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LEGAL ENVIRONMENT ASSESSMENT FOR HIV

An operational guide to conducting
national legal, regulatory and policy
assessments for HIV

**Practical Manual
January 2014**

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Legal Environment Assessment for HIV:

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ABBREVIATIONS AND ACRONYMS

AIDS	Acquired immunodeficiency syndrome
GNP+	Global Network of People Living with HIV
HIV	Human immunodeficiency virus
LEA	Legal Environment Assessment
LGBTI	Lesbian, gay, bisexual, transgender and intersex
MDG	Millennium Development Goals
MSM	Men who have sex with men
STI	Sexually transmitted infection
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNAIDS	United Nations Joint Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNGASS	United Nations General Assembly Special Session

FOREWORD

The law has a profound impact on people's lives—especially those who are vulnerable and marginalized. The true test of a just society is reflected in its commitment to protect and promote the rights of minorities. Indeed, in recent years the law has been a positive force in advancing effective HIV responses based on public health evidence and grounded in human rights. For example, judicial and legislative action has improved access to life-saving treatment and protected people living with HIV against discrimination. Where the law has guaranteed equal rights to inheritance and property for women and girls, it has helped to mitigate the social and economic burden caused by HIV. Where intellectual property laws and policies are consistent with international human rights law, they have ensured access to life-saving treatment and prevention in low- and middle-income countries.

Although enabling legal frameworks have been used to mitigate the causes and consequences of HIV, the adoption of this relatively low-cost tool in the global response to AIDS has been limited. Unfortunately, in far too many countries, legal frameworks that further entrench inequalities and marginalization persist. Moreover, the degree to which existing anti-discrimination laws are enforced is unclear, and in some countries favourable legal frameworks are being undermined by the criminalization of HIV transmission and exposure, sex work, adult consensual same-sex sexual relations, and drug use. Laws that criminalize HIV transmission, exposure or non-disclosure of HIV status discourage people from getting tested and treated. Similarly laws that criminalize and dehumanize members of key populations drive them away from essential health services and heighten their HIV risk.

As shown by the report by the Global Commission on HIV and the Law, laws and policies based on public health evidence and human rights are the foundation of enabling legal environments that have the potential to transform the global HIV response. To effectively control the spread of HIV and mitigate its impact, it is crucial to promote and protect the human rights of people living with HIV, key populations as well as vulnerable groups such as women, girls, children and young people. Where evidence on the impact of punitive and protective laws, policies and practices on HIV and health outcomes has been collated and used to inform law- and policymakers, it has contributed to the enactment of rights-based law and policy. Just as it is important to 'Know Your Epidemic', it is imperative to understand the laws, policies and contextual factors influencing human rights and access to basic services within specific epidemic settings.

Progress has been made towards improving the HIV-related legal environment in several countries. Since 2012, the implementation of the findings and recommendations of the Global Commission on HIV and the Law report has been initiated in at least 82 countries with the support of UNDP and in partnership with other UN agencies, governments and civil society. However, there is need for practical, standardized, evidence-based guidance for countries to effectively document, understand and transform legal environments, so that laws and law enforcement are aligned in supporting national HIV responses that affirm human rights and promote public health. In line with the UNDP 'Strategic Plan 2014–2017' and the UNAIDS '2011–2015 Strategy: Getting to Zero', the manual on Legal Environment Assessment for HIV provides UN

practitioners and Joint UN teams on AIDS as well as national governments, civil society, development partners and legal experts or advisers with guidance on how to support national efforts on reviewing laws, policies and practices pertaining to HIV. It can also be used to inform the development and oversight of HIV programmes supported by the Global Fund.

The manual offers step-by-step guidance on how to undertake a national Legal Environment Assessment, with concrete case studies, tools and resources. It is intended to assist governments, civil society and other key stakeholders to develop evidence-informed policy and strategy, to review and reform laws and policies based on human rights considerations and support increased capacity to achieve enabling legal environments for effective HIV responses.



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I. INTRODUCTION

1. HIV and the law: background

“Every day, stigma and discrimination in all their forms bear down on women and men living with HIV, including sex workers, people who use drugs, men who have sex with men, and transgender people. Many individuals most at risk of HIV infection have been left in the shadows and marginalized, rather than being openly and usefully engaged... To halt and reverse the spread [of HIV], we need rational responses which shrug off the yoke of prejudice and stigma. We need responses which are built on the solid foundations of equality and dignity for all, and which protect and promote the rights of those who are living with HIV and those who are typically marginalized.”

— Helen Clark, Administrator, UNDP,
at the launch of the Global Commission on HIV and the Law, Geneva, June 2010

According to the UNAIDS ‘Report on the Global AIDS Epidemic’, an estimated 35.3 million (32.2 million–38.8 million) people were living with HIV around the world in 2012.¹ The report shows that an estimated 0.8 percent of adults aged 15–49 years worldwide are living with HIV,² although the burden of the epidemic continues to vary considerably between countries and regions. Sub-Saharan Africa remains home to 70 percent of all new HIV infections worldwide in 2012, despite a decline of 34 percent in the annual number of new HIV infections among adults. Promising progress has been achieved in the Caribbean, which still remains the second most heavily affected region by HIV.³ New HIV infections continue to be on the rise in Eastern Europe and Central Asia. These contexts have low and/or concentrated epidemics affecting key population groups such as men who have sex with men (MSM), sex workers, transgender people and people who use drugs.⁴

1. UNAIDS, ‘Global Report: UNAIDS Report on the Global AIDS Epidemic 2013’, UNAIDS, Geneva, 2013, p. A4.

2. *Ibid.*, p. A9.

3. *Ibid.*, p. A4.

4. The term ‘key populations’ used throughout this manual comprises sex workers, MSM, transgender people and people who use drugs. Depending on the country context, it can include other populations considered key to the national HIV response such as prisoners, migrants, truck drivers etc. As explained by the UNAIDS terminology, key populations refers to those most likely to be exposed to HIV or to transmit it. As such, their engagement is critical to a successful HIV response—i.e. they are key to the epidemic and key to the response. See UNAIDS, ‘UNAIDS Terminology Guidelines, Revised Version’, UNAIDS, Geneva, 2011, available at: http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2118_terminology-guidelines_en.pdf.

While heterosexual transmission of HIV remains the primary mode of infection in generalized epidemics, there is increasing evidence that unprotected paid sex, sex between men and the use of unclean injecting equipment are significant factors in the HIV epidemics of several countries. Evidence shows that female sex workers are 13.5 times more likely to be living with HIV than other women.⁵ UNAIDS points out that MSM are important components of national epidemics. In Latin America they represent the largest source of new infection in the region.⁶ HIV prevalence also remains high among people who use drugs, as they account for more than 40 percent of new infections in some countries. Although figures vary within countries and regions, HIV prevalence among people who inject drugs ranges from 5 percent in Eastern Europe to 28 percent in Asia.⁷ Gender inequalities pose a major obstacle to effective HIV responses, as shown by the global figures—for instance, HIV prevalence among young women remains more than twice as high as among young men throughout sub-Saharan Africa.⁸

National responses to HIV need to reach out to all populations, including key populations, with HIV prevention, treatment, care and support services. Importantly, a country's legal environment—its laws and policies and how they are implemented and enforced—plays a critical role in these national responses. As shown by the Global Commission on HIV and the Law's 2012 report, 'HIV and the Law: Risks, Rights & Health',⁹ protective legal environments improve the lives of people living with HIV and reduce vulnerability to HIV infection. Across the globe, it also found evidence that stigma, discrimination, punitive laws, police violence and lack of access to justice continue to fuel the HIV epidemic.

In 2011, Member States of the United Nations (UN) adopted the 'Political Declaration on HIV/AIDS',¹⁰ committing to reviewing national laws and practices that create barriers to effective HIV responses.

Political Declaration on HIV and AIDS, 2011

At the 2011 UN General Assembly High Level Meeting on AIDS, Member States adopted the 'Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV and AIDS'.

Paragraph 39 of the resolution states "Reaffirm that the full realization of all human rights and fundamental freedoms for all is an essential element in the global response to the HIV epidemic, including in the areas of prevention, treatment, care and support, recognize that addressing stigma and discrimination against people living with, presumed to be living with or affected by HIV, including their families, is also a critical element in combating the global HIV epidemic, and recog-

5. UNAIDS, 'Global Report: UNAIDS Report on the Global AIDS Epidemic 2013', UNAIDS, Geneva, 2013, p. 20.

6. *Ibid.*, p. 22.

7. *Ibid.*, p. 30.

8. *Ibid.*, p. 17.

9. Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, available at: <http://hivlawcommission.org/index.php/report>.

10. United Nations General Assembly, 'Political Declaration on HIV/AIDS: Intensifying our Efforts to Eliminate HIV/AIDS', A/RES/65/277, United Nations, New York, 2011, pp. 7 and 12–14, available at: http://www.unaids.org/en/media/unaids/contentassets/documents/document/2011/06/20110610_UN_A-RES-65-277_en.pdf.

nize also the need, as appropriate, to **strengthen national policies and legislation** to address such stigma and discrimination;”

The section on ‘Advancing human rights to reduce stigma, discrimination and violence related to HIV’ reads as follows:

77. Commit to **intensify national efforts to create enabling legal, social and policy frameworks** in each national context in order to eliminate stigma, discrimination and violence related to HIV and promote access to HIV prevention, treatment, care and support and non-discriminatory access to education, health care, employment and social services, provide legal protections for people affected by HIV, including inheritance rights and respect for privacy and confidentiality, and promote and protect all human rights and fundamental freedoms with particular attention to all people vulnerable to and affected by HIV;
78. **Commit to review, as appropriate, laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes** to people living with and affected by HIV, and consider their review in accordance with relevant national review frameworks and time frames;
79. Encourage Member States to consider identifying and reviewing any remaining HIV-related restrictions on entry, stay and residence so as to eliminate them;
80. Commit to national HIV and AIDS strategies that promote and protect human rights, including **programmes aimed at eliminating stigma and discrimination** against people living with and affected by HIV, including their families, including through sensitizing the police and judges, training health-care workers in non-discrimination, confidentiality and informed consent, supporting national human rights learning campaigns, legal literacy and legal services, as well as monitoring the impact of the legal environment on HIV prevention, treatment, care and support;
81. Commit to ensuring that national responses to HIV and AIDS meet the specific needs of women and girls, including those living with and affected by HIV, across their lifespan, through **strengthening legal, policy, administrative and other measures for the promotion and protection of women’s full enjoyment of all human rights** and the reduction of their vulnerability to HIV through the elimination of all forms of discrimination, as well as all types of sexual exploitation of women, girls and boys, including for commercial reasons, and all forms of violence against women and girls, including harmful traditional and customary practices, abuse, rape and other forms of sexual violence, battering and trafficking in women and girls;
82. Commit to strengthen national social and child protection systems and care and support programmes for children, in particular for the girl child, and adolescents affected by and vulnerable to HIV, as well as their families and caregivers, including through the provision of equal opportunities to support the development to full potential of orphans and other children affected by and living with HIV, especially through equal access to education, the creation of safe and non-discriminatory learning environments, supportive legal systems and protections, including civil registration systems, and provision of comprehensive information and support to children and their families and caregivers, especially age-appropriate HIV information to assist children living with HIV as they transition through adolescence, consistent with their evolving capacities;

83. Commit to **promoting laws and policies that ensure the full realization of all human rights and fundamental freedoms for young people**, particularly those living with HIV and those at higher risk of HIV infection, so as to eliminate the stigma and discrimination they face;
84. **Commit to address, according to national legislation, the vulnerabilities to HIV experienced by migrant and mobile populations** and support their access to HIV prevention, treatment, care and support;
85. **Commit to mitigate the impact of the epidemic on workers**, their families, their dependants, workplaces and economies, including by taking into account all relevant conventions of the International Labour Organization, as well as the guidance provided by the relevant International Labour Organization recommendations, including Recommendation No. 200, and call on employers, trade and labour unions, employees and volunteers to eliminate stigma and discrimination, protect human rights and facilitate access to HIV prevention, treatment, care and support.¹¹

2. Legal Environment Assessment: Translating the Global Commission on HIV and the Law report into action

Global Commission on HIV and the Law report¹²

The Global Commission on HIV and the Law was an independent body convened by UNDP on behalf of the UNAIDS family from 2010 to 2012. During its 18-month process, the Global Commission examined the impact of laws, policies and practices on HIV in seven regions of the world. The Commission's report contains evidence that protective legal environments improve the lives of people living with HIV and reduce vulnerability to HIV infection. Across the globe, it also found evidence that stigma, discrimination, punitive laws, police violence and lack of access to justice continue to fuel the HIV epidemic.

For instance, in many countries people living with HIV experience stigma and discrimination in their families, homes, places of worship, communities, health care services and workplaces even where protective HIV laws are in place. Laws in a number of countries provide a mechanism for criminal punishment of people for exposing another person to or transmitting HIV, exacerbating HIV-related stigma and spreading fear among populations. Laws that criminalize aspects of sex work, same-sex relations and drug use can lead to increased violence and brutality against these key populations, driving them away from health care and harm reduction services. Women and girls live under laws, customs and norms that deny them economic power and sanction inequality and abuse, undermining their ability to protect themselves from HIV. In addition, women (including elderly women and young girls) often carry a disproportionate burden

11. *Ibid.*, pp. 7 and 12–14.

12. Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, available at: <http://hivlawcommission.org/index.php/report>.

of caregiving for family members living with HIV. Young people are denied access to crucial services and information that protect them from unsafe sex and drug use. International trade law and intellectual property protections can block access to low-cost medicines in many countries.¹³

These human rights violations continue to take place despite the existence of legal frameworks that protect and promote human rights and even, in some cases, despite the existence of HIV-specific anti-discrimination laws. The reasons for this may vary. Governments may fail to uphold their human rights commitments in times of political instability and resource constraints. There may be broad overall protection for the rights of all people, including people affected by HIV, but limited specific guidance on and understanding of how these rights relate to HIV in countries. Where HIV-specific laws exist, there may be limited capacity to undertake the full range of measures required to make rights real—such as training health workers, judges and employers and providing affordable legal services—and limited political commitment to implementing and enforcing HIV laws. Additionally, the HIV laws themselves may be problematic where they include punitive and coercive provisions (such as provisions criminalizing HIV transmission) or where they fail to adequately protect and promote the rights of other groups of populations beyond people living with HIV.¹⁴ Laws may also contradict each other, and often customary, religious or traditional laws and practices may not be aligned with statutory legal protections and legislations; and vice versa.

LEAs as a follow-up activity to the Global Commission’s findings and recommendations

UNDP is supporting LEAs as one of the first steps that countries can take to translate the recommendations in the Global Commission’s report into action. Activities relating to the implementation of the Global Commission’s findings and recommendations including LEAs have been reported in 82 countries since the beginning of 2012. The LEA offers an opportunity to look at priority HIV, legal and human rights issues identified by the report. This includes a specific focus on reviewing the legal and regulatory framework in the HIV context with respect to stigma and discrimination; women and gender; children and young people; criminal laws and key populations; and intellectual property law and access to HIV treatment.

13. *Ibid.*, pp 76–87.

14. *Ibid.*, pp 26–61.

GLOBAL COMMISSION ON HIV AND THE LAW'S SUMMARY RECOMMENDATIONS

- ▶ Outlaw all forms of discrimination and violence directed against those who are vulnerable to or living with HIV or are perceived to be HIV-positive. Ensure that existing human rights commitments and constitutional guarantees are enforced.
- ▶ Repeal punitive laws and enact laws that facilitate and enable effective responses to HIV prevention, care and treatment services for all who need them. Enact no laws that explicitly criminalize HIV transmission, exposure or non-disclosure of HIV status, which are counter-productive.
- ▶ Work with the guardians of customary and religious law to promote traditions and religious practice that promote rights and acceptance of diversity and that protect privacy.
- ▶ Decriminalize private and consensual adult sexual behaviours, including same-sex sexual acts and voluntary sex work.
- ▶ Prosecute the perpetrators of sexual violence, including marital rape and rape related to conflict, whether perpetrated against females, males or transgender people.
- ▶ Abolish all mandatory HIV-related registration, testing and forced treatment regimens.
- ▶ Facilitate access to sexual and reproductive health services and stop forced abortion and coerced sterilization of HIV-positive women and girls.
- ▶ Reform approaches towards drug use. Rather than punishing people who use drugs but do no harm to others, governments must offer them access to effective HIV and health services, including harm reduction programmes and voluntary, evidence-based treatment for drug dependence.
- ▶ Enforce laws against all forms of child sexual abuse and sexual exploitation, clearly differentiating such crimes from consensual adult sex work.
- ▶ Ensure that the enforcement of laws against human trafficking is carefully targeted to punish those who use force, dishonesty or coercion to procure people into commercial sex, or who abuse migrant sex workers through debt bondage, violence or deprivation of liberty. Laws against human trafficking must be used to prohibit sexual exploitation, but they must not be used against adults involved in consensual sex work.
- ▶ In matters relating to HIV and the law, offer the same standard of protection to migrants, visitors and residents who are not citizens as is extended to citizens. Restrictions that prohibit people living with HIV from entering a country and/or regulations that mandate HIV tests for foreigners within a country should be repealed.
- ▶ Enforce a legal framework that ensures social protection for children living with and affected by HIV and AIDS. Laws must protect guardianship, property and inheritance rights, and access to age-appropriate, comprehensive sex education, health and reproductive services.
- ▶ Develop an effective intellectual property regime for pharmaceutical products. Such a regime must be consistent with international human rights law and public health needs, while safeguarding the justifiable rights of inventors.

3. About the Legal Environment Assessment

What is a Legal Environment Assessment?

An LEA is an assessment of a country's national legal and policy framework. In the human rights context, an LEA can aim to identify and examine **all** important legal and human rights issues affecting **all** people in a country. In the context of HIV, it is an important step in understanding how the legislative environment can play a role in influencing HIV prevention, treatment and impact mitigation efforts. LEAs can be critical to strengthening a country's response to HIV.

The first aim of a legal and policy assessment is to review HIV, health and any other related laws, regulations, policies and practices to identify those which have an impact on responses to HIV. A range of laws (not just health laws) are implicated because HIV is not just a health or medical issue but also a phenomenon that requires inquiry into structural factors of inequality, power, and personal and social dynamics.

The LEA process examines how these laws, policies and practices are implemented in a country, to determine the extent to which the legal framework protects rights and promotes an enabling legal environment for the national response to HIV, particularly for people living with and affected by HIV and key populations. In addition, an LEA document analyses experiences of people affected by HIV, to further identify laws, policies and practices that have an impact on access to HIV-related services.

An LEA may have a **broad** scope and aim to examine all legal and policy concerns related to HIV and all persons and communities infected and affected by HIV—people living with HIV and affected populations, including members of key populations such as people who use drugs, MSM, transgender people, and sex workers. Depending on the epidemiological and social context of each country, other populations might be considered key to the country's epidemic and included in the scope of the LEA. An LEA may also have a **narrow** focus on specific issues of concern to a particular country, such as HIV, legal and human rights issues affecting women; children and young people; criminal laws in the context of HIV; or access to treatment.

The findings of a national LEA can form the basis for recommendations for law and policy reform, strengthened implementation and enforcement of the HIV-related legal framework and measures to improve access to justice. This can support countries in meeting national, regional and international commitments to protect rights and promote universal access to HIV treatment, prevention, care and support. As such the LEA report constitutes critical evidence which is then used to develop evidence-informed national policy and strategy.

The process of conducting an LEA may also result in a number of associated benefits. This process enables national stakeholders to build a comprehensive picture of a country's legal and policy framework, its strengths as well as its gaps and challenges, and to make recommendations for creating an enabling and protective legal environment in line with international, regional and national human rights and health commitments. The process can contribute to increasing awareness and understanding of HIV, and sensitizing a range of stakeholders on HIV, legal and human rights issues. When carried out in a consultative, participatory and transparent manner as recommended by this manual, it is also useful for building consensus among national stakeholders on actions needed to strengthen legal and policy frameworks. Where HIV-related issues are complicated, particularly in relation to key populations, this process can help to increase or initiate dialogue among various stakeholders. To be used as critical evidence-informed data, the LEA process needs to be designed in a robust way and implemented rigorously.

Rationale for an LEA

An HIV-related LEA is an opportunity to:

- raise awareness of and generate national dialogue on the priority legal and human rights issues of people living with and affected by HIV and of key populations within the country;
- identify and examine key HIV, legal and human rights issues affecting people in the context of HIV—including key populations—and, in particular, HIV and human rights issues affecting women, children and young people; criminal laws in the context of HIV; and access to treatment;
- determine the extent to which the current legal framework protects rights or acts as a barrier to access to HIV-related social, legal and health services, in compliance with international, regional and national human rights commitments;
- identify the extent to which these protections are known (e.g. by communities, service providers, law enforcers), implemented and enforced and, for which people are able to access justice;
- use the findings of the LEA to formulate evidence-informed national policies and strategies and to make recommendations for steps to strengthen the legal environment, including through law review and reform, advocacy and programmes to increase awareness of rights and access to legal services and improve law enforcement; and
- develop national consensus on priority actions for ensuring a more protective legal and policy environment for effective responses to HIV.

4. About the manual

Aim

This manual provides operational guidance on how to undertake a national LEA, what to review and who to include in the process. With the aim of advancing human-rights-affirming law, policy and practice, the manual outlines a process for identifying the extent to which a country's national legal and policy framework addresses key HIV, legal and human rights issues.

It is intended for all UNDP staff, UN practitioners and Joint UN teams on AIDS as well as national governments/or national implementing institutions, civil society, development partners and legal experts or advisers to support national efforts on reviewing laws, policies and practices pertaining to HIV. It can also be used to inform the development and oversight of HIV programmes supported by the Global Fund.

This manual includes:

- background information on key HIV, legal and human rights issues, and links to resources on legal and policy frameworks for HIV;
- information on planning for an LEA, including how to ensure that the assessment process is consultative, participatory and inclusive of a range of key stakeholders and populations, and that it is relevant to and focused on priority HIV, legal and human rights issues within the country;
- references and links to other useful resources to inform the process of undertaking an LEA;

- details of timeline and operational considerations in conducting an LEA;
- practical steps on undertaking an assessment, including recommended methodologies for identifying and analysing national laws, regulations and policies, and information on stigma, discrimination, human rights violations, key populations and access to justice and law enforcement issues;
- recommendations for obtaining feedback on and finalizing the assessment in a way that accommodates the perspectives of all those involved;
- ideas for dissemination of and working with the results from the LEA with key stakeholders;
- suggestions for moving forward from the assessment towards action planning for strengthening legal and policy frameworks for HIV; and
- case studies, examples and detailed annexes to guide on specific issues.

Using the manual

The manual can be used in all countries, regardless of the type of LEA that is being conducted and the scope or the stage of development and implementation of HIV-related laws, regulations and policies. It is recommended to use the manual as a reference guide when developing and planning LEAs. The suggestions regarding possible processes and structures may guide decision-making regarding a country's LEA—process to follow, who will be involved and how the assessment will take place—based on its particular needs, resources and time constraints. Furthermore, while country-specific issues and concerns will inform the purpose and scope of each country's individual LEA, the illustrative examples contained within the case studies and Annex in the manual may help to guide a country's LEA planning.

The manual is divided into five main sections dealing with a recommended five-stage process to support a national LEA:

(1) **Planning**

(2) **Assessment**

(3) **Feedback and finalization**

(4) **Dissemination, implementation and impact**

(5) **Documenting the process: communication, monitoring and evaluation, and coordination.**

Important points to consider in the LEA process and some limitations of the manual:

- ▶ **The manual as a starting point for the identification of key legal and human rights issues at a national level:** This manual focuses on LEAs to look at priority HIV, legal and human rights issues identified by the report of the Global Commission on HIV and the Law. Thus it guides the reader to possible sources of law, regulation and policy that may deal with some of the key issues of the Global Commission's report, possible queries and issues to examine. However, the manual does not account for all possible issues and concerns that may be raised at a national level, nor does it account for every possible type of law, regulation, policy or guideline found in each country. Issues may differ within each national legal and policy framework. The manual is, therefore, a starting point for country teams, who will need to identify the full range of HIV, legal and human rights issues to be included in their particular LEA process.

- ▶ **The LEA process does not end with the LEA report:** The LEA process follows a five-stage process and does not end with the development and finalization of the LEA report. It is important to use the findings of the LEA to generate evidence and use it to actively review policies, strategies and practices as well as to review and reform laws.
- ▶ **Determining relevant norms and standards:** While this manual outlines the parameters of an LEA process that may be followed and adapted in different countries, conducting the national LEA itself remains a decidedly local task for each country. This manual does not offer a uniform format; national norms and standards will need to be identified by each country depending on the legal framework in place. In some countries there may be limited examples of current or comprehensive medical and health laws, and the various relevant laws, regulations and policies will be found in a range of sources of law, from health law to criminal law. In other cases, the lack of health and HIV-specific laws may require applying general laws (such as constitutional laws) to health issues. Many countries have dual legal systems, with conflicts between civil laws and other laws (e.g. customary or religious laws) and practices creating further complexity. In addition, several countries are currently reviewing and reforming health, HIV, child-care, personal, family, marriage and customary laws, among others, to bring them into line with international and regional human rights standards. Some countries may also be reviewing their constitutions and considering how it might apply to HIV, which may pose both an opportunity and a challenge. As a result, determining relevant norms and standards is not always a straightforward process.
- ▶ **Looking beyond the law:** Some of the issues identified as priority concerns for HIV, law and human rights (e.g. the need for appropriate sensitization of lawmakers, law enforcers and service providers) are not issues generally set out in law. Protective laws and policies are also often ineffective due to weak access to justice and law enforcement practices. Accordingly, the assessment process may be required to look beyond the law and to include a review of access to justice and law enforcement issues to gain a comprehensive understanding of the strengths and weaknesses of the current legal and policy framework.
- ▶ **Dealing with gaps and weaknesses in the legal and policy framework:** The assessment findings are likely to highlight strengths as well as gaps and weaknesses in a country's legal and policy framework. These findings cannot create a protective legal and policy framework in and of themselves but can guide and catalyse advocacy for reform. Where the LEA finds gaps, challenges, human rights abuses and barriers to an effective HIV response, country teams and stakeholders need to follow up the assessment process with strategic recommendations and planning for the way forward. Some issues, however, are not easily remedied through law review and reform and may require long-term strategies to deal with cultural practices, attitudes and stigma and discrimination involving specific populations (e.g. in the case of gender inequality or the stigmatization of key populations such as sex workers and MSM).
- ▶ **Dealing with urgency and resource constraints:** This manual suggests a comprehensive five-stage process for conducting a legal and regulatory environment assessment. In some countries there may be limited time and budgets, and countries may need to consider shortcuts to the process. An extensive and consultative LEA could take between three and six months, whereas an abbreviated process may be finalized within three months. While it is possible to conduct an LEA without undertaking all

of the proposed steps, it is important to ensure that the process is consultative and involves the active participation of key stakeholders, including key populations, at all stages of the process.

SPECIFIC RESOURCES:

LEGAL ENVIRONMENT ASSESSMENTS IN THE CONTEXT OF HIV

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United Nations General Assembly, 'Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS', United Nations, New York, 2011, available at: http://www.unaids.org/en/media/unaids/contentassets/documents/document/2011/06/20110610_UN_A-RES-65-277_en.pdf.

World Bank, 'Legal Aspects of HIV/AIDS: A Guide for Policy and Law Reform', World Bank, Washington, DC, 2007, available at: <https://openknowledge.worldbank.org/handle/10986/6754>.

II. PROCESS OF A NATIONAL LEGAL ENVIRONMENT ASSESSMENT

SECTION 1

Planning for a Legal Environment Assessment

SECTION 2

Conducting the Legal Environment Assessment

SECTION 3

Feedback and Finalization Stage

SECTION 4

Dissemination, Implementation and Impact

SECTION 5

Documenting the Process

SECTION 1

Planning for a Legal Environment Assessment

The planning stage aims to ensure that the process is a transparent and participatory exercise and is focused on priority HIV, legal and human rights issues of national concern to all. Thorough planning, consultation and preparation involving a range of stakeholders who are key to the HIV response within the country helps to increase awareness and understanding of the LEA process, to foster buy-in and support from leadership and key stakeholders and to ensure that the LEA is relevant to the needs of the country.

