commission brings further impetus and focus to these efforts, and it facilitates sharing best practices between countries. It is therefore important to continue to advance the Commission's follow-up activities in collaboration with stakeholders (including interested governments, United Nations partners and civil society) for a coordinated, efficient and effective HIV response that focuses on enabling legal environments. The limited availability of quantitative data on the impact that punitive legal environments, stigma and discrimination have on investments and access to HIV services hinders efforts to insert HIV-sensitive programming into National Strategic Plans, national investment

cases, Global Fund concept notes, and monitoring and evaluation frameworks.

In many countries, despite punitive laws and policies acting as substantial barriers, partnerships with public and primary health-care services were initiated, strengthened and maintained for sex workers, men who have sex with men, and other key populations. Despite ILO constituents expressing keen interest in receiving judicial training, resource constraints have limited the amount and frequency of training events. This hurdle was overcome in Brazil with support from the Federal Superior Labour Court, which covered the cost of transportation and lodging for participating judges.

Changing laws on the age of consent requires working with legal, health and social protection experts. Parents also must participate in the consultative process and receive education about child rights.

Responding to the adverse impact of punitive laws and minimizing them has taken various forms, ranging from silent diplomacy to visibly supporting affected communities in their demands for justice and accountability. Examples of this include actions taken following the December 2013 adoption of draconian anti-homosexuality laws in Nigeria and Uganda, including:

- undertaking high-level engagement by the UNAIDS Deputy Executive Director in Nigeria;
- engaging the offices of the Presidents of both countries, as well as their respective the national AIDS control agencies and line ministries;
- providing support to civil society organizations and ongoing work on mitigation strategies, including community crisis response mechanisms, legal services and support for those arrested;
- monitoring the impact of the laws/crises on national AIDS responses; and
- supporting a Constitutional Petition filed by civil society organizations that challenged the legality of the anti-homosexuality legislation in Uganda.

KEY FUTURE INTERVENTIONS

- In June 2014, the UNAIDS Inter-Agency Task Team (IATT) on private sector mobilization called for the establishment of an ILO-led working group to develop indicators to measure HIV-related stigma and discrimination in workplaces. The indicators will be made available to private sector actors in order to:
 - establish a baseline for assessing the nature and extent of stigma and discrimination in workplaces;
 - inform the design and delivery of targeted interventions; and
 - measure progress achieved in addressing HIV-related stigma and discrimination.
- UNDP and UNFPA plan to advance the follow-up actions resulting from the Global

Commission on HIV and the Law meeting on sex work. Country consultations in key countries will examine further how to implement normative guidance for key populations, including building more supportive environments and removing policy barriers to sexual and reproductive health and HIV service provision and access.

- UNDP will participate actively in the Task Force on Transnational Organized Crime and Drug Trafficking to highlight the development dimensions of drug policy in the build-up to the 2016 United Nations General Assembly Special Session. It also will convene a meeting to present the findings and recommendations of the Global Commission on HIV and the Law as they relate to drug control policy
- ILO will continue to provide technical advisory support for the development of employment-related legislation and policy that safeguards the rights of workers living with or affected by HIV, and it will advocate for the removal of legislative provisions that impair rights.
- The UNAIDS Secretariat plans to launch the Zero Discrimination targets for no new punitive laws—and the repeal of punitive laws where they exist—with the endorsement of high-level leaders and concrete country action planning.
- UNDP will support efforts to ratify the Arab Convention, which provides a good regional framework for harmonizing national laws.
- The UNAIDS Secretariat will support a zero HIV criminalization initiative, building on global momentum to end overly-broad HIV criminalization and develop a global criminalization index.
- UNICEF and its partners will continue to map out different legal age of consent laws to ensure they are aligned with international human rights law, and that efforts are being made to progressively realize the agency of the child.

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