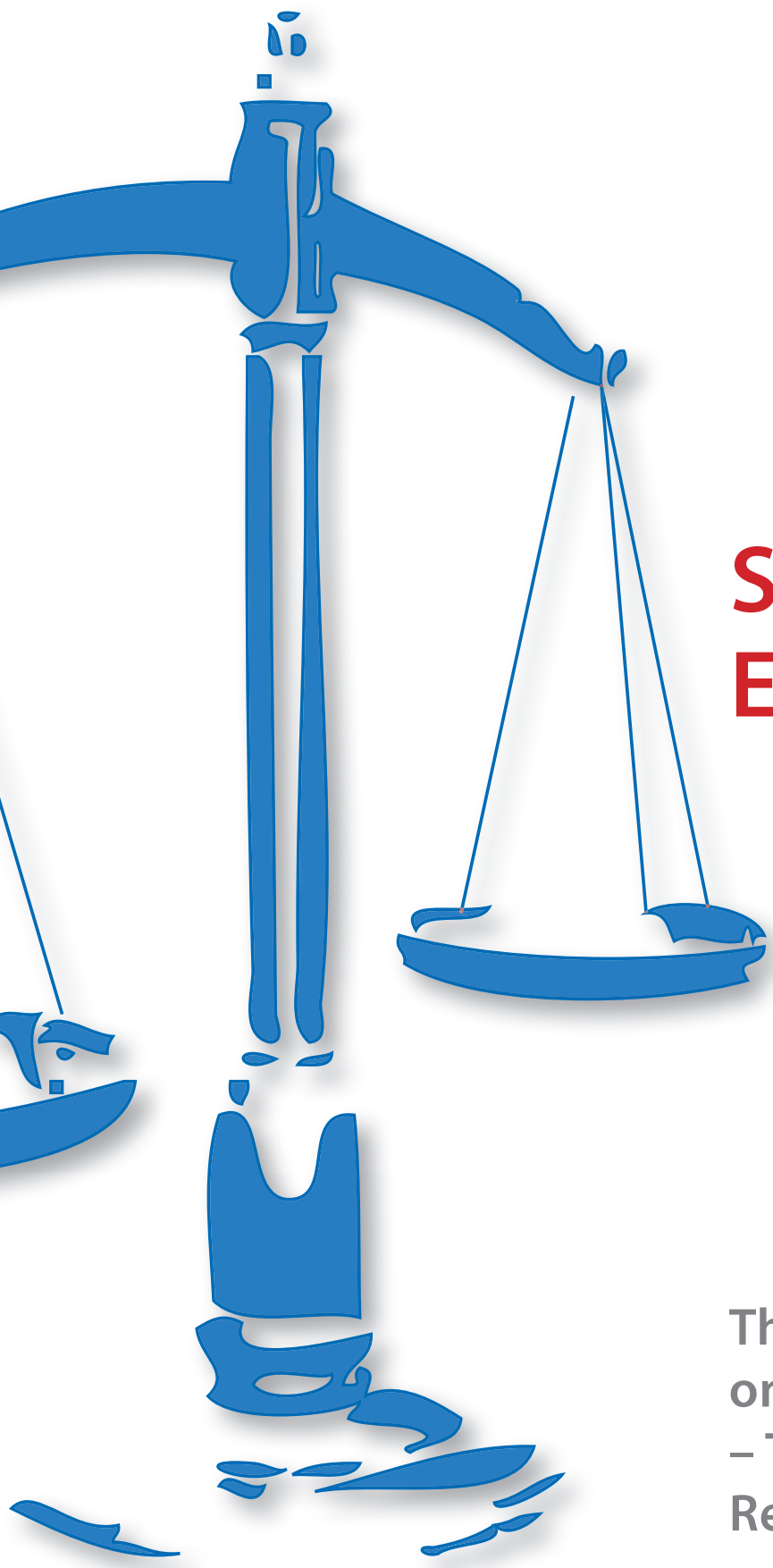




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# SUMMARY OF E-DISCUSSION

The Global Commission  
on HIV and the Law  
– Taking the Commission’s  
Recommendations Forward

United Nations Development Programme

HIV, HEALTH AND DEVELOPMENT

Disclaimer

The views expressed in this publication are those of the authors and do not necessarily represent those of the United Nations Development Programme (UNDP).

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This e-discussion was organized to mark the one-year anniversary of the launch of the final report of the Global Commission on HIV and the Law. Special thanks to Christos Tsentas for writing this summary, to Anna Boelens for organizing the e-discussion, and to Tenu Avafia who provided insightful feedback on the e-discussion and on an initial draft of this summary.

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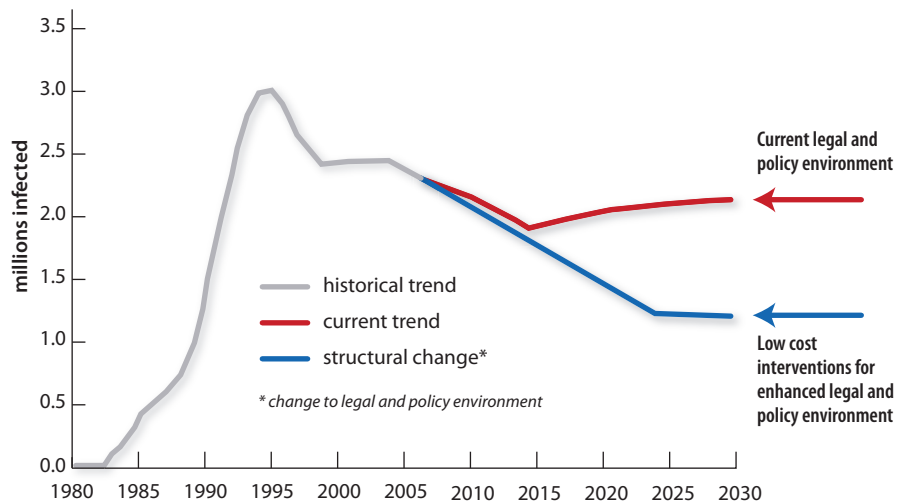
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# 1. Introduction