Commitment and leadership from all partners

The global experience with HIV-related legal assessments has reinforced the importance of government commitment, which can ensure the participation of key ministries and institutions and facilitate the integration and uptake of recommendations emerging from such assessments into national strategies and action plans. Similarly, the involvement of other forms of leadership at all levels of society, including traditional and religious leaders, is also vital to an LEA and to the final outcome of the process.

The participation of key populations, such as sex workers, MSM and people who use drugs, and the inclusion of their voices and perspectives as individuals and through civil society organizations ensure that the LEA focuses on priority human rights issues experienced by key populations in their daily lives. This also ensures that the LEA's recommendations are relevant and are supported by them.

Any potential challenges to commitment and participation of the relevant stakeholders should be identified, discussed and addressed at the outset. Challenges may include a lack of government commitment and leadership of the LEA process; 'jurisdictional' disputes between government institutions as well as between the government and other stakeholders regarding the leadership or scope of an LEA; potential conflicts between the traditional or religious norms and beliefs of leaders and communities and the human rights principles which underpin the LEA; the 'invisibility' of key populations within a country (particularly in countries where they are criminalized and are unable to live and organize freely without fear of harassment); and the lack of capacity within government and civil society to participate effectively in the process.

The UN and development partners may help to identify and overcome challenges to stakeholder participation in the LEA process through various means. For instance, they may support and facilitate processes to bring stakeholders together; sensitize stakeholders on the role of law in national responses to HIV; and provide technical and other forms of support and mobilizing resources for the LEA.

The planning stage of an LEA may involve various steps, including some or all of the following:

- holding a consultative meeting or national dialogue to discuss national HIV, legal and human rights issues and to agree on the purpose, nature and scope of the LEA and priority issues of national concern;
- establishing a representative Technical Working Group to lead the assessment;
- briefing the Technical Working Group on the relevant background information about HIV, law and human rights;
- agreeing on a Terms of Reference for the LEA Task Team; and
- planning for the legal and policy assessment.

Holding a consultative planning meeting

A consultative planning workshop or national dialogue may be a useful way to start a national LEA and to encourage the participation and inclusion of all partners. This may help to:

- raise awareness and understanding of HIV, legal and human rights issues in the country and the importance of an LEA in strengthening effective responses to HIV;
- ensure a transparent, participatory and rights-based approach to conducting the LEA;
- clearly define and agree on the purpose, nature, scope, methodology and implementation of the LEA;
- discuss and agree on oversight and reporting mechanisms for the various stages of the LEA, including the possible nature, purpose and composition of a participatory Technical Working Group to guide and oversee the process;
- identify key stakeholders to participate in consultations, focus group discussions or surveys;
- agree on preliminary focus areas for the LEA based on key HIV, legal and human rights issues raised by participants; and
- brainstorm on the laws, regulations, policies, research reports and other documents that need to be reviewed during the LEA.

Key stakeholders in the LEA process include, among others:

- ▶ networks of people living with HIV;
- ▶ key populations and their networks/representatives (e.g. women, youth, sex workers, MSM, transgender people, people who use drugs etc.);
- ▶ civil society organizations (e.g. those working on health, HIV, legal and human rights issues and with key populations);
- ▶ legal and human rights academics and activists;
- ▶ faith-based organizations and leaders;
- ▶ government offices (e.g. Health, Justice, Gender, Education, Correctional Services, Social Welfare, Safety and Security, Trade and Industry);
- ▶ statutory bodies (e.g. Human Rights Commission, Law Commission, Ombudsperson);
- ▶ traditional authorities;
- ▶ academia and research institutions;
- ▶ professional bodies (e.g. Medical Associations, Nurses' Council);
- ▶ parliamentarians;
- ▶ members of the judiciary;
- ▶ UN agencies and international organizations; and
- ▶ the private sector.

A national dialogue at the planning stage is particularly important where leaders are unwilling to engage on particular issues or where key populations are 'invisible' within a specific context or unable to participate due to lack of organization, fear of harassment or because their criminalized status leads to a real fear of arrest or prosecution. A national dialogue can provide a safe space for the participation of key populations in a moderated dialogue between them and the government on HIV, legal and human rights issues. In this way it encourages awareness-raising and sensitization of stakeholders and facilitates the identification of key issues for an LEA.¹⁵

See [Section 2: 'Conducting the Legal Environment Assessment'](#) and [Section 3: 'Feedback and finalization stage'](#) for more information on conducting a national dialogue on HIV and the law. See also www.hivlawcommission.org for more information on the regional dialogues on HIV and the law conducted by the Global Commission on HIV and the Law.

Setting up a Technical Working Group

It is useful to set up a Technical Working Group to guide, support and oversee the work of the LEA as well as to take up recommendations after the LEA. Ideally the role, composition and functioning of the Tech-

15. UNDP, 'National Dialogues on HIV and the Law, Practical Manual', UNDP, New York, 2013 (forthcoming).

nical Working Group should be discussed and deliberated on at the consultative planning stage, and the Terms of Reference agreed on by the Technical Working Group itself at its first meeting. It is important for the Technical Working Group to discuss and identify from the beginning the time-span of its involvement and the best way to take up recommendations resulting from the LEA process.

The roles and responsibilities of a Technical Working Group are not fixed and will differ from country to country. A number of suggested roles are set out below for consideration in developing locally relevant Terms of Reference for a country group.

Roles and responsibilities of the Technical Working Group

The Technical Working Group has a number of possible roles that it may fulfil in guiding and supporting the national LEA:

- **Oversight:** The Technical Working Group needs to guide and monitor the assessment process to ensure it is conducted according to agreed processes and in a way that ensures consultation, inclusivity and a commitment to a rights-based response.
- **Advice:** As a multisectoral and representative body, the Technical Working Group itself can provide various perspectives and technical inputs on key HIV, legal and human rights issues and on the various stages in the LEA process.
- **Implementation:** In some situations, particularly where resources are limited, Technical Working Group members may take on the implementation of some aspects of the LEA process themselves.

The various responsibilities of the Technical Working Group may include:

- guiding the national LEA in accordance with national priorities and recommended guidance, as a multidisciplinary reference group;
- facilitating fundraising/resource mobilization including data and reference materials for conducting the national LEA;
- providing ongoing technical support to the planning, implementation and finalization of the national LEA;
- overseeing and monitoring the national LEA through each stage of the process;
- raising awareness of the HIV, legal and human rights issues of priority national concern;
- strengthening and ensuring political commitment to the national LEA and its outcome;
- reviewing and endorsing the LEA recommendations and supporting action plans for strengthening the legal and policy environment for HIV and AIDS;
- reporting back on the outcomes of the process to key stakeholders; and
- developing a process or forum for ongoing monitoring of the outcome of the LEA, with the involvement of key stakeholders.

The Technical Working Group should comprise around 10 to 15 representatives (at most) from a range of sectors, institutions and organizations that are key to the national response to HIV. It should also seek representation from individuals with a range of skills, experience and competencies, as well as those with direct experience and understanding of stakeholder perspectives and key human rights issues. Experts on areas of human rights (health, more broadly), trade (intellectual property), governance (on procedural aspects of law) etc. may be called on by the Technical Working Group to provide useful insights without being members of the group. The composition of the Technical Working Group should seek to balance representation between government, civil society and other groups as well as to ensure gender diversity.

There should be clarity in the roles and responsibilities of the various members of the Technical Working Group, including identifying institutions that will provide leadership and those that will provide administrative, financial and other support to the process. The Technical Working Group should be supported and 'administered' by key government ministries with technical expertise in, and responsibilities for, the uptake of the final recommendations of the LEA.

Technical Working Group membership

The Technical Working Group charged with overseeing the LEA may include representatives from the following organizations and institutions:

- relevant government ministries and entities (e.g. Health, Justice, Social Welfare, Youth, Gender, Trade and Industry, Prisons, Labour etc.);
- national governing bodies on AIDS such as National AIDS Commission;
- statutory bodies (e.g. Human Rights Commission, Law Commission, Women's Commission);
- professional bodies (e.g. Medical Council, Nurses' Council, Law Society);
- networks of people living with HIV;
- people living with HIV, women and youth, as well as key populations and their networks/representatives (e.g. sex workers, MSM, transgender people, people who use drugs);
- civil society organizations (e.g. HIV service organizations, law and human rights organizations, organizations working with key populations, women's health and rights organizations, community-based organizations etc.) including 'mainstream' human rights organizations not specifically working on HIV-related issues;
- faith-based organizations (e.g. organizations of religious leaders affected by or infected with HIV);
- legal and academic institutions;
- the national parliament; and
- UN agencies (e.g. UNAIDS, UNDP, UNFPA, UNICEF, WHO, UNODC, OHCHR, ILO etc.)

For the Technical Working Group to be equipped with relevant expertise to carry out the LEA process, its members should possess a range of skills, experience and competencies in areas such as:

- public health;
- law and human rights;

- gender equality;
- trade and intellectual property; and
- working with key populations such as people living with HIV, women, children and young people, sex workers, MSM, people who inject drugs, prisoners and migrants

It is important to ensure the involvement of all key populations within the particular country context. This may require special efforts to include less visible key populations.

BOX 1

Example of Technical Working Groups/Steering Committees for national review and consultations in Indonesia and Pakistan¹⁶

In early 2013, at an informal consultative planning meeting, a Steering Committee was convened in Indonesia to guide the planning of a national review and consultation process of HIV-related legal and policy issues. Members of the Steering Committee included: the Ministry of Health (NAC), Ministry of Law and Human Rights, National Human Rights Commission, representatives of the communities, UNAIDS and UNDP.

In Pakistan, a Steering Committee was set up in 2013 to oversee the overall process of a national study of the legislative and policy environment with regard to the human rights of key populations in the country. The Steering Committee approved the methodology, work plan and deliverables and monitored the process through meetings at critical stages of the study. It consisted of representatives from UNAIDS, UNDP, UNICEF, UNFPA, IDLO, the National AIDS Control Programme, the Human Rights Commission of Pakistan, the Country Coordinating Mechanism and key populations.

See *Annex 1B* for an example of a generic Terms of Reference for a Technical Working Group.

Developing an inception report or concept note

An inception report or concept note sets out a clear plan of action for conducting the national LEA, integrating all previous discussions and deliberations (such as the outcome of the consultative planning process, national dialogue and meetings of the Technical Working Group) into a final road map for the assessment process.

16. UNAIDS, UNDP, 'Creating Enabling Legal Environments: Conducting National Reviews and Multi-Sector Consultations on Legal and Policy Barriers to HIV services, Guidance Document for Asia and the Pacific Region', UNDP, Bangkok, 2013, available at: http://asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2013-creating-enabling-legal-environments.pdf.

WHAT TO INCLUDE IN AN INCEPTION REPORT/CONCEPT NOTE

Purpose and scope of the LEA

The inception report or concept note should clearly set out the purpose and scope of the LEA, including:

- ▶ a brief overview of the contextual background to HIV, law and human rights in the country, key gaps, challenges and HIV law and human rights priorities in the current response and the role of the LEA in strengthening an enabling legal framework for HIV and AIDS;
- ▶ a short review and consolidation of any previous work that is relevant for a legal review of HIV, such as UNGASS country reports, any Universal Periodic Review reports filed with UN human rights monitoring bodies that are relevant to HIV, relevant national HIV or human rights commission reports etc.;
- ▶ the scope of the LEA—i.e. whether it will be broad and examine all relevant laws and policies as they relate to HIV or whether it will be narrow and focus only on particular issues; and
- ▶ a brief overview of the nature of the LEA, which should be of a legal nature, how it shall be carried out and what it shall seek to report on.

Methodology and implementation modalities

The inception report or concept note should specify the various methodologies, activities and deliverables that will form part of the LEA process, including: (1) a desk review; (2) stakeholder consultations; and (3) national consultative forum(s) or dialogue(s) for presenting draft findings. These methodologies are described in greater detail in the following section. The inception report/concept note should also include a broad overview of the roles, responsibilities and reporting mechanisms of various partners in the process, including the lead organization(s), the researchers and the national reference group set up to oversee the process. The inception report or concept note should also mention as a deliverable the final report to be completed by the LEA researchers/LEA Task Team.

Detailed road map

It is useful for the inception report or concept note to also include a detailed work plan, such as:

- ▶ specific activities to be carried out during the various stages of the LEA;
- ▶ the deliverables to be achieved during the various stages of the LEA;
- ▶ the timelines attached to the specific activities and stages of the LEA;
- ▶ the specific roles and responsibilities of various partners for each activity;
- ▶ the incorporation of reporting and feedback mechanisms during the process; and
- ▶ the support and resources required for each stage of the process.

Appendices

Other useful information that should be attached to the inception report or concept note includes:

- ▶ a list of international and regional human rights instruments, national laws, regulations, policies, strategies and plans as well as foreign countries/laws to be reviewed;
- ▶ a list of stakeholders to be consulted or surveyed in interviews, consultations, focus group discussions or questionnaires;
- ▶ tools to be used in the review process, including tools for analysis of the legal and regulatory framework, questionnaires, surveys and interview guides;
- ▶ an outline of the LEA report; and
- ▶ minutes of meetings of the LEA project team and a report of the consultative planning workshop.

BOX 2

The purpose and scope of an LEA: broad vs. narrow focus?

In some countries an LEA may have a very specific and narrow focus. For instance, it may focus on a specific issue (such as reviewing the impact of laws, policies and practices that promote gender inequality, harmful gender norms and gender-based violence in the context of HIV and AIDS within a country) or it may focus on a specific law (e.g. the review of an existing HIV law in a country).

Example:

In Asia and the Pacific an assessment was carried out to review HIV-specific laws in the region. The objective of the research project was to determine “the experiences of states of Asia and the Pacific in enacting and enforcing legislation that specifically addresses HIV-related discrimination and human rights protections... and alternative legal approaches and good practice examples that could be pursued for the protection and promotion of the human rights of PLHIV, including the use of Constitutional rights and the integration of HIV-related human rights protection into general laws on welfare, social protection, labour, disability and public health.”¹⁷

In other countries or regions, an LEA may be a broad-based assessment of a country's legal and policy framework as a whole, including a review of all relevant laws, regulations and policies that have an impact on HIV and on key populations (e.g. health laws, criminal laws, anti-discrimination laws, children's laws, employment laws etc.), as well as a review of the extent to which laws are known, implemented and enforced. This may include customary and religious laws and practices, as well as the extent to which laws are implemented and enforced and communities are able to access justice for violations of their rights. This would also mean looking at issues such as the nature and extent of HIV-related stigma and discrimination by institutions, service providers, communities and leaders; the extent to which people know their rights; the existence of organizations and programmes to reduce stigma and discrimination and provide legal literacy and legal support services; and the extent to which service providers, lawmakers and law enforcers are sensitized to the HIV, law and human rights.

Example:

In the Middle East and North Africa region, the Arab Institute for Human Rights, in partnership with UNICEF, UNDP, the Office of the High Commissioner for Human Rights, the ILO and UNAIDS conducted a review of “international instruments, statutory and customary laws, jurisprudence and policies related to the human rights of children infected, affected by HIV/AIDS and at risk of contracting HIV/AIDS, their families, as well as vulnerable groups, especially women and young people in Arab countries, in order to promote and guarantee the protection of these rights.”¹⁸

17. UNAIDS and UNDP, 'Creating Enabling Legal Environments: Conducting National Reviews and Multi-Sector Consultations on Legal and Policy Barriers to HIV services, Guidance Document for Asia and the Pacific Region', UNDP, New York, 2013.

18. Source: UNDP Middle East and North Africa Regional Service Centre.

Example:

In China a review was conducted with the objectives of:

- *“identification of problems in the legal and regulatory framework of HIV/AIDS in China with the international human rights standards and best practices as a benchmark;*
- *identification of obstacles in the implementation and enforcement of the legal and regulatory framework of HIV/AIDS, in light of differences between ‘law in action’ and ‘law on the books’;*
- *identification of the actual impact on key target populations resulting from the implementation and enforcement of the legal and regulatory framework of HIV/AIDS, emphasizing the impacts on the human rights and other legally protected interests of vulnerable groups; and*
- *identification of evidence-based and human rights-oriented recommendations to the Chinese legal and regulatory framework of HIV/AIDS and solutions to overcome the obstacles in the implementation/enforcement.”¹⁹*

The focus of an LEA will depend on each country’s context and the key issues at stake. However, when making decisions about the scope and focus of an LEA it is important to bear in mind the following considerations:

- An LEA with a narrow focus allows for an in-depth analysis of a particular issue or law and provides an opportunity for detailed and very specific recommendations in response to its findings. A broad LEA, on the other hand, is able to look at a range of issues covering a country’s entire legal and policy framework. This means that a broad LEA is able to provide comprehensive recommendations for effective HIV responses that work across all sectors for all affected populations; however, it is not always able to provide an in-depth analysis of all issues. It can highlight specific issues for further investigation, where required.
- Where there are in-country sensitivities around specific issues (e.g. criminal law issues to do with key populations), a broad LEA may be preferable to focusing an LEA on one controversial issue that may receive limited commitment from stakeholders. A broad focus encompassing politically and societally sensitive issues in some countries will work better than narrowing the scope of the LEA only on these issues.
- Whether LEAs have a narrower or broader focus, they should always look beyond simply reviewing the ‘law on the books’ and should include a review of the ways in which laws are implemented and enforced and the extent to which populations know their rights and are able to access justice.

See **Annex 1A** for an example of a generic Terms of Reference for an LEA.

19. UNAIDS and UNDP, ‘Creating Enabling Legal Environments: Conducting National Reviews and Multi-Sector Consultations on Legal and Policy Barriers to HIV services, Guidance Document for Asia and the Pacific Region’, UNAIDS, Geneva, and UNDP, New York, 2013.

Recruiting the LEA Task Team

The recruitment of the LEA Task Team for the research and implementation of the LEA process is an important step. It is recommended to recruit at least two consultants (one national and one international) who will provide technical support and guidance throughout the LEA process in close collaboration with the Technical Working Group, to ensure the successful implementation of the project. Due to the responsibility of the LEA Task Team and in view of the contentious aspects that often surround HIV and legal issues, careful attention should be paid to the selection of the team based on a thorough review of the expertise of the consultants, which should be acknowledged across government officials and civil society organizations.

See Annex 1C for an example of a generic Terms of Reference for the research and implementing team.

Identifying legal and policy issues for analysis

An LEA aims to determine the nature, extent, efficacy and impact of the legal and policy framework for protecting rights and promoting universal access to HIV prevention, treatment, care and support. This requires also determining key HIV, legal and human rights issues of concern within a country and how these are addressed by laws, regulations and policies.

Legal and human rights issues of global concern, common to countries across the world, include:

- HIV-related stigma and discrimination;
- women and girls, HIV and the law;
- children, young people, persons with disabilities, HIV and the law;
- workplace laws and HIV;
- key populations, HIV and the law;
- criminal laws and HIV; and
- access to treatment.

Countries will also need to include additional country-specific issues, identified during the consultative planning stage, stakeholder consultations and in research and related documentation.

BOX 4

Key issues identified by the Global Commission on HIV and the Law across the world²⁰

Stigma and discrimination: 123 countries have legislation to outlaw discrimination based on HIV status; 112 legally protect at least some populations based on their vulnerability to HIV. But these laws are often ignored, laxly enforced or aggressively flouted.

20. Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, available at: <http://hivlawcommission.org/index.php/report>.

Women, HIV and the law: Women and girls make up half of the global population of people living with HIV. Laws and legally condoned customs—from genital mutilation to denial of property rights—produce profound gender inequality; domestic violence also robs women and girls of personal power. These factors undermine women’s and girls’ ability to protect themselves from HIV infection and cope with its consequences.

Children, young people, HIV and the law: Where sex education, harm reduction and comprehensive reproductive and HIV services are accessible to young people, their rates of HIV and other sexually transmitted infections (STIs) drop. These interventions are rare, however, and in both developed and developing nations the denial of the realities of young people’s lives is reflected in the high physical, emotional and social toll of HIV on them.

Criminalization of HIV transmission: In over 60 countries it is a crime to expose another person to HIV or to transmit it, especially through sex. At least 600 individuals living with HIV in 24 countries have been convicted under HIV-specific or general criminal laws. Such laws do not increase safer sex practices. Instead, they discourage people from getting tested or treated, for fear of being prosecuted for passing HIV to lovers or children.

Key populations: In many countries, the law (either on the books or on the streets) dehumanizes many of those at highest risk for HIV: sex workers, transgender people, MSM, people who use drugs, prisoners and migrants. Rather than providing protection, the law renders these ‘key populations’ all the more vulnerable to HIV. Contradictory to international human rights standards, 78 countries—particularly governments influenced by conservative interpretations of religion—make same-sex activity a criminal offence, with penalties ranging from whipping to execution. Similarly, laws prohibiting—or interpreted by police or the courts as prohibiting—gender non-conformity, defined vaguely and broadly, are often cruelly enforced. The criminalization of sex work, drug use and harm reduction measures creates climates in which civilian and police violence is rife and legal redress for victims impossible. Fear of arrest drives key populations underground, away from HIV and harm reduction programmes. Incarceration and compulsory detention expose detainees to sexual assault and unsafe injection practices, while condoms are contraband and harm reduction measures (including antiretroviral medicines) are denied.

Access to treatment: A growing body of international trade law and the over-reach of intellectual property protections are impeding the production and distribution of low-cost generic drugs. Intellectual property protection is supposed to provide an incentive for innovation, but experience has shown that the current laws are failing to promote innovation that serves the medical needs of poor people. The fallout from these regulations—in particular, the Trade-Related Aspects of Intellectual Property Rights (TRIPS) framework—has exposed the central role of excessive intellectual property protections in exacerbating the lack of access to HIV treatment and other essential medicines. The situation is direst in low- and middle-income countries but reverberates through high-income countries as well. Provisions allowing some low- and middle-income countries exceptions to and relaxations of these rules could help alleviate the crisis, but there is substantial pressure against their use. A small number of countries have been able to take advantage of the few international legal flexibilities that exist.

SPECIFIC RESOURCES:

GUIDANCE ABOUT NATIONAL DIALOGUES AND MULTISECTORAL CONSULTATIONS

UNAIDS, UNDP, 'Creating Enabling Legal Environments: Conducting National Reviews and Multi-Sector Consultations on Legal and Policy Barriers to HIV services, Guidance Document for Asia and the Pacific Region', UNDP, Bangkok, 2013, available at: http://asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2013-creating-enabling-legal-environments.pdf.

UNDP, 'National Dialogues on HIV and the Law, Practical Manual', UNDP, New York, 2013 (forthcoming).

CASE STUDY 1: JAMAICA

Laying the foundation for an LEA on HIV and key populations²¹

This case study demonstrates how the focus of an LEA can be tailored to country-specific issues, as detailed in the section above.

National context

With declining official development assistance (ODA), the Government of Jamaica is increasingly concerned with crafting an effective, affordable and sustainable response to HIV. A key element to ensuring sustainability of the response will be the reform of HIV-related laws and a shift away from discriminatory and counter-productive practices. There is also recognition that better use of trade-related intellectual property flexibilities can also help lower the cost of essential HIV-related drugs and diagnostics, once again contributing to the financial sustainability of the response.

Implementing process and partners

In March 2013, the American Bar Association, UNDP and the International Legal Resource Center (ILRC) sent out a call in search of mid-to-senior-level legal experts with a background in HIV, human rights and health law to begin a process of assessing the legal environment in Jamaica.

Aims and objectives

Among the potential work identified for the LEA is the assessment of HIV-related domestic legislation; identification of gaps in compliance with international human rights instruments; development of a plan of action for the amendment of HIV-related policy and legislation; capacity assessment of entities providing legal aid for persons vulnerable to HIV-related abuse of rights; and training of parliamentarians on sensitization of the direct and indirect effects of outdated, inconsistent and discriminatory HIV-related laws on the incidence of HIV in Jamaica.

Specific focus areas proposed for the review in Jamaica include:

- **access to essential services:** spanning public education research and information exchange; HIV prevention; testing, counselling and referral; treatment, care and other health services; social protection and material assistance; and protection of privacy and confidentiality;
- **equality of people living with HIV in public and private life:** spanning political, social and family life; family sexual and reproductive life; education and training; employment, work and economic life; private and public housing; entry, stay and residence; and non-criminalization of HIV exposure and transmission;
- **key populations:** spanning women, children and youth, people who use drugs, adults engaged in commercial sex, MSM, transgender people, and incarcerated persons; and
- **access to justice:** spanning legal protection, legal awareness, assistance and representation, access to judicial services, fair trial and the enforcement of remedies.

²¹ Source: UNDP Latin America and the Caribbean Regional Service Centre.

SECTION 2

Conducting the Legal Environment Assessment

This section outlines some of the common methodologies that have been used effectively in conducting LEAs in various countries. Legal reviews have generally included a literature or desk review, as well as a component aimed at eliciting the experiences of law enforcement, access to justice etc. of key stakeholders and populations.

Stakeholder consultations

Consulting with key stakeholders is a useful way to obtain information on the legal and policy environment from the different perspectives of those who experience it in the course of their work at different levels and those who experience it as populations accessing services. Consultations promote an inclusive and participatory LEA in which the voices of all key stakeholders can be heard. They help gain insight into issues and experiences that may not otherwise be documented, particularly in relation to the impact of laws, regulations and policies on people's lives, whether they are able to access justice and how laws are implemented and enforced. Stakeholder consultations also raise awareness and promote dialogue about HIV, legal and human rights issues and the purpose of the LEA.

At the planning stage of the LEA, it is important to determine:

- which stakeholders will be consulted during the process;
- how stakeholders will be consulted;
- who will undertake stakeholder consultations; and
- what they will be consulted on.

If focus group discussions and qualitative interviews are going to be undertaken, some countries may require a formal ethical review and approval process to be completed beforehand (**see the point about Ethical review and approval below**).

Identifying key stakeholders

The consultative planning stage provides a good opportunity to gain broad input and agreement from key stakeholders who should be consulted during the LEA. Key stakeholders should include a broad range of individuals or organizations working in different sectors or at different levels in the country, as well as people living with HIV, women and young people and those representing key populations. It is important to look beyond HIV-specific organizations and institutions to include a broader range of 'mainstream' organizations such as those working on human rights, health, women's issues, employment rights etc. It is also important to recognize that members of key populations and other subgroups may be diverse and are not a 'homogenous group'. For instance, transgender sex workers may have issues and concerns separate from migrant sex workers; women living in rural areas may have specific needs and concerns not shared by women with disabilities.

Key stakeholders may include:

- ▶ leaders and technical experts from the executive branches of key government ministries, including those dealing with HIV, Health, Justice, Gender, Social Development, Education, Trade and Industry, Employment/Labour, Correctional Services, Safety and Security, among others;
- ▶ parliamentarians;
- ▶ members of the judiciary, legal fraternity and legal aid services;
- ▶ representatives of statutory bodies such as an Ombudsperson, Public Protector, Human Rights Commission and Law Commission;
- ▶ representatives of professional bodies such as medical councils, nursing councils, councils of psychologists;
- ▶ service providers such as health care workers, educators, social welfare workers;
- ▶ networks of people living with HIV;
- ▶ representatives and networks of key populations such as sex workers, MSM, people who use drugs;
- ▶ people living with HIV, women and young people;
- ▶ civil society organizations working on health, HIV, legal and human rights issues and with key populations;
- ▶ faith-based organizations;
- ▶ traditional authorities and religious leaders; and
- ▶ any other group of specific relevance to the country's HIV epidemic, such as chambers of commerce, workers' unions, migrant workers' groups etc.

There are various ways to obtain the views of different stakeholders. The approach taken will depend on the needs, information required and the resources available for the LEA.

