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First EECA Regional Judges' Forum on HIV, Human Rights and the Law

3-4 October 2019

Chisinau, Moldova

1. Thematic background

The rate of new HIV infections is decreasing globally, however in Eastern Europe and Central Asia (EECA), the HIV epidemic continues to grow. According to UNAIDS, there are approximately 1.7 million people living with HIV in the region. The HIV epidemic in EECA has grown by 29 percent since 2010, reflecting insufficient political commitment and domestic investment in national AIDS responses across much of the region. The vast majority of people acquiring HIV were in the Russian Federation and Ukraine, the two most populous countries in the region. Together, these countries account for 84 percent of all new infections. Most new infections in the region are among key populations,¹ who must contend with punitive legal environments, social ostracization and discrimination. EECA is one of only two regions in the world where the annual number of AIDS-related deaths has increased since 2010, although that trend appears to have reversed with the past few year (38,000 estimated AIDS-related deaths in 2018 compared to 36,000 in 2010). Antiretroviral treatment (ART) coverage in the EECA region is improving but is still very low, only covering approximately 38 percent of all people living with HIV (PLHIV)².

High rates of co-infections are prominent, with tuberculosis cases increasingly linked to HIV infection and drug use, while hepatitis C infection is approaching 80 percent prevalence amongst people who use drugs. Nine (Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, the Republic of Moldova, the Russian Federation, Tajikistan, Ukraine and Uzbekistan) 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 region. Less than 50 percent of cases have been detected and successfully treated³.

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 include⁴:

- Criminalisation of HIV transmission, non-disclosure and exposure
- Criminalisation of sex work or introduction of increased punitive measures against sex workers
- Introduction of homophobic and transphobic laws usually presented as “anti-propaganda” legislation
- Criminalisation of drug use and/or possession for personal use;
- Punitive “prevention” measures against people with HIV as a category of people more likely to commit crimes
- Forced and coerced HIV testing

¹ 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).

² Communities at the Centre – Global AIDS Update 2019 - https://www.unaids.org/sites/default/files/media_asset/2019-global-AIDS-update_en.pdf

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

⁴ Global Commission on HIV and the Law – Risks, Rights and Health - <https://hivlawcommission.org/supplement/>

- Prosecution of the people who are not able to or willing to undergo TB treatment
- Shrinking space for civil society organizations to function as service providers for key populations, PLHIV and people who experience TB including access to financial resources.

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

2. Justification

The Global Commission on HIV and the Law was launched in June 2010 to develop actionable, evidence-informed and human rights-based recommendations for effective HIV responses. In its July 2012 Report titled “Risks, Rights & Health” and subsequent Supplement in 2018⁵, the Global Commission on HIV and the Law recognizes that the law alone cannot stop HIV transmission, nor can the law alone be blamed when HIV responses are inadequate. However, the GCHL found that legal environments can play a powerful role in the well-being of people living with or vulnerable to HIV⁶. 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. Effective laws can widen access to prevention and health care services, improve the quality of treatment, enhance social support, and protect human rights.

There has been limited opportunity for members of the judiciary to comprehend the developing roles of the law and the judiciary in the response to HIV, within the context of developments of law and legislation across the region, as well as important medical, scientific and epidemiological developments that inform these findings. Some challenges include disenabling legislation on HIV in certain countries toward people living with HIV and key populations at higher risk of HIV, inadequate capacitation on the use of international law by domestic courts, and cultural constraints impeding the protection of key populations.

Judges across EECA have expressed interest in further familiarising themselves with the challenges and developments regarding HIV-related jurisprudence, in order to better protect and serve key populations and support judicial excellence on HIV and the law. In order to both sustain these activities and respond to judicial members’ requests, learning from the experience of other regions UNDP will support a Regional Judges’ Forum for EECA. This Forum, which will be led and convened initially by a small number of senior judges from EECA countries, will create a space for honourable judges to convene and discuss issues of HIV and the law, call for expert inputs, and share experiences and challenges. A key component will be to strengthen regional leadership and international good practices. It will also build on the positive experience from the judges’ breakfast meeting held in Ukraine in late 2018. The first meeting of the Judges’ Forum will take place 3-4 October 2019.

