
UBRAF thematic report: ending punitive laws

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Results

1. HIV and the law

The Joint Programme and its partners generated and consolidated objective evidence on the impact of punitive laws, policies and practices on HIV and health outcomes. These initiatives included: the Global Commission on HIV and the Law report (www.hivlawcommission.org), which was informed by 18 working papers and selected bibliographies; research on legal protections for HIV human rights in Asia Pacific (UNDP); and a review of laws and policies affecting young people's access to sexual and reproductive health and HIV services (UNESCO, UNFPA, UNAIDS, UNDP and Youth Lead, an organization whose mission is to empower young key populations at high risk of HIV exposure). The Joint Programme also launched a guidance note analysing the scientific, medical and legal evidence, and considerations to end overly broad criminalization of HIV non-disclosure, exposure and transmission. This guidance note was used at country level to support advocacy that resulted in the rejection of legislative proposals on overly broad criminalization of HIV transmission in Nigeria and Gabon.

In 84 countries, including 31 UNAIDS High Impact Countries, the Joint Programme worked with governments, civil society and donors to advance the recommendations of the UNDP-led Global Commission on HIV and the Law, including those on the criminalization of HIV transmission and key populations, gender inequality and violence, the rights of young people and key populations to access health services, and lesbian, gay, bisexual and transgender (LGBT) rights and treatment access.

Some of the other positive changes that occurred with Joint Programme support included:

- With UNDP, the UNAIDS Secretariat and other partners, the Arab convention on HIV to protect the rights of people living with HIV (PLHIV) was endorsed, and the East African Community HIV and AIDS Prevention and Management Bill was passed. Kenya and Uganda have already assented to the bill.
- UNICEF helped Zambia harmonize its national legal framework with the UN Committee on the Rights of the Child (CRC) and pass an Anti-Gender Based Violence Act and a Disability Act.
- In Argentina, a new National Gender Identity Law was passed with Joint Team support.
- UNAIDS supported the Nigerian House of Representative to adopt a protective Anti-Stigma and Discrimination Bill. The bill is now being considered by the Nigerian Senate.

2. Stigma and discrimination

Stigma and discrimination against people living with HIV and key populations remains a major challenge. Developed to consolidate evidence on how stigma and discrimination impact on the HIV response, the PLHIV Stigma Index (<http://www.stigmaindex.org/>), supported by the International Planned Parenthood Federation (IPPF), UNAIDS, the Global Network of People Living with HIV (GNP+) and the International Community of Women Living with HIV (ICW), has proved a successful measuring tool. Since its implementation, 50 countries have completed the study, more than 1300 people living with HIV have been trained as interviewers and 45 000 have been interviewed. Stigma Index findings have been used to question HIV laws, regulations and policies.

3. Enabling legal environments

UNDP, the UNAIDS Secretariat and WHO worked with the Global Fund secretariat to develop an implementation plan for the human rights strategic objective in the Global Fund's Strategic Plan. A chapter on enabling legal environments in an existing UNDP online capacity development toolkit for Global Fund principal recipients was launched in 2013. This tool provides information and key resources about enabling legal and policy environments which can be used to support inclusion of programming activities and interventions in new funding applications to the Global Fund (www.undp-globalfund-capacitydevelopment.org/home.aspx).

The ILO, the UNAIDS Secretariat and UNDP have promoted dialogue and consultation to strengthen the capacity of the judiciary on HIV and the law. These initiatives were implemented at the regional and country levels and were based on the ILO's *HIV and AIDS and labour rights: a handbook for judges and legal professionals*, the UNAIDS Secretariat's *Judging the epidemic: a judicial handbook on HIV, human rights and the law*, and UNDP's *Compendia of judgments: background material, judicial dialogue on HIV, human rights and the law in Asia and the Pacific and Eastern and Southern Africa*, all launched in 2013.

Judicial dialogues on HIV, human rights and the law were convened by UNDP, UNAIDS Secretariat and the International Commission of Jurists (ICJ) in Bangkok, and by the Kenya Judicial Training Institute and the Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN), in partnership with UNDP and the UNAIDS Secretariat, in Nairobi. The latter efforts by the Joint Programme to sensitize judges contributed to a successful litigation in the Industrial Court of Kenya sitting at Nairobi in 2013; the ruling in Veronica Muthio Kioik versus Catholic University of Eastern Africa asserted labour rights, including the right to work and gender equality, and non-discrimination of people living with HIV.