See www.stigmaindex.org for information on the involvement of people living with HIV in the Stigma Index carried out in various countries, with the support of the Global Network of People Living with HIV (GNP+) and other partner organizations.

The kind of questions to ask in the consultation will be informed by the specific focus (for example, broad or narrow) of the LEA and the kind of analysis envisaged for presentation in the final report. It is important to prepare the questions according to the group, to obtain the right answers. For instance, in the case of an interview with sex workers' groups, some questions for consideration include:

- Is sex work illegal or criminalized in the country? What are the aspects of sex work that are illegal or criminalized? How is your everyday life affected by these provisions?
- How does law enforcement deal with sex workers? Do you face police violence? Do you feel supported by the legal system?
- Is the provision of HIV prevention tools such as condoms legal? And is the possession of such tools exempt from criminal law?
- What HIV-related programmes/services are needed for sex workers?
- What are the obstacles to accessing health and rights-based services?
- When you experience health problems, where do you go?
- Do you have any institution or organization to turn to in case of violence or abuse of your rights?
- Do you know your rights?

Various methodologies may be used for undertaking consultations with stakeholders and key populations, and care should be taken to ensure that this is done in an ethical way. Care should be taken to ensure that this is done in a safe place, that the process ensures confidentiality of the respondents and that informed consent is obtained from them prior to the group discussion/interview: the principle guiding the ethical process should be the principle of 'do no harm'. Some examples of consultations include:

- undertaking one-on-one interviews with individual representatives of organizations;
- holding focus group discussions with groups of individuals with common characteristics and with possible shared experiences and concerns, such as:
 - a group of service providers providing similar services (e.g. health care workers, HIV counsellors, legal aid lawyers);
 - a group of people who share characteristics such as age, gender, disability, social origin (e.g. women, young people aged 15–24);
 - a group of people who share similar positions in society (e.g. traditional leaders); or
 - a group of people who self-identify with a specific population (e.g. a group of MSM);

- conducting site visits for first-hand experience of the impact or implementation of relevant laws and policies and to speak to people at different sites across the country (e.g. clinics, courts, police stations, prisons, drug centres);
- distributing questionnaires to selected individuals and organizations from different sectors;
- conducting online surveys including through the websites of different organizations; or
- developing short 'vignette' questions, commonly used in survey research, which could be useful to start discussions around HIV and human rights without having to ask direct questions.

The researchers will also need to develop tools to ensure a standardized approach to stakeholder consultations, whether they are one-on-one interviews or focus group discussions, which should allow for:

- the provision of background information on HIV, law and human rights in the context of HIV and the purpose, scope and nature of the LEA process;
- questions for discussion and feedback on common issues relevant to all stakeholders; and
- questions and discussion points on key issues relevant to each particular organization or institution.

The feedback from stakeholder consultations needs to be documented in the form of a brief report of each interview, visit or focus group discussion. The information should also be collated and analysed to draw out the key issues identified by the stakeholders. If possible, the following should be described in a consolidated report on the stakeholder consultations:

- the level of awareness of HIV, legal and human rights issues and their role in effective responses to HIV;
- the key HIV, legal and human rights concerns of various stakeholder groups, including:
 - concerns regarding current laws, regulations and policies;
 - concerns regarding levels of awareness of rights and the ability to access justice; and
 - concerns regarding the ways in which rights are implemented and enforced;
- the impact of protective or punitive laws on people's ability to promote or achieve universal access to HIV prevention, treatment, care and support services; and
- recommendations that have been made for strengthening the legal and policy framework.

Ethical review and approval

Like other studies that collect data from people, an LEA must observe certain standards with regard to ethical issues and data protection. In each country where this survey is carried out, those responsible for conducting the study should ensure that it conforms to that country's ethical and data protection requirements.

BOX 3

Ethical issues in research, data collection and documentation: informed consent and confidentiality²²

According to the People Living with HIV Stigma Index, two issues of particular importance in conducting ethical research are **informed consent and confidentiality**.

What is informed consent?

The principle of informed consent means that each interviewee must be asked to consent to the collection and processing of their personal data after being fully informed about the nature of the study, who is involved in it, how the data will be processed and stored, and what the data will be used for.

What is confidentiality?

Confidentiality is concerned with the issue of who has the right to access data provided by the participants of a research study. When conducting research, one should always ensure that appropriate measures are put in place so as to make absolutely certain that the information participants have disclosed and their identities are kept in confidence.

How to ensure confidentiality and security of data

To ensure confidentiality in the use of data collected from people living with HIV and other key stakeholders, the LEA Task Team must ensure that data to be used are in pseudo-anonymized interview notes stripped of personal identifiers as soon and as close as possible to the actual source of the raw information. Access to the data should be restricted to a limited number of individuals within the LEA Task Team. The information contained in the interview notes should be kept by a single person. The dissemination of the report based on the interview notes should be kept to a minimum whenever possible, and it should not be shared in soft copy before the information is validated by the stakeholders who took part in the interviews.

See Specific Resources in this section below for further information. See also Annex 2 for a sample informed consent form.

Desk review

Legal systems differ from country to country. However, most countries have various sources of law as well as different branches of law. They also have a range of organizations, services, mechanisms and institutions to implement laws, regulations and policies and to enable people to access justice and enforce laws when these are violated.

22. People Living with HIV Stigma Index, 'User Guide', People Living with HIV Stigma Index, London, 2008, available at: <http://www.stigmaindex.org/90/publications/the-people-living-with-hiv-stigma-index-user-guide.html>.

A desk review of laws, regulations and policies relevant to HIV requires looking at many sources of law in a country. Laws regulating public health and HIV are seldom codified in one form. In most cases, health norms are found in various sources and branches of the law and are complemented by a range of health regulations, policies, guidelines, plans and strategies. Some countries have HIV-specific laws. However, in other countries general laws related to health, disability and medical practice (e.g. laws setting out patients' rights or regarding the safety, quality and availability of health services) will apply equally to HIV and AIDS. Additionally, general principles of law, such as those set out in the constitution, as well as common law principles relating to privacy and autonomy, will also apply to patients' rights.

In addition, HIV touches the lives of many different people and groups across a wide range of sectors; the ways in which their lives are regulated may affect their exposure to HIV or their vulnerability to the impact of HIV. A range of laws outside the health sector is equally important to understanding the impact of law on access to HIV prevention, treatment, care and support. Therefore, the desk review needs to also include laws affecting key populations as well as other populations considered key for the country's HIV epidemic:

- children's laws that set out children's rights;
- family, marriage and inheritance laws providing information on the rights of women to own and inherit property;
- criminal laws that affect people living with HIV (e.g. laws that criminalize HIV transmission or exposure), that protect people from sexual violence, and that criminalize behaviour including sex work, sexual behaviour such as same-sex relationships, or injecting drug use;
- intellectual property laws that restrict or promote access to antiretroviral medicines;
- correctional service laws that determine access to services for prisoners;
- refugee laws that determine access to services for non-citizens;
- employment laws that set out the rights of employees living with HIV or AIDS; and
- disability laws that set out the rights of people with disabilities.

Finally, a country may have a 'dual' legal system, where statutory law operates alongside customary and/or religious laws and practices. In this case, customary or religious laws may have a greater impact on the daily lives of many populations than the statutory laws of the land. It is important to ensure that they form part of the LEA.

Documents to be reviewed

The desk review needs to include an assessment of:

- international and regional human rights instruments and declarations, including those specific to HIV;
- laws, regulations and policies;
- plans, strategies and guidelines;
- case law;
- annual reports and research reports of networks of people living with HIV and other civil society organizations, statutory bodies (such as a Human Rights Commission), international and regional organizations (e.g. Universal Periodic Review reports, Human Rights Watch reports etc.) and academic publications; and
- country reports on human rights commitments to regional bodies (e.g. the African Commission on Human and Peoples' Rights) and international bodies (e.g. the UN).

Each of the key issues may be regulated by a range of laws, regulations, policies and/or guidelines. The assessment process will require all relevant laws to be identified and analysed to describe how they protect rights in the context of HIV or act as a barrier to universal access to services. The checklist below provides an indication of potentially useful laws, regulations, policies and guidelines that may apply to HIV and AIDS.

Checklist: Laws regulating HIV and AIDS

Where to look: The following types of international and regional instruments and national laws, regulations, policies or guidelines may contain provisions that protect rights (or block access to services) in the context of HIV:

- ✓ international and regional human rights covenants, charters and declarations as well as those specifically relating to HIV;
- ✓ constitution (particularly the Bill of Rights within a constitution);
- ✓ anti-discrimination laws (e.g. equality legislation);
- ✓ medical and health (including HIV) laws and regulations;
- ✓ intellectual property laws, regulations and trade laws/agreements regulating medicines and medical supplies;
- ✓ labour laws and regulations (including occupational health and safety laws);
- ✓ civil laws with provisions affecting personal rights of adults, minors and people with limited capacity (e.g. people with disabilities), including issues such as status, capacity, age of majority and guardianship;
- ✓ children's laws;

- ✓ laws affecting women's rights (e.g. family, marriage and inheritance laws, domestic violence laws);
- ✓ criminal laws (e.g. laws criminalizing sexual offences, HIV transmission or exposure, sex work, same-sex relationships, and drug use);
- ✓ drug laws (e.g. relating to access to medicines as well as laws relating to drug possession);
- ✓ correctional service/prison laws;
- ✓ laws regulating the armed forces (police, security, defence force);
- ✓ disability laws, regulations and policies;
- ✓ educational laws;
- ✓ social welfare and development laws;
- ✓ laws that regulate migration within as well as across borders and/or restrict movement (such as quarantine);
- ✓ customary and religious laws; and
- ✓ policies and ethical guidelines (e.g. health policies, codes of ethics and ethical guidelines for health practitioners).

What to look for: Provisions in laws and policies that may be relevant to the LEA include:

- ✓ the protection of basic human rights (e.g. rights to equality, non-discrimination, dignity, autonomy, liberty, security of the person, privacy, the right to be protected from cruel, inhuman or degrading treatment or punishment, the right to reproductive health etc.). These rights provide all people with broad human rights that will also apply to them as patients in HIV-related health care services and as populations within the country entitled to protection;
- ✓ country commitments to rights-based responses to HIV and AIDS;
- ✓ the specific regulation of health (including HIV) rights, responsibilities and services: provisions within health laws may provide clear guidance on how health programmes and services are provided and standards for ensuring the availability, accessibility, safety and quality of treatment as well as related health goods and services. They may also contain provisions relating to the responsibilities of health care providers and the rights of patients with respect to health (including HIV) issues, such as their rights regarding informed consent to medical treatment, to medical confidentiality, of access to health care services, including women's rights to sexual and reproductive health care, and to be protected from harm;
- ✓ the regulation of intellectual property and related laws, including anti-counterfeiting legislation and competition laws, will provide guidance on the extent to which a country's laws restrict or facilitate access to treatment;
- ✓ the regulation of employment and occupational health and safety: these laws and regulations provide for the rights and responsibilities of employers and employees as well as norms and standards for ensuring safe working conditions;

- ✓ the regulation of a child's legal status and his or her evolving capacity to conduct certain acts: these provisions may answer questions regarding the capacity of children and young people to consent to (and to refuse) HIV testing and access to HIV prevention, treatment, care and support independently, and the capacity of parents/guardians to provide proxy consent in the absence of health-specific provisions within a country's legal system;
- ✓ protection against gender inequality, harmful gender norms and gender-based violence: provisions in family, marriage and inheritance law may provide information on women's equality rights within their relationships and their rights to own and inherit property, including marital property. These laws may also provide information on the nature and extent of protection against gender-based violence (e.g. domestic violence, sexual assault and rape, including marital rape) and harmful gender norms (e.g. early marriage, widow inheritance and sexual cleansing practices). This may also involve efforts to engage men and boys, as partners as well as for raising their own consciousness about gender, inequality and structural determinants of health;
- ✓ the criminalization of certain behaviours, such as HIV transmission or exposure, sex between men, sex work and injecting drug use: these provisions will help to determine the climate within which key populations live and whether criminal laws exist that may pose barriers to access to HIV prevention, treatment, care and support;
- ✓ the legal protection for other populations vulnerable in the context of HIV such as prisoners, refugees, migrants, members of the armed forces, school pupils, people with disabilities: these provisions may help to determine whether these populations will have equal access to the HIV prevention, treatment and care services they need; and
- ✓ access to justice—for example, through the right to representation, and accessibility of legal aid.

See Annex 3 for tools for reviewing HIV laws, regulations and policies in relation to key issues including stigma and discrimination, women, children, criminal law and HIV and access to treatment.

BOX 5

Example: Analytical framework from the 'HIV/AIDS Legal Assessment Tool: Assessment Methodology Manual' by the American Bar Association (2012)²³

In 2012, the American Bar Association released an HIV/AIDS Legal Assessment Tool that is designed to assess countries' *de jure* and *de facto* (in the law and in practice) compliance with international legal standards on the protection of human rights of people living with, perceived to be living with, and affected by HIV. The tool focuses predominantly on laws, policies, strategies, programmes and other measures developed, adopted and implemented by national governments and civil society (see Introduction and Acknowledgements).

23. American Bar Association (ABA), 'HIV/AIDS Legal Assessment Tool: Assessment Methodology Manual', ABA, Chicago, 2012.

The tool is structured around an analytical framework of 22 'Factor Statements' which serve as indicators or principles used to analyse domestic laws, policies and practices in four key areas where HIV-related discrimination is likely to occur: 1) access to essential services; 2) equality of people living with HIV in public and private life; 3) key populations; and 4) access to justice.

Analytical framework (see pages 35–37)

I. Access to essential services

Factor 1: Public education, research and information exchange

Every person enjoys an equal right to seek, receive and impart reliable and accurate information about bio-medical and socio-economic aspects of HIV. The State implements and supports raising HIV-related awareness, stigma reduction, training and information exchange programmes, and ensures that HIV research adheres to the highest ethical standards.

Factor 2: HIV prevention

Every person has equitable and sustainable access to a wide range of effective, human-rights-based and evidence-informed measures aimed at preventing HIV transmission.

Factor 3: Testing, counselling and referral

Every person has unrestricted access to voluntary, confidential or anonymous HIV testing accompanied by quality counselling and referral to essential services. Arbitrary, mandatory or compulsory HIV testing is prohibited.

Factor 4: Treatment, care and other health services

People living with HIV enjoy the right to the highest attainable standard of physical and mental health, including equitable and sustainable access to comprehensive health care. The State takes concrete steps to progressively realize universal access to HIV-related treatment and care.

Factor 5: Social protection and material assistance

People living with HIV enjoy the right to an adequate standard of living, including equitable access to social protection and other forms of material assistance, particularly in the event of unemployment, sickness or disability.

Factor 6: Protection of privacy and confidentiality

People living with HIV enjoy effective protection from arbitrary or unlawful interference with their privacy. Their medical and personal information is subject to strict rules of data protection and confidentiality.

II. Equality of people living with HIV in public and private life

Factor 7: Political, social and cultural life

People living with HIV enjoy full equality and inclusion in political, social and cultural life. The State ensures the right of people living with HIV, HIV advocates and service workers to peaceful assembly and association.

Factor 8: Family, sexual and reproductive life

People living with HIV enjoy full equality in family life and the right to the highest attainable standard of sexual and reproductive health. The State facilitates the prevention of vertical transmission.

Factor 9: Education and training

People living with HIV enjoy the right to equal educational opportunity. Where appropriate, special measures are employed to provide reasonable accommodations for people living with HIV and increase their representation in educational institutions.

Factor 10: Employment, work and economic life

People living with HIV enjoy equal rights to: work in the public and private sectors, including just, favourable, safe and healthy conditions of work; property and inheritance; and credit. Where appropriate, special measures are employed to provide people living with HIV with income-generating opportunities and reasonable accommodations in the workplace.

Factor 11: Private and public housing

People living with HIV enjoy equal access to adequate private and public housing, including residential facilities. Where appropriate, special measures are employed to provide reasonable accommodations for people living with HIV and protect their rights in their place of residence. Segregation, exclusion and coercive or punitive measures based on HIV status are prohibited.

Factor 12: Entry, stay and residence

The State does not impose restrictions on the entry, stay and residence of people living with HIV based on their HIV status. People living with HIV are not returned to countries where they face persecution, torture or other forms of cruel, inhuman or degrading treatment. Migrants and mobile populations have equitable and sustainable access to comprehensive HIV-related services.

Factor 13: Non-criminalization of HIV exposure and transmission

HIV exposure and non-intentional transmission are not criminalized. Deliberate and intentional transmission of HIV is prosecuted under general rather than HIV-specific criminal law.

III. Key populations

Factor 14: Women

The State takes all appropriate measures to reduce specific HIV vulnerabilities of women, eliminate HIV-related discrimination against them and provide them with equitable and sustainable access to comprehensive HIV-related services.

Factor 15: Children and youth

The State takes all appropriate measures to reduce specific HIV vulnerabilities of children and youth, eliminate HIV-related discrimination against them and provide them with equitable and sustainable access to comprehensive HIV-related services.

Factor 16: People who use drugs

The State takes all appropriate measures to reduce specific HIV vulnerabilities of people who use drugs, eliminate HIV-related discrimination against them and provide them with equitable and sustainable access to comprehensive HIV-related services.

Factor 17: Adults engaged in commercial sex

The State takes all appropriate measures to reduce specific HIV vulnerabilities of adults engaged in commercial sex, eliminate HIV-related discrimination against them and provide them with equitable and sustainable access to comprehensive HIV-related services.

Factor 18: Men who have sex with men, and transgender people

The State takes all appropriate measures to reduce specific HIV vulnerabilities of MSM, and transgender people, eliminate HIV-related discrimination against them and provide them with equitable and sustainable access to comprehensive HIV-related services.

Factor 19: People under state custody

The State takes all appropriate measures to reduce specific HIV vulnerabilities of people under state custody, eliminate HIV-related discrimination against them and provide them with equitable and sustainable access to comprehensive HIV-related services. Terminally ill people living with HIV are considered for early release and given proper treatment outside prisons.

IV. Access to justice

Factor 20: Legal protection

Every person enjoys the right to an adequate and effective protection against violations of human rights based on HIV status, vulnerability, advocacy or service work.

Factor 21: Legal awareness, assistance and representation

The State implements and supports educational programmes aimed at raising legal literacy among people living with HIV. People living with HIV have equal access to adequate and affordable legal assistance and representation.

Factor 22: Access to a forum, fair trial, and enforcement of remedies

People living with HIV, HIV advocates and service workers are guaranteed equal access to a forum administering justice, the right to a fair trial, and effective enforcement of remedies.

Beyond the review of actual laws, regulations and policies, LEAs also encompass reviewing how laws are implemented and enforced, the nature and extent of stigma and discrimination among communities, leaders and institutions and how people access justice. This requires mapping the work of various organizations and services in the country and examining documentation such as case law, annual reports of civil society organizations, research reports, submissions and case studies.

BOX 6

UNAIDS seven key programmes to reduce stigma and discrimination and increase access to justice in national HIV responses²⁴

UNAIDS has developed guidance on seven key programmes for reducing stigma and discrimination and increasing access to justice in national HIV responses. These programmes not only help realize basic human rights for people living with HIV and those vulnerable to infection, they are also critical enablers to the success of HIV prevention and treatment programmes. An LEA may wish to examine the extent to which organizations, institutions and services carry out any or all of these programmes in examining issues of access to justice in a particular country:

Stigma and discrimination reduction programmes: Programmes aimed at reducing stigma and discrimination against people living with HIV or people at risk of HIV infection should address the actionable causes of stigma and discrimination (ignorance, irrational fears of infection and moral judgements) and empower people affected by HIV and AIDS. Examples of programmes may include community interaction, focus group discussions involving people living with HIV and key populations, media messages and engagement with religious and community leaders.

HIV-related legal services can facilitate access to justice and redress in cases of HIV-related discrimination or other legal matters. These services may include legal information and referrals; legal

24. UNAIDS, 'Key Programmes to Reduce Stigma and Discrimination and Increase Access to Justice in National HIV Responses, Guidance Note', UNAIDS, Geneva, 2012, available at: http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/Key_Human_Rights_Programmes_en_May2012.pdf.

advice and representation; alternative/community forms of dispute resolution; and engaging religious or traditional legal leaders/systems with a view to resolving disputes or changing traditional norms/processes (i.e. village courts).

Monitoring and reforming laws, regulations and policies relating to HIV through, for example, developing protective draft laws, advocacy for law reform; engagement with parliamentarians and Ministers of Justice, the Interior, Corrections, Finance, Industry, Labour, Women's Affairs, Education, Immigration, Housing, Defence, Health and Trade, among others; and promotion of the enactment and implementation of laws, regulations and guidelines that prohibit discrimination and support access to HIV prevention, treatment, care and support.

Legal literacy ('know your rights') programmes teach those living with or vulnerable to HIV infection about human rights and the national and local laws relevant to HIV and information on different legal and human rights mechanisms to seek redress. These programmes can form part of other HIV services (e.g. health care provision, support groups) or can be stand-alone programmes involving such activities as awareness-raising campaigns through the media (e.g. TV, radio, print, Internet) and community mobilization and education.

Sensitization of lawmakers and law enforcement agents helps to inform and sensitize those who make the laws (parliamentarians) and those who enforce them (Ministers of the Interior and Justice, police, prosecutors, judges, lawyers) about the important role of the law in the response to HIV, issues affecting people living with HIV and populations at high risk of HIV exposure and the implications this has for the development, implementation and enforcement of national law by the police and the courts.

Training for health care providers on human rights and medical ethics related to HIV helps to ensure that health care providers know about their own human rights to health (HIV prevention and treatment, universal precautions, compensation for work-related infection) and to non-discrimination in the context of HIV and also to reduce stigmatizing attitudes in health care settings and to provide health care providers with the skills and tools necessary to ensure patients' rights to informed consent, confidentiality, treatment and non-discrimination.

Reducing harmful gender norms and gender-based violence and increasing their legal, social and economic empowerment: Programmes promoting the rights of women and girls in the context of HIV should address the intersections between gender inequality, gender-based violence and vulnerability to HIV infection and impact. For instance, programmes may address women's and girls' inequality in sexuality and reproduction, access to health services, educational and economic opportunity, inheritance, property ownership, marriage, divorce and custody rights as well as addressing sexual and other violence through, for example, life skills programmes to reduce gender inequality and gender-based violence, work with communities to reform domestic relations and work with lawmakers and law enforcers to improve domestic violence laws and their implementation and enforcement.

The report from the LEA

The information collated from the stakeholder consultations and desk review needs to be analysed to determine:

- the situation with relation to HIV, law and human rights in the country, including the country's HIV epidemic, key populations, women and youth, stigma, discrimination and related HIV, legal and human rights issues of concern. This could include, for example, depending on the focus of the LEA, the situation with regard to:
 - women, HIV and the law;
 - children, young people, HIV and the law;
 - criminal law and HIV;
 - access to treatment; and
 - stigma and discrimination against people living with or affected by HIV or AIDS;
- the broader framework/standard set by international, regional and national human rights obligations as well as guidance and best practices on legal and policy responses to HIV;
- the current legal, regulatory and policy environment for responding to HIV and AIDS, with particular respect to key populations and key human rights issues and including a review of:
 - protective laws, regulations, policies and programmes which support human rights and access to health in the context of HIV and AIDS;
 - punitive laws, regulations and policies which pose barriers to human rights and access to health in the context of HIV and AIDS;
 - the extent to which people are able to access justice and enforce laws, including the extent to which people know their rights, the organizations, institutions and services providing accessible legal literacy and legal support services and law enforcement practices;
 - gaps and weaknesses in the current legal, regulatory and policy framework; and
- recommendations for law review and reform, strengthening access to justice as well as ensuring enforcement of rights, to create an effective response to HIV and AIDS.

Key questions for consideration in developing an LEA report

- ▶ What is the framework set by international, regional and national human rights commitments for rights-based responses to HIV?
- ▶ What are the key HIV, legal and human rights issues of concern? What is the nature of HIV-related stigma and discrimination?
- ▶ Which laws, regulations and policies regulate HIV and AIDS or key populations and other populations considered key for the national HIV response in the country?
- ▶ How do the laws, regulations and policies address the various key HIV, legal and human rights issues identified as priority concerns?

- ▶ How do the laws, regulations and policies protect the rights of infected and affected populations?
- ▶ How do the laws, regulations and policies promote access to services without discrimination to people infected and affected by HIV?
- ▶ How do the laws, regulations and policies block access to services, including for key populations?
- ▶ How are laws implemented and enforced?
- ▶ Which organizations, institutions and mechanisms are available to support access to justice and to enforce laws, regulations and policies?
- ▶ Are key populations able to access justice for violations of rights?
- ▶ Which problems with the legal and policy framework, including access to justice and law enforcement, have been identified by stakeholders?
- ▶ What are the gaps and inconsistencies in the legal and policy framework?
- ▶ What law and policy reform is needed to address the problems, gaps and inconsistencies?
- ▶ What training and sensitization is required to ensure that laws, regulations and policies are implemented and enforced?
- ▶ Which legal support services are required to ensure that populations are able to access justice?
- ▶ Which mechanisms are required to ensure that populations are able to claim justice and enforce rights?

SPECIFIC RESOURCES: RESEARCH AND ETHICAL CONSIDERATIONS

American Bar Association, 'HIV/AIDS Legal Assessment Tool: Assessment Methodology Manual', American Bar Association, Washington, DC, 2012, available at: http://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_i_hiv_aids_legal_assessment_tool_11_12.authcheckdam.pdf.

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CASE STUDY 2: UGANDA

A legal audit focusing specifically on key populations²⁵

This case study illustrates the choice of a narrow- rather than broad-focused LEA and the use of different methodologies including desk review and consultations with key populations.

National context

For a long time Uganda's experience in dealing with HIV has been heralded worldwide as a successful and model response. But this is beginning to change, with high prevalence rates currently being registered. Efforts aimed at mainstreaming key populations into HIV prevention, care and treatment programmes exist but face many challenges. Structural, policy and legal limitations need to be addressed so that key populations are integrated into available service delivery programmes. While Uganda is party to several progressive regional and international treaties that greatly advance equal access to HIV services and programming, challenges remain in practice largely due to the cultural environment within which health service providers operate.

Aims and objectives

A legal audit was undertaken by UNDP, UNFPA and the AIDS Information Centre in Uganda in 2012 to examine Uganda's legal and policy framework with regard to key populations, with a specific focus on MSM and sex workers. The audit took into consideration international, regional and domestic legal regimes and policies and probed how far they are supportive of key populations in HIV programming and service delivery. The audit captured the views of sex workers and MSM on these legal and policy frameworks while also investigating interpretations of the various laws and policies.

The study's main objective was to identify key provisions in the country's legal and policy framework related to key populations. The specific objectives were:

- to review existing laws and policies and identify those that support or criminalize sexual minorities in regard to their access to sexual and reproductive health and rights and HIV prevention, care and treatment services;
- to establish the interpretation and implications of these laws and policies and how they influence programming and service delivery for minority groups; and
- to establish community interpretations (from key populations, specifically) of these legal and policy provisions.

Outcomes and advice

To achieve the objectives, a range of methodologies were used, including a desk review and consultation with key informants and stakeholders. The study included a critical analysis of the various regional and international treaties to which Uganda is party and how they relate to the situation of sex workers and MSM. Most of the treaties explored are human rights treaties that guarantee the right of equal treatment to all persons. It also includes an analysis of the domestic legal and policy framework

25. Source: UNDP Regional Service Centre Africa.

and how it relates to the situation of sex workers and MSM, and the situational analysis of health service delivery to sex workers and MSM in Uganda. It concludes with recommendations on the legal and policy framework relating to sex workers and MSM.