The **Global Commission on HIV and the Law** (hereafter: the Commission), convened by the **United Nations Development Programme** (UNDP) on behalf of the Joint United Nations Programme on HIV/AIDS (UNAIDS) and chaired by the former president of Brazil, Mr. Fernando Henrique Cardoso, examined the relationship between HIV, human rights and legal environments. The Commission's key findings are:

- Punitive and discriminatory laws, policies, and practices exacerbate stigma, thereby fuelling the spread of HIV, while undermining the effectiveness of HIV investments and;
- Effective laws grounded in human rights and based on evidence do exist and should be replicated in other to strengthen the AIDS response.

## Why the Law Matters: Annual number of new HIV infections among adults aged 15–49



Source: Results for Development Institute, *Costs & Choices: Financing the Long-Term Fight Against AIDS*, An aids2031 Project, 2010.

The Commission's final report, *HIV and the Law: Risks, Rights & Health*, contains several actionable recommendations relating to discrimination; the criminalization of HIV transmission, exposure and non-disclosure; key populations at greater risk of HIV, including people who use drugs, sex workers, men who have sex with men, transgender persons, prisoners, and migrants; women and children and youth; and intellectual property regimes and HIV and related medicines.

To further advance the implementation of the Commission's recommendations, UNDP Administrator Helen Clark and UNAIDS Executive Director Michel Sidibé sent a **joint letter** to UN Resident Coordinators in June 2013, requesting their leadership and support to advance efforts on HIV and the law.

The e-discussion "**The Global Commission on HIV and the Law – Taking the Commission's Recommendations Forward**", organized by UNDP's HIV, Health and Development Group in collaboration with the Democratic Governance Group and the Gender Team, aimed to analyze experiences in implementing the Commission's recommendations one year after the launch of the Commission's final report, while identifying challenges, good practices and lessons in addressing human rights and legal frameworks in the context of HIV.

The e-discussion took place from 27 June to 31 July 2013 on a **public discussion space** and was also circulated by email on 10 UN(DP) and civil society knowledge networks.<sup>1</sup>

**Suki Beavers**, Policy Advisor and Cluster Leader for Democratic Governance and Crisis Prevention and Recovery and Gender-Based Violence in the UNDP Gender Team, and **Tracy Robinson**, Senior Lecturer in the Faculty of Law, University of the West Indies, Jamaica, moderated the first phase of the discussion. **Michaela Clayton**, Director of the AIDS and Rights Alliance for Southern Africa (ARASA) and **Vivek Divan**, Policy Specialist for Key Populations and Access to Justice, in UNDP's HIV, Health and Development Group, moderated the second phase of the discussion. In total 80 contributions were received. 64% of contributions were received from UNDP staff, 28% from representatives of Civil Society Organizations/networks and academics. Other UN programmes and agencies, including UNAIDS, UNICEF and UNFPA, also participated in the discussion, as well as one Government Minister.<sup>2</sup>

Most contributions came from Asia Pacific and Africa (29% and 26% respectively), followed by contributions from Eastern Europe and the Commonwealth of Independent States (CIS) (21%), Latin America and the Caribbean (14%), and the Arab States (3%). 8% of the contributions came from people or organizations with a global or headquarters affiliation.

Sincere thanks to all contributors to the discussion: **Ahmed Sehata**, International Development Law Organization (IDLO); **Alesandr Khodanovich**, East Europe & Central Asia Union of people living with AIDS, Belarus; **Ali Salman**, UNDP Bahrain; **Alka Narang**, UNDP India; **Amara Bou**, UNDP Cambodia; **Ana Palacios**, UNDP Democratic Republic of Congo; **Andrea Pastorelli**, UNDP China; **Andrei Usatii**, the Minister of Health of the Republic of Moldova; **Andrew Gasozi Ntwali**, UNFPA Rwanda; **Bob Verbruggen**, UNAIDS Cambodia; **Boyan Konstantinov**, UNDP Europe and CIS Regional Centre; **Brianna Harrison**, UNAIDS Asia-Pacific; **Bwijo Bwijo**, UNDP Tanzania; **Charles Chauvel**, UNDP New York; **Cheryl Overs**, Michael Kirby Centre for Public Health and Human Rights, Australia; **Claudia Dubon de Morales**, UNDP El Salvador; **Carol Flore-Smrecznik**, UNDP Malawi; **David Owolabi**, UNDP Nigeria; **David Patterson**, IDLO; **Deni Ahmad Fauzi**, UNDP Indonesia; **Dieudonné Ruturwa**, UNAIDS Rwanda; **Edmund Settle**, UNDP Asia-Pacific Regional Centre; **Elisa Slattery**, IDLO; **Erick Ngoie**, UNDP Democratic Republic of Congo; **Evghenii Golosceapov**, UNDP Moldova; **Ferdinand Strobel**, UNDP Pacific Regional Centre; **Gisella Camoriano**, UNDP Honduras; **Ian Milimo**, UNDP Zambia; **Kamila Fathyhova**, East Europe and Central Asia Union of People living with AIDS, Uzbekistan; **Kerry L. Neal**, UNICEF New York; **Khemtip Khemsaksit**, UNDP Thailand; **Kordzo Sedega**, UNDP Ghana; **K. Fatihova**, East Europe and Central Asia Union of People living with AIDS; **Laila Alberto Jose Sueye**, Mozambique; **Ludfine Opudo**, UNDP Kenya; **Lucrecia Mendez**, UNDP Guatemala; **Maung Maung Kyaw**, UNDP Myanmar; **Meena Sheshu**, SANGRAM, India; **Miguel A. Ramiro Aviles**, Universidad de Alcala, Spain; **Moses Mulumba**, Center for Health, Human Rights & Development (CEHURD), Uganda; **Naomi Burke-Shyne**, IDLO; **Narcisse Saturnin Chimi**, UNDP Cameroon; **Narmada Acharya**, UNAIDS Cambodia; **Nick Crofts**, Law Enforcement and HIV Network (LEAHN); **Ninoslav Mladenovic**, Health, Education, and Research Association (HERA), Macedonia; **Olya Alesandrova**, 'Real World, Real People', Armenia; **Peterson Magoola**, UNDP Papua New Guinea; **Phauly Tea**, UNAIDS Cambodia; **Philip Castro**, UNDP the Philippines; **Rachel Morrison**, UNDP Jamaica; **Robert Gass**, UNICEF Thailand; **Rosemary Kumwenda**, UNDP Malawi; **Sirirath Chunnasart**, UNICEF Thailand; **Tinaye Mmusi**, UNDP Botswana; **Umesh Chawla**, UNDP India; **Vladimir Gordeiko**, UNDP Ukraine.

