



# **LESSONS FROM THE EVALUATION OF THE GLOBAL COMMISSION ON HIV AND THE LAW**

## **ISSUE BRIEF #3**

Regional spaces for HIV responses

*Drawing on the external evaluation of the Global Commission on HIV and the Law,<sup>i,ii</sup> this issue brief shares lessons and reflections on the importance of regional spaces for strengthening responses, to inform the implementation of key commitments in the Political Declaration on HIV and AIDS and the Global AIDS Strategy.*

## Introduction

Regions share certain realities. These may include similarities in legal and political systems, cultural rites, and gender norms and practices, as well as socio-economic conditions, all influencing HIV epidemics in particular directions within these regions. Therefore, tailored and differentiated responses that respond to the epidemiological and social realities of different regions and countries are important. From the outset of the HIV response, states have looked to other countries' experiences to help inform the development of laws, policies and practices around HIV. Along these lines, the sharing and promotion of knowledge and good practice has proved effective for informing and shaping legal and policy environments in neighbouring countries.

Regional human rights systems, consisting of regional instruments and mechanisms, play an increasingly prominent role in promoting and protecting human rights. There are three established regional human rights systems: African, European and Inter-American. These regional systems help to localise international human rights norms and standards, reflecting the specific concerns of the region. They may prove to be more effective in some respects than the universal systems for various reasons, including similarities in political, social and cultural systems; the closer proximity of regional human rights systems to regional stakeholders, including civil society, than to global human rights mechanisms; judicial and quasi-judicial bodies with a wealth of local jurisprudence; and finally, the fact that many of the regional treaties were

developed with cognizance of regional contexts.

In some instances, specific technical expertise on human rights, law and HIV have made regional human rights systems better for advancing the rights of people living with HIV and key populations and increasing access to sexual and reproductive health and rights. For example, the Inter-American Commission on Human Rights had a more advance jurisprudence and monitoring mechanism on sexual orientation, gender identity and expression before the UN human rights system.<sup>iii</sup> The African Commission on Human and Peoples' Rights established a Committee on the Protection of the Rights of People Living with HIV and those at Risk of, Vulnerable to and Affected by HIV in 2010.<sup>iv</sup> The regional human rights systems afford civil society, communities of people living with HIV and key populations, as well as other stakeholders, an important space to advance work on human rights in the context of HIV.

In the 2021 Political Declaration on HIV and AIDS: Ending Inequalities and Getting on Track to End AIDS by 2030 (the Political Declaration), UN Member States committed to reinforcing "global, regional, national and subnational HIV responses through enhanced engagement with a broad range of stakeholders, including regional and subregional organizations and initiatives".<sup>v</sup> Despite this commitment to regional HIV efforts, the potential for regional collective action to make a difference in the AIDS response remains largely underutilized. The Global AIDS Strategy 2021–2026: End

Inequalities. End AIDS (the Global AIDS Strategy) acknowledges the importance of leveraging regional knowledge, good practice and innovative approaches to accelerate country-level progress, especially in countries which are lagging.<sup>vi</sup> This issue brief highlights the importance of regional spaces for HIV responses, both regionally and within countries.

### **Key lessons from the Global Commission on HIV and the Law**

Achieving the goals of the Political Declaration and the Global AIDS Strategy can be supported by using regional spaces for collaboration and knowledge exchange to encourage and strengthen national-level efforts, with attention to each of the strategic lessons presented below.

#### **1. Convening stakeholders in regional spaces can be safer than in national spaces**

Creating and maintaining safe spaces for convening civil society, communities of people living with HIV, key populations, lawmakers and policymakers is crucial for fostering an inclusive, rights-based, and effective response to HIV. Safe fora for rights holders and duty bearers to share experiences can facilitate a broader and better-informed dialogue about experiences with, and the impacts of, laws and policies on the HIV response.

Bringing together stakeholders at a regional level rather than in their home countries allows for more constructive and frank discussions, particularly of sensitive issues. Individuals who may face restrictive legal and policy environments at home are able to voice their experiences with HIV and the positive and negative impacts of laws,

policies and practices in a safe space, including with government officials from their countries. These officials are also exposed to perspectives that can truly be beneficial for the HIV response. They can feel safe to learn from civil society without pressure to conform to official policy or conservative viewpoints. For example, the International Development Law Organization (IDLO), UNDP and UNAIDS co-sponsored a series of regional meetings to discuss law enforcement in the Middle East and North Africa and the role of the police in the context of HIV-related legal issues. For many of the participants, these were the first occasions in the region where senior police officers were invited to participate in the same forum as representatives from key populations. Discussion centred around the engagement of police in national HIV responses and building trust between police, key populations and civil society. Building on these meetings, the Middle East and North Africa Network for AIDS and Law was formed with the support of UNDP and IDLO to act as a network for civil society organizations from Algeria, Djibouti, Egypt, Jordan, Lebanon, Morocco, Sudan and Tunisia to share information and mobilize resources on legal issues relating to HIV.<sup>vii</sup>

Regional spaces allow key populations to engage on a level more equal with government actors, thus improving their comfort in expressing themselves and the ability to continue conversations safely once back home. A Kenyan government participant at a regional training, having learnt about the challenges people who use drugs face with respect to TB, collaborated with civil society on her return to Kenya to establish outreach TB services for people who use drugs.

