



Third meeting
of the EECA Regional Judges' Forum on HIV, Human Rights and the Law
11-12 November 2021
Kyiv, Ukraine/Virtual

CONCEPT NOTE

1. Thematic background

Eastern Europe and Central Asia (EECA) is one of only three regions where the HIV epidemic is growing; it is also one of only two regions in the world where the annual number of AIDS-related deaths has increased since 2010. According to UNAIDS, there are approximately 1.6 million people living with HIV in the region.¹ Most new infections in the region are among key populations,² who must contend with punitive legal environments, social ostracization and discrimination.

High rates of co-infections are prominent, with tuberculosis (TB) increasingly linked to HIV infection and drug use, while hepatitis C infection is approaching 80 percent prevalence amongst people who use drugs. Nine of the world's 30 countries with a high burden of multidrug-resistant TB (MDR-TB) and extensively drug-resistant TB (XDR-TB) are within the EECA region³.

While there have been significant improvements in the legal environment relevant to HIV and TB in the region, legal barriers persist. The rights of PLHIV, key populations at risk of HIV, and of people experiencing TB are not sufficiently and effectively protected. Additionally, the legal, policy and regulatory frameworks that govern national efforts in prevention, treatment, care and support need significant strengthening. Some key obstacles include: criminalisation of HIV transmission, non-disclosure and exposure; criminalisation of sex work or introduction of increased punitive measures against sex workers; criminalisation of drug use and/or possession for personal use; forced and coerced HIV testing and others.⁴

Functional and effective judicial systems are imperative to ensure the protection of the rights of key populations. In this regard, the judiciary in a number of the EECA countries has been quite progressive also through important enabling court decisions.

2. Context

¹ UNAIDS - <https://aidsinfo.unaids.org/>

² UNAIDS considers gay men and other men who have sex with men, sex workers and their clients, transgender people, people who inject drugs and prisoners and other incarcerated people as the main key population groups. These populations often suffer from punitive laws or stigmatizing policies, and they are among the most likely to be exposed to HIV. Their engagement is critical to a successful HIV response everywhere—they are key to the epidemic and key to the response (UNAIDS Terminology Guidelines, 2015, https://www.unaids.org/sites/default/files/media_asset/2015_terminology_guidelines_en.pdf).

³ Stop TB Partnership, High Burden Countries - <http://www.stoptb.org/countries/tbdata.asp>

⁴ Global Commission on HIV and the Law – 2018 Supplement - <https://hivlawcommission.org/supplement/>

In its flagship “Risks, Rights & Health” report of 2012⁵ and subsequent 2018 Supplement⁶, the Global Commission on HIV and the Law recognized that the law alone cannot stop HIV transmission, nor can the law alone be blamed when HIV responses are inadequate. However, the Global Commission found that legal environments can play a powerful role in the well-being of people living with or vulnerable to HIV.⁷ Without the contribution of judicial members in combatting HIV and related conditions, it is unlikely that significant change in how HIV is comprehended on a societal, legal and medical level will be actualized.

In response to the Global Commission’s recommendation, the United Nations Development Programme (UNDP) has been facilitating the work of the African Regional Judges’ Forum on HIV and AIDS, which held its sixth meeting in 2019. As the Forum proved to be an important platform for information and experience exchange, raising awareness and sensitizing members of the judiciary on the issues of HIV and key and vulnerable populations, UNDP supported participation of EECA judges in the meetings of the African Judges Forum in 2018 and 2019, creating a clear demand by these judges to replicate the experience in the EECA region.

On 3-4 October 2019, the first meeting of the EECA Judges’ Forum on HIV, Human Rights and the Law (hereinafter, the Forum) took place in Chisinau, Moldova, gathering over sixty participants, including members of the judiciary, representatives of national judicial training institutes, officers of UN country offices, and civil society and community activists from 11 countries of EECA, as well as representatives of headquarters and regional offices of UN agencies. The second meeting of the Forum took place in Dushanbe, Tajikistan, on 15 and 16 October 2020. Due to the global pandemic of COVID-19 and related travel restrictions, the meeting was organized in a hybrid format whereby participants in Tajikistan gathered in one venue, and participants from other countries connected remotely via Zoom. The meeting, focused on the issue of criminalization of HIV transmission, exposure and non-disclosure, gathered 88 participants. As an outcome of the meeting, the participants agreed on a number of next steps, including the decision to hold the 3rd Forum meeting in 2021 in Ukraine, with one day devoted to criminal law and a second day on civil law.

3. Main objectives and expected outcomes

The Forum aims to provide a collegial environment for EECA judges to discuss the latest scientific, medical and epidemiological evidence, international and regional guidance, social and structural factors that increase the vulnerability of people living with HIV and key populations, and judicial and legislative responses to HIV and related national, regional and international laws, and to share experiences and challenges in their work to protection of people’s rights in the context of HIV and co-infections.