Many contributors noted that the Commission's establishment, consultative process and recommendations provided a strong framing and structure within which to advance a rights-based approach to the HIV response in their countries. At the same time, a number of contributors mentioned that their work on HIV and the Law has been ongoing for many years, and should not necessarily be exclusively seen as a 'follow up' to the recommendations of the Commission.

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1 UNDP's HIV, Health and Development-Net, the Network for UNDP's Partnership with the Global Fund, the UN Human Rights Policy Network – HuriTALK, Democratic Governance Practice-Net, Gender-Net, the Asia Pacific Community of Practice on HIV, Gender and Human Rights (HIV-APCoP), the joint United Nations Initiative on Mobility and HIV/AIDS in South East Asia (JUNIMA), the UNICEF HIV/AIDS Community of Practice, the Interagency Task Team HIV and Young People Community of Practice and the Global Commission on HIV and the Law mailing list.

2 The Minister of Health from the Republic of Moldova.

## 2. Highlights: Activities to Advance the Commission's Recommendations

Countries seeking to implement an enabling legal environment to improve their responses to HIV undertook a range of activities that were generally encompassed within the following categories:

- Legal Environment Assessments or Legal Audits, including related advocacy
- Legislative Review or Legislative Reform, including related advocacy
- National Dialogues on HIV and the Law, including action planning
- Human Rights Training, Capacity Strengthening, and consultations with members of the judiciary
- Outreach to Parliamentarians, capacity development and consultation
- Access to Justice and Legal Services, including rights based trainings for law enforcement
- Community Based Advocacy on Stigma and Discrimination, including through the media and community and religious leaders.

A multisectoral approach to establishing enabling legal environments meant that activities carried out in one category often built upon, complemented, or were informed by activities occurring in other categories.

Additionally, some countries approached legal reform from a thematic perspective, focusing on the rights and needs of people living with HIV or key populations at higher risk of HIV such as men who have sex with men, transgender people, or sex workers. Some national reform efforts were also encompassed within broader regional activities facilitated by UN regional centres or other partners. These often provided capacity building and awareness trainings to attendees from multiple countries; encouraged sharing of model laws, policies and practices between countries; and provided multilateral fora for discussions on best practices towards integrating human-rights based principles in national HIV responses.

Ultimately each country adopted its own unique approach to legal reform depending on the particular circumstances of its epidemic, including its existing laws and policies, the general awareness and engagement of its policy leaders, the level of empowerment of its civil society organizations and networks of key affected populations, and the practical political realities for legislative action.

### Activity Summary

In many countries (including Cambodia, El Salvador, Guatemala, Malawi, Russia and Ukraine) the **Commission's report has been widely disseminated** at the national level with key decision makers, including parliamentarians and civil society, and at national HIV conferences with a view to persuading decision makers to promote a favourable legal environment to respond to HIV.

Another frequent follow-up activity noted in the e-discussion by at least **18 countries**, was the organization or planning of a **National Dialogue on HIV and the Law**, following the Commission's example of organizing regional dialogues with a wide variety of stakeholders. National Dialogues include representatives of the government and state institutions, UN agencies, and civil society organizations and provide opportunities for a constructive exchange between various participants, including key

populations, to directly engage with government agencies and ministries around common issues of legal gaps and gaps in service provision.

**Legal environment assessments** or **legal audits** involving a wide range of stakeholders were also reported in **41 countries** via the e-discussion. These reviews examined laws regulating and protecting the rights of people living with HIV, key populations at higher risk of HIV, or other vulnerable populations. Often, these reviews were coupled with or preceded by stigma index surveys of HIV-positive people and key populations, which resulted in identification of the difference between the *de jure* (in law) and *de facto* (in practice) legal frameworks, and legal gaps that prevent effective protection of the rights of people living with HIV and key populations.

Many countries have also sought to implement the Commission's recommendations through **legislative reviews** examining implementation of existing laws, and **legal reform** involving the introduction or enactment of new legislation. Legal reviews and reform were reported by **18 countries** through the e-discussion. Such efforts often focused on strengthening HIV prevention programmes and access to HIV services by expanding protections against discrimination, improving mechanisms for seeking legal redress, addressing access to medicines through patent reform, and establishing or strengthening medical privacy and confidentiality laws. In some cases, legal reform included attempts to repeal existing provisions in law that directly discriminate against people living with HIV, such as HIV related travel restrictions. Legal reform was pursued both through legislation amending existing general laws and through comprehensive HIV-specific legislation providing for distinct rights, protections and prohibitions in particular circumstances.