National dialogues on HIV and the law in 49 countries provided an opportunity for frank, constructive exchanges involving governments, civil society and other stakeholders on sensitive issues. These dialogues have mobilized key constituencies to assess and discuss the role of the law in stigma and discrimination. For example, in El Salvador, steps to review or reform laws following a national dialogue in June 2012 resulted in promising efforts to revisit the national AIDS law and draft a gender identity law similar to Argentina's Gender Identity and Health Comprehensive Care for Transgender People Act (Gender Identity Law) 2012. In the Pacific, the April 2013 multisectoral consultations on legal and policy barriers to HIV services led to country-specific action plans to push rights-based HIV legislation through parliament. In Ghana, following a national dialogue in April 2013, the Government decided to review the draft HIV Bill containing a provision to criminalize HIV.

Constraints, challenges and lessons learned

- Effectively addressing stigma and discrimination at a grass-roots level requires government support, especially for people living with HIV and key populations. Gathering evidence on discrimination experienced by key populations is especially challenging in countries where political, legal, social or cultural barriers impede information exchanges on drug use, homosexuality, sex workers or prison conditions. The financial and human resource capacity of civil society and community-led organizations for monitoring the social and legal environment must be strengthened.
- Applying protective legislation, especially for key populations and vulnerable populations such as

migrants who are discriminated against in health care, employment and education, remains problematic. The conflation of adult consensual sex work with sexual exploitation and human trafficking erodes sex workers' access to health services and to justice.

- Where national legal and policy reforms are difficult to achieve, working directly at a local level to educate law enforcement personnel, such as judges, police and prison wardens, as well as promoting rights literacy and mobilization among key populations, are seen as effective alternative approaches to reduce stigma and discrimination among key populations.
- An increasing number of developed and developing countries are debating and introducing punitive laws, policies and practices. It remains crucial to continuously monitor laws and policies since positive changes can be reversed due to changes in political leadership and societal pressures.
- De jure and de facto discrimination against women, including women living with or vulnerable to HIV, remains a serious challenge. Focusing on formal legal systems, customary law and the interface between these systems is important to advance women's rights and address the links to violence against women and broader systemic discrimination against women and girls, including property and inheritance laws and practices, early marriage and other restrictive interpretations of religious and customary laws.
- Expanding birth registrations remains a challenge, particularly for children born in indigenous and rural communities. A lack of disaggregated data across regions, communities and social backgrounds is masking disparities within countries. Registering stateless children who may be unable to prove their parentage or place of birth is another key challenge.
- The report of the Global Commission on HIV and the Law brings further focus and impetus to legal reform and can help countries share best practices. It is important to maintain momentum and advance the commission's follow-up activities in collaboration with stakeholders, including governments, UN partners and civil society, for a coordinated, efficient, and effective HIV response that focuses on enabling legal environments, including law, law enforcement and access to justice. Sufficient resources are needed to continue to support this process.

Key future interventions

- The Joint Programme, in partnership with stakeholders, will continue to support national dialogues, legal environment assessments for HIV, and judicial and parliamentary sensitization, and will also continue to help build the capacity of communities and civil society, including their access to justice programming, to catalyse HIV-related law reform and achieve country-level action to improve legal environments. UNODC will review drug control laws and laws that have an impact on HIV and prisons.
- The Stigma Index developed by the Global Network of People Living with HIV (GNP+) will continue to be used as a tool to assess stigma in different settings.
- In line with its new strategic plan, UNDP will work to strengthen local governance and national capacities to secure more equitable access to services for people affected by HIV, and reinforce the rule of law and legal systems reform to deal with discrimination against people affected by HIV, including in urban settings.
- UNDP and UNFPA will lead work to further implement the Global Commission on HIV and the

Law's recommendations on sex work.

- UNDP and UNICEF will lead further work on young people and law in the context of HIV.

Supporting documentation

- *Global Commission on HIV and the Law: risks, rights and health, 2012*
<http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>
- *Guidance note: ending overly broad criminalization of HIV non-disclosure, exposure and transmission: critical scientific, medical and legal considerations, 2013*
http://www.unaids.org/en/media/unaids/contentassets/documents/document/2013/05/20130530_Guidance_Ending_Criminalisation.pdf
- *Judging the epidemic: a judicial handbook on HIV, human rights and the law, 2013*
http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2013/201305_Judging-epidemic_en.pdf
- *HIV and AIDS and labour rights: a handbook for judges and legal professionals, 2013*
http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/publication/wcms_228498.pdf
- *Compendia of judgments: background material, judicial dialogue on HIV, human rights and the law in Asia and the Pacific and Eastern and Southern Africa, June and October 2013*
<http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/compendium-of-judgements--background-material.html>
<http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/compendium-of-judgment-for-judicial-dialogue-on-hiv--human-right.html>

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