The study showed that there is a disconnect between Uganda's laws and policies as regards the situation of key populations within the national HIV response, and especially that of MSM and sex workers. While penal laws criminalize the activities of MSM and sex workers, the policies that have been adopted, especially those from 2005 onwards, realize the importance of addressing the needs of these groups as part of the broader public health response to prevent and manage HIV. For their part, health service providers are left unsure about how to effectively address the needs of key populations, particularly MSM and sex workers, without violating the penal laws of the country.²⁶

It would appear that the government of Uganda has already embarked on a policy of harm reduction where public health interventions are carried out despite prevailing penal laws. However, there is a need for these tentative steps to be better articulated and institutionalized.

CASE STUDY 3: PACIFIC

Legal reviews²⁷

From 2007 to 2009 the UNDP Pacific Centre, the Pacific Regional Rights Resource Team of the Secretariat of the Pacific Community and UNAIDS jointly commissioned a legislative review of HIV, ethics and human rights in 15 Pacific Island countries—Cook Islands, Fiji, Federated States of Micronesia, Kiribati, Marshall Islands, Niue, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.²⁸

The legislative review employed a series of 10 'checklists' from the 'Handbook for Legislators on HIV/AIDS, Law and Human Rights' with which to assess whether different areas of law are compliant with the 'International Guidelines on HIV/AIDS and Human Rights' published in 1998 and updated in 2006. The checklists included in this document were on: 1) public health law; 2) criminal law; 3) prison/correctional laws; 4) anti-discrimination legislation; 5) equality of legal status of vulnerable populations; 6) privacy/confidentiality laws; 7) employment law; 8) therapeutic goods, consumer protection laws; 9) ethical human research; and 10) association, information and codes of practice. Each review examined national laws and regulations following the checklist.

These reviews were updated and consolidated, along with recommendations from subsequent dialogues and workshops on the legal environment, in the review document to support the consultation of seven countries on legal and policy barriers to access to HIV services, on 17–19 April 2013 in Fiji.

26. Interview with Dr. Raymond Byaruhanga, Executive Director, AIDS Information Centre, held on 14 October 2011.

27. UNAIDS, UNDP, 'Creating Enabling Legal Environments: Conducting National Reviews and Multi-Sector Consultations on Legal and Policy Barriers to HIV services, Guidance Document for Asia and the Pacific Region', UNDP, Bangkok, 2013.

28. UNDP Pacific Centre and UNAIDS, 'Enabling Effective Responses HIV Pacific Islands Countries. Options for Human-Rights Based Legislative Reform', UNDP Pacific Centre, Suva, and UNAIDS, Geneva, 2009, available at: http://www.undp.org/content/rbap/en/home/library/hiv_aids/enabling-effective-responses-to-hiv-in-pacific-island-countries-.html.

SECTION 3

Feedback and Finalization Stage

Overview of the results of the LEA

The completed LEA will have consolidated information—and will potentially have unearthed some new perspectives—about the role of the law and its links with HIV, health and human rights in the national context.

While consensus on recommendations and the way forward may be possible, it is also likely that some of the issues that emerge may be new for some, including members of the Technical Working Group, and potentially some findings might elicit different opinions (for example, in relation to harm reduction approaches and criminalizing laws affecting key populations).

The results of the LEA will provide an opportunity to generate and facilitate informed debate about the critical issues at the intersection of law, human rights and health in a country. It may also be possible in the future to compare the implications of the key findings (rather than the specific results per se) between national LEAs to look at similarities and differences between legal environments in different epidemic settings.

Purpose of the feedback and finalization stage

The purpose of this stage of the LEA is to:

- present draft findings and recommendations to national stakeholders;
- provide an opportunity for dialogue on key issues and feedback on draft findings and recommendations;
- disseminate the draft final report, discuss potential recommendations based on the LEA;
- seek consensus on final findings and recommendations and at least agree on common principles and objectives that can be endorsed by the Technical Working Group going forward;
- prioritize recommendations and key actions for moving forward to strengthen the legal framework for HIV and AIDS; and
- create a mechanism or forum for ongoing monitoring and evaluation of the process.

There are a number of different options for feedback and consensus-building during the LEA process and dissemination of the report findings and recommendations. Some possible processes are discussed below for consideration at country level.

Ongoing peer review

The LEA process may build in various opportunities for the review of draft findings during the assessment, including through:

- regular reports back to the Technical Working Group on key issues emerging from stakeholder consultations, of the draft findings of the desk review and draft versions of the LEA report;

- tabling the draft report at various relevant sectoral and multisectoral meetings and forums;
- meeting individually with various stakeholders with updates on the LEA; and
- dissemination of the draft report to a 'readers group' of peers with skills, expertise and experience in HIV, legal and human rights issues, for them to provide written comments.

Consultative validation workshop

Stakeholders who have participated in the process should also have an opportunity to discuss and deliberate on the outcomes and recommendations flowing from the LEA process once the near-final report is available. This is a specific phase likely to be more comprehensive and consolidated in nature than the ongoing review process outlined above. The report-back process should aim to:

- thank stakeholders for their participation in the LEA;
- report back to stakeholders on the process of the LEA, including:
 - which laws, policies and documents were reviewed and which stakeholders were consulted;
 - how stakeholders' perspectives and other findings were incorporated into the LEA;
 - how reporting was done and feedback received on preliminary findings; and
 - any limitations and challenges during the process and how these were dealt with;
- report on key issues, draft findings and recommendations made by the LEA;
- provide an opportunity for dialogue on key issues and feedback on the process, findings and recommendations; and
- reach consensus on findings and recommendations, including priority recommendations for strengthening the legal and policy framework.

National dialogues and their role in the LEA²⁹

The Global Commission on HIV and the Law held regional dialogues in seven regions of the world. The regional dialogues helped to bring civil society and government participants together in 'town hall' style meetings to discuss key HIV, legal and human rights issues and their impact on effective responses to HIV and AIDS. Civil society participants were pre-selected on the basis of submissions they made, and key government participants with interest and experience in legal and policy responses to HIV were invited to participate. Subsequently a number of countries have expressed an interest in holding national dialogues on HIV and the law, to create platforms for sharing experiences and insights and dialoguing at country level.

A national dialogue may be integrated within the LEA process in a number of ways. It may help to 'kick-start' an LEA, bringing people together to have a dialogue, discuss key issues of national concern and agree on important focus areas for a national LEA. This helps create safe spaces for dialogue on sensitive issues and ensures that the LEA focuses on areas of national concern and that stakeholders are committed to the process.

29. UNDP, 'National Dialogues on HIV and the Law, Practical Manual', UNDP, New York, 2013 (forthcoming).

Alternatively, a national dialogue may be useful at the feedback and finalization stage of an LEA, as a particular form of consultative validation workshop, where selected stakeholders with skills, expertise and experience in HIV, legal and human rights issues are brought together to discuss key issues identified by the LEA and recommendations for moving forward. Finally a national dialogue may also be useful at the dissemination stage to launch and discuss the results from the LEA as well as to start to prioritize recommendations and identify key actions towards action planning.

See www.hivlawcommission.org for further information on the regional dialogues on HIV and the law conducted in 2011, including resources for conducting dialogues on HIV and the law at national level.

Producing a final report

The report from the LEA should be finalized after feedback from the Technical Working Group and the consultative validation meeting. It should build on the foundation of the inception report/concept note and include:

- the purpose, scope and nature of the national LEA;
- the key HIV, legal and human rights issues of priority national concern that were addressed during the process;
- the methodology and specific activities undertaken;
- the deliverables achieved;
- the responsibilities and involvement of various parties in the process;
- a summary of the work plan and time-frame in which the work was undertaken;
- an account of resources required, effective resources mobilized and final budget;
- any questionnaires, survey plans, discussion guides and analysis tools that were used during interviews, focus group discussions and desk reviews;
- ethical approval sought and gained (as required) for research process;
- laws, regulations and policies reviewed;
- key stakeholders consulted during the assessment;
- key findings from the desk review and key informants;
- discussion of the results and key findings;
- implications of the key findings;
- proposed recommendations for going forward and having an impact with the results;
- references and list of key resources; and
- acknowledgements of all involved in the process and any donor support, and declarations of any conflict of interest among the LEA Task Team.

The complete final report from the LEA is likely to be a long document, ranging from 40 to 100 pages depending on the scope and objectives set out in the inception report.

Summary policy briefing

To make the key results more easily accessible for those who do not have time to read the full final report from the LEA, a summary policy briefing based on the final report might be a useful document. This shorter document could be 2–4 pages and include:

- a summary of the purpose, scope and nature of the national LEA and the key HIV, legal and human rights issues of priority national concern that were addressed during the process;
- highlights from the methodology and specific activities undertaken, including reference to any ethical approval sought and gained (as required) for the research process;
- a summary of the process and key stakeholders involved;
- a summary of the key results and implications of the key findings;
- proposed recommendations; and
- details of where the full report and further details about the LEA can be found.

Specific thematic or issue-based briefings could also be produced—for example, the narrow results of the LEA for different specific populations groups (such as people under the legal age of consent, people living with HIV, MSM, people who use drugs, and/or sex workers) or, alternatively, in different legal areas (such as criminal law, public health law, and constitutional law reform).

Production of final resource materials

To the extent that resources allow, the final report and policy briefing report could be produced as designed reports (for example, including logos of partners, photographs taken to document the process, pull quotations etc.) and available online as PDFs and/or printed for distribution at the national launch event to disseminate the results. The stages involved in the production of these materials include proof-reading, designing, reviewing, a print preview, printing and distribution.

Translation

Consideration should be given to the language in which the final report is published. Issues to consider include accessibility for:

- national policymakers, legislators and law enforcers and other stakeholders;
- participants in the research process;
- the general public in the national context; and
- an international audience and the potential of the LEA results to be a useful resource for other countries.

The results and/or report of the LEA may need to be translated into one or more languages to ensure that the results are accessible and effectively communicated to a range of audiences.

CASE STUDY 4: SEYCHELLES

A situation assessment of the impact of law on HIV to inform future law reform³⁰

This case study illustrates the oversight and guidance from the Technical Working Group throughout the process, from inception through to finalization. It also shows the choice of both a narrow- and broad-focused LEA.

National context

Seychelles faces a concentrated HIV epidemic among key populations such as people who use drugs, and MSM, as evidenced by the 2011 Respondent-Driven Sampling Study.³¹ The country has no clear legislation on HIV, though some legal and human rights aspects of HIV-related issues are addressed under various existing legislations and regulations including the Public Health Act and HIV Workplace Policy 2007. The Government of Seychelles has shown continued commitment to improving the national response. Recognizing the importance of a systematic analysis of the extent to which existing laws, policies and practices either support or constrain the national response to HIV and AIDS, the Government of Seychelles undertook a full LEA along with key development partners and stakeholders in accordance with the 2012 'National Strategic Framework for HIV and AIDS and STIs 2012–2016'.

Scope of LEA

The LEA aimed to analyse an agreed list of prioritized, relevant laws, regulations, policies and practices to determine how they undermine or support an enabling legal environment and national AIDS response. The scope of the LEA was broad, since it analysed the entire legal environment including the extent to which people living with HIV know and are able to access their rights, and service providers, lawmakers and law enforcers are sensitized to HIV-related legal and human rights issues to enable effective implementation of services, access to justice and enforcement of HIV-related laws and rights. However, the assessment was also narrow, as it did not address all HIV-related issues and was restricted to legal and policy concerns as they affected the rights of key populations.

Strong involvement and leadership of stakeholders in the LEA process

The LEA was led by the National AIDS Council which advised and supported the development of the project concept, design and planning. Structures set up to support project implementation included:

- a Technical Working Group—set up to provide support to planning, implementation of data collection activities, and inputs into findings and recommendations. Members consisted of representatives and senior staff from government ministries and departments (e.g. Health, Education, Community Development and Social Affairs, Prison, Youth, National Children's Council), the Attorney General's office, UN agencies (WHO, UNDP, UNFPA), NGOs, the private sector, including banks, and people living with HIV. Working meetings were organized on a monthly basis with regular email-based exchange and inputs into the processes; and

30. M. Clayton, I. Carolus and C. Grant, 'Legal Environment Assessment of HIV and AIDS', UNDP Regional Service Centre Africa, Addis Ababa, 2013.

31. Conducted in 2011 by the Epidemiology Department, Ministry of Health, Seychelles.

- a National Steering Committee—provided overall leadership and oversight to ensure successful implementation of the project. It was chaired by the Minister of Health and comprised senior officers and representatives of various departments, ministries and relevant sectors. The role was more political and strategic to leverage high-level support for the project.
- Two consultants (one national and one international) were enlisted to provide technical support and guidance in close collaboration with the Technical Working Group.

The project implementation was categorized into three overlapping phases, with the Technical Working Group involved actively throughout each:

1. The establishment of a Technical Working Group during the inception stage was critical, as it played a key role throughout the LEA process as a resource for the project, providing inputs drawing on its knowledge and experiences from different sectors.
2. The Technical Working Group played a key role in the desk review and data collection phase. During the desk review it helped access various documents on the laws, policies and, in some cases, plans to be reviewed. It helped identify issues and finalize a list of priority laws, regulations and policies. It also provided inputs for the initial findings of the desk review report, providing information to clarify issues and making suggestions on areas that required further analysis. The Technical Working Group also played a supportive role in helping identify key informants, setting up meetings with different groups, helping identify rights holders and their representatives and setting up meetings with members of key population groups.
3. In the feedback and finalization phase, the Technical Working Group worked closely with the consultants to develop the final composite report. Feedback from members of the Technical Working Group and stakeholders played an important role in adding weight to and advancing the review towards commonly agreed findings and recommendations among Technical Working Group members and also among the wider groups of stakeholders. The Technical Working Group meeting after the consultative validation workshop ensured that the information gathered from the workshop was integrated into the final LEA report. The consultants worked closely with the Technical Working Group to incorporate information gathered from the workshop, to harmonize and ensure consistency and soundness of the findings and recommendations.

The working meetings were planned and designed to bring Technical Working Group members together to discuss, agree and adopt findings and recommendations at the Technical Working Group level. It is also important to note that consensus among the consultants and a member of Technical Working Group was not a prerequisite for approval by the wider stakeholders. Further consensus and buy-in would then be solicited among wider stakeholders through stakeholders' consultative meetings—for example, at the consultative validation workshop.

Outcomes and lessons learned

The HIV LEA was completed successfully and provided a range of platforms for consultations and feedback at different levels. These offered the opportunity to gather valuable inputs that shaped overall findings and recommendations, and to achieve a strong consensus among all those involved in the LEA process. The lessons learned are the following:

- Active engagement and feedback from Technical Working Group members are important. However, motivation is an issue that needs to be addressed to enhance active participation in the project. The solution found was to provide an honorarium to all Technical Working Group members as an appreciation of their support and inputs at various stages of project implementation, findings and recommendations.
- The LEA process is not exactly a linear process, and the LEA core team may need to discuss and agree on how to proceed in cases of unforeseen circumstances during implementation. This could also require adopting a more dynamic process which allows reviewing and adjusting strategies and activities to fit with emerging circumstances, at the same time being careful enough to execute the project activities within reasonable timelines.
- Depending on the local context, consultation methods may vary, and it is important for the LEA core team to decide and agree on the scope, objectives and the target audience for consultations. For instance, depending on the social, legal and policy environment, consultation methods for key populations may vary, as they may be hard to reach.

“Our key populations remain hard to reach, marginalized and even criminalized. Reaching them will require an even greater commitment to human rights and inclusion of all members of society in fighting stigma and discrimination. We must address these equity gaps with unprecedented urgency.”

— **Honorable Minister Mitcy Larue**, Minister of Health, Seychelles
Keynote address at the opening of the National AIDS Council meeting where
LEA recommendations were adopted

SECTION 4

Dissemination, Implementation and Impact

During all steps of this phase of implementing the LEA, it is important for the main audience for all associated activities to include, at least, those who participated in the process—at all levels—including the stakeholders, the Technical Working Group and the people and groups who participated in the interviews and discussions.

Purpose of disseminating the results of the LEA

The purpose of this final stage of the LEA is to:

- provide the opportunity for dialogue on the final results, key issues and recommendations;
- maximize the potential impact of the findings and recommendations to national stakeholders;
- use the evidence to inform law reform processes;
- sustain momentum and generate multi-stakeholder commitment to address key issues that emerged from the LEA; and
- trigger, support and/or sustain multi-stakeholder action to take the recommendations forward.

It is important to consider the target audience for any dissemination activity, and then consider the most appropriate channel of communication and language to reach that specific audience. As noted above, for specific audiences it may also be useful to consider generating specific thematic summary reports tailored to specific issues, key findings and/or key populations to spotlight special attention on timely and critical issues highlighted in the results of the LEA.

There are a number of different options for disseminating the results of the LEA. Some possible processes are discussed below for consideration at country level.

Dissemination workshop

All countries should plan to have at least a national dissemination workshop to launch the results of the LEA. A final national dissemination workshop may be an opportunity to:

- disseminate the final LEA report and its findings and recommendations;
- provide an opportunity for dialogue and discussion on the findings and recommendations;
- prioritize recommendations for strengthening the legal and regulatory framework for HIV and AIDS;
- discuss key actions to take forward, including issues for:

- law review and reform;
- strengthening access to justice; and
- sensitizing law enforcement and prison agencies to issues around HIV, human rights and access to care and support for marginalized and key populations;
- discussing the roles and responsibilities of various partners in taking up recommendations;
- developing a road map for future action required to ensure the implementation of recommendations; and
- developing a process or forum for ongoing monitoring and evaluation of the process.

Media engagement

Engaging the media and generating media coverage of the process and results from the LEA can be another way to promote and inform public dialogue about the key issues. Depending on the resources available, a variety of approaches could be used to promote coverage of the LEA through news stories, in-depth feature coverage and more sustained investigative journalism, and/or through commissioned public service announcements.

Channels of communication that could be considered include print, television and broadcast media (such as commercial and community radio) as well as online and other social media.

Some possible activities for consideration include:

- press releases, jointly issued by all partners involved in the Technical Working Group, to trigger coverage of the national launch event and release of the final report from the LEA in news coverage;
- media fellowships, to support and sustain in-depth investigative reporting of key issues emerging from the LEA through feature stories. The fellowships could include a short capacity development training specifically for journalists and editors on the results and recommendations from the LEA, stipends to support travel costs and provide an incentive for journalists to invest time and energy in in-depth coverage of the issues, and ongoing mentoring support from a senior 'expert' journalist who can provide technical guidance on the content and style of the features while also potentially assisting journalists to place their stories with other media houses outside their own;
- public service announcements could be commissioned and produced to ensure that regular controlled messages are disseminated consistently over a period of time; and
- online and social media coverage of the LEA process and results may be appropriate (depending on the reliability and coverage of internet access).

As with all dissemination and communication activities, target audience, cost and resources will be important considerations in determining which activities it may be possible to undertake effectively.

BOX 7

Media fellowships in East and Southern Africa

Building capacity, forming relationships and generating media coverage of the integration of sexual and reproductive health and HIV services in Kenya, Malawi, Swaziland and Uganda

In July 2012 the International Planned Parenthood Federation (IPPF) sent a call for applications for a media fellowship opportunity for journalists in East and Southern Africa. As part of the communications strategy of the Integra Initiative, a five-year operations research project, IPPF sought to generate public debate based on the research findings and reflections from the process of implementing the project.

The media fellowship included three main stages:

1. **A capacity development workshop:** The main aim of the workshop was to establish links between the selected journalists and members of the project team while also offering in-depth technical training on issues relating to the integration of sexual and reproductive health and HIV services. In this example, this workshop was linked as a pre-meeting to a regional conference on 'Integration for Impact' held in Nairobi, Kenya, in September 2012. Fifteen journalists attended, having been selected from a larger pool of around 40 applicants. The main criteria for selection included journalistic experience, links to a media house, genuine interest in the issues, and demonstrated ability to critically engage with complex research findings. Applications from journalists living with HIV were also proactively encouraged. Representation from a range of different communication channels (print, broadcast, online etc.) was sought across all the applicants. The applications were shortlisted and reviewed by project partners, and the successful applicants were offered support to travel to Nairobi to attend the workshop and conference.
2. **Mentorship:** After the workshop 11 of the journalists qualified for the sustained fellowship, which included ongoing mentorship for six months from a senior journalist based in the region who was associated with the BBC. It also included ongoing access to press releases and the latest information (in advance of general release) relating to new research publications and potential media hooks generated by the Integra Initiative.
3. **Research support for investigative journalism:** During the six-month fellowship period, journalists also received honoraria to support their research costs to enable publication of in-depth and 'hard-to-reach' stories. This included a small stipend to cover their time as well as transport costs (approximately US\$100 per journalist for the six-month period).

Two journalists were also selected, based on their engagement and performance during the fellowship, to attend the launch of the Integra research results at the UK Houses of Parliament in March 2013.

During the Integra media fellowships more than 50 stories were published or broadcast in print, on radio and/or online. The stories have each taken a unique angle on some of the critical issues relating to the integration of sexual and reproductive health and HIV services, and many have drawn on resources from the Integra Initiative and/or interviews with members of the team as sources for their stories.

To read the outputs from the media fellowships, visit www.integrainitiative.org.

Tailored summary reports on key findings

The LEA process is likely to produce a vast amount of useful information that can be presented in numerous ways to focus on different critical issues and/or concerns for specific stakeholders and/or priorities for different key populations. It may be useful to consider producing focused thematic summary briefs drawing out specific aspects from the key findings, results and recommendations from the LEA. This can be particularly useful if a broad focus has been adopted for the LEA that is of direct relevance in different ways for the diverse members of the Technical Working Group and other stakeholders. Possible examples of different ways to present a summary of the key findings could include a specific focus on:

- individual key population groups and how different laws specifically interact and have an impact: for example, a summary of legal and policy issues related to sex workers may include a review of punitive legislation relating to the soliciting and/or selling of sex, relevant public health laws (such as relating to the criminalization of transmission, exposure and/or non-disclosure of HIV or venereal disease) alongside human rights provisions within the constitution and documentation of cases where sex workers may have been arrested under specific laws and/or faced abuse in law enforcement processes. It would also include a specific analysis of information provided by key stakeholders who spoke about sex work and the analysis of key findings, results and recommendations specifically for sex work. Similarly, summaries could be collated for MSM, transgender people, people who use drugs, and people living with HIV;
- cross-cutting themes, such as gender or stigmatization or access to health services, and how different laws have a specific impact—positive or negative—on specific thematic areas; and
- actors and champions to take action on specific recommendations: for example, breaking down the key recommendations proposed and developing tailored resource briefs that include a summary of the relevant findings that have informed the specific recommendations, details of the laws implicated, and strategies for action mapping out key actors, stakeholders, risks, vulnerabilities and opportunities for taking the recommendations forward.

These summary reports could be issue- or population-based, and be used to support targeted advocacy or community mobilization on specific issues within the wider concerns raised and addressed in the LEA. They could be presented in a variety of formats and should always be framed within the context of the wider results from the complete LEA (for example, through a reference or a short paragraph of introduction that contextualizes the specific report). Some possible formats for presenting specific summary reports could include:

- short written reports (2–4 pages);
- webinars and/or a specific round-table discussion;
- community awareness-raising activities within key populations (for example, peer support groups of MSM, in a context where same-sex sexual relations is criminalized in the law; discussions about the results of the LEA and the implications in real lives of MSM in terms of stigma and access of legal services); and
- professional network meetings or capacity development activities—for example, with a national union of journalists (drawing on the findings from the LEA in terms of media coverage of legal and public health issues); police officers' union; the National Law Reform Commission or the National Law Society.

Small grants for tailored advocacy

Given the participatory nature of the LEA process, one of its greatest strengths will be the breadth and diversity of the partners and stakeholders involved. One way to facilitate and support partners in taking forward the results and recommendations from the LEA may be to provide small grants for key stakeholders to take forward their own initiatives and activities to maximize the dissemination and potential impact of the LEA. This may include developing new and discrete pieces of work, as well as potentially incorporating a focus on the LEA into existing programmes and activities. It may also include specific grants to support the tailored summary reports outlined above.

Sustaining the process

It is important to ensure that the LEA does not end with the production of the final report. In the final workshop, a consultative process of prioritizing recommendations and identifying some key actions for strengthening the legal and regulatory framework may be useful as a way of increasing ownership in future processes to build on the LEA findings. In addition, it is important to identify some other steps to sustain commitment to strengthening the legal framework after the LEA, such as:

- assigning responsibilities for follow-up work to various institutions and organizations;
- designating a structure (such as the Technical Working Group or a new structure specifically set up for the purpose) to coordinate and communicate with the various sectors and oversee follow-up work;
- integrating LEA recommendations and follow-up activities into the existing work of organizations and into national strategies and plans (such as national development plans, national strategic plans on HIV and AIDS, and UN development assistance frameworks);
- including activities that empower key populations and civil society organizations to claim their rights and that build the capacity of state institutions to implement HIV and human rights activities; and
- promoting linking, sharing and learning across countries and across the region to increase long-term national and regional knowledge and capacity in HIV, law and human rights and efforts to strengthen legal and regulatory responses to HIV.

SPECIFIC RESOURCES: COMMUNICATION AND DISSEMINATION

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Overseas Development Institute, 'Developing Capacities for Better Research Uptake: The Experience of ODI's Research and Policy in Development Programmes', Overseas Development Institute, London, 2011, available at: <http://www.odi.org.uk/publications/6195-research-uptake-rapid-research-policy-development>.

Overseas Development Institute, 'Toolkit: Tools for Policy Impact: A Handbook for Researchers', Overseas Development Institute, London, 2004, available at: <http://www.odi.org.uk/publications/156-tools-policy-impact-handbook-researchers>.

Panos, 'Relay: Communicating Research', Panos, London, 2013, available at: <http://panos.org.uk/projects/relay/>.

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Panos, 'At the Heart of Change: The Case for Communication in Sustainable Development', Panos, London, 2007, available at: <http://panos.org.uk/resources/at-the-heart-of-change/>.

CASE STUDY 5: MALAWI

An LEA linked closely to the reform and revision of a proposed HIV bill³²

This case study illustrates the choice of a broad-focused LEA and the stages of planning through implementation of different aspects of the methodology in different parts of Malawi.

National context

The Constitution of Malawi, the supreme law of the land, is built on human rights principles. It contains a Bill of Rights that includes protection of the rights to equality and non-discrimination, to gender equality, to privacy, to dignity, to security of the person, to information, and to work, among others. The Constitution also mandates that the State enacts laws and develops policies that meet the health needs of Malawians. In addition, Malawi is party to and has ratified various regional and international human rights conventions, declarations, covenants and treaties. All people, including people living with HIV, key populations and other subpopulation groups vulnerable to HIV, are accorded human rights and protection from discrimination in Malawi.

HIV is not specifically listed as protected grounds for non-discrimination in the Constitution, nor is there specific HIV legislation in Malawi. Applying broad laws and rights to HIV is a possible approach but leads to gaps, challenges and uncertainties within the current legal and regulatory framework.

Implementing process and partners

The Department of Nutrition and HIV and AIDS (DNHA) and the Ministry of Justice, in collaboration with UNDP, commissioned an LEA with the overall objective of assessing the legal, regulatory and policy environment in relation to HIV in Malawi. Specifically, the LEA aimed at assessing the extent to which the current legal, regulatory and policy environment protects and promotes the rights of all people, including people living with HIV and other populations key to the national HIV response, and promotes universal access to HIV prevention, treatment, care and support.

Aims and objectives

The specific objectives of the assessment were:

- to analyse international, regional and national human rights obligations relating to HIV and related rights that Malawi has committed to as a State Party;
- to review relevant national laws and policies and recent and ongoing law reform initiatives, including laws that affect populations key to the national HIV epidemic;
- to assess the 2008 'Report of the Law Commission on the Development of HIV and AIDS Legislation', including submissions to the report;
- to review findings from research studies relating to law, human rights, stigma, discrimination and HIV in Malawian society;
- to analyse access to justice and law enforcement on matters related to HIV and human rights, including a review of the awareness and understanding of rights among people living with HIV, key populations and key service providers, access to legal support services, law enforcement mechanisms and other key issues raised; and
- to assess the key human rights issues affecting people living with HIV and other populations key to the national HIV epidemic, and the extent to which these issues are addressed by the current environment.