National dialogues and legal environment assessments to advance the recommendations of the Commission often led to the **development of national action plans** or **revision of existing National HIV Policies**, incorporating suggestions for changes to existing laws and policies, setting targets and timelines, and dividing responsibility for reform efforts. In some cases, national action plans were thematic in character, focusing on people living with HIV, the prevention of violence against women, the needs of men who have sex with men and transgender persons, or more broadly on human rights.

Nearly all submissions referred to **partnerships with key stakeholders** to further dialogue, support participatory consultations, raise awareness, and advocate for human rights-based approaches to legal frameworks and HIV responses more broadly. Facilitating dialogue and consultations on HIV and the law at national, sub-national, regional and sub-regional levels and bringing together a wide variety of stakeholders featured strongly in the examples of responses to the legal and human rights challenges faced by people living with HIV and key populations.

Many initiatives also focused on **strengthening the capacities of civil society, people living with HIV and human rights activists, together with the authorities** to claim their rights, advocate for change and implement international human rights requirements. In some cases, direct technical support and funding from UNDP and partner agencies, including the Global Fund to Fight AIDS, Tuberculosis and Malaria, also facilitated the participation and involvement of people living with HIV and key populations in national planning and decision making bodies, helping to hold a country's national HIV response accountable to these communities.

**Access to justice** for populations affected by HIV continues to be an ongoing challenge in many countries, with legal frameworks and services remaining inappropriate, inaccessible or insufficiently implemented. In addition, a lack of sufficient knowledge of the applicability of human rights, available redress and lack of confidence in the legal system continue to impede the assertion of human rights in several countries. To expand access to justice, several countries initiated **support to legal aid centres** and **training of pro-bono lawyers** to provide services to people living with HIV, in addition to legal literacy and empowerment programmes, including through **'know your rights'** initiatives for people living with HIV and key populations. **Human rights training and capacity development efforts** also targeted actors along the justice chain including; police officers, lawyers, magistrates, judges, prison wardens and guards.



**Regional work** was leveraged to complement national efforts, particularly where work at the national level is restricted, controversial or sensitive. For example, a regional conference on enabling laws, policies and practices to support an effective national response to HIV brought together representatives of national governments, civil society organizations, people living with HIV, key populations, and international experts to support information exchange, learning from experience, and discussion of challenges and good practices in the region and internationally.

Several submissions from **UNAIDS, UNICEF, and UNFPA** also detailed their work in advancing the Commission's recommendations through technical and financial support for a variety of activities including: capacity building among people living with HIV and key populations, expanding access to reproductive health services, **addressing violence against women and advancing gender equality and empowerment**, strengthening alternative care systems for children, promoting social protection measures, and **improving birth registration systems** by identifying barriers to utilization and access, and supporting pilot interventions.

# 3. Challenges Experienced in Advancing the Commission's Recommendations

While there are encouraging signs of progress, significant challenges remain and more needs to be done in the area of legal reform, both to further strengthen legal frameworks in line with international human rights standards, and to advance the non-discriminatory implementation of a wide range of laws. Comprehensive approaches to ensure that laws and policies are harmonized are critical, as is ensuring that implementers are both capacitated and committed to delivering on the recommendations of the Commission.

Addressing **stigma and discrimination against people living with HIV and key populations** remains a critical challenge. In many countries, the concerns and needs of key populations – including men who have sex with men, transgender people, sex workers, and people who use drugs – remain highly sensitive issues that are not easily discussed and all too often are not prioritized for policy and legal action. Many submissions (Democratic Republic of Congo, Honduras, Kenya, Nigeria, Philippines, Tanzania, Zambia) noted that **deep-seated social, cultural, and religious attitudes were at the heart of stigma and discrimination** towards people living with HIV and key populations in their countries. An absence of sufficient political support was noted on a number of occasions and the need to overcome political sensitivities and/or ambivalence and corresponding passivity in national responses towards people living with HIV and key populations were also identified as common challenges, particularly when reform efforts were pursued in the shadow of forthcoming elections (Malawi).

In some cases, this **stigma and discrimination drove further attempts to enact punitive laws** and measures directed at key populations and men who have sex with men in particular. Commenters noted that laws were recently proposed or enacted to criminalize the “propaganda of homosexuality” (Moldova, Russia, Ukraine), or to prohibit same sex marriages and impose penalties on groups or individuals working with sexual diversity organizations (Nigeria). A number of the submissions noted that punitive laws further stigmatize and marginalize men who have sex with men and other sexual minorities, violating their human rights, normalizing discrimination against them, and inevitably restricting information and access to HIV and other health services and undermining national responses towards HIV.

Several country submissions (Democratic Republic of Congo, Kenya, Moldova) specifically indicated that **stigma and discrimination made it more difficult to repeal laws criminalizing transmission of HIV**. Factors impacting advocacy efforts included prior convictions for HIV transmission, conflicting positions between Ministries of Health, Justice, and Interior, divisions within civil society, and differing opinions of politicians and legal professionals, which have made it difficult to reach consensus on repeal.