## **2. Regional-level discussions can foster fruitful peer-to-peer knowledge exchanges, particularly in the context of similar legal systems**

Meetings between duty bearers and rights holders at the regional level provide opportunities for exchanging knowledge and experience to inform HIV and public health responses and different approaches to legal reform, education and awareness-raising. While every region has political and cultural differences, similarities in history, geography, culture and language can help bridge divides. For example, in regions with a shared colonial history, it may be possible for countries to plan, implement programmes and learn from each other due to similarities in governmental structures, laws and languages.

Information on the decisions of different courts on a range of HIV-related issues across a region can help judges, lawyers and civil society better understand how law might be interpreted and leveraged to support a rights-based response. A good example of this is the series of trainings for lawyers on human rights-based strategic litigation, advocacy on HIV and TB, and legal defence hosted by the Southern Africa Litigation Centre (SALC) between 2016 and 2019 with support from UNDP. To further facilitate knowledge sharing across various country contexts, SALC developed the HIV Criminalization Defence Case Compendium comprising criminal cases from all over the world that are related to HIV exposure, non-disclosure and transmission.<sup>viii</sup>

Lawyers who participated in the trainings subsequently formed a network of regional peers for consulting each other on HIV-related cases and worked to remove laws and policies inhibiting prisoners' health in

Botswana, Malawi and Zambia. Lawyers from SALC successfully obtained a court order from the Botswana Court of Appeal that required the government to provide antiretroviral treatment to all foreign-born prisoners living with HIV who meet treatment criteria. This service was previously only available to Botswana citizens in prison settings. In Malawi, lawyers have been involved in successful cases that covered the release of children from prisons, migrant detention and medical parole for terminally ill prisoners. In Zambia, lawyers who participated in the regional training have been involved in litigation on access to food, health care and improved conditions for prisoners living with HIV. Lawyers who participated in these trainings have also argued cases concerning police abuse of key populations, HIV criminalization, and sexual orientation, gender identity and expression. Regional discussions among duty bearers and rights holders are valuable for addressing HIV-related legal reform that is needed immediately but is also an important strategy with long-term benefits.

## **3. Networking at the regional level can lead to sustained in-country networks of allies in the HIV response**

Convening stakeholders at the regional level can also support the creation of local peer networks of duty bearers and rights holders equipped with the knowledge to jointly drive work within their country to improve HIV-related legal and policy environments. Much of the transformative work being undertaken to challenge unjust HIV-related criminalization, for example, has been built upon the synergies and networks created and/or bolstered through regional processes. Networks of people sensitized about issues relating to HIV and the law who can work



together, particularly to support the rights and health of people living with HIV and key populations, remain important in the face of continued political and ideological shifts. Even if individual duty bearers change jobs, once they are trained, sensitized and a part of these networks, they carry with them the knowledge, skills and collaborations they have gained into other jobs or areas.

Regional sensitization of health workers and law enforcement—both groups of duty bearers who interact with affected communities and key populations on a regular basis—has helped improve understanding of their international and national legal obligations to communities regarding HIV and the law. In some places, this has created cadres of duty bearers known by key population members to be friendly and supportive, whom they can choose as their health providers or on whom they can call, as necessary, during interactions with law enforcement. Engagement of these various stakeholders at the regional level helps promote a more supportive in-country legal and policy environment for people living with HIV, key populations and other vulnerable groups.

#### **4. Regional economic communities can support the alignment of national HIV-related laws with international human rights commitments**

States can look to other countries' experiences to help inform the development of laws, policies and practices around HIV, particularly to neighbouring countries and those with whom they share strong economic, cultural and historic ties. Initiatives to support the alignment of national laws and policy with regional and international human rights commitments have been carried out by

regional economic communities, including the Association of Southeast Asian Nations (ASEAN), the Caribbean Community (CARICOM), the East African Community (EAC), the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC), with technical support provided by UNDP. These initiatives include the adoption of model laws, development of regional strategies, mobilization of civil society and key populations, and strategic litigation. For example, in 2012, the East African Community HIV Prevention and Management Act was adopted by the East African Legislative Assembly to regulate effective responses to HIV across the five countries of the East African Community.<sup>ix</sup> The Kenya Legal & Ethical Issues Network on HIV and AIDS (KELIN), with support from the Global Fund, held a regional forum in 2017 to enhance understanding of states' obligations under the new law, to establish a platform for comparative analysis of the new law and national HIV laws, and to foster partnerships for increased advocacy around the law. Gaps were identified, as well as the need for ongoing national-level monitoring. During the regional forum, key stakeholders committed to a range of follow-up activities including in-country sensitization and implementation in Tanzania, national advocacy around the regional law and its integration into national HIV programmes in Uganda; and creating an enabling legal environment for access to HIV and TB services in Kenya.