32. UNDP Africa Regional Service Centre, 'Assessment of Legal, Regulatory & Policy Environment for HIV and AIDS in Malawi', UNDP, Addis Ababa, 2012.

Outcomes and advice

Between December 2011 and March 2012, a team of legal and public health experts, the LEA Team, implemented the LEA by reviewing relevant documents (literature, laws, bills, reports, policies etc.) and conducting key informant interviews and focus group discussions with important stakeholders at national and district level. A total of 66 key informants and 21 focus group discussions were conducted in Blantyre, Lilongwe, Zomba, Mangochi and Mzimba.

The LEA identified a number of ongoing challenges relating to HIV, law and human rights in Malawi:

1. There are a number of vulnerable populations such as women, children, young people, people with disabilities, prisoners and employees, among others, and key populations including MSM and sex workers who have been shown to be at higher risk of HIV exposure and/or to experience the impact of HIV and AIDS more severely than the general population.
2. HIV-related stigma and discrimination were found and were reported to exacerbate the negative impact of HIV.
3. Although protective provisions in Malawian law and policy were identified (such as criminal laws to protect women from sexual violence, children's laws that protect the rights of orphaned children, and employment laws that protect all employees from unfair discrimination), many laws pre-date and do not specifically deal with HIV or the various inequalities and human rights abuses experienced by people living with HIV and key populations. In addition, access to justice and law enforcement for human rights violations is limited. Populations are not fully aware of their rights and how to enforce them, and enforcement mechanisms are not always accessible and well resourced.
4. There were a number of punitive or coercive provisions in law, many of which pre-date HIV but which are now recognized as creating barriers to the response. For instance, laws that criminalize sex between men and aspects of sex work block access to services for key populations.
5. The LEA team noted that there are various health and sectoral laws and policies, including the national HIV and AIDS policy, which promote the health rights of all people. However, resource constraints means that policies are not always fully implemented and, in some cases, do not adequately provide for rights of individual people living with HIV or access to appropriate HIV prevention, treatment, care and support. In addition, there was limited use of flexibilities within international trade agreements (the TRIPS Agreement) in Malawi to promote access to treatment.

The LEA calls for the enactment of an HIV and AIDS law that must protect and promote human rights in the context of HIV and prohibit all forms of discrimination on the basis of actual or perceived HIV status, with specific prohibitions on discrimination in key sectors such as health care, employment, education and social assistance, among others.

Among other recommendations, the LEA recommends that the law must set out the State's responsibilities to take all reasonable measures to provide for the regulation of and access to affordable, quality health care services for the prevention, treatment, care and support of HIV, the details and implementation of which are to be enumerated in policies and operational plans. Legal, policy and/or administrative barriers to the provision of effective health care services for HIV should be removed to ensure provision of health care for all, including criminalized populations.

How Malawi has used the LEA report

After validation of the LEA report by the National Reference Group—a national entity that provided guidance, oversight and quality assurance throughout the LEA process—a national dissemination

workshop was held, with the participation of multiple stakeholders from districts and national levels. These included traditional leaders, faith leaders, civil society representatives, the private sector, representatives from the government, international organizations, service providers and affected populations—including people living with HIV, pregnant women, married men and women, persons with disabilities, sex workers' organizations, young girls, and organizations working on issues of MSM, among others. A special media breakfast was organized with the Resident Coordinator/UNDP Resident Representative before the national dissemination to communicate the recommendations of the LEA report to journalists and answer their questions on rights-based interventions in the HIV response.

The national dissemination culminated in a national communiqué of the LEA, which stated:

“Going forward from the National Conference on HIV and AIDS Legal Environment in Malawi, we reiterate our commitment to continue to collaborate across all sectors to act on the evidence and deliver on our human rights commitments by reviewing discriminatory and punitive laws and harmful practices, strengthening anti-discrimination protection in law, regulation and policy for all populations affected by HIV and AIDS; increasing awareness of HIV and human rights; providing accessible legal support services for all those whose rights are violated; reducing stigma and discrimination; sensitizing lawmakers, law enforcers and service providers to key legal and human rights challenges and eliminating gender inequality, harmful gender norms and cultural practices and violence against women, to ensure people living with and at higher risk of HIV have access to health and social services they are entitled to.”

The DNHA also convened four regional dissemination meetings, through which the report was disseminated to the members of all 28 District Executive Committees, which are multisectoral committees responsible for district-level policy planning and governance.

Malawi has used the LEA to revise the National HIV and AIDS Policy and Strategic Plan, and both will be launched during World AIDS Day on 1 December 2013. Malawi is currently reviewing the draft HIV bill facilitated by the DNHA and the Ministry of Justice, to integrate findings of the LEA and other recent recommendations into it, for enactment into law by 2015.

“After more than two decades of stigma, discrimination and other ills, LEA is the hope of the hopeless HIV-positive persons including the affected (not only in Malawi but also within the region), if the proposed recommendations are fully adopted and executed by government(s). It is like a mirror, which has exposed and enlightened us on the existence of both bad and good laws in our society in the context of HIV and AIDS pandemic including what is missing. The LEA has potential to help us to develop an acceptable, conducive and evidence-based legal and regulatory framework that can sustain the response for better lives of the infected and affected people plus the nation of Malawi at large.”

— Sylvester Gawamadzi,

Chief Planning Officer, Department of Nutrition, HIV and AIDS, OPC, Malawi (2013)

SECTION 5

Documenting the Process: Communication, Monitoring and Evaluation, and Coordination

Finally, the LEA in one country may provide valuable experiences and information for other countries considering an assessment. This document sets out suggested processes, methodologies and implementation modalities for undertaking an assessment; however, the actual assessment process in each country will be unique. Documenting and sharing strategies, successes and lessons learned between countries can only further enrich the LEA process and contribute to shared learning between countries and regions.

This section deals with a number of important, often forgotten, cross-cutting issues that are important for planning, carrying out and following up on an LEA. The section includes a description of key considerations in the communication, coordination and budgeting of an LEA process. It also offers ideas for a monitoring and evaluation framework that can support the documentation, learning and sharing of best practices between national experiences of implementing an LEA.

Coordination

In planning for the implementation of the LEA, due attention should be paid to the time and energy involved in effectively coordinating participatory processes and enabling meaningful engagement from all stakeholders. The amount of time and investment required in coordination will depend on the nature of the national initiative, whether any one organization is predominantly facilitating the process and/or the extent to which the stakeholder group and Technical Working Group are participating and actively involved in each phase of implementing the LEA.

Communication

Throughout this manual, the notion that the process of conducting an LEA is just as important as the outcome has been emphasized in the framework and illustrated by the case studies.

Regular, open and clear communication is key to ensuring as smooth a process of meaningful engagement with all stakeholders as possible. However, unexpected challenges will emerge, and communication will play a key role in resolving any issues and moving forward in a way that does not risk undermining the collaborative nature of the process.

Effective stakeholder communication can be managed in a variety of ways, and sharing relevant information in a timely and constructive way is a critical component of the LEA process. Possible strategies include:

- regular updates (for example, through a weekly email) that include a summary of actions taken and upcoming key activities;
- clear reminders about decision points and input needed from all stakeholders;
- updates to and from the Technical Working Group with other stakeholders involved in the process;
- strategic and transparent sharing of select information. For example, not everyone needs to be involved in every decision, nor do all stakeholders need to be aware of specific challenges and opportunities as they arise—often a summary may suffice once specific issues have been resolved; and
- documenting the process—including the challenges as well as the opportunities—and promoting critical reflection among the implementing team and Technical Working Group. This will also provide a useful resource for other national efforts to conduct an LEA, and likewise reviewing reports from other countries may be a useful way to troubleshoot and anticipate challenges in the planning stages of an LEA.

Budgeting

Budgets will vary dramatically between contexts. A detailed budget with an estimated cost for the different stages of the LEA will need to be elaborated to inform decisions about implementation and focus (as well as fundraising) depending on the resources available.

To enable meaningful participation among stakeholders, due recognition and investment should also take the cost of communication into consideration when planning and implementing an LEA. This includes considerations in terms of:

- cost, including items such as telephone and Internet access;
- transport, including items such as vehicle hire, fuel, reimbursement of travel on public transport;
- meeting material, such as printing and taking notes for the agenda, minutes, organizing refreshments etc., as required;
- facilitation of regular communication (as agreed during the inception period) among the Technical Working Group and stakeholder group with the lead researcher(s);
- media liaison, and drafting press releases and liaising with journalists and media professionals; and
- review, as well as coordination of the peer review process, to ensure quality and consistency of material produced and publicized relating to the LEA. Examples could include the draft and final report, summary reports, press releases, online social media and other tailored thematic discussion of the LEA.

Monitoring and evaluation

A monitoring and evaluation plan should take place before and after the LEA to assess the process and potential impact of the LEA. Effective policies and programmes require qualitative and quantitative baselines. A ‘results orientation’ calls for qualitative and quantitative data on the extent of legal literacy in the target audience, as well as perhaps information about the frequency of reporting of human rights violations, and experiences of accessing justice.

In line with UNDP’s Results-Based Management (RBM), programmes should differentiate between outcomes, outputs and activities. Monitoring and evaluating the influence of an LEA is challenging, especially because—as with any research—the potential impact may only come to fruition after a number of years.

Some suggested areas for review at baseline and then repeated on completion of the LEA, and ideally—as resources allow—6–12 months after completion of the LEA include:

- the experiences of stakeholders related to critical issues concerning access to justice, and prevalent human rights issues in the national response to HIV as well as opinions about relevant laws and legislations;
- an audit of the GIPA principle (‘Greater Involvement of People living with HIV’) in the proposed implementation process and dissemination of the LEA, including reviewing the visibility and engagement of people living with HIV, including disaggregation by gender and age; and people from key populations, including disaggregation by gender and age;
- measurements relating to self-awareness about human rights and the law among lead research partner(s), the Technical Working Group and stakeholder group; and
- awareness of existing actions and initiatives relevant for the LEA.

Regular monitoring of project implementation can be useful in informing the development of the project. Documenting and sharing lessons learned can provide significant opportunities for other countries to learn from not only the outcomes and recommendations of the LEA but also the process. This can also be very useful for stakeholders within the country who may be interested in undertaking an LEA on a different thematic area and/or considering ongoing in-depth work based on the results of the LEA.

SPECIFIC RESOURCES: MONITORING AND EVALUATION

American Bar Association, ‘HIV/AIDS Legal Assessment Tool: Assessment Methodology Manual’, American Bar Association, Washington, DC, 2012, available at: http://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_i_hiv_aids_legal_assessment_tool_11_12.authcheckdam.pdf (see country report template, pp. 12–13).

IDLO, UNAIDS and UNDP, ‘Toolkit: Scaling up HIV-related legal services’, IDLO, Rome, UNAIDS, Geneva, and UNDP, New York, 2009, available at: http://data.unaids.org/pub/Manual/2010/20100308revisedhivrelatedlegalservicetoolkitwebversion_en.pdf.

Overseas Development Institute, 'Making a Difference: M & E of Policy Research', Working Paper, No. 281, Overseas Development Institute, London, 2007, available at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2426.pdf>.

UNDP, UNAIDS, 'Creating Enabling Legal Environments: Conducting National Reviews and Multi-Sector Consultations on Legal and Policy Barriers to HIV Services, Guidance Document for Asia and the Pacific Region', UNDP, Bangkok, 2013, available at: http://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2013-creating-enabling-legal-environments.pdf.

III. ANNEXES

ANNEX 1

Sample Terms of Reference

ANNEX 2

Sample informed consent form

ANNEX 3

Focus area questions to guide LEA

ANNEX 1

Sample Terms of Reference

Annex 1 includes the following draft Terms of Reference:

- **Annex 1A: Sample concept note: national LEA**
- **Annex 1B: Terms of Reference for the Technical Working Group supporting the LEA**
- **Annex 1C: Terms of Reference for the researcher(s) implementing the LEA**

ANNEX 1 A

Sample concept note: national LEA

Background and national HIV context

In the 'Political Declaration on HIV/AIDS' (2011) and 'Declaration of Commitments on HIV/AIDS' (2006) governments committed themselves to protecting the human rights of people living with HIV, women and members of vulnerable populations.

In the 2011 'Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV/AIDS'³³ they committed to review, as appropriate, laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes to people living with and affected by HIV. The Declaration recognizes that a country's legal environment—its laws and how they are implemented and enforced—plays a critical role in the national response to HIV.

To support governments to meet their commitments and targets relating to eliminating HIV stigma and discrimination and to create enabling legal environments, an independent Commission led by UNDP on behalf of the Joint UN Programme on HIV/AIDS (UNAIDS), developed actionable, evidence-informed and human-rights-based recommendations for an effective HIV response. The findings of the Global Commission on HIV and the Law in its 2012 report, 'HIV and the Law: Risks, Rights & Health', found evidence of how protective legal environments improve the lives of people living with HIV and reduce vulnerability to infection.³⁴ Across the globe it also found evidence of how stigma, discrimination, punitive laws, police violence and ineffective access to justice continue to fuel the HIV epidemic. The Global Commission's report focused on five main areas: laws and practices that discriminate against people living with HIV; laws and practices that criminalize those living with and most vulnerable to HIV; laws and practices that sustain or

33. UN General Assembly, 'Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV/AIDS', General Assembly A/65/1/77, United Nations, New York, 2011.

34. Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, available at: <http://hivlawcommission.org/index.php/report>.

mitigate violence and discrimination against women; laws and practices that facilitate or impede access to HIV-related treatment; and issues of law relating to children and young people in the context of HIV.³⁵

Following the Global Commission's findings and recommendations, there is commitment to conduct a national Legal Environment Assessment (LEA) of laws, policies and practices that affect people living with HIV, key populations, women, youth and other population groups identified as critical for the national HIV response.

[INSERT 3–4 PARAGRAPH OVERVIEW OF COUNTRY RESPONSE TO HIV, LAW AND HUMAN RIGHTS e.g.

- Epidemiological information
- Broad overview of legal and policy framework in the country in relation to human rights, HIV and the law
- Key HIV, legal and human rights issues of concern
- Current response, if any, to strengthening legal and policy framework
- Impact on key populations and other populations key for the national HIV response
- Key gaps and challenges.]

Purpose of the national LEA

The primary purpose of the national LEA is to review laws, regulations and policies, access to justice and law enforcement in the context of HIV, to identify the nature and extent of stigma, discrimination, gender inequality, gender-based violence and human rights abuses affecting key populations. The national LEA also aims to assess the effectiveness of the legal framework in protecting rights and promoting universal access to services. It aims to identify HIV, legal and human rights issues of concern by:

- examining HIV-related laws and human rights issues affecting people living with HIV, women and youth in the context of HIV and key populations in a particular country, including key human rights issues of concern, with regard to:
 - stigma and discrimination against people infected and affected by HIV;
 - women, HIV and the law;
 - children, young people, HIV and the law;
 - criminal laws affecting key populations such as sex workers, men who have sex with men (MSM), transgender people and people who use drugs; and/or
 - access to treatment;
- examining the extent, efficacy and impact of the current legal and policy framework, including:
 - examining laws that protect against discrimination and human rights abuses and promote universal access to HIV-related health care, including anti-discrimination laws, laws that protect the rights of women, children and young people, health laws that promote patients' rights, and intellectual property laws that promote access to treatment, among others;
 - reviewing punitive laws that block access to services for key populations, including criminal laws

35. *Ibid.*, pp. 62–69.

- that criminalize HIV transmission or exposure, sex work, same-sex relationships, provision of harm reduction programmes to people who use drugs; coercive health laws that deny patients' health rights; and immigration laws that create travel restrictions for people living with HIV, among others;
- finding out the extent to which populations know their rights, and service providers, lawmakers and law enforcers are sensitized to HIV-related legal and human rights issues to enable effective implementation of services, access to justice and enforcement of HIV-related laws;
 - identifying the impact of the current legal framework on key populations and on universal access to HIV prevention, treatment, care and support; and
 - noting, where relevant, lessons learned during the process of developing, implementing and enforcing laws, regulations and policies relevant to HIV and AIDS, including those that are barriers to the development, implementation and enforcement of protective frameworks;
- identifying strengths, gaps and challenges in the legal and policy framework in terms of alignment with national, regional and international human rights commitments, guidance, best practice and lessons learned from foreign jurisdictions (where relevant) and in terms of addressing key HIV, legal and human rights issues and promoting effective responses to HIV; and
 - recommending measures to:
 - strengthen the development, implementation, monitoring and enforcement of protective laws;
 - remove or amend punitive laws;
 - strengthen awareness of protective laws and services among communities and service providers; and
 - improve access to justice and law enforcement in the context of HIV and AIDS.

Expected outcomes

The outcome of the national LEA is to make recommendations for strengthening an enabling environment for an effective response to HIV. More specifically, the outcome of the LEA is to generate evidence and use it actively to strengthen the legal environment, including through law review and reform, programmes to increase awareness of rights and access to legal services and improve law enforcement.

Methodology

A five-stage process will be followed to support the national LEA with the involvement of all key stakeholders and the establishment of a Technical Working Group:

- (1) Planning
- (2) Assessment
- (3) Feedback and finalization
- (4) Dissemination, implementation and impact
- (5) Documenting the process: communication, monitoring and evaluation, coordination

Role of stakeholders involved in the LEA process (*refer to page 22 for a suggested list of key*

stakeholders)

Key stakeholders will be meaningfully involved in the LEA process. Their role is to participate in consultations relating to the LEA in a timely manner and provide accurate information and opinions to the best of their ability.

[Provide here a list of all key stakeholders to be involved in the process.]

ANNEX 1 B

Sample Terms of Reference for the Technical Working Group

Background and national HIV context

In the 'Political Declaration on HIV/AIDS' (2011) and 'Declaration of Commitments on HIV/AIDS' (2006) governments committed themselves to protecting the human rights of people living with HIV, women and members of vulnerable populations.

In the 2011 'Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV/AIDS'³⁶ they committed to review, as appropriate, laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes to people living with and affected by HIV. The Declaration recognizes that a country's legal environment—its laws and how they are implemented and enforced—plays a critical role in the national response to HIV.

To support governments to meet their commitments and targets relating to eliminating HIV stigma and discrimination and to create enabling legal environments, an independent Commission led by UNDP on behalf of the Joint UN Programme on HIV/AIDS (UNAIDS), developed actionable, evidence-informed and human-rights-based recommendations for an effective HIV response. The findings of the Global Commission on HIV and the Law in its 2012 report, 'HIV and the Law: Risks, Rights & Health', found evidence of how protective legal environments improve the lives of people living with HIV and reduce vulnerability to infection.³⁷ Across the globe it also found evidence of how stigma, discrimination, punitive laws, police violence and ineffective access to justice continue to fuel the HIV epidemic. The Global Commission's report focused on five main areas: laws and practices that discriminate against people living with HIV; laws and practices that criminalize those living with and most vulnerable to HIV; laws and practices that sustain or mitigate violence and discrimination against women; laws and practices that facilitate or impede access to HIV-related treatment; and issues of law relating to children and young people in the context of HIV.³⁸

Following the Global Commission's findings and recommendations, there is commitment to conduct a national Legal Environment Assessment (LEA) of laws, policies and practices that affect people living with HIV, key populations, women, youth and other population groups identified as critical for the national HIV response.

[INSERT 3–4 PARAGRAPH OVERVIEW OF COUNTRY RESPONSE TO HIV, LAW AND HUMAN RIGHTS e.g.

- Epidemiological information
- Broad overview of legal and policy framework in the country in relation to human rights, HIV and the law
- Key HIV, legal and human rights issues of concern

36. UN General Assembly, 'Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV/AIDS', General Assembly A/65/1/77, United Nations, New York, 2011.

37. Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, available at: <http://hivlawcommission.org/index.php/report>.

38. Ibid.

- Current response, if any, to strengthening legal and policy framework
- Impact on key populations and other populations key for the national HIV response
- Key gaps and challenges.]

Technical Working Group objectives

The main objectives of the Technical Working Group are to guide and support the national LEA by ensuring that the recommended five-stage process to support a national LEA is followed—i.e.: 1) planning; 2) assessment; 3) feedback and finalization; 4) dissemination, implementation and impact; and 5) documenting the process.

More specifically, the objectives of the Technical Working Group may be to provide:

- **oversight:** to guide and monitor the assessment process to ensure that it is conducted according to agreed processes and in a way that ensures consultation, inclusivity and a commitment to a rights-based response;
- **advice:** providing technical input on key HIV, legal and human rights issues and on the various stages in the LEA process; and
- **implementation support:** supporting and/or actively undertaking the LEA depending on the arrangement with the researcher(s) and the resources available to support the LEA.

Responsibilities of the Technical Working Group

The responsibilities may include:

- guiding the national LEA in accordance with national priorities and recommended guidance, as a multi-disciplinary reference group;
- facilitating fundraising/resource mobilization for conducting the national LEA;
- providing ongoing technical support to the planning, implementation and finalization of the national LEA;
- overseeing and monitoring the national LEA throughout each stage of the process;
- raising awareness of the HIV, legal and human rights issues of priority national concern;
- advocating to strengthen political commitment to the national LEA and its outcome;
- reviewing and endorsing the LEA recommendations and supporting action planning to strengthen the legal and regulatory environment for HIV;
- reporting back on the outcomes of the process to key stakeholders; and
- developing a process or forum for ongoing monitoring of the outcomes of the LEA, with the involvement of key stakeholders.

Members (refer to page 23–25 for a suggested list of members of the Technical Working Group)

The Technical Working Group should comprise around 10 to 15 representatives. Members should have the following characteristics:

- come from a range of sectors, institutions and organizations key to the national response to HIV;
- skills, experience and understanding of HIV, law and human rights, public health, gender equality, trade and intellectual property; and
- experience of working with people living with HIV, women, youth, key populations etc.

The Technical Working Group should seek to balance representation between government, civil society and other groups. It should seek to maintain a gender-balanced representation.

[Include here the list of all members of the Technical Working Group].

Duration and meetings

[Include here the time-span of the Technical Working Group's involvement and the number of meetings that it is supposed to hold].

ANNEX 1C

Sample Terms of Reference for the LEA Task Team

Background and national HIV context

In the 'Political Declaration on HIV/AIDS' (2011) and 'Declaration of Commitments on HIV/AIDS' (2006) governments committed themselves to protecting the human rights of people living with HIV, women and members of vulnerable populations.

In the 2011 'Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV/AIDS'³⁹ they committed to review, as appropriate, laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes to people living with and affected by HIV. The Declaration recognizes that a country's legal environment—its laws and how they are implemented and enforced—plays a critical role in the national response to HIV.

To support governments to meet their commitments and targets relating to eliminating HIV stigma and discrimination and to create enabling legal environments, an independent Commission led by UNDP on behalf of the Joint UN Programme on HIV/AIDS (UNAIDS), developed actionable, evidence-informed and human-rights-based recommendations for effective HIV response. The findings of the Global Commission on HIV and the Law in its 2012 report, 'HIV and the Law: Risks, Rights & Health', found evidence of how protective legal environments improve the lives of people living with HIV and reduce vulnerability to infection.⁴⁰ Across the globe it also found evidence of how stigma, discrimination, punitive laws, police violence and ineffective access to justice continue to fuel the HIV epidemic. The Global Commission's report focused on five main areas: laws and practices that discriminate against people living with HIV; laws and practices that criminalize those living with and most vulnerable to HIV; laws and practices that sustain or mitigate violence and discrimination against women; laws and practices that facilitate or impede access to HIV-related treatment; and issues of law relating to children and young people in the context of HIV.⁴¹

Following the Global Commission's findings and recommendations, there is commitment to conduct a national Legal Environment Assessment (LEA) of laws, policies and practices that affect people living with HIV, key populations, women, youth and other population groups identified as critical for the national HIV response.

[INSERT 3–4 PARAGRAPH OVERVIEW OF COUNTRY RESPONSE TO HIV, LAW AND HUMAN RIGHTS e.g.

- Epidemiological information
- Broad overview of legal and policy framework in the country in relation to human rights, HIV and the law
- Key HIV, legal and human rights issues of concern
- Current response, if any, to strengthening legal and policy framework

39. UN General Assembly, 'Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV/AIDS', General Assembly A/65/1/77, United Nations, New York, 2011.

40. Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, available at: <http://hivlawcommission.org/index.php/report>.

41. *Ibid.*

- Impact on key populations and other populations key for the national HIV response
- Key gaps and challenges.]

Objective of the assignment

The country is embarking on a national LEA to review laws, regulations and policies, access to justice and law enforcement in the context of HIV, to identify the nature and extent of stigma, discrimination, gender inequality, gender-based violence and human rights abuses affecting people living with HIV and key populations.

The objective of this consultancy is to set up an LEA Task Team to provide research, analytical, coordination, implementation and writing support throughout the process of the national LEA.

Duties and responsibilities

The role of the lead consultant/researcher(s) of the LEA Task Team is to:

- facilitate the implementation of the LEA by liaising with the Technical Working Group;
- develop the inception report/concept note and the final report in partnership with the Technical Working Group and in consultation with key stakeholders;
- coordinate the implementation of the LEA with the Technical Working Group and involved key stakeholders by ensuring that their feedback is taken into account;
- conduct a desk review to examine all HIV-related laws and policies as well as other laws relevant in the context of HIV, human rights and public health; and
- conduct focus group discussions and stakeholder consultations.

The **responsibilities** of the lead consultant/researcher(s) of the LEA Task Team may include:

- implementing the national LEA in accordance with national priorities and recommended guidance, as a multi-disciplinary reference group;
- ensuring relevant ethical approval is sought and achieved as required;
- overseeing the quality of the research process—for example, by ensuring informed consent and that due confidentiality is protected throughout every stage of the process;
- drafting the inception report, final report and other summary policy briefs or specific thematic briefs as required according to the accepted methodology;
- thoroughly referencing the sources of information (e.g. literature review materials, interviews etc.);
- being responsive to the ongoing technical support from the Technical Working Group and peer review feedback throughout the process;
- reviewing and endorsing the LEA recommendations and supporting action planning to strengthen the legal and policy environment for HIV;
- reporting back on the outcomes of the process to key stakeholders; and
- collaborating in the process or forum for ongoing monitoring of the outcomes of the legal and policy framework, with the involvement of key stakeholders.

Scope of work

The national LEA should cover:

- a review of all international, regional and national human rights obligations and commitments, particularly those relevant in the context of HIV and AIDS;
- a review of all relevant current or proposed national laws, including common law, statutory law, case law, customary law and religious law; regulations; policies and codes of conduct relevant to HIV and/or to key populations;
- a review of relevant strategies and planning documents relating to HIV, health and other key sectors and populations at higher risk of HIV exposure, such as national strategic plans on HIV, national gender strategies, national disability frameworks etc.; and
- research, reports and case studies relating to HIV-related legal and human rights issues, such as:
 - Stigma Index studies detailing the nature and extent of HIV-related stigma and discrimination;
 - research, reports, submissions and case studies by civil society organizations—for example, on knowledge, attitudes and practices of communities, service providers, lawmakers and law enforcers; reports on stigma and discrimination, advocacy on HIV-related laws, access to justice and law enforcement issues within the country etc.;
 - research and reports by statutory institutions (e.g. Human Rights Commission or Law Commission) on HIV, legal and human rights issues including the implementation and enforcement of laws and policies; and
 - research and reports by international organizations (e.g. Human Rights Watch, UN organizations) on HIV, legal and human rights issues.

Laws to be reviewed may include, depending on the extent of the assessment, those covering:

- ▶ HIV;
- ▶ anti-discrimination (e.g. constitution, equality laws);
- ▶ privacy and autonomy of the person;
- ▶ status (e.g. age of majority, status of women, children, people with disabilities, refugees);
- ▶ marriage;
- ▶ inheritance;
- ▶ children;
- ▶ women;
- ▶ migrants/refugees;
- ▶ correctional services/prisons;
- ▶ the armed and security forces;

- ▶ health (e.g. public health legislation, regulation of medicines, regulation of medical professionals, patient rights, medical schemes);
- ▶ trade and industry, and intellectual property;
- ▶ criminalization (e.g. laws regulating sexual offences, sex work, same-sex relationships, HIV exposure or transmission, drug use);
- ▶ drugs;
- ▶ social welfare and development;
- ▶ education;
- ▶ labour/employment;
- ▶ traditional dispute resolution mechanisms;
- ▶ business, insurance and credit.