Many commenters also noted **the effect of stigma, discrimination and criminalization on key affected populations** in countries where punitive laws were already in place, undermining legal reform efforts and impeding the national HIV response. For example in cases where:

- ▶ Sex work and sex workers are heavily criminalized and police brutality and discrimination remains rampant.
- ▶ Family and societal pressures to marry and procreate inhibit discussion of the rights of lesbian, gay, bisexual and transgender people.
- ▶ Criminalization of consensual same sex relations create the implication that key populations identified as engaging in such behaviour are prohibited from accessing public health services and may instead face criminal prosecution if they attempt to access such services.
- ▶ Vague and selectively applied criminal statutes are used to justify harassment, extortion, and arrest of men who have sex with men, transgender people, and sex workers.
- ▶ Prohibitions against distribution of clean needles or injecting equipment.
- ▶ Conflicting laws or policies: in some countries laws or policies exist that restrict information and services to people who need them. Sometimes these laws are inconsistent with national AIDS laws and policies.
- ▶ People living with HIV who have had their rights abused choose not to seek legal redress out of fear, perceived obstacles, or a lack of confidence in the outcome.
- ▶ Punitive measures against people who use drugs are enforced, or opioid substitution therapy is prohibited, or harm reduction programmes are insufficient or largely unfunded.

Even in countries where protective laws exist, **a lack of awareness of legal remedies and a lack of enforcement of legal protections hindered the national HIV response** and undermined access to justice efforts for those interested in seeking legal redress (China, Philippines). Similarly, laws protecting property and inheritance rights for women in Kenya were poorly upheld due to traditional patriarchal systems, resulting in continued economic dependence on men and highlighting the imbalance of power in their relationships.

**Inconsistent leadership** and a lack of ownership, general **institutional or structural weaknesses** within government including the national AIDS authority, and **a lack of resources** were also frequently cited as persistent problems undermining effective evidence-based and human rights based national responses to HIV. Some commenters noted that political leadership and the judiciary were not completely on board with legal reform efforts and that advocacy efforts were ad hoc and inconsistent (India), or that maintaining HIV as part of the national agenda of the current government was an ongoing challenge (Guatemala). The fragility of democratic institutions within government also limited efforts to promote and defend human rights of key populations (Honduras).

Several countries (Guatemala, Honduras, Philippines) reported **capacity constraints within the national AIDS authority** which limited its ability to influence government and lead the national AIDS response, and which frequently lacked the institutional capacity to implement existing laws and programmes, or to follow through on programme oversight, or monitoring and evaluation towards strategic goals. **Underfunding for legal reform** and programme implementation was identified as a persistent problem in several countries (Cameroon, Philippines) while the new found political and economic status of China as an upper middle income country and the subsequent withdrawal of donor funding was noted as a worrying concern for legal aid, reform and rights based programming, as many HIV specific legal aid clinics had already closed and the State was unlikely to fully replace such funding.

Capacity constraints within national AIDS authorities were often linked to **ineffective or inadequate national and multisectoral planning** and a lack of general accountability across government. This frequently limited the national HIV response to the health sector (Guatemala, China), or resulted in the absence of one national policy or strategy promoting HIV prevention differentiated for specific groups (Honduras).

Difficulties in **accessing sex education and reproductive health services** were also noted as challenges in several countries. In Ukraine, concerns were raised about a bill in parliament that would criminalize abortion and prohibit the trafficking and sale of abortifacient medicines, restricting the reproductive rights of women and potentially limiting access to sexual and reproductive health information. It was noted for instance that in Thailand, the age of consent to receive HIV testing was higher than the age of consent for sexual activity, raising concerns about the ability of sexually active young people to independently access confidential health services. High rates of adolescent pregnancy and abortion (Thailand), and significant gaps in knowledge about HIV transmission and prevention methods and inconsistent use of condoms (Honduras) were noted as being indicative of inadequate coverage and insufficient access to sex education programmes.

Several countries (Guatemala, India, Zambia) also identified **fragmentation and lack of empowerment, capacity, funding, and coordination among civil society organizations**, including of key affected populations, as a persistent challenge to creating enabling environments and improving national HIV responses. In India, a lack of empowerment was especially acute among organizations serving sex workers and people who use drugs, and proactive dialogue, cooperation and information sharing among all civil society organizations (CSOs) were identified as critical needs. In Zambia, limited funding for CSOs was an ongoing issue and tied directly to the closure this year of the Zambia AIDS Law Research and Advocacy Network, which pioneered the country's work on HIV and the law.

**De jure and de facto discrimination against women**, including women living with or vulnerable to HIV remains a serious challenge in many contexts. The importance of focusing on formal legal systems, customary law and the interface between systems was highlighted in the context of efforts to advance women's rights to property and inheritance rights in Kenya.

However, many contributions did not adequately reflect follow up work undertaken to address laws and legally condoned customs that produce and reinforce gender inequalities and undermine the ability of women and girls to protect themselves from HIV infection and cope with the consequences. The links to violence against women and broader systemic discrimination against women and girls – including property and inheritance laws and practices, early marriage and interpretations of religious and customary laws – do not yet appear to be fully integrated into some national follow up initiatives.

A submission from UNICEF addressed a variety of **challenges in expanding birth registration** efforts around the world, noting in particular the difficulty of registering children born in indigenous and rural communities, the fact that a lack of disaggregated registration data across regions, communities, or social backgrounds was masking disparities within countries, and the challenge of registering stateless children who may be unable to prove their parentage or place of birth.

Finally, the **need for broad representation in multilateral forums** and **policy consistency and harmonization** within the UN family were raised as ongoing challenges. UNDP Europe and CIS pointed out that the Commission lacked representation from Europe or Central Asia and that Russia did not participate in the Commission regional dialogue. While UNDP India also noted that an opportunity existed to strengthen the UN response by developing a common strategy for addressing punitive laws affecting people living with HIV and key populations in the context of sex work, trafficking, and HIV.

Despite this array of challenges, e-discussion submissions made it clear that promoting rights-based responses to HIV continues to require evolving short, medium and long-term multisectoral strategies and engagement with key national actors. Legal reform efforts must also remain context specific in order to be practical and politically achievable within each country.