3. Strategic Objectives

The Judges’ Forum on HIV and the Law aims to provide a collegial environment for EECA judges to:

1. Discuss the latest scientific, medical and epidemiological evidence pertaining to HIV prevention, treatment and care
2. Discuss the latest international and regional guidance on HIV, co-infections, law and human rights
3. Discuss the social and structural factors that increase the vulnerability of people living with HIV and key populations

⁵ <https://hivlawcommission.org/supplement/>

⁶ <https://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf>

4. Discuss judicial and legislative responses to HIV and related law at national, regional and international levels
5. Share experiences and challenges in their work with the protection of rights in the context of HIV and co-infections.

The Judges' Forum intends to instigate a shift in the comprehension of HIV and key populations, by providing a framework through which current and future law and change makers are able to effect significant and unprecedented change. Participants will have the benefit of better understanding the contemporary scientific, medical, legal and social dimensions of HIV and its co-infections and rights-based approaches to addressing them through the judiciary. The Forum will provide an interconnecting platform for judiciary members, to ensure there is space to communicate, deliberate, and share information.

4. Expected outcomes from the Forum

- a) An increased awareness among participants on:
 - The latest scientific and medical evidence pertaining to HIV prevention, treatment and care and co-infections
 - The latest international and regional guidance on HIV, co-infections, law, human rights and addressing stigma and discrimination toward PLHIV and KPs
 - The social and structural factors that increase the vulnerability of people living with HIV and key populations, including evidence on HIV-related discrimination
 - Judicial and legislative responses to HIV- and related law at national, regional and international levels and foundation for development of jurisprudence on HIV and TB related cases.
 - Experiences and challenges of their peers in HIV-related litigation
- 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 the formal judicial training with the overall objective of reducing HIV and co-infections prevalence.
- c) Awareness of principles and information on HIV and the law, developed by UNAIDS and its Co-sponsors to address the issue of HIV, co-infections, human rights, stigma and discrimination, and rights violations.
- d) Agreement on the format, membership and content of future EECA Judges' Forum on HIV meetings.
- e) Ideas on how members of the Judges' Forum on HIV can share learning with colleagues in their countries.
- f) Consider selection of a Steering Committee that may include a Chair and Co-Chair, for more effective communication procedures and to streamline deliberation processes.

5. Methodology

UNDP, in collaboration with UNAIDS Secretariat and other partners, will discuss with the judges to finalise critical areas of interest, methodology, agenda and format for the Forum, in order to ensure the methodology is informed by the specific requirements of the honourable judges. UNDP and partners will support implementation of the Judges' Forum during its first and subsequent meetings. 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 newer epidemiological, scientific and medical evidence or specific areas of interest such as challenges of intellectual property law and access to medicines. 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.

6. Participants

Judges, representatives of National Institute of Justice⁷ and UNDP CO HHD focal points from selected EECA countries (3-4 country delegation members), including **Belarus, Georgia, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan and Ukraine**, will participate. Participation will focus initially on judges with experience in HIV-related cases that are consonant with human rights principles and seen as advancing HIV jurisprudence. The meeting will bring together approximately 30-35 participants (including resource persons). Official languages of the meeting will be Russian and English.

7. Resource persons

Subject to an agenda agreed upon by the convening judges, the following expert resource persons may be called upon to provide input during specific Judges' 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 an understanding of the critical HIV-related legal issues in the region.
- Health experts with an 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 at risk of HIV exposure.
- Representatives of UNDP, UNAIDS Secretariat and co-sponsor agencies and other key partners.

8. Venue and dates

The first EECA Regional Judges' Forum will be held from 3-4 October 2019 at Marriott Courtyard Hotel, Chisinau, Moldova.

9. Conveners and modalities of participation

- The Regional Judges' Forum will be convened by senior judges from EECA. UNDP Istanbul Regional Hub together with UNDP CO Moldova, 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.
- Costs for the Forum relating to participation, including travel, per diems and terminals will be covered by the Regional HHD team at the Istanbul Regional Hub.

⁷ National Institute of Justice or other relevant organization in country responsible for the training and continued education of judges.