See Annex 3 for further tools to guide a review of laws, policies and practices in relation to equality and non-discrimination; women; children; young people and access to treatment.

Methodology, tasks and deliverables

The LEA will be undertaken using some or all of the following methodologies to meet its objectives:

1. Planning stage

A consultative planning workshop: A consultative process/dialogue involving a range of key stakeholders to discuss and finalize the purpose and scope of the LEA, key issues for priority focus during the LEA, suggested laws, regulations and policies to be included in the desk review, suggested stakeholders to be consulted during the review and the roles, responsibilities and composition of various partners in the process, including a participatory body to guide, support and oversee the review process.

Deliverable 1: Development of an inception report/concept note and work plan

Clearly setting out:

- ▶ the process to be followed in the LEA;
- ▶ activities to be undertaken;
- ▶ an inventory of laws, regulations, policies and other documents to be reviewed;
- ▶ a list of key stakeholders/focus groups to be consulted;
- ▶ interview and focus group discussion tools/questionnaires;
- ▶ measures to be taken to protect the confidentiality of informants and focus group members, where necessary; and
- ▶ a report of the consultative planning stage, where relevant.

2. Review stage

A desk review of relevant international and regional commitments, national laws, regulations and policies as well as research reports, submissions and case studies relevant to HIV, law and human rights in the country.

Interviews, consultations, surveys, questionnaires and/or focus group discussions with key stakeholders from executive, legislative and judicial branches of government, civil society, religious organizations, traditional, religious and other community leaders, the private sector and international organizations, among others.

Deliverable 2: Elaboration of a national report from desk review (20–30 pages)

Based on the desk review, the lead consultant/researcher(s) should draft a report setting out:

- ▶ a broad overview of HIV, law and human rights in the country, including the HIV epidemic; information regarding key populations at higher risk of HIV exposure, and HIV, legal and human rights issues of concern such as: discrimination laws; women, HIV and the law; children, young people, HIV and the law; criminal law and HIV; and access to treatment;
- ▶ the broader framework/standard set by international, regional and national human rights obligations as well as guidance and best practices on legal and policy responses to HIV; and
- ▶ the current legal, regulatory and policy environment for responding to HIV and AIDS, with particular respect to key populations and key human rights issues and including a review of:
 - protective laws, regulations, policies and programmes which support human rights and access to health in the context of HIV and AIDS;
 - punitive laws, regulations and policies which pose barriers to human rights and access to health in the context of HIV and AIDS;
 - gaps and weaknesses in the current legal, regulatory and policy framework; and
 - recommendations for law review and reform, strengthening access to justice as well as ensuring enforcement of rights, to create an effective response to HIV and AIDS.

Deliverable 3: Development of a methodology, based on feedback from the Technical Working Group, and relevant ethical approval as required

Deliverable 4: Finalization of the form and process for ensuring informed consent and protecting confidentiality throughout the research process

Deliverable 5: Elaboration of a report of the stakeholder interviews, surveys, questionnaires and focus group discussions

Deliverable 6: Draft of a consolidated LEA report (40–80 pages)

The draft consolidated LEA report should include the results from the desk review (Deliverable 2) and results from other methodologies (Deliverables 3 and 5) that:

- ▶ assess the current legal and policy environment to respond to HIV and AIDS with a specific focus on issues and/or populations of priority concern such as: discrimination laws; women, HIV and the law; children, young people, HIV and the law; criminal law and HIV and access to treatment;
- ▶ identify strengths, weaknesses and gaps in the current legal and policy environment, including the extent to which the current environment complies with human rights obligations, addresses key issues and promotes universal access to HIV prevention, treatment, care and support; and
- ▶ make recommendations for strengthening the legal and policy environment in the country so as to ensure a response which complies with international, regional and national human rights obligations, address key human rights issues in the context of HIV and AIDS, including the rights of key populations, promote universal access, and balance public health and human rights imperatives.

3. Feedback and finalization stage

A consultative validation stage to provide feedback and develop consensus on the draft findings and recommendations to all relevant stakeholders who participated in and are affected by the national legal review.

A dissemination process to disseminate the final national legal review report, to prioritize recommendations and to discuss key actions for moving forward.

Deliverable 7: Development of a consultative workshop report

A short report that sets out the outcome of the final consultation and peer review process with the Technical Working Group and key stakeholders on the draft findings and recommendations.

Deliverable 8: A final national legal review report

A long report that includes finalized LEA results and based on the outcome of the final consultative process.

Deliverable 9: Communication, dissemination and impact strategy

A short strategy to guide the communication, dissemination and potential impact of working with the results from the LEA. The final assessment process should also create mechanisms and processes to support further documents to ensure the uptake of recommendations made by the assessment—for example, advocacy and action plans or draft legislation.

Summary of deliverables and time-frame

Month 1:

Deliverable 1: Inception report and work plan

Deliverable 2: National report from desk review

Month 2:

Deliverable 3: Methodology, based on feedback from the Technical Working Group, and relevant ethical approval as required

Deliverable 4: Finalize the form and process for ensuring informed consent and protecting confidentiality throughout the research process

Month 2–4:

Deliverable 5: Report of the stakeholder interviews, surveys, questionnaires and focus group discussions

Deliverable 6: Draft consolidated LEA report

Month 5:

Deliverable 7: Consultative workshop report

Month 6:

Deliverable 8: Final national legal review report

Deliverable 9: Communication, dissemination and impact strategy

Qualifications and competencies for the lead consultant/researcher(s)

It is envisaged that the LEA Task Team will be made up of two or three individuals (one international/lead consultant and one national consultant).

The qualifications require a strong educational background in law such as international law and/or human rights law, public health and HIV law.

Advanced knowledge and work experience of assessing and developing legal, regulatory and policy frameworks to respond to health, in particular HIV and AIDS, is required; as is experience in conducting research, including developing interview and focus group discussion tools and conducting interviews, as well as desk research.

It is essential that individuals of the Task Team be considered free of any conflict of interest and neutral towards the issues being screened by the LEA process. The Task Team should also be acknowledged across government entities and civil society organizations.

ANNEX 2

Sample informed consent form

I hereby freely grant the United Nations Development Programme (UNDP) permission to create and use audio or video recordings, photographs and footage of me during this interview for the national Legal Environment Assessment, in [insert country], taking place [insert time, date and place of interview].

In particular, my consent extends to the following:

1. I consent to an audio recording being made during the interview.
 YES NO
2. I consent to photographs being taken and used to document the process of the interview that may include me as background in the shot.
 YES NO
3. I consent to photographs being taken and used to document the process of the interview that include me in close-up and/or profile.
 YES NO
4. I consent to being filmed while making verbal submissions during the interview.
 YES NO

I fully understand that:

- any audio or video recordings or photography taken during the interview will be used and distributed to ensure the rigour of the Legal Environment Assessment and provide an accurate documentation of the experiences shared during the interviews;
- any audio or video recordings or photography taken during the interview may also be used and distributed to promote the activities of UNDP to protect people living with HIV and vulnerable to HIV, and to document the legal environment in [insert country name]; and
- UNDP is the rights-holder of the footage of the Legal Environment Assessment process, and may produce a photograph collection and/or video as part of its mandate to generate enhanced outreach of information and services.

I fully understand that any audio or video recordings or photography taken during the interview for the Legal Environment Assessment in [insert country name] may, therefore, be shown through multiple channels, including online media, public screenings, DVD distributions and exhibitions.

I understand that all images and recordings captured by UNDP will be used solely as promotional materials to protect people living with HIV and vulnerable populations, and not for any commercial purposes.

I hereby release UNDP of all claims of every account of such use, and I waive any rights of compensation or ownership thereto.

I confirm that the content of this consent form has been explained to me, and that I fully understand the meaning.

(Date)

(Name)

(Witness)

ANNEX 3

Focus area questions to guide LEA

The following five question guidelines are based on the key areas identified in the report of the Global Commission on HIV and the Law. The tools draw significantly from the Global Commission's report as well as on existing resources to support the implementation of an HIV LEA produced by the American Bar Association.⁴²

Annex 3 includes resources and guidance tools for reviewing:

- A: Access to treatment**
- B: HIV-related stigma and discrimination**
- C: Women, HIV and the law**
- D: Criminal law in the context of key populations**
- E: Criminal law in the context of HIV**
- F: Children, young people, HIV and the law**

ANNEX 3A

Tool for reviewing access to treatment

Access to treatment is a universal human right

As noted in the Report of the Global Commission on HIV and the Law, antiretroviral drugs and other medicines to counteract the effects of HIV and its co-infections make the difference between health and illness, productive life and early death. The prices of first-generation antiretrovirals have fallen dramatically over the past 13 years, thanks primarily to increased marketplace competition from generic medicines. This translates into more people in low- and middle-income countries receiving treatment. At the end of 2012, an estimated 9.7 million people in low- and middle-income countries were receiving antiretroviral therapy.⁴³ More people on treatment means not only fewer AIDS-related deaths but also fewer HIV infections, fewer children orphaned due to AIDS, and reduced expenditure for precariously sustained households and health systems. Yet, second- and third-line antiretrovirals, second-generation first-line antiretrovirals and medications for treatment of co-infections such as hepatitis C remain expensive and, therefore, out of reach for many patients. By 2015, governments have pledged to provide treatment to 15 million people living with HIV.⁴⁴

42. Both resources were released in 2012.

43. UNAIDS, 'Global Report, UNAIDS Report on the Global AIDS epidemic 2013', UNAIDS, Geneva, 2013, p. 46.

44. *Ibid.*, p. 46.

A number of countries have enacted specific laws protecting the right to health for people living with HIV or have achieved broad access to treatment through the courts. In some countries administrative or judicial decisions have been adopted that give priority to public health needs over intellectual property protection, as allowed by the intellectual property framework of the World Trade Organization (WTO). These decisions have substantially reduced costs and increased access to treatment of good quality. Such legal strategies, together with global advocacy and generic competition, resulted in a 22-fold increase in access to antiretroviral therapy between 2001 and 2010.⁴⁵ While some pharmaceutical companies have entered into agreements to offer medicines at reduced prices in developing countries, their actions cannot be significantly credited for the dramatic rise in treatment. In addition, in most cases such decisions have been triggered by government or judicial actions that aim to increase access to treatment. Evidence shows that increased competition among producers/suppliers has led to substantial decreases in prices without jeopardizing quality. Despite this remarkable achievement, the world is in the grip of a crisis in treatment affordability and accessibility—and this crisis is only set to increase, due to the general uncertainty of funding of the AIDS response, along with price pressures of newer, more effective treatments.

The legal environment can have an impact on access to treatment in many ways. Significantly, access is affected through laws that regulate intellectual property, multilateral agreements such as the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and international statements such as the Doha Declaration, unilateral laws and policies, anti-counterfeiting laws and free trade agreements. Other aspects of law enforcement may also have an impact on how individuals, particularly from key populations, seek testing services and access treatment—for example, if they fear incarceration, registration and/or deportation for seeking treatment.

The purpose of the LEA is to establish whether and/or which laws have an impact on and the extent to which they enable or prevent access to affordable, good-quality treatment for HIV, for co-infections and opportunistic infections.

Suggested areas for review in the LEA

State of the domestic health care system

- What are the major health care challenges in the country? Provide information about: population size; population growth rate; life expectancy at birth; breakdown of burden of disease; prevalence of malnutrition; infant mortality rate; maternal mortality ratio; any other important macro health information; percentage of people who buy medicines out of pocket; percentage of people who have regular access to essential medicines.
- What is the status of health policy and health regulations in the country? Provide information about: constitutional provisions for health care; existence of a national health policy document and its vision.

General situation on access to medicines

- Is there a medicines law? If yes, when was it last updated? Highlight important areas regulated by this law. Is there a national essential medicines list? If yes, how often is it updated, when was it last

45. UNAIDS, 'Key Global Findings: AIDS at 30: Nations at the crossroads', UNAIDS, Geneva, 2011, available at: http://www.unaids.org/en/media/unaids/contentassets/restored/AIDS30_KEY_FINDINGS_en.pdf.

updated, and does it include essential medicines for the treatment of HIV, co-infections and opportunistic infections?

- Are medicines for HIV and its co-infections freely available in the public sector? If not, explain. If yes, what HIV-related medicines are available in the public sector (e.g. first-line, second-line, third-line, Hepatitis B and C, TB including multidrug-resistant and extensively drug-resistant TB, paediatric medicines)? Are these imported or locally manufactured? Does the country also export HIV-related medicines? Are the medicines available from the public sector from originator companies or generic companies? What prices does the public sector pay for HIV-related medicines? What HIV-related medicines are available in the private sector, and at what prices are these medicines available? Are purchases of HIV-related medicines from the private sector reimbursable through public or private insurance, and who can claim such insurance (e.g. only government employees, military personnel or the public at large)?
- Link to existing documentation within the LEA relating to current levels of access to treatment. For example, what is the latest known and estimated number of people living with HIV receiving treatment for HIV or a related co-infection or for opportunistic infections? How many people living with HIV in need of antiretroviral therapy are actually receiving it? How many people living with HIV access HIV-related treatment from the public sector, and how many from the private sector?

Laws on intellectual property and access to treatment

- Is the country a WTO Member? If not, does it have a national patent law, and does the law provide patent protection to pharmaceuticals? Explain the law including the patentable subject matter, flexibilities available such as compulsory licensing and the enforcement provisions. What is the term of patent and type of patent protection provided—i.e. process and product?
- If the country is a WTO Member, to what extent are the following TRIPS flexibilities reflected in national intellectual property and medicines laws? Where the national intellectual property and medicines laws exceed the requirements of the TRIPS Agreement—i.e. incorporate TRIPS-plus measures—please describe these.

Types of flexibilities	Examples
<p>Preventative: <i>Policy options to minimize the effects patents have on restricting access to affordable medicines. Advantages: less politically sensitive than some remedial measures, less resource-intensive and, because they can occur before remedial measures, access is secured earlier.</i></p>	<ul style="list-style-type: none"> • Exclusion from patentability: Exclude new use of known substances, methods and processes, traditional medicines, naturally occurring genes • Patentability criteria: Develop and apply strict patentability criteria for examination of pharmaceutical patents to ensure grant of only high-quality patents; reduces ‘evergreening’ of patents • Patent opposition: Allow pre-grant and post-grant patent opposition in a fast, accessible and cost-efficient manner that allows people living with HIV, health and public interest groups to file such oppositions • Waiver for Least Developed Countries: LDCs should utilize the waiver from providing patent protection for pharmaceuticals until 1 July 2021 (and possibly longer, if extended by the WTO).

Remedial:

Preventative flexibilities cannot always be used to meet existing and emerging needs to secure access to affordable medicines. Therefore, series of remedial flexibilities are included in the TRIPS Agreement.

- **Compulsory licences and government use orders**
- **Compulsory licences for export** under the **WTO decision of 30 August 2003**
- **General exceptions to patent rights:** Bolar (early working) exception, research and experimental use exception, individual use, import of small quantities or small consignments
- Use of **national competition laws to prevent intellectual property rights abuse** and provide remedies in the event of such abuse
- **Parallel importation with an international exhaustion rule**

Enforcement:

Related to obligations under Part III of the TRIPS Agreement, which sets minimum standards for intellectual property enforcement.

- Do intellectual property enforcement laws **conflate the public health problem of substandard and falsified medicines with claims of intellectual property infringement?** If so, how?
- Do the provisions for the enforcement of intellectual property reflect TRIPS flexibilities, including in relation to the grant of interim or final injunctions so as to ensure that intellectual property infringement proceedings do not hamper or impede access to affordable, generic medicines?

- Has the country entered into a free trade, bilateral or regional agreement with an intellectual property component, a bilateral or regional intellectual property agreement, a bilateral investment treaty or anti-counterfeiting treaty? Please list all such agreements.
- Please describe the intellectual property obligations found in these agreements, particularly in relation to patent terms, patentability criteria, compulsory licences, parallel importation, protection of pharmaceutical test data, marketing authorization procedures (e.g. patent linkage), and enforcement, including as they relate to trademarks and border measures. Where these exceed the minimum standards of the TRIPS Agreement, please indicate so.
- Does the country undertake substantive examination of patent applications? If it does not, have reasons been given as to why not? Is the country a member of any regional grouping in relation to the examination and grant of patents, such as the African Regional Intellectual Property Organization (ARIPO), Eurasian Patent Office (EAPO) or the Organisation Africaine de la Propriété Intellectuelle (OAPI)?

Related laws and access to treatment

- Does the country have anti-counterfeiting legislation? If so, does the definition of a counterfeit rely on a definition of an infringement of intellectual property, rather than on threats to public health? Are there border measures for suspected patent infringement or those that apply to exports and in-transit

goods, including for trademark infringement? Are there other forms of criminalization in intellectual property laws in addition to wilful trademark infringement and copyright piracy on a commercial scale? Please describe.

- Does the country have a competition law? If so, does the law contain any provisions that can be used to reduce the price of medicines and active pharmaceutical ingredients, protect or promote local manufacturing, and regulate agreements and licences between pharmaceutical companies (including pay-for-delay agreements)? Does the competition law prevent abuse of intellectual property rights and provide remedies pertaining to treatment access and where such abuse is anti-competitive or where there is an abuse of dominance by a pharmaceutical company? Does the competition law or any other law regulate the mergers or acquisitions of pharmaceutical companies and allow for the inclusion of measures to ensure public interest in such mergers or acquisitions? Is the competition authority accessible for public interest and health groups to file competition complaints? Please include and describe any relevant competition law decisions.
- What is the mechanism used by the country to assess the safety and efficacy of medicines and then to register the marketing approval of medicines? Describe the process—for example, what are the costs and time-frames involved? Are there expedited processes available for registering medicines for HIV, its co-infections or opportunistic infections? Are there compassionate use provisions for unregistered medicines or those that are still in clinical trials?
- Does the country have any legal mechanisms or bodies aimed at controlling or influencing the price of medicines? If so, please describe these.

LEA Task Teams should note that the guidance above has a specific focus on access to affordable and good-quality generic treatment that has been the key to the provision of access to HIV-related treatment in the developing world. In the HIV context, access to treatment may also require the examination of several other issues. For instance, the LEA Task Team may consider examining legal and policy provisions related to 'quackery' and the interplay between traditional and allopathic medicines and whether the prescription of HIV treatment is regulated. Access to diagnostic testing (CD4 tests, viral loads, drug sensitivity tests, tests for TB and Hepatitis B and C etc.) are also integral to the provision of treatment. As newer HIV and TB treatments are increasingly tested in developing countries, LEA Task Teams may also consider a closer examination of laws and policies related to clinical trials, the protection of test subjects and post-trial access to newer treatments. Access to treatment for migrants and refugees also poses unique legal problems, as the responsibility of the State for such populations is seldom included in national laws. In some settings access to pre-exposure prophylaxis for health care providers and for survivors of sexual assault may also be an important issue to consider.

SPECIFIC REFERENCES AND LINKS:

STIGMA AND DISCRIMINATION

For more information on specific tools:

American Bar Association, 'HIV/AIDS Legal Assessment Tool, Rule of Law Initiative', American Bar Association, Washington, DC, 2012, pp. 55–63.

Please refer to the factors stated in this resource which might be of particular interest:

Factor 4: Treatment, care and other health services

Factor 5: Social protection and material assistance

OHCHR and UNAIDS, 'International Guidelines on HIV/AIDS and Human Rights', 2006 Consolidated Version, OHCHR and UNAIDS, Geneva, 2006, pp. 37–48, available at:
http://www2.ohchr.org/english/issues/hiv/docs/consolidated_guidelines.pdf.

Refer to the Guidelines mentioned in this resource which might be of particular interest:

Guideline 6 and its commentary: Access to prevention, treatment, care and support

For more information on access to treatment:

Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, Chapter 6, pp. 76–87.

UNDP, 'Good Practice Guide: Improving access to treatment by utilizing public health flexibilities in the WTO TRIPS Agreement', UNDP, New York, 2010, available at: http://content.undp.org/go/cms-service/stream/asset/?asset_id=3259443.

UNDP, 'Discussion Paper: Anti-counterfeit laws and Public Health: What to look out for', UNDP, New York, 2012, available at: <http://www.undp.org/content/dam/undp/library/hivaids/English/UNDP%20Discussion%20Paper%20-%20%28revised%29.pdf>.

UNDP, UNAIDS and WHO, 'Policy Brief: Using TRIPS flexibilities to improve access to HIV treatment', UNDP, New York, UNAIDS and WHO, Geneva, 2011, available at: http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2049_PolicyBrief_TRIPS_en.pdf.

UNDP, 'Discussion Paper, The Doha Declaration ten years on and its impact on access to medicines and the right to health', UNDP, New York, 2011, available at: http://www.undp.org/content/dam/undp/library/hivaids/Discussion_Paper_Doha_Declaration_Public_Health.pdf.

Interesting link:

Treatment Action Campaign: <http://www.tac.org.za/>

ANNEX 3B

Tool for review of HIV-related stigma and discrimination

HIV-related stigma and discrimination are among the foremost barriers to HIV prevention, treatment, care and support. Stigma and discrimination can have a negative impact on the lives of people living with and vulnerable to HIV. They can undermine HIV prevention efforts by making people afraid of seeking HIV information, services and modalities to reduce their risk of infection, and of adopting safer behaviours, in case these actions raise suspicion about their HIV status. Fear of stigma and discrimination discourages people living with HIV from disclosing their status, even to family members and sexual partners, and undermines their ability and willingness to access and adhere to treatment. Thus, stigma and discrimination weaken the ability of individuals and communities to protect themselves from HIV and to stay healthy if they are living with HIV.

The law does have a symbolic potential in defining aspirations for social and economic changes that may address the underlying determinants of ill health and protect human rights. As such one aspect of the LEA is to analyse laws and law enforcement to identify where, how and whether the law contradicts notions of human rights and/or has the potential to discriminate against people living with HIV and/or key populations and/or fuel stigma. Aspects of law enforcement, including the training, sensitivity and actions of police, traditional authorities and other law enforcement mechanisms as well as health providers will also have a direct impact on the extent to which stigma and discrimination are mitigated or exacerbated within communities.

The purpose of the LEA is to establish whether and/or which laws and practices have—or have the potential to—mitigated or exacerbated HIV-related stigma, which laws protect against discrimination, and which laws can enable recourse to justice through legal redress of experiences of HIV-related discrimination.

Stigma and discrimination

HIV-related **stigma** refers to the negative beliefs, feelings and attitudes towards people living with HIV, groups associated with people living with HIV (e.g. families of people living with HIV) and other key populations at risk of HIV infection, such as people who use drugs, sex workers, MSM and transgender people.

HIV-related **discrimination** refers to the unfair and unjust treatment (act or omission) of an individual based on his or her real or perceived HIV status. Discrimination in the context of HIV also includes unfair treatment of other key populations, such as sex workers, people who use drugs, MSM, transgender people, people in prison and other closed settings, and in some social contexts women, young people, migrants, refugees and internally displaced persons. HIV-related discrimination is usually based on stigmatizing attitudes and beliefs about populations, behaviours, practices, sex, illness and death. Discrimination can be institutionalized through existing laws, policies and practices that negatively focus on people living with HIV and marginalized groups, including criminalized populations.

Suggested areas for review in the LEA

General overview/introduction to people living with HIV in the domestic legal system

- Has the country signed and ratified important international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which protect the rights of all people to equality and non-discrimination? Has it signed and ratified relevant regional human rights instruments protecting human rights?
- Does it have a Constitution with a Bill of Rights protecting the rights of all people to equality and non-discrimination? Is HIV status or health status a protected ground for non-discrimination? Has there been any case law extending equal rights to people living with HIV?
- What are the key human rights issues affecting all people, and those specifically affecting people in the context of HIV and AIDS?

General situation of people living with HIV

- What is the HIV epidemic in the country; the major breakdown of burden of disease; the incidence and prevalence of HIV and AIDS among various populations, key populations? Who has access to HIV prevention, treatment, care and support services? Who has not? What is the impact of HIV on infected and affected populations?
- Is the HIV policy promoting the rights of people living with HIV and other key populations? Provide information about the vision of the national strategic plan on HIV and human rights issues as well as that of related health, gender and other relevant policies and plans.

Equality and non-discrimination

- Is there an equality/anti-discrimination law? Is it general or HIV-specific? Does it provide for equality and prohibit discrimination on the basis of HIV and AIDS? Does it prohibit HIV-related discrimination in specific sectors (e.g. employment, education, insurance, health care, social services, financial services, standing for public office, housing). Is discrimination prohibited in both the public and private sectors? Does the law protect people who file complaints of HIV-related discrimination—as well as witnesses or others who support the complaints—from vilification?
- Are there employment laws? Do they prohibit unfair discrimination, including HIV-related discrimination, in the working environment? Do they prohibit pre-employment HIV testing or mandatory HIV testing of an employee in all working environments? Do they provide employees with the right to confidentiality regarding HIV status? Do they protect all employees from occupational exposure to HIV and provide for compensation in the event of occupational infection with HIV? Do they provide for reasonable accommodation? Is HIV-related discrimination prohibited in the armed forces, police and other law enforcement agencies?
- Are there insurance laws, policies? Do they prohibit unfair discrimination in the allocation of insurance etc.?

Health rights

- Is there a health or HIV law? Does it specifically recognize the need to protect rights to equality and prohibit discrimination against people living with HIV as well as other key populations? Does it provide

for equal access to health care for people living with HIV and key populations? Does it provide for access to a range of HIV-related prevention, treatment, care and support services for HIV and AIDS?

- Does public health/HIV law recognize the right to confidentiality and non-disclosure of HIV status? Does it provide for voluntary HIV testing on the basis of informed consent, and prohibit mandatory HIV testing?

Access to justice and law enforcement

- What is the mechanism for redress for cases of discrimination? Is there an HIV-specific institution, a human rights ombudsperson, a national human rights commission, a human rights tribunal or other institutions that take up complaints of discrimination? Do courts examine cases of discrimination?
- Are there stigma and discrimination reduction programmes?
- Do people living with HIV and key populations know their rights? Are there programmes to increase people's awareness about their rights?
- Are there legal support services to help people living with HIV and key populations access information, advice, referrals and support to uphold their rights? Can people living with HIV or members of key populations file cases using pseudonyms or asking for the suppression of their identity?
- Have health care providers been trained on HIV and human rights?
- Have lawmakers and law enforcers been sensitized on HIV and human rights?
- Are human rights violations monitored and documented?

SPECIFIC REFERENCES AND LINKS:

STIGMA AND DISCRIMINATION

For more information on specific tools, see:

American Bar Association, 'HIV/AIDS Legal Assessment Tool, Rule of Law Initiative', American Bar Association, Washington, DC, 2012, pp. 64–86; 123–128.

Refer to the factors stated in this resource which might be of particular interest:

Factor 6: Protection of privacy and confidentiality

Factor 7: Political, social and cultural life

Factor 8: Family, sexual and reproductive life

Factor 9: Education and training

Factor 10: Employment, work and economic life

Factor 11: Private and public housing

Factor 12: Entry, stay and residence

Factor 20: Legal protection

Factor 21: Legal awareness, assistance and representation

Factor 22: Access to a forum, fair trial and enforcement of remedies

OHCHR and UNAIDS, 'International Guidelines on HIV/AIDS and Human Rights', 2006 Consolidated Version, OHCHR and UNAIDS, Geneva, 2006, pp. 31–37; 52–58.