## 4. Advancing the Commission's Recommendations through Best Practices and Innovative Projects

A variety of innovative activities are being pursued by UNDP and other UN agencies, along with partners in civil society, across the six thematic areas of the Commission's report:

### 4.1 Discrimination

With stigma and discrimination against people affected by HIV remaining the biggest barrier to accessing HIV-related services and achieving legal reform in many countries, most submissions highlighted the range of efforts underway to target this problem. **Organizing national dialogues** to bring key stakeholders together and provide an opportunity for people living with HIV and key populations to share their experiences directly with government ministers and officials was a frequently cited activity. In the Democratic Republic of Congo, **involving organizations of people living with HIV in planning the national dialogue** was viewed as a way to reduce stigma against and give voice to representatives of vulnerable groups.

Many countries also organized **capacity building and training programmes** and activities for judges, law enforcement and detention officers and parliamentarians. **Utilizing sustained peer-to-peer outreach** to conduct such programmes was viewed as particularly effective by the Law Enforcement and HIV Network in the context of changing police culture, and in training programmes targeted to judges in Kenya conducted with the assistance of the Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN). Capacity building and advocacy efforts on legal reform were also facilitated by **supporting parliamentary networks** that are already champions on HIV (such as the Forum of Parliamentarians on HIV/AIDS in India, the Rwandan Parliamentarians Network on Population and Development, and the Tanzania Parliamentary AIDS Coalition), or helping to identify such individuals and establish such networks.

Many UNDP and other UN agency country and regional offices also provided **direct technical support to improve national HIV responses** and better integrate multisectoral human rights-based approaches across all national plans and policies, as well as providing **technical assistance in drafting proposed amendments and anti-discrimination legislation** to ensure adherence to human rights obligations and remove barriers to AIDS related services. In the Philippines, UNDP assistance in amending the Philippine AIDS Prevention and Control Act and also **facilitated involvement by civil society organizations** at various stages during the legislative process. While in Nigeria, UNDP provided technical support to the National AIDS Control Authority in **organizing a stakeholder forum** to mobilize and unify advocacy for passage of an anti-stigma and discrimination bill into law. Finally, linking HIV efforts to general disability related- anti-discrimination laws was also suggested as a potential avenue to protect rights of people living with HIV.

### 4.2 Criminalization of HIV Transmission, Exposure, and Non-Disclosure

As noted earlier, attempts to repeal or prevent adoption of laws criminalizing HIV transmission have been an ongoing challenge in many countries due to a lack of consensus. Much more work needs to occur to raise awareness among stakeholders (including parliamentarians, government officials, civil society, law enforcement and judicial officers, and legal professionals) regarding the public health implications of criminalizing HIV transmission. In order to counter misperceptions and prejudices, legal reform efforts should emphasize evidence indicating that HIV criminalization laws are ineffective at preventing transmission. Criminalization frequently results in human rights violations, and discourages individuals from getting tested, talking openly with their

physician about HIV, or disclosing their HIV status. In Ukraine, one approach by UNDP involved **studying the experiences of neighbouring countries** regarding criminal liability for HIV transmission and presenting a summary of best practices to the government.

Contributions highlighted that strategies for legal reform could include helping to **develop clear prosecutorial and police guidelines**, or **encouraging the use of general criminal laws as opposed to HIV-specific statutes** (as suggested by the Health, Education, and Research Association), or **establishing moratoria on all prosecutions** while undertaking a broader advocacy and awareness campaign with key stakeholders.

## 4.3 Risk and Stigma Affecting Key Populations

As noted by the **Law Enforcement and HIV Network (LEAHN)**, working with police departments to change police culture and **establish harm reduction approaches to community policing** reduces stigma, discrimination and violence against key populations and engages the police as a partner in the national HIV response.

Cambodia has launched an innovative **Police Community Partnership Initiative** aimed at creating an enabling environment to increase access to services of key populations, including sex workers, men who have sex with men, transgender people, and people who use drugs. The project has improved police attitudes towards key populations and supported the friendly involvement of police in coordinating and facilitating training sessions and related events, reducing fear of police among key populations and strengthening care-and-service-seeking attitudes. As a result there has been an increase in the utilization of services, communication between the police and concerned partners has improved, and there is confidence amongst entertainment establishment owners to cooperate with NGO partners in displaying and ensuring the availability of condoms in their venues.

In Thailand, **an innovative learning programme in partnership with the Royal Thai Police** was initiated in 2012 to educate junior police cadets about HIV transmission and preventing related stigma and discrimination. The programme includes information to improve basic knowledge about HIV, and provides guidelines for police practices and training toolkits. With the collaboration of a new partner, the Thailand Business Coalition on AIDS, the initiative is now being scaled up to reach higher-level commissioned officers, including inspectors, superintendents and commanders.

### 4.3.1 PEOPLE WHO USE DRUGS

Few countries reported activities directed specifically to address the needs of people who use drugs. However UNDP **support for legal and policy reviews related to HIV and drug prevention and control** in the Philippines helped establish the evidence base and rationale to introduce reforms to existing drug policy and provide support for the implementation of harm reduction services.

In China, UNDP support for the Daytop Drug Abuse Treatment and Rehabilitation Centre in Yunnan Province has led to a variety of innovative partnerships and built the organization's capacity to provide **legal aid services for people living with HIV and key populations**, including offering legal consultations in person, over the phone and via mobile outreach sites. In addition, Daytop and UNDP have partnered with the Yunnan Bar Association to provide **HIV legal and rights trainings to lawyers and law enforcement** personnel and **trainings with law students** from the local university through its legal aid clinic. Daytop is also organizing a broader consultation **sharing legal aid best practices** and discussing sustainability and the importance of **integrating HIV within existing legal aid programmes**.