#### **Conclusion**

Regional-level activities, facilitated by support for follow-up work within countries, have had positive impacts on national and local HIV-related laws and the lives of key populations, demonstrating the powerful potential of investing in regional spaces for

the HIV response. The Political Declaration and the Global AIDS Strategy call for the strengthening of regional HIV responses, alongside global and local efforts, to promote cooperation and engagement across sectors and geographies. Sustained support for

regional spaces, and the sharing of the knowledge and experience which they facilitate, is key to supporting local HIV responses and ending AIDS as a public health threat by 2030.

UNDP is a founding co-sponsor of the Joint UN Programme on HIV/AIDS (UNAIDS). UNDP convenes the Joint Programme's work on rights, law, stigma and discrimination and co-convenes the work on key populations (with UNFPA). UNDP also serves as interim Principal Recipient for Global Fund HIV grants in challenging operating environments. UNDP is a co-convenor of the Global Partnership for Action to Eliminate All Forms of HIV-related Stigma and Discrimination which works with countries to address stigma and discrimination across six priority settings: the community, education, health care, humanitarian and emergency settings, the justice system and the workplace.

On behalf of UNAIDS, UNDP convened the Global Commission on HIV and the Law in 2010.<sup>x</sup> The Global Commission's 2012 Report and 2018 Supplement made recommendations to governments on a range of issues including criminalization, key populations, gender equality, rights-based service delivery, access to medicine and the use of digital technologies for HIV. The breadth and approach of follow-up activities to the Global Commission offer key lessons for what it will take to operationalize the ambitious commitments of the 2021 Political Declaration and the Global AIDS Strategy.

UNDP has worked with governments, civil society organizations and other partners to advance the recommendations of the Global Commission on HIV and the Law in 90 countries. In line with its Strategic Plan 2022–2025 and HIV and Health Strategy 2022–2025, UNDP supports countries and communities to create enabling legal and policy environments that respect human rights, and is committed to regaining lost ground on HIV, TB and malaria.

## Endnotes

<sup>i</sup> Program on Global Health and Human Rights, Institute on Inequalities in Global Health, University of Southern California. *Evaluation of the Global Commission on HIV and the Law*. 2020. Available at: <https://hivlawcommission.org/wp-content/uploads/2021/06/Final-Report-Independent-Evaluation-Global-Commission-HIV-and-the-Law.pdf>.

<sup>ii</sup> Program on Global Health and Human Rights, Institute on Inequalities in Global Health, University of Southern California. *Evaluation of the Global Commission on HIV and the Law: Executive Summary*. 2021. Available at: [https://hivlawcommission.org/wp-content/uploads/2021/06/Global-Commission\\_evaluation\\_ExecSummary.pdf](https://hivlawcommission.org/wp-content/uploads/2021/06/Global-Commission_evaluation_ExecSummary.pdf).

<sup>iii</sup> Inter-American Commission on Human Rights. *Advances and Challenges Towards the Recognition of the Rights of LGBTI Persons in the Americas*. 2018. Available at: [www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf](http://www.oas.org/en/iachr/reports/pdfs/LGBTI-RecognitionRights2019.pdf).

<sup>iv</sup> African Commission on Human and People's Rights. "Committee on the Protection of the Rights of People Living With HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV". Undated. Available at: [www.achpr.org/specialmechanisms/detail?id=15](http://www.achpr.org/specialmechanisms/detail?id=15).

<sup>v</sup> UNGASS. *Political Declaration on HIV and AIDS: Ending Inequalities and Getting on Track to End AIDS by 2030*. 2021.

<sup>vi</sup> UNAIDS. *End Inequalities. End AIDS: Global AIDS Strategy 2021–2026*. 2021.

<sup>vii</sup> IDLO. *Equal Rights, Equal Treatment, Ending AIDS: Strengthening and expanding HIV-related legal services and rights*. 2017. Available at: <https://www.idlo.int/sites/default/files/pdfs/publications/IDLO%20Equal%20Rights%2C%20Equal%20Treatment%2C%20Ending%20AIDS%20%28English%29.pdf>.

<sup>viii</sup> SALC. *HIV criminalisation defence case compendium*. 2018. Available at: [www.southernafricalitigationcentre.org/wp-content/uploads/2018/02/Designed-Compendium-1.pdf](http://www.southernafricalitigationcentre.org/wp-content/uploads/2018/02/Designed-Compendium-1.pdf).

<sup>ix</sup> KELIN. Questions and Answers about the EALA Bill (18 April 2017). Available at: [https://kelinkenya.org/wp-content/uploads/2010/10/QA\\_EALA\\_Bill\\_5July\\_Final1.pdf](https://kelinkenya.org/wp-content/uploads/2010/10/QA_EALA_Bill_5July_Final1.pdf).

<sup>x</sup> Global Commission on HIV and the Law. [www.hivlawcommission.org/](http://www.hivlawcommission.org/).



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