Refer to the guidelines mentioned in this resource which might be of particular interest:

Guideline 5 and its commentary: Anti-discrimination and protective laws

Guideline 8 and its commentary: Women, children and other vulnerable groups

Guideline 9 and its commentary: Changing discriminatory attitudes through education, training and the media

For more information on stigma and discrimination:

Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights and Health', Global Commission on HIV and the Law, New York, 2012, pp. 15–19; 26–61.

UNAIDS PCB, 'Non-discrimination in HIV responses', UNAIDS PCB, Geneva, 2010, available at: http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/basedocument/2010/20100526_non_discrimination_in_hiv_en.pdf.

UNAIDS PCB, 'Background Note: Non-discrimination', UNAIDS PCB, 2012, available at: https://www.unaids.org/en/media/unaids/contentassets/documents/pcb/2012/20121111_PCB%2031_Non%20Discrimination_final_newcoverpage_en.pdf.

UNAIDS, 'HIV-related stigma, discrimination and human rights violations: Case studies of successful programmes', UNAIDS, Geneva, 2005, available at: http://www.unaids.org/en/media/unaids/contentassets/dataimport/publications/irc-pub06/jc999-humrightsviol_en.pdf.

UNAIDS, 'Reducing HIV stigma and discrimination: a critical part of national AIDS programmes, A resource for national stakeholders in the HIV response', UNAIDS, Geneva, 2007, available at: http://data.unaids.org/pub/report/2008/jc1521_stigmatisation_en.pdf.

UNAIDS, 'Key programmes to reduce stigma and discrimination and increase access to justice in national HIV responses, UNAIDS Guidance Note', UNAIDS, Geneva, 2012, available at: http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/Key_Human_Rights_Programmes_en_May2012.pdf.

UNDP, 'Stigma, discrimination and key affected populations: Strengthening the role of media advocacy in Sri Lanka through a critical analysis of news media coverage', UNAIDS, Geneva, 2013, available at: http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/stigma--discrimination-and-key-affected-populations--strengtheni/.

World Bank, 'Tackling HIV-related stigma and discrimination in South Asia', World Bank, Washington, DC, 2010, available at: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/0,,contentMDK:22654773~menuPK:2246552~pagePK:2865106~piPK:2865128~theSitePK:223547,00.html>.

International HIV/AIDS Alliance, 'Integrating stigma reduction into HIV programming: Lessons from the Africa regional stigma training programme', International HIV/AIDS Alliance, Hove, 2011, available at: <http://www.aidsalliance.org/publicationsdetails.aspx?id=90523>.

International HIV/AIDS Alliance, AED, ICRW, 'Understanding and challenging HIV stigma: Toolkit for action', International HIV/AIDS Alliance, Hove, and AED and ICRW, Washington, DC, 2007, available at: http://www.aidsalliance.org/includes/Publication/8_Stigma_Action.pdf.

ICRW, 'Scaling up the response to HIV stigma and discrimination', ICRW, Washington, DC, 2010, available at: <http://www.icrw.org/publications/scaling-response-hiv-stigma-and-discrimination>.

DFID, 'Taking action against HIV stigma and discrimination: Guidance document and supporting resources', DFID, London, 2007, available at: <http://www.icrw.org/files/publications/DFID-Taking-Action-Against-HIV-Stigma-and-Discrimination.pdf>.

IPPF, ICW, GNP+, UNAIDS, 'The people living with HIV stigma index: An index to measure the stigma and discrimination experienced by people living with HIV, User Guide', IPPF, ICW, GNP+, UNAIDS, 2008, available at: <http://www.stigmaindex.org/90/publications/the-people-living-with-hiv-stigma-index-user-guide.html>.

University of Pretoria, 'Righting stigma: Exploring a rights-based approach to addressing stigma', AIDS and Human Rights Research Unit, University of Pretoria, Pretoria, 2005, available at: http://www.aidslex.org/site_documents/D-0018E.pdf.

EnGender Health, 'Reducing stigma and discrimination relating to HIV/AIDS: Training for health care workers', EnGender Health, New York, 2004, available at: http://www.aidslex.org/site_documents/D-0017E.pdf.

Interesting links:

The People Living with HIV Stigma Index: www.stigmaindex.org/
Global Network of People Living with HIV: www.gnpplus.net/

ANNEX 3C

Tool for review of the law in relation to women, girls and HIV

Women and girls account for half of the people living with HIV in the world; in Africa the proportion is even higher at 60 percent. In the regions with the highest rates, HIV strikes younger women and girls particularly hard—in the Caribbean and sub-Saharan Africa, for instance, their rates of acquiring HIV are more than double those of men and boys of the same age. Poverty, both of individuals and of nations, plays its part. Almost all (98 percent) of HIV-positive women live in developing countries, and of the remaining 2 percent who live in developed countries the majority are poor.

Why are women and girls so vulnerable to HIV? Part of the reason is biological and physiological: younger girls especially are more susceptible to contracting HIV. In addition, women are more physiologically susceptible than men. Gender inequality and discrimination, often enshrined in custom and law, as well as physical, sexual and domestic violence result in the disproportionate impact of HIV on women. Profound gender inequality and gender-based violence undermine women's and girls' ability to protect themselves from HIV infection and cope with its consequences. For example, child marriage exacerbates their risks. In countries with a high prevalence of HIV in the general population, older husbands may contract HIV from other relationships, and child brides, lacking education, experience, knowledge or the chance of economic independence, are less able to negotiate safer sex or demand fidelity. According to the UN Special Rapporteur on Violence Against Women, a demographic and health survey of 26 countries found that "the majority of sexually active girls aged 15–19 in developing countries are married, and these married adolescents tend to have higher rates of HIV infection than their peers".

Women often experience a disadvantaged social and economic status in families, communities and countries. This is often reinforced by widespread discrimination in the formal legal system. In some cases, women are considered legal minors or do not have the same citizenship rights as men. However, even with full citizenship by law, women and girls are frequently excluded from decision-making processes and subjected to high levels of physical and sexual violence—verging on the extreme in conflict contexts. In many countries, particularly in Africa and Asia, the situation for women is complicated by plural legal systems—i.e. general laws that apply to matters in the public domain, and codified customary/religious laws mostly concerning private and family life. Although most constitutions stipulate that constitutional law prevails when government and traditional law conflict, the Global Commission on HIV and the Law spotlights how “customary laws and religious laws enjoy the status of binding sources of law in the vast majority of countries in the African region.”⁴⁶ This combination of colonial legacies and post-colonial political decisions can perpetuate or compound gender inequality and discriminatory practices that have “negative implications for [women’s] sexual health” and rights.

The purpose of the LEA is to establish whether and/or which laws, policies and practices have been—or have the potential to be—used in the context of HIV to mitigate or exacerbate gender inequality, and identify which laws (potentially) protect, punish and/or discriminate against women.

Suggested areas for review in the LEA

General overview/introduction to women in the domestic legal system

- Has the country signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women? Has it signed and ratified relevant regional human rights instruments protecting women’s rights (such as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights in the context of women)? Has the country signed Optional Protocols to the Convention?
- Are women’s rights specifically protected in the Constitution? Do women have the right to equality and non-discrimination? Does the Constitution recognize customary/religious laws, and how is this reconciled with equality/non-discrimination and other rights?
- What is the status of women, broadly, in the socio-economic and cultural context? Do women experience gender inequality, harmful gender norms and gender-based violence?

General situation on women and HIV

- Provide information about: the HIV epidemic in the country; a major breakdown of burden of disease; incidence and prevalence of HIV and AIDS among women; women’s access to HIV prevention, treatment, care and support services; factors increasing women’s vulnerability to HIV; the impact of HIV on women.
- What is the status of HIV policy in relation to women and HIV? Provide information about the vision of the national strategic plan on HIV and related health and gender policies and plans.

46. Global Commission on HIV and the Law, ‘HIV and the Law: Risks, Rights & Health’, Global Commission on HIV and the Law, New York, 2012, p. 62–63, available at: <http://hivlawcommission.org/index.php/report>.

Equality and non-discrimination

- Is there an equality/anti-discrimination law? Does it prioritize gender equality?
- Are there employment laws protecting gender equality in the workplace? Do employment laws provide for compassionate employment of women living with or affected by HIV on the death or illness of their spouse?
- Do personal laws (e.g. marriage laws, personal status laws) provide women and men with equal rights?
- Are there any laws or case precedents by which women could seek legal redress if they have experienced discrimination in specific settings (such as in the workplace)?

Health rights

- Is there a health or HIV law? Does it specifically recognize the vulnerability of women to HIV? Does it specifically provide for equal access to health care without discrimination for women? Does it specifically provide for the health needs of women in the context of HIV? Does it prioritize HIV prevention, treatment, care and support for women affected by HIV (e.g. prevention of mother-to-child transmission programmes)? Does it include training on gender equality and the impact of gender-based violence within HIV information and education?
- Does the health/HIV law recognize women's rights to confidentiality regarding HIV status? Does it protect women's rights to HIV testing only with voluntary and informed consent? Does it protect women from mandatory HIV testing (e.g. mandatory HIV testing of pregnant women or of sex workers)? Does it include provisions for partner notification with and/or without the woman's consent?

Protection from violence

- Is there a law prohibiting domestic violence? What forms of violence are prohibited?
- Is there a law prohibiting sexual violence? What forms of sexual violence are prohibited? Is marital rape prohibited?
- Are there any HIV-specific laws and policies relating to sexual offences (e.g. mandatory HIV testing of sexual offenders; access to post-exposure prophylaxis for those who have been sexually assaulted; criminalization of HIV transmission?) If there are laws criminalizing HIV transmission, are laws broadly framed? Will women be disproportionately affected by criminalization laws (e.g. if they are more likely to know their HIV status first or if they are likely to be prosecuted for passing on HIV to unborn children)?
- Are there any laws or case precedents by which women could seek legal redress if they have experienced violence?
- Do criminal and other laws protect women living with or affected by HIV from forcible abortion or forcible sterilization?

Property, inheritance, marriage and family laws

- Are there property laws? Do women have the same rights as men to own, control and dispose of property, including marital property? (See also marriage laws.)
- Are there laws regulating testate and intestate succession? What kinds of laws? For instance, are they statutory, customary or religious laws? Are there conflicts of laws? Do laws provide women with equal rights to inheritance as men? Do laws protect women from property-grabbing?

- Are there marriage laws? Are they statutory, customary or religious laws? If there are dual systems of law, what is the approach in the case of a conflict of laws? Do women and men have equal rights within marriage? Are child marriages prohibited? Does the law prohibit premarital mandatory testing for HIV? Is HIV a ground for divorce or annulment?
- Do women living with HIV have the right to marry? Do they have a right to reside in their matrimonial homes? Do they have custody rights on divorce?
- Do women living with HIV or in sero-discordant couples have the right to bear children? Do they have the right to adopt children? Do they have the right to access artificial reproductive technology?

Harmful gender norms

- Are there harmful gender and cultural norms that increase women's vulnerability and their risk of exposure to HIV? For instance, laws and practices that allow for sexual cleansing, widow inheritance, early marriage or female genital mutilation may place women at higher risk of exposure to HIV.
- Are harmful gender norms prohibited by law?

Access to justice and law enforcement

- Do women know their rights? Are they able to access legal support services? Are there legal support services particularly for women?
- Are there any laws or case precedents by which women could seek legal redress if they have experienced coercive health practices (e.g. sterilization or abortion)? And/or where they have been denied services (e.g. family planning for young or unmarried women or for women living with HIV)?
- What are the mechanisms for women to access and enforce their rights? Are they more likely to use formal mechanisms or traditional structures to enforce their rights? Are any of these mechanisms specifically tailored/sensitized to women's rights and gender equality?
- Are law enforcers sensitized to the rights of women? Are they linked to health services to refer women at risk of exposure to HIV?

SPECIFIC REFERENCES AND LINKS:

WOMEN, GIRLS AND HIV

For more information on specific tools, see:

American Bar Association, 'HIV/AIDS Legal Assessment Tool, Rule of Law Initiative', American Bar Association, Washington, DC, 2012, pp. 71–74; 111–114; 123–128 and specifically pages 95–100 for guidelines on women (factor 14).

Refer to the factors stated in this resource which might be of particular interest:

Factor 8: Family, sexual and reproductive life

Factor 14: Women

Factor 17: Adults engaged in commercial sex

Factor 20: Legal protection

Factor 21: Legal awareness, assistance and representation

Factor 22: Access to a forum, fair trial and enforcement of remedies

OHCHR and UNAIDS, 'International Guidelines on HIV/AIDS and Human Rights', 2006 Consolidated Version, OHCHR and UNAIDS, Geneva, 2006, pp. 52–56.

Refer to the guidelines mentioned in this resource which might be of particular interest:

Guideline 8 and its commentary: Women, children and other vulnerable groups

For more information on women, HIV and the law:

Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, pp. 62–69.

UNAIDS, 'Agenda for Accelerated Country Action for Women, Girls, Gender Equality and HIV', UNAIDS, Geneva, 2010, available at: http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2010/20100226_jc1794_agenda_for_accelerated_country_action_en.pdf.

UNAIDS Interagency Task Team on Gender and HIV/AIDS, 'Operational Guide on Gender and HIV/AIDS: A rights-based approach', UNAIDS, Geneva, 2005, available at: <http://www.unfpa.org/hiv/docs/rp/op-guide.pdf>.

WHO and UNAIDS, 'Addressing gender inequalities: Strengthening HIV/AIDS Programming for Women and Girls', WHO and UNAIDS, Geneva, available at: http://www.who.int/hiv/pub/toolkits/2-1a_Gender_Oct08EN.pdf.

WHO, '*Integrating gender into HIV/AIDS programmes in the health sector: Tool to improve responsiveness to women's needs*', WHO, Geneva, 2009, available at: http://whqlibdoc.who.int/publications/2009/9789241597197_eng.pdf.

Partners For Prevention, 'Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations multi-country study on men and violence in Asia and the Pacific', Partners For Prevention, Bangkok, 2013, available at: http://asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/womens_empowerment/RBAP-Gender-2013-P4P-VAW-Report.pdf.

UNDP, 'On course: Mainstreaming Gender into National HIV Strategies and Plans: A roadmap', UNDP, New York, 2012, available at: <http://asapltd.com/wp-content/uploads/2013/07/UNDP-Roadmap-12-11-2012-final.pdf>.

UNDP, 'Discussion Paper: Linkages between violence against women and HIV in Asia and the Pacific', UNDP, New York, 2013, available at: http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/discussion-paper--linkages-between-violence-against-women-and-hi/.

ICRW, 'An Action Guide for Gender Equality in National HIV Plans: Catalyzing change through evidence-based advocacy', ICRW, Washington, DC, 2011, available at: <http://www.icrw.org/files/publications/Action%20Guide%20for%20Gender%20Equality%20in%20National%20HIV%20Plans.pdf>.

Population Council, 'Guidelines and activities for a unified approach to sexuality, gender, HIV and human rights education', Population Council, New York, 2009, available at: http://www.aidslex.org/site_documents/G-0316E.pdf.

ICASO, 'Gender, sexuality, rights and HIV: An overview for community sector organizations', ICASO, Toronto, 2007, available at: http://www.aidslex.org/site_documents/SO-0002E.pdf.

Ahmed A., 'HIV and Women: Incongruent Policies, Criminal Consequences', *Yale Journal of International Affairs*, Winter 2011, pp. 32–42.

Interesting links:

What Works for Women & Girls: www.whatworksforwomen.org/

ANNEX 3D

Tool for review of criminal law in relation to key populations

To safeguard their health and that of others, key populations, such as MSM, transgender people, sex workers, people who use drugs, prisoners and at-risk migrants, must have access to effective HIV prevention and treatment and commodities such as clean needles and syringes, condoms and lubricant. Numerous international bodies call the provision of these commodities a human rights obligation. But a needle or a condom is only the concrete representation of what key populations (like everyone) are entitled to: the fundamental human rights of dignity, autonomy and freedom from ill treatment, as well as the right to the highest attainable standard of physical and mental health, regardless of sexuality or legal status.

Yet punitive laws, discriminatory or extralegal enforcement and systematic barriers to justice violate the basic human rights of key populations; in fact, they practically guarantee such violation. In many cases, the police commit violent and discriminatory acts because the law and social attitudes at least tacitly authorize them to do so, in the name of public safety, order or morality. When the law punishes drug use, sex work and certain sexual behaviours and identities, key populations can neither count on the police for protection from violence nor seek legal redress when they are its victims, especially when the perpetrators are police officers. After all, under the law, the person who uses drugs, the homosexual, the transgender person or the sex worker is the 'criminal'. That lack of justice reinforces the climate of police impunity.

Just as the cycle of discrimination, violence and government neglect of key populations erects barriers to HIV prevention, treatment and care, these incremental changes can help to dismantle those barriers.

The purpose of the LEA is to establish whether and/or which laws have been—or have the potential to be—used to criminalize key populations, as well as the policies and practices in place to promote (or not) the right to health of key populations.

Suggested areas for review in the LEA

General overview of HIV and human rights in relation to key populations

- What is the HIV epidemic in the country and the major breakdown of burden of disease? What is the incidence and prevalence of HIV among various populations and, more specifically, key populations

such as sex workers, MSM, people who inject drugs, transgender people, prisoners and migrant populations? Are there other populations considered key for the national HIV response? What is the incidence and prevalence of HIV among these key groups?

- Has the country signed and ratified important international human rights instruments such as the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, which protect the rights of all people to equality, non-discrimination and health? Has it signed and ratified relevant regional human rights instruments protecting human rights?
- Does it have a Constitution with a Bill of Rights protecting the rights of all people to equality and non-discrimination?
- What are the key human rights issues affecting all people and, more specifically, key populations?
- Are there specific laws that criminalize sex work, same-sex relations and drug use? Does the country have laws that specifically spell out the rights and entitlements of prison populations, migrant workers, non-documented immigrants etc.?
- Do key population groups in the country have access to HIV prevention, treatment, care and support services? Are there any studies documenting the impact of HIV on key populations, and what are the key findings from such studies?
- Are key populations specifically identified as people at risk of HIV in national policy documents? What is the status of HIV policy in relation to protection of the rights of key populations at higher risk of HIV exposure? Provide information about the national strategic plan, HIV policy and other related health policies and plans and the extent to which they include/prioritize key populations.
- Are there any registration laws for societies and/or associations in the country? Do these laws have sections that prevent organizations of key populations from formally registering themselves as representative bodies/associations?
- What are the key HIV and human rights issues affecting key populations and their families/dependents and children? Do they and their families experience stigma and discrimination? Do they experience violations of their rights? For example, from health care and social service workers? From law enforcement officials? If so, describe these. What are the impacts of these laws?
- Is there any ongoing or record of civil and/or criminal cases, public interest litigation etc. that involve/have involved key populations and their rights?

Health and HIV laws

- Does the country under review have public health, sanitation and epidemic control/quarantine laws? If so, do these laws have coercive sections?
- Is there a specific HIV law? If so, does this law identify key populations in the first instance and protect the equal rights of and prohibit discrimination against MSM, sex workers and people who inject drugs? Does it provide for equal access to health care for key populations? Does it provide for targeted HIV-related prevention, treatment, care and support services and access to commodities for key populations in the context of HIV and AIDS?
- Does the health/HIV law recognize health rights such as the right to confidentiality and non-disclosure of HIV status? Does it provide for voluntary HIV testing on the basis of informed consent? Does it prohibit mandatory HIV testing in general and specifically of key populations?

- Does the HIV/health law have discriminatory and/or coercive provisions with respect to key populations such as MSM, sex workers and people who inject drugs, as well as prison inmates, prisoners awaiting trial etc.?

Access to justice and law enforcement

- Are human rights violations in general monitored and documented?
- Does the country have an independent national human rights commission and other human rights bodies? Do these bodies record/document human rights violations against key populations?
- Do national strategic plan/policy documents acknowledge HIV stigma and discrimination in general and advocate for programmes to reduce stigma and discrimination? Do these programmes also include reducing stigma and discrimination against key populations?
- To what extent do key populations know their rights? Are 'know your rights' campaigns/programmes also provided specifically to key populations?
- Are there legal support services to help key populations access information, advice, referrals and support to uphold their rights? Are key populations able to claim and enforce their rights, and if not, why not? And is there a difference of perspective on this question between key populations and law enforcement officers?
- Have health care and other service providers been sensitized on the rights of key populations? If so, are such training materials and/or training schedules, numbers of health care providers trained, and evaluation of the impact of such interventions available for review?
- How are criminal laws, other laws and municipal by-laws or orders enforced against key populations (e.g. which laws/by-laws etc. are used to arrest them? What is used as evidence of the 'crime' of, for instance, sex work, drug use, sex between men, to effect arrests?) Do they report experiences of harassment, abuse, violence at the hands of law enforcement officials?
- Have lawmakers and law enforcers been sensitized on HIV and human rights? If so, are such training materials and/or training schedules and the number of different categories of the judiciary, law enforcement and legislators trained available for review? Have impact assessments of such interventions been undertaken, and are they available for review?

SPECIFIC REFERENCES AND LINKS:

KEY POPULATIONS

For more information on specific tools, see:

American Bar Association, 'HIV/AIDS Legal Assessment Tool, Rule of Law Initiative', American Bar Association, Washington, DC, 2012, pp. 106–128.

Refer to the factors stated in this resource which might be of particular interest:

Factor 16: People who use drugs

Factor 17: Adults engaged in commercial sex

Factor 18: Men who have sex with men, and transgender people

Factor 19: People under state custody

Factor 20: Legal protection

Factor 21: Legal awareness, assistance and representation

Factor 22: Access to a forum, fair trial and enforcement of remedies

OHCHR and UNAIDS, 'International Guidelines on HIV/AIDS and Human Rights', 2006 Consolidated Version, OHCHR and UNAIDS, Geneva, 2006, pp. 29–37; 48–52; 78; 83; 91–92; 95–97.

Refer to the guidelines mentioned in this resource which might be of particular interest:

Guideline 4 and its commentary: Criminal laws and correctional systems

Guideline 5 and its commentary:

Guideline 7 and its commentary:

See section III: International human rights obligations and HIV

For more information on the criminalization of key populations:

Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, Chapter 3, pp. 26–61.

amfAR, The Foundation for AIDS Research, 'Issue Brief: Tackling HIV/AIDS among Key Populations: Essential to Achieving an AIDS-free Generation', amfAR, Washington, DC, 2013, available at: [http://www.amfar.org/uploadedFiles/_amfarorg/Articles/On_The_Hill/2013/Key%20Populations%20Issue%20Brief%20-%20Final%20\(2\).pdf](http://www.amfar.org/uploadedFiles/_amfarorg/Articles/On_The_Hill/2013/Key%20Populations%20Issue%20Brief%20-%20Final%20(2).pdf).

ANNEX 3D.1

People who use drugs

This subsection includes some suggestions of tools for 'laws', policies and practices relating to the specific key population group of people who use drugs. It is recommended to specifically review municipal by-laws etc., laws and statutes around forming associations, receiving funding and conducting business to provide services, as well as explicit criminal and public health laws, policies and practices. It is also recommended to review policies and programmes about harm reduction.

Laws relating to drug use

- Are there laws and policies that enable/prohibit harm reduction approaches (e.g. substitution therapy)?
- Are there laws, policies and practices in place that enable or inhibit harm reduction approaches (e.g. safe injecting spaces, facilities for safe disposal of injecting equipment, needle exchange programmes etc.)?
- Are sentences or fines increased in cases where drugs have been identified as being involved?
- Is there a national network or community group of people who use drugs? Are there by-laws and other processes that may make it either harder or easier for such groups to register as an organization?
- Does the law/do the authorities allow organizations of people who use drugs to register and operate?
- Are there drug laws criminalizing drug use? What do they prohibit?

- Do these laws provide for punitive measures for people who use drugs, such as mandatory detention, mandatory treatment and registration as an offender?

SPECIFIC RESOURCES: **PEOPLE WHO USE DRUGS**

For more information on people who use drugs:

Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, Chapter 3.1, pp. 29–35.

WHO, UNAIDS and UNODC, 'Advocacy guide: HIV/AIDS prevention among injecting drug users', WHO and UNAIDS, Geneva, and UNODC, Vienna, 2004, available at: http://www.aidslex.org/site_documents/J004E.pdf.

International HIV/AIDS Alliance, 'Good Practice Guide: HIV and Drug Use: Community responses to injecting drug use and HIV', International HIV/AIDS Alliance, Hove, 2010, available at: <http://www.aidsalliance.org/Publicationsdetails.aspx?Id=454>.

Open Society Foundations (formerly Open Society Institute), 'Human rights documentation and advocacy: A guide for organizations of people who use drugs', OSF, New York, 2009, available at: http://www.aidslex.org/site_documents/DR-0054E.pdf.

Open Society Foundations and Equitas, 'Harm Reduction and Human Rights: A Resource Guide', OSF, New York, and Equitas, Montréal, 2007, available at: http://www.aidslex.org/site_documents/DR-0058E.pdf.

International HIV/AIDS Alliance, OSI and Canadian HIV/AIDS Legal Network, 'Nothing about us without us, Greater, meaningful involvement of people who use illegal drugs, A public health, ethical and human rights imperative', International HIV/AIDS Alliance, Hove, OSF, New York and Canadian HIV/AIDS Legal Network, Toronto, 2008, available at: <http://www.aidsalliance.org/Publicationsdetails.aspx?Id=310>.

Interesting links:

International Network of People Who Use Drugs: <http://inpud.wordpress.com/>

ANNEX 3D.2

Sex work

This subsection includes some suggestions of tools for 'laws', policies and practices relating to the specific key population group of sex workers. It is recommended to review municipal by-laws etc., laws and statutes around forming associations, receiving funding and conducting business to provide services, as well as explicit criminal and public health laws, policies and practices. It is also recommended to review that specific policies and programmes that enhance services for HIV, STIs and other sexual health care for sex workers are in place.

Laws relating to sex work

- Are there sexual offence laws/penal codes criminalizing sex work or aspects of sex work? What exactly is criminalized? Buying and/or selling sex? Running a brothel? Living off the earnings of sex work? Advertising sex work? What are the punishments for an offence?

- Are other laws used to target sex workers? For example, are sex workers prosecuted under laws, regulations and bye-laws relating to public order (e.g. 'nuisance' laws, vagrancy laws)? Are sex workers prosecuted under laws relating to public health?
- Do these laws distinguish between adult consenting sex and sexual trafficking?
- Does the law allow organizations of sex workers to register? Does it allow organizations to receive and use donor or public funds to provide HIV-related services to sex workers?
- Is there a national network or community group of sex workers? Are there by-laws and other processes that may make it either harder or easier for such groups to register as an organization?
- Are there policies or practices that try to rehabilitate sex workers? If so, how are these approaches viewed by the sex worker community.
- Are there policies and programmes in place to enhance services for HIV, STI and other sexual health care for sex workers?

SPECIFIC RESOURCES:

SEX WORK

For more information on sex work:

Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, Chapter 3.2, pp. 36–43.

UNDP, UNFPA and UNAIDS, 'Sex Work and the Law in Asia and the Pacific', UNDP and UNFPA, New York, and UNAIDS, Geneva, 2013, available at: <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/sex-work-and-the-law-in-asia-and-the-pacific/>.

UNAIDS, 'UNAIDS Guidance Note on HIV and Sex Work', UNAIDS, Geneva, 2009, updated in 2012, available at: http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf.

WHO, UNFPA, UNAIDS and the Global Network of Sex Work Projects (NSWP), 'Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries, Recommendations for a public health approach', WHO and UNAIDS, Geneva, UNFPA, New York, and NSWP, Edinburgh, 2012, available at: http://apps.who.int/iris/bitstream/10665/77745/1/9789241504744_eng.pdf.

WHO, UNFPA, UNAIDS, NSWP and World Bank, 'Implementing Comprehensive HIV/STI Programmes with Sex Workers, Practical Approaches from Collaborative Interventions', WHO and UNAIDS, Geneva, UNFPA, New York, NSWP, Edinburgh, and World Bank, Washington, DC, 2013, available at: http://apps.who.int/iris/bitstream/10665/90000/1/9789241506182_eng.pdf.