Where punitive laws exist, or where harm reduction measures are prohibited, and where achieving legal reform may be difficult, **working locally in partnership with police, judges, magistrates, lawyers and community and religious leaders** may be a better approach to supporting tolerance, awareness, and eliminating stigma and discrimination against people who use drugs.

### 4.3.2 SEX WORKERS

Innovative approaches to supporting sex workers are underway in many countries, providing a variety of models for pursuing legal reform, combating stigma and discrimination and expanding access to HIV and related services among this key population. These approaches ranged from **sex worker collectivization** efforts in India organized by the NGO SANGRAM, among female sex workers, male and transgender sex workers and HIV positive sex workers; to the formation of rapid response teams **providing direct legal and health services to arrested or detained sex workers** in Cambodia; to ongoing **research on the links between sex work and violence** in Myanmar conducted with UNDP support and in partnership with the Myanmar Police Force and Sex Workers Network in Myanmar; to **conducting a needs assessment** among male sex workers in Kenya; or **working with a Parliamentarians network** in Rwanda to distribute the results of a qualitative needs assessment of female sex workers; and to **providing technical support to civil society organizations** in developing advocacy materials lobbying for decriminalization of sex work in Rwanda.

Where national legal and policy reforms were difficult to achieve, **working directly to educate and build capacity and knowledge among police at a local level** was seen as an effective alternative approach. The Law Enforcement and HIV Network noted that direct outreach to law enforcement in Malaysia led police to ignore their own standard operating procedure of charging street sex workers who possessed two condoms with prostitution, and in Ghana police stopped harassing women carrying condoms for being sex workers and instead began carrying condoms themselves for distribution to sex workers.

### 4.3.3 MEN WHO HAVE SEX WITH MEN

Efforts to empower men who have sex with men and achieve legal reform of punitive laws targeting sexual minorities require sustained ongoing activities to change social and cultural attitudes and practices and combat stigma and discrimination. UNDP and its partners are helping to **establish and build capacity among men who have sex with men and transgender communities**. For example in Papua New Guinea, the country's first and only men who have sex with men and transgender organization (Kapul Champions) was launched in November 2012; and in India support for the Integrated Network for Sexual Minorities is financing collectivisation of local organizations, facilitating information sharing and advocacy, and local promotion of human rights with key stakeholders including police, judiciary and health workers.

In Malawi, **population size estimates and surveys of** men who have sex with men can help to build the evidence base for advocacy, while moratoria on prosecutions of consensual same-sex activity can provide space to consider law reform. In Nigeria, the Urban Health and Justice Initiative, a joint initiative of UNDP, UNFPA and UNAIDS to address issues of key populations in large metropolitan centers around the world, focuses on three priority pillars: Increasing access **to HIV and sexual health services** for key populations; **Strengthening access to justice** and rights-based interventions for key population; **Promoting local capacities, dialogue and partnerships** between municipal authorities and communities and strengthen capacity of community organizations working with men who have sex with men, sex workers and transgender populations. Each of these activities can also facilitate broader national policy changes, as in the Philippines, where UNDP advocacy resulted in the establishment of **a national strategic plan for men who have sex with men and transgender populations**.

### 4.3.4 TRANSGENDER PERSONS

The lack of data and interventions targeted specifically towards transgender people indicate that they are often overlooked in national HIV responses or otherwise grouped in activities targeting men who have sex with men or other key populations. Additional research, capacity building, and advocacy to separately strengthen and empower transgender communities, much like other key populations, can facilitate legal recognition and law reform efforts. The experience of UNDP in India in **organizing a conference on transgender persons and the law** with the National Authority on Legal Services and judges to discuss gender identity, human rights, and the Hijra community is indicative of the types of interventions that must be replicated across countries to advance the Commission's recommendations on transgender individuals.

### 4.3.5 PRISONERS

Few countries reported on activities directed towards addressing the needs of prisoners, indicating that this key population may be overlooked in most national HIV responses. Conducting **HIV prevalence and behavioural surveys in prisons**, as in Malawi, is a necessary first step to understanding the extent of the epidemic among incarcerated populations and can provide impetus for reform of prison health systems, including provision of condoms and voluntary HIV testing and treatment services. In Kenya, **trainings and capacity building for prison wardens and law enforcement** were also planned as a way to advocate for access to HIV and related health services for prisoners. Additionally, **discussions of human rights violations in detention facilities during national dialogues** on HIV and the law, as occurred in El Salvador, can also highlight the unique needs and position of prisoners. Finally, **facilitating the transition of formerly incarcerated populations back into society** by ensuring that they continue to have access to health services, and remain eligible for social protection and other support programmes is also a critical component of a sustainable response to HIV.

### 4.3.6 MIGRANTS

Issues affecting migrants were also infrequently addressed, though in several instances, **advocacy by UNDP and other partners supported repeal of HIV travel restrictions**, as in Fiji, or the development or repeal of legislation, as in Ukraine. Additionally little data exists regarding whether and to what extent migrants are able to access HIV and related health services within a country, and whether such services are voluntary and offered with full informed consent. Further research is therefore necessary to ensure that the needs of migrant populations, including workers and refugees, are considered and addressed within national HIV responses, as well as in areas where cross-border migration is common and along major transportation corridors and border crossings.

## 4.4 Gender and Disempowerment: Women

Concrete actions to advance the Commission's recommendations relating to women included the **development of national plans on gender or violence against women**, such as in Belarus and Cambodia, **engagement of men and boys** in developing plans as in Nigeria, and integration of these plans within the national HIV response. In Papua New Guinea advocacy around the Commission helped generate momentum to pass a **family protection bill addressing violence against women**, while a proposal to establish a **parliamentary committee on gender-based violence** is under consideration. However, addressing the gendered dimensions of the HIV epidemic and empowering women to protect their health and wellbeing requires a sustained effort to change cultural and social gender norms, and translate good law and policies into practice.