The agenda of the third Forum meeting will cover the following issues and sub-topics:

Day 1 - 11 November 2021, Thursday:

- Access of people living with HIV, affected by TB and key populations to justice in the context of the COVID-19 pandemic
- International standards and guidelines related to decriminalization of HIV transmission, exposure and non-disclosure (existing documents, their status, gaps)
- International experience of HIV decriminalization

⁵ Global Commission on HIV and the Law – Risks, Rights and Health - <https://hivlawcommission.org/report/>

⁶ Global Commission on HIV and the Law – 2018 Supplement -<https://hivlawcommission.org/supplement/>

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<https://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf>

- HIV status in criminal procedure
- Risk levels in the context of HIV criminalization and other offenses

Day 2 - 12 November 2021, Friday:

- HIV-status in the context of civil litigation: access to justice
- Civil law and HIV:
 - a) the right to confidentiality – enforcement mechanisms, claiming moral damage for disclosure of HIV-status
 - b) claiming moral and material damage for HIV infection
 - c) HIV and employment: labour disputes
- Family law and HIV:
 - a) custody and adoption by people living with HIV
 - b) the right to confidentiality
 - c) HIV as a barrier for marriage and a ground for divorce.

Expected outcomes:

- a) Increased awareness among participants on:
 - International standards, guidelines and recommendations on issues related to HIV in criminal, civil and family law and litigation
 - Latest scientific and medical evidence and information about HIV infection and transmission;
 - Qualification and levels of risk in criminal law
 - Access of people living with HIV, affected by TB and key populations to justice, including in context of COVID-19 pandemic
 - The positive impact of HIV decriminalization in other regions
 - The practice of HIV-related criminal justice and civil litigation in EECA countries
- b) Support the further development of judicial leaders to undertake follow-up activities at national level, such as sensitisation and experience-sharing with other judicial members, and the potential integration of modules on HIV and the law into formal judicial training with the overall objective of reducing biased and misinformed judgements on HIV-related criminal cases and promoting good civil litigation practice.
- c) Decisions on the host country, format and content of the next Forum meeting.
- d) Ideas on how members of the Forum can share learning with colleagues in their countries.

4. Methodology

The third meeting of the Forum will be organised by UNDP in collaboration with national and regional stakeholders in the EECA countries. The Forum Steering Committee (SC) with support from UNDP, WHO, UNAIDS and other partners, will prepare the methodology, agenda and format for the Forum. UNDP and partners will support implementation of the third meeting of the Forum. The methodology may include panel discussions, presentations by eminent jurists, and reviews of pertinent judgements from different jurisdictions. It may also include expert presentations on newest epidemiological, scientific and medical evidence or specific areas of interest. In addition, it may include engagement between civil society, including affected communities, and the judiciary, to facilitate discussion of the constraints and challenges experienced by people living with HIV and key populations.

Due to the continuing COVID-19 pandemic and related restrictions, the SC again chose hybrid format for the third meeting: participants from Ukraine will be invited to a venue in Kyiv, while participants in other countries will connect individually via Zoom. In other countries, depending on resource availability and epidemiological situation, similar arrangements may be made as in Ukraine in order to ensure more local interaction and networking.

The meeting is planned to last two days for 3.5-4 hours each day, and take place on 11-12 November 2021.

5. Participants

Judges, representatives of national institutes of justice⁸ and UNDP Country Office HIV, Health and Development focal points from selected EECA countries, including Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Ukraine, Uzbekistan and possibly other countries of the region will be invited to participate. Participation will focus on judges with experience in HIV-related cases that are consonant with human rights principles and seen as advancing HIV jurisprudence, as well as the judges who participated in previous Forum meetings. The meeting will bring together up to 100 participants, including resource persons. Official languages of the meeting will be Russian and English, with simultaneous translation from and into these languages provided.

6. Resource persons

Subject to the agreed upon agenda, the following expert resource persons may be called upon to provide input during specific Forum sessions:

- Members of the Global Commission on HIV and the Law
- Regional members of the judiciary presiding in landmark HIV-related judgements
- Legal experts with understanding of the critical HIV-related legal issues in the region, including from countries which decriminalized HIV exposure, transmission and non-disclosure
- Health experts with understanding of the medical, scientific and epidemiological evidence impacting on matters of HIV and the law.
- Representatives of the PLHIV community, key population networks and civil society organizations with experience in protecting and advocating for people living with HIV, and members of key populations
- Representatives of UNDP, UNAIDS, WHO and other key partners.

7. Conveners and modalities of participation

The third meeting of the Forum will be convened by the Forum SC. UNDP Istanbul Regional Hub together with UNDP CO Ukraine, and in collaboration with UNAIDS Regional Support Team for Eastern Europe and Central Asia and other partners will facilitate convening the Forum and will provide ongoing support. Support from other UNDP Country Offices in EECA may be required to should it be decided to run the meeting in the hybrid format in other countries.

The organizers will cover all costs related to the participation in the Forum, including:

- for participants travelling to a local venue: travel, per diems and terminals;
- for participants connecting individually: internet packages, USB modems, webcams.

For participants with limited knowledge of using web-conferencing, UNDP Istanbul Regional Hub will provide detailed guidance on connecting through Zoom.

⁸ National institutes of justice or other relevant organization in country responsible for the training and continuous education of judges.