Interesting links:

Global Network of Sex Work Projects: www.nswp.org

Paulo Longo Research Initiative: www.plri.org/

ANNEX 3D.3

Men who have sex with men

This subsection includes some suggestions of tools for 'laws', policies and practices relating to the specific key population group of MSM, gay and lesbian people. It is recommended to review municipal by-laws etc., laws and statutes around forming associations, receiving funding and conducting business to provide services, as well as explicit criminal and public health laws, policies and practices. It is also recommended to review that specific policies and programmes enhancing services for HIV, STIs and other sexual health care for MSM are in place.

Laws relating to same-sex sexual relations

- Are there sexual offence laws/penal codes criminalizing sex between men? What is criminalized [e.g. 'unnatural' sexual offences (unspecified), same-sex activity, sex between men, sodomy]? What related offences are criminalized? What is the punishment for an offence?
- Are there other laws used to target MSM, lesbian and gay people?
- Is there a national network or community group of LGBTI people? Are there by-laws and other processes that may make it either harder or easier for such groups to register as an organization?
- Does the law/do the authorities allow organizations of MSM/LGBTI organizations to register and operate?
- Does law/policy allow the provision of prevention services to MSM in prisons? Are condoms available in prisons?
- Is there a 'pride' march in the country? And if so, is it afforded police protection?
- Are there policies and programmes in place to enhance services for HIV, STIs and other sexual health care for MSM?

SPECIFIC RESOURCES:

MEN WHO HAVE SEX WITH MEN

For more information related to men who have sex with men:

Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, Chapter 3.3, pp. 44–50.

UNAIDS, 'We can support the ability of men who have sex with men, sex workers and transgender people to protect themselves from HIV infection, achieve full health and realize their human rights', UNAIDS, Geneva, 2010, available at: http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2010/20101201_JC1971_MSM.en.pdf.

UNDP, 'The time has come', 'Enhancing HIV, STI and other sexual health services for MSM and transgender people in Asia and the Pacific: Training package for health providers to reduce stigma in health care settings', UNAIDS, Geneva, 2013, available at: http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/the-time-has-come/.

APCOM and UNDP, 'Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific: An agenda for action', APCOM, Bangkok, and UNDP,

New York, 2010, available at: http://www.asiapacificforum.net/support/issues/acj/references/sexual-orientation/downloads/Legal_Analysis_of_Asia_Pacific.pdf.

SAARCLAW, IDLO and UNDP, 'Regional Legal Reference Resource: Protective laws related to HIV, men who have sex with men and transgender people in South Asia—Promoting a legal enabling environment and strengthening the legal response to HIV', SAARCLAW, Delhi, IDLO, Rome, and UNDP, New York, 2013, available at: http://asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2013-regional-legal-reference-resource.pdf.

UNAIDS, 'UNAIDS Action Framework: Universal Access for Men who have Sex with Men and Transgender People', UNAIDS, Geneva, 2009, available at: http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/report/2009/jc1720_action_framework_msm_en.pdf.

European Union, 'Toolkit to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual and transgender people', European Union, Brussels, 2010, available at: http://www.aidslex.org/site_documents/SO-0081E.pdf.

Beyrer C. et al., 'MSM, HIV and the Law: The Case of Gay, Bisexual and other Men who have Sex with Men (MSM)', Working paper for the third meeting of the Technical Advisory Group, Global Commission on HIV and the Law, Washington, DC, 2011, available at: <http://www.hivlawcommission.org/index.php/working-papers?task=document.viewdoc&id=95>.

Interesting links:

Global Forum on MSM and HIV: www.msmsgf.org

International Lesbian and Gay Association: www.ilga.org

ANNEX 3D.4

Transgender people

This subsection includes some suggestions of tools for 'laws', policies and practices relating to the specific key population group of transgender people. It is recommended to review municipal by-laws etc., laws and statutes around forming associations, receiving funding and conducting business to provide services, as well as explicit criminal and public health laws, policies and practices. It is also recommended to review that specific policies and programmes enhancing services for HIV, STIs and other sexual health care for transgender people are in place.

Laws relating to transgender people

- Is the gender identity of transgender recognized in national measurement tools such as the Census or Demographic Health Survey? Are there laws in place allowing transgender people to change their biological gender in civil documents, or are there laws/regulations recognizing a third gender?
- Are there other laws used to target transgender people?

- Is there a national network or community group of transgender people? Are there by-laws and other processes that may make it either harder or easier for such groups to register as an organization? Does the law/do the authorities allow organizations of transgender people to register and operate?
- Are hormone therapy and/or other sex re-assignment medical procedures included in National Health Service provision and/or covered by insurance?
- Are there policies and programmes in place to enhance services for HIV, STIs and other sexual health care for transgender people?

SPECIFIC REFERENCES AND LINKS:

TRANSGENDER PEOPLE

For more information related to transgender people:

Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, Chapter 3.4, pp. 51-54.

Baral, S. et al., 'Human Rights, the Law, and HIV among Transgender People', Working paper prepared for the third meeting of the advisory group, Global Commission on HIV and the Law, Washington, DC, 2011, available at: <http://www.hivlawcommission.org/index.php/working-papers?task=document.viewdoc&id=93>.

APCOM and UNDP, 'Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific, An agenda for action', APCOM, Bangkok, and UNDP, New York, 2010, available at: http://www.asiapacificforum.net/support/issues/acj/references/sexual-orientation/downloads/Legal_Analysis_of_Asia_Pacific.pdf.

UNDP, 'Lost in transition: Transgender people, rights and HIV vulnerability in the Asia-Pacific region', UNDP, New York, 2012, available at: http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/lost-in-transition--transgender-people--rights-and-hiv-vulnerabi/.

SAARCLAW, IDLO, UNDP, 'Regional Legal Reference Resource: Protective laws related to HIV, men who have sex with men and transgender people in South Asia—Promoting a legal enabling environment and strengthening the legal response to HIV', SAARCLAW, Delhi, IDLO, Rome, and UNDP, New York, 2013, available at: http://asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2013-regional-legal-reference-resource.pdf.

UNDP, 'Discussion Paper, Transgender Health and Human Rights', UNDP, New York, 2013, available at: <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/discussion-paper-on-transgender-health--human-rights/>

Interesting links:

Transgender Asia Research Center: www.transgenderasia.org

Transitioning Africa: www.transitioningafrica.org/

RedLacTrans (Red Latinoamericano y del Caribe de Personas Trans / Latin-American and Caribbean Network of Trans Persons): <http://redlactrans.org.ar>

Transgender Europe: <http://tgeu.org/>

UCSF Centre of Excellence for Transgender Health: <http://transhealth.ucsf.edu/>

ANNEX 3E

Tool for review of the criminalization of HIV transmission, exposure and non-disclosure

The application of criminal law to HIV transmission and exposure can be seen as indicative of the problematic role of law in social control, stigmatization and the policing of 'deviance'. Criminal law in essence provides a mechanism for the deterrence, punishment or retribution of those that violate established social norms through legal action such as imprisonment, probation, community service or fines. Specifically in the context of HIV transmission, exposure and non-disclosure, this raises questions about the interface between constructions of responsibility, harm, consent and the delineation of attitudes towards disease and society.

Internationally, the last decade has seen an increasing trend to apply the criminal law (prosecuting HIV transmission, and in some cases HIV exposure) as part of national responses to HIV and to promoting public health. In many countries, criminal prosecutions relating to HIV are being brought under laws that have only recently been enacted (for example, HIV-specific legislation) or under old laws that have only recently been applied to HIV transmission or exposure (such as public health laws relating to contagion, or criminal laws relating to assault and/or grievous bodily harm). It has been suggested that one of the reasons for the recent proliferation of laws relating to HIV transmission and exposure has been that politicians have been seeking to be seen to be doing something proactive, concrete and publicly visible in response to HIV.

Internationally, momentum is gathering towards consensus that the application of criminal provisions to HIV transmission, exposure and non-disclosure is detrimental to national efforts to address HIV.

The purpose of the LEA is to establish whether and/or which laws have been—or have the potential to be—used to criminalize HIV transmission, exposure or non-disclosure.

Suggested areas for review in the LEA

Public health laws criminalizing HIV transmission, exposure and/or non-disclosure

- Are there public health laws criminalizing the transmission of 'venereal' or 'infectious' disease or the transmission of any kind of disease?
- If so, have these been applied to HIV? Have they been applied to any STIs?
- Are there laws that govern quarantine or some form of mandatory detention or limitations of movement for any individuals diagnosed with a 'contagious' disease?

General criminal laws criminalizing HIV transmission, exposure and/or non-disclosure

- Are there aspects of the criminal law that have been applied to HIV? For example, laws against grievous bodily harm, assault or attempt to murder.
- Does the law define *mens rea* (guilty mind) in relation to cases of HIV transmission, exposure or non-disclosure? For example, does it differentiate between intentional, accidental, reckless, careless and negligent frames of mind?

- Does the law define *actus rea* (guilty act) in relation to HIV? For example, does it specify whether HIV non-disclosure or exposing someone to HIV or incidents where HIV transmission may have occurred could also be considered a crime?
- Does knowledge of HIV status affect the judgement? For example, for a criminal prosecution to take place, would an individual have to be aware, presume or otherwise know his/her HIV status? Does the law distinguish between a person 'knowing' their HIV status and 'understanding' the implications of their HIV status? Do courts or the law incorporate the concept of 'wilful blindness' to expand the scope of criminalization of HIV transmission?
- How does the law define notions of 'harm'?
- How does the law define notions of 'consent'?

Specific HIV laws criminalizing HIV transmission, exposure and/or non-disclosure

- Is there an HIV-specific law?
- If so, does it include specific provisions that criminalize HIV transmission, exposure or non-disclosure?
- If so, how does it compare with other regional and/or national HIV laws (such as in Africa with the South African Development Community model law or N'Djamena model law)?
- What specifically is criminalized? For example:
 - Does the law prohibit intentional or negligent transmission of HIV? Does the law prohibit exposing another person to HIV? Does the law prohibit non-disclosure of HIV status to a sexual partner?
 - Are there specific acts that are prohibited? Are there specific acts that do not incur criminal liability?
 - Are there grounds of justification or defences to a charge of criminalizing HIV transmission, and if so, what are they?
- Does the law define *mens rea* (guilty mind) in relation to cases of HIV transmission, exposure or non-disclosure? For example, does it differentiate between intentional, accidental, reckless, careless and negligent frames of mind?
- Does the law define *actus rea* (guilty act) in relation to HIV? For example, does it specify whether HIV non-disclosure and/or exposing someone to HIV and/or incidents where HIV transmission may have occurred could also be considered a crime?
- Does knowledge of HIV status affect the judgement? For example, for a criminal prosecution to take place, would an individual have to be aware, presume or otherwise know their HIV status?
- How does the law define notions of 'harm'?
- How does the law define notions of 'consent', and is it recognized as a defence?

Sexual offences laws

- Is there a law that criminalizes sexual offences?
- Does it explicitly refer to HIV and/or other STIs?
- Does it criminalize HIV transmission, exposure and/or non-disclosure?

- Does it increase the penalty in cases of rape/sexual assault where the sexual offender knew he was HIV-positive at the time of committing rape?
- Does it provide for compulsory HIV testing of a person charged with or convicted of a sexual offence?
- Has a sexual offenders' register ever been used as part of a sentence for a case relating to HIV?

Enforcement

- Are there any prosecutorial guidelines explicitly for criminal cases relating to HIV and/or STIs? Are there specific burden-of-proof requirements to prove criminal transmission?
- Are cases related to the criminal transmission of HIV conducted under pseudonyms, with in-camera proceedings and sealed covers for decisions?
- Is HIV training and sensitization included in the training for police and other law enforcement officers?
- To what extent does the law place responsibility more onto people living with HIV than onto others?

Case law and precedents

- Where cases have been documented, how do the sentences given compare with other incidents that have been prosecuted within a similar charge at a similar time?
 - How does (potential) sentencing for HIV-related offences compare with other 'crimes'? For instance, do sentences seem harsh, lenient, the same etc.?
 - Does sentencing include notation under any other laws such as in a sexual offenders' register?
 - Do sentences and prison settings take account of a person's HIV status—for example, in ensuring access to treatment?
- Are there any court cases relating to criminalization of HIV transmission?
 - Document any relevant cases and precedents, noting date, court, sentence, any key experts called to give evidence, and key evidence offered in support of the prosecution as well as for the defence.

SPECIFIC REFERENCES:

CRIMINALIZATION OF HIV TRANSMISSION, EXPOSURE AND NON-DISCLOSURE

For more information on specific tools, see:

American Bar Association, 'HIV/AIDS Legal Assessment Tool, Rule of Law Initiative', American Bar Association, Washington, DC, 2012, pp. 91–94; 123–128.

Refer to the factors stated in this resource which might be of particular interest:

Factor 13: Non-Criminalization of HIV exposure and transmission

Factor 20: Legal Protections

Factor 21: Legal awareness, assistance and representation

Factor 22: Access to a forum, fair trial and enforcement of remedies

OHCHR and UNAIDS, 'International Guidelines on HIV/AIDS and Human Rights', 2006 Consolidated Version, OHCHR and UNAIDS, Geneva, 2006, pp. 29–31.

Refer to the guidelines mentioned in this resource which might be of particular interest:

Guideline 4 and its commentary: Criminal laws and correctional systems

For more information on criminalization of HIV transmission, exposure and non-disclosure:

Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, Chapter 2, pp. 20–25.

UNAIDS, 'Ending overly-broad criminalisation of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations', UNAIDS, Geneva, 2013, available at: http://www.unaids.org/en/media/unaids/contentassets/documents/document/2013/05/20130530_Guidance_Ending_Criminalisation.pdf.

UNAIDS and UNDP, 'Policy Brief: Criminalization of HIV Transmission', UNAIDS, Geneva, and UNDP, New York, 2008, available at: http://data.unaids.org/pub/basedocument/2008/20080731_jc1513_policy_criminalization_en.pdf.

IPPF, GNP+ and ICW, 'Verdict on a Virus', IPPF and ICW, London, and GNP+, Amsterdam, 2008, available at: <http://www.ippf.org/resource/Verdict-Virus-Public-health-human-rights-and-criminal-law>.

OSF, 'Ten Reasons to oppose the criminalization of HIV exposure or transmission', OSF, New York, 2010, available at: <http://www.opensocietyfoundations.org/publications/ten-reasons-oppose-criminalization-hiv-exposure-or-transmission>.

Pearshouse, R., 'Legislation Contagion: the spread of problematic new HIV laws in Western Africa', *HIV/AIDS Policy and Law Review*, 2007; 12: 2–3.

Weait, M., 'Intimacy and Responsibility: The Criminalization of HIV Transmission', Routledge-Cavendish, Oxford, 2007.

Weait, M., 'The Criminalization of HIV Exposure and Transmission: A Global Review', Working Paper prepared for the Third Meeting of the Technical Advisory Group, Global Commission on HIV and the Law, 2011, available at: <http://www.hivlawcommission.org/index.php/working-papers>.

Interesting links:

HIV Justice Network: www.hivjustice.net/

The Center for HIV Law & Policy: www.hivlawandpolicy.org/

Canadian HIV/AIDS Legal Network: www.aidslaw.ca/EN/

GNP+ Global Criminalisation Scan: www.gnpplus.net/criminalisation/

ANNEX 3F

Tool for review of the law in relation to children, young people and HIV

According to the report of the Global Commission on HIV and the Law, children and youth have the most to lose from HIV: “They are far more likely to become poor or homeless, drop out of school, face discrimination and violence, see their opportunities dwindle, and grow ill and die long before their time. Their woes are many and complex and include malnutrition, expulsion from school, grieving for their parents and fearing their own mortality. But they also have the most to gain from successful HIV responses. Children and youth can be powerful agents of change in HIV prevention and in fighting stigma and discrimination.”⁴⁷

Many governments have affirmed society’s obligations to realize children’s right to equality, provide for their survival and development, promote their best interests and give them a meaningful say in matters affecting their lives. Since its adoption in 1989, an estimated 69 countries of the 193 parties to the Convention on the Rights of the Child have enacted statutes affirming these principles. But not all governments are living up to these ideals. Few have actively promoted and funded programmes to benefit children infected or affected by HIV. Rarely does a government take full account of the realities of young people’s lives—including their sexual lives.

Legal issues such as those relating to inheritance, adoption, birth registration, custody, consent and foster care have an impact in relation to HIV as well as laws and policies designed to provide social care, access to education, and access to health services.

The purpose of the review is to establish whether and/or which laws have been—or have the potential to be—used to support or impede young people living with or affected by HIV.

Suggested areas for review in the LEA

General overview/introduction to children and young people in a domestic legal system

- How is a child defined in national law? At what age does a child reach majority? Are there different ages at which the agency of children and young people is recognized (for example, age to commit an offence, for joining the military, for consent to marriage, for consent to sex, for voting, for consent to medical treatment etc.)?
- Has the country signed and ratified the Convention on the Rights of the Child and any relevant regional children’s rights instruments?
- Are children’s rights specifically protected in the Constitution?
- Is there a broad children’s law setting out the rights of children?
- Broadly speaking, does the domestic legal system protect the rights of children? Specific areas could include equality rights, health rights, educational rights, rights to care and support and access to justice. Does it provide for the best interests of the child as the paramount consideration in all matters affecting children?

47. Global Commission on HIV and the Law, ‘HIV and the Law: Risks, Rights & Health’, Global Commission on HIV and the Law, New York, 2012, Chapter 5, available at: <http://hivlawcommission.org/index.php/report>.

General situation of children and HIV

- What is the HIV epidemic in the country, and what is the incidence and prevalence of HIV among children and young people? What is the major breakdown of burden of disease? How many children are orphaned by HIV and AIDS? How many children are affected by HIV? What is the available information on prevention, treatment, care and support for children and major health challenges for children?
- Is there disaggregated information based on sex and gender in relation to children and young people? Is there information on specific vulnerabilities relating to gender?
- What is the impact of HIV and AIDS on children and young people? What are some of the key HIV and human rights issues that children face?
- What is the status of HIV policy in relation to children and HIV? Provide information about the vision of the national strategic plan on HIV and related health, children's and gender policies and plans.

Children's law

Is there a children's law? If yes, when was it last updated? Highlight important areas regulated by this law for children in the context of HIV and AIDS, such as:

- children's rights to equality and non-discrimination;
- children's rights to a name/identity;
- children's privacy rights—whether and at what age children have a right to confidentiality with regard to medical information such as HIV status;
- children's rights to liberty and security of the person—whether and at what age children can independently consent to or refuse medical testing or treatment and can access sexual and reproductive health services independently or with a guardian of their own choosing;
- children's rights to accessible, appropriate, quality health care services including treatment;
- children's rights to education;
- children's rights to social support, including alternative care in the absence of parental care;
- children's rights to be protected from violence, abuse and neglect;
- children's rights to be protected from sexual violence—whether and at what age children can lawfully consent to sex: heterosexual or homosexual, and whether the age of consent differs according to sexual act;
- children's property rights;
- children's rights to access justice including awareness, legal literacy and access to legal mechanisms; and
- children's right to family (linked with the right of HIV-positive or sero-discordant couples to bear or adopt children and of HIV-affected siblings to be fostered or adopted together).

Related laws affecting children in the context of HIV

- Does the country have a general law or an HIV-specific law? If so, does this law deal specifically with children and HIV? For example, does it provide for HIV-related health care for children, the age of consent for children to access health care, confidentiality and disclosure of HIV status? Does it protect

children from punitive laws such as mandatory HIV testing and disclosure of HIV status? Is HIV-related treatment and diagnostic testing available for children and young people, including paediatric doses and child-friendly health services?

- Does the country have criminal laws relating to violence and sexual offences against children? Are children protected from sexual offences? Does the law provide for mandatory reporting of sexual offences by service providers? Are children of an appropriate age allowed to consent independently to sex, and at what age? Is the age of consent different for heterosexual and homosexual sex? Are there conflicts in laws relating to age of consent to sex, age of consent to marriage and age of consent to access sexual and reproductive health services? Are there HIV-specific offences in sexual offence laws? Are there clear distinctions between sex work and sexual exploitation or trafficking in law? Is child marriage prohibited? Are there protections for children from domestic violence?
- Does the country have guardianship and status laws setting out the status of children, the relationship between children and parents and how guardianship is transferred when a parent can no longer take care of a child? What are the parental rights and responsibilities, including responsibilities to consent on behalf of the child to various legal acts? Does the country have laws regarding fostering and adoption of children who are in need of care, including children living with HIV?
- Does the country have birth registration laws to ensure all children the right to an identity? Do children or their parents experience difficulties registering births?
- Does the country have laws relating to succession/inheritance of property? Are there statutory and customary/religious laws, and if so, how do these laws operate together? Are inheritance and property laws non-discriminatory, providing girl, boy and transgender young people with equal inheritance rights? Do they protect children affected by HIV and AIDS from property-grabbing?
- Does the country have educational laws and policies? Do these laws and policies protect the rights to education of all children? Do they specifically provide for HIV and AIDs within the school environment? Do they promote access to information and education relating to HIV as well as sex education, sexuality and sexual health within schools? Are there specific provisions for reasonable accommodation for children living with HIV or those affected by HIV and who may be caregivers for parents or siblings living with HIV, including in relation to absenteeism, performance etc.?
- Does the country have social assistance laws and policies? Do these laws and policies provide social services for families or children? If so, are these laws and policies appropriate for children living with or affected by HIV? Do laws and policies account for and support children and young people who are caregivers for parents, siblings, grandparents etc.?
- Does the country have drug laws prohibiting the use of illegal drugs? Do these laws provide for access to HIV prevention information and tools (including condoms, lubricants or harm reduction for people who use drugs)? Are young people able to access these services, and at what age?
- Does the country have sex work laws that prohibit sex work or the activities around sex work? Do these laws distinguish between adult consenting sex and sexual trafficking?
- Is homosexuality illegal or sodomy criminalized? How do these laws affect young people?
- Does the country have juvenile justice laws or related laws? Do these laws provide for children to access legal support services? Do these laws provide for the safety of children detained under the justice system?

Harmful cultural practices affecting children

- Are there harmful cultural practices that have an impact on children in the context of HIV, such as early marriage and female genital mutilation? Are there any laws prohibiting harmful cultural practices? Are there policies, plans and programmes responding to harmful cultural practices?
- Are there gender norms that affect boy, girl and transgender young people in the context of HIV? Are there laws prohibiting harmful gender norms? Are there policies, plans and programmes responding to harmful gender norms?

Access to justice and law enforcement

- Do children and young people know their rights? Are they able to access legal support services?
- What are the mechanisms for children to access and enforce their rights? Are children and their families more likely to use formal mechanisms or traditional structures to enforce their rights? Are any of these mechanisms specifically tailored/sensitized to the needs of children?
- Are law enforcers sensitized to the rights of children and young people in the context of HIV and AIDS?

Additional issues for consideration in an LEA

- What is the legal framework in the case of children and young persons in different settings such as children living on the streets and their vulnerability to abuse, HIV and other diseases? Do these children have access to health care facilities? Are there mechanisms to register complaints in cases of exploitation and abuse, including child sexual abuse? Do these children and young people have access to HIV prevention information and tools, including sex education, clean needles etc.?
- What is the impact of HIV on children in other settings such as those in child labour, children who are migrants, refugees etc.? What are the specific legal and policy issues that affect them in the context of HIV?

SPECIFIC REFERENCES:

CHILDREN, YOUNG PEOPLE AND HIV

For more information on specific tools, see:

American Bar Association, 'HIV/AIDS Legal Assessment Tool, Rule of Law Initiative', American Bar Association, Washington, DC, 2012, pp. 101–105; 123–128.

Refer to the factors stated in this resource which might be of particular interest:

Factor 15: Children and youth

Factor 20: Legal protection

Factor 21: Legal awareness, assistance and representation

Factor 22: Access to a forum, fair trial and enforcement of remedies

OHCHR and UNAIDS, 'International Guidelines on HIV/AIDS and Human Rights', 2006 Consolidated Version, OHCHR and UNAIDS, Geneva, 2006, pp. 31–48; 52–56; 88–89.

Refer to the guidelines mentioned in this resource which might be of particular interest:

Guideline 5 and its commentary: Anti-discrimination and protective laws

Guideline 6 and its commentary: Access to prevention, treatment, care and support

Guideline 8 and its commentary: Women, children and other vulnerable groups

Section II International human rights obligations and HIV relating to human rights of children

For more information on children and young people:

Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, Chapter 5, pp. 70–75.

Committee on the Rights of the Child, 'Convention on the Rights of the Child, General Comment No. 3: HIV/AIDS and the Rights of the Child', CRC/GC/2003/1, Committee on the Rights of the Child, New York, 2003, available at: http://www.unicef.org/aids/files/UNHCHR_HIV_and_childrens_rights_2003.pdf.

UNESCO, UNFPA, WHO and UNAIDS, 'Young People Today, Time to Act Now, Why adolescents and young people need comprehensive sexuality education and sexual and reproductive health services in Eastern and Southern Africa', UNESCO, Paris, UNFPA, New York, and WHO and UNAIDS, Geneva, 2013, available at: http://res.cloudinary.com/netizn/image/upload/v1380819317/Final_summary_report_03_10_msuqnc.pdf.

UNESCO, UNFPA, UNAIDS, UNDP, 'Youth Lead, Young people and the law in Asia and the Pacific: A review of laws and policies affecting young people's access to sexual and reproductive health and HIV services', UNESCO, Thailand, 2013, available at: <http://unesdoc.unesco.org/images/0022/002247/224782E.pdf>.

IV. RESOURCES

Ahmed, A., 'HIV and Women: Incongruent Policies, Criminal Consequences', *Yale Journal of International Affairs*, 2011, pp. 32–42.

American Bar Association, 'HIV/AIDS Legal Assessment Tool: Assessment Methodology Manual', American Bar Association, Washington, DC, 2012, http://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_i_hiv_aids_legal_assessment_tool_11_12.authcheckdam.pdf.

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Asia Pacific Transgender Net: <http://www.transgenderasia.org/aptn%20info.htm>

BBC World Service Trust: http://www.bbc.co.uk/worldservice/us/annual_review/2007/world-service-trust.shtml

Canadian HIV/AIDS Legal Network: www.aidslaw.ca/EN/

Global Commission on HIV and the Law: www.hivlawcommission.org

Global Forum on MSM and HIV: www.msmsgf.org

Global Network of People Living with HIV: www.gnpplus.net/

Global Network of Sex Work Projects: www.nswp.org

GNP+ Global Criminalisation Scan: www.gnpplus.net/criminalisation/

Institute of Development Studies (IDS), Research to Policy Praxis: <http://www.ids.ac.uk/project/research-to-policy-praxis>

HIV Justice Network: www.hivjustice.net/

International Lesbian and Gay Association: www.ilga.org

International Network of People Who Use Drugs: <http://inpud.wordpress.com/>

Internews: <http://www.internews.org/taxonomy/term/234>

Kaiser Family Foundation, Media Fellowships and Internship Program: <http://www.kff.org/mediafellows/>

Panos, Relay: Communicating Research: <http://panos.org.uk/projects/relay/>

Paulo Longo Research Initiative: www.plri.org/

RedLacTrans (Red Latinoamericano y del Caribe de Personas Trans / Latin-American and Caribbean Network of Trans Persons): <http://redlactrans.org.ar>

The Center for HIV Law & Policy: www.hivlawandpolicy.org/

The People Living with HIV Stigma Index: www.stigmaindex.org/

Transgender Asia Research Center: www.transgenderasia.org

Transitioning Africa: www.transitioningafrica.org/

Transgender Europe: <http://tgeu.org/>

Treatment Action Campaign: <http://www.tac.org.za/>

UCSF Centre of Excellence for Transgender Health: <http://transhealth.ucsf.edu/>

UNAIDS, National Commitments and Policy Instruments (NCPI) Reports: <http://www.unaids.org/en/data-analysis/knowyourresponse/ncpi/2012countries/>

What Works for Women & Girls: www.whatworksforwomen.org/



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