In Myanmar an **innovative civil society partnership** supported by UNDP led to the creation of the Myanmar Positive Women's Network in 2008 and with continued support, the organization has now become involved in a range of activities to strengthen the national HIV response with expanded action on gender equality through the **empowerment and engagement of positive women in HIV prevention, care and support, sexual and reproductive rights, and policy advocacy**. In Kenya, a project led by KELIN is **utilizing the customary legal system to protect women's and children's inheritance rights** and prevent further destabilization to families who lose a husband or father to AIDS and face the potential loss of their homes or land.

## 4.5 Children and Youth

Activities addressing the needs of children and youth generally focused on three areas: **expanding coverage of sex education programmes** to reduce myths and misconceptions about HIV transmission and encourage the use of condoms among sexually active youth, **ensuring access to confidential HIV and reproductive health services** without requiring parental consent, including information and commodities, and **advancing universal birth registration**. In Honduras the Ministry of Education



launched **new sexual health education guides and trained teachers** as part of its efforts to expand access to sex education, while in the Philippines the national dialogue raised the importance of **including HIV education within the existing curriculum**, and in Thailand, UNICEF is **reviewing the quality and coverage of comprehensive sexuality education** in schools.

UNICEF's ongoing work to achieve universal birth registration has led to a number of innovative programmes including the **development of online systems linking hospitals to registrar offices** in Thailand, **geo-mapping tools to improve birth registration** among Roma populations in Albania, and the **use of mobile phones to facilitate birth registration** in Tanzania. Combined with analyses of barriers to birth registration, direct technical support to registrars, and ongoing advocacy, UNICEF's activities are helping to advance the Commission's recommendations by protecting and promoting the rights of children.

## 4.6 Intellectual Property Law and Access to Treatment

Although reforming the current global intellectual property regime for pharmaceutical products requires sustained international commitment and cooperation between patent holding and patent utilizing countries, flexibilities already exist within international law and can be utilized.

In Ukraine, discussions on a draft order to allow for compulsory licensing of medicines are ongoing and **civil society organizations are actively working with international intellectual property experts** to provide commentary. In India, UNDP supported a **national consultation bringing together government, experts, industry and affected communities** to discuss access to medicines in light of the changing dynamics around intellectual property rights. While in Cambodia, a draft law on compulsory licensing for public health, developed by the government and UN partners, was submitted for adoption by the National Assembly and has **strengthened engagement and cooperation between the ministries of health and commerce** on intellectual property rights and access to affordable generic medicines.

In Egypt, **legal and public health organizations are working together** in an innovative, cross-discipline twinning arrangement supported by the International Development Law Organization (IDLO) to strengthen the capacity of public health actors to understand and utilize intellectual property law to promote access to medicines for the treatment of HIV. The possibility of **non-traditional partnerships with industry groups** was also suggested by the **Center for Health, Human Rights & Development (CEHURD, Uganda)**, which noted the partnership between civil society and local generic pharmaceutical manufacturers in the East African Community to remove tax and investment barriers to effective local manufacturing.

## 5. Conclusion

A number of multisectoral cross-cutting activities are underway to establish enabling legal and policy environments and integrate human rights within national HIV responses. By succinctly laying out the evidence and advancing the rationale for legal reform, the Commission report brings further impetus and focus to these efforts, and can help facilitate and share best practices between countries and across regions. In summary the range of activities documented by this e-discussion include:

- ▶ **Broadening and deepening partnerships** with national and local governments, policy makers, members of parliament, judicial and law enforcement officers, religious leaders, the media, people living with HIV, key populations, and civil society organizations, through a mix of high level diplomacy and community initiatives to encourage dialogue, information sharing and exchange.
- ▶ **Expanding awareness of HIV and human rights issues** through national dialogues, capacity building and sustained training of key stakeholders, and via advocacy and media campaigns.
- ▶ **Linking national laws and policies on HIV to international human rights commitments and standards** through legal and policy reviews and assessments, support for national human rights institutions and officers, and the establishment of technical and advisory working groups to support reform and advocacy efforts.
- ▶ **Promoting country ownership and effective institutional leadership and governance** through direct technical support to government, including the national AIDS authority, consultation and advocacy with parliamentarians, and by empowering and working with ‘transformed leaders’.
- ▶ **Strengthening the capacity of CSOs representing people affected by HIV** to effectively advocate with government and Parliament for legal and policy change, ensure the adoption of a rights-based approach to HIV, and maintain accountability in the national AIDS response.
- ▶ **Supporting ongoing research and needs assessments of people living with HIV, women, and key populations** to better understand the HIV epidemic and the impact of human rights violations within these communities.
- ▶ **Enhancing access to justice** for people living with HIV and key populations by training lawyers and facilitating the establishment of legal aid networks, supporting “know your rights” campaigns and legal advocacy clinics for CSOs, and helping to establish effective and accountable legal redress mechanisms.
- ▶ **Developing regional support mechanisms** to facilitate coordination, information sharing, technical support and resource mobilization for national HIV and human rights initiatives, particularly for issues that are too sensitive to discuss at the national level.
- ▶ **Promoting universal birth registration** through innovative partnership and new technologies.

Although reform efforts in some countries may not yet be realized, the actions of UNDP offices, along with other UN agencies, and country and civil society partners in advancing the Commission’s recommendations have helped create broader awareness of the need to integrate human rights principles within national HIV responses and provide a foundation on which the continued progressive realization of effective, evidence-based responses to HIV can continue to be built.





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