

• International Guidelines on Human Rights and Drug Policy • ECOM Regional report on violations of the right to health of gay and other MSM and trans people in the EECA region for 2020

Presentation of the Report on the Evaluation of the Global **Commission on HIV and the Law** 

On 21 June 2021, at the panel discussion "Removing Legal and Structural Barriers to Ending AIDS by 2030: Lessons from the Global Commission on HIV and the Law" organized by UNDP in partnership with UNAIDS, the Global Commission on HIV and the

Law (hereafter – the Global Commission) presented the report "Evaluation of the Global Commission on HIV and the Law" (available in English). The event brought together

representatives of governments, civil society organizations, communities of people living with HIV, key populations and other partners who reflected on the evaluation and the lessons learned from the work of the Global Commission on HIV and the Law. Dr Mandeep Dhaliwal, Director of the UNDP's HIV. Health and Development Group, moderated the discussion. This event not only presented the findings of the evaluation but also provided an important forum for participants to discuss how these lessons can inform concrete actions at national, regional and global levels. Valeriia Rachynska, Head of Regional Policy, Human Rights, Gender and Communities Development Team, International Community of Women Living with HIV/ Positive Women Ukraine, presented the regional perspective on the state of play with regard to HIV and co-morbidities in the Eastern Europe and Central Asia region.

The report presented at the event contains findings from an external evaluation of the impact and legacy of the Global Commission on human rights and legal issues relating to HIV. It explores the fulfillment of the Commission's objectives, taking into account the perspectives and experiences of representatives from governments, along with law and policymakers, civil society and marginalized and affected by HIV people and communities, as well as UN agencies and other development partners.

Rights, the Institute on Inequalities in Global Health and the University of Southern California. The evaluation process included analysis of available internal and external documents and publications and interviews with a diverse range of stakeholders. "The single most important insight is that the Global Commission didn't die with the final report. I do think something that makes this particularly striking is how much follow-up there has been, partly because of UNDP, and partly because of civil society." — Independent Evaluator

The findings of the evaluation report showcased that the Global Commission positioned itself well from the outset to accomplish its goals, ensuring very widespread participation of different stakeholders in the process of developing its recommendations that also served to foster their broad-based and long-term buy-in and ownership. Its impact was multi-faceted and can be traced at global, regional and national levels. The Global Commission's substantive influence on global politics was felt in such areas of work as decriminalization of HIV transmission, intellectual property, access to medicines,

surrounding legal environment. The Global Commission also influenced a number of initiatives, including the creation of the High-Level Panel on Access to Medicines. The 2012 Report provided stakeholders with a critical advocacy tool. Organizations such as Amnesty International in conjunction with CREA, Realizing Sexual and Reproductive Justice, and Accountability International have worked together using recommendations from the Commission to challenge criminalization around sexuality, reproduction, gender and drug use. The Global Commission emphasized the critical importance of input from and engagement of a variety of players among duty-bearers and right-holders at the regional level for

stakeholders to interact and discuss challenging issues, as well as created an enabling environment for the HIV response from the regional perspective. The Global Commission influenced the establishment of a number of regional networks that have been continuing working on the promotion of its recommendations, such as the Africa's Key Population Group and regional judges' forums in Africa, Eastern Europe and Central Asia and the Caribbeans. Since 2013, with the technical support from UNDP, there have been eight regional grants distributed across Africa, Asia the Caribbean, Eastern Europe and the Western Pacific. The work at the regional level resulted in progress with regard to legislative and policy work, including the adoption of model laws, development of regional strategies, mobilization of civil society and key populations, and strategic litigation on issues raised during consultations with the Global Commission. The impact of the Global Commission's work was equally visible at the national level creating a safe space for civil society, strengthening Governments' receptivity to joint work

Governments as well as reported changes in Governments' attitudes relating to how the law affects the HIV response and lives of members of key populations. The Global Commission modeled the establishment of national-level commissions, as well as led to the adoption of a number of landmark judgments: India: In 2018, in the case Natvej Singh Jahar v. Union of India the Supreme Court of India overturned Section 377 of the Indian Penal Code which stated that "carnal intercourse against the order of nature" was a criminal offense punishable by life imprisonment. The case effectively decriminalized homosexuality in India while simultaneously recognizing the identities of LGBT persons within the country. Evidence presented by the Report of the Global Commission was used by the Court in the lead-up to their ultimate decision. Botswana: In 2015, following a case brought by two HIV-positive inmates, the Botswana Court of Appeal upheld a ruling on free HIV treatment for foreign prisoners. Foreign prisoners were previously expected to pay for their own medications. Judges who adopted

the decision had attended the Africa Regional Judges' Forum on HIV and the Law.

role of civil society and key populations is critical for global HIV targets to be met

improved HIV response.

morbidities at global, regional and national levels.

contributing to a better quality of life of people living with HIV and key populations and

The Global Commission on HIV and the Law: In 2010, with the support of UNDP and at the behest of the UNAIDS Programme Coordinating Board, the independent Global Commission on HIV and the Law

The evaluation report manifested the success and overall impact the Global Commission had as a result of the participatory process and early engagement of both duty bearers and right holders that was always forward-looking and went beyond the framework set by the report and, therefore, still has relevance to this day. Lessons learned from the Global Commission's work can provide critical evidence to support the implementation of the Global AIDS Strategy 2021-2026 and the 2021 Political Declaration adopted at the High-Level Meeting on HIV/AIDS. Due attention to the legal and policy environments and to the

(or "the Global Commission") convened to examine legal and human rights issues through an HIV lens, increase awareness among key constituencies on issues of rights and law, and engage with and strengthen civil society. The Global Commission was comprised of fourteen distinguished Commissioners from diverse nationalities and disciplines. The Commissioners are advised by a Technical Advisory Group (or "TAG") of 23 experts. In July 2012, the Global Commission issued its landmark report "HIV, and the Law: Risks, Rights and Health". It contains a thorough examination of the relationship between HIV and the law, and includes recommendations covering the breadth of the HIV response. In July 2018, the Commission released the report "Supplement on HIV and the Law". This Supplement highlighted developments since 2012 in science, technology, law, geopolitics and funding through an HIV response perspective. These two documents, taken together, offer an optimal blueprint for what is needed to shape appropriate HIV-related legal environments and serves as a critical resource and advocacy tool for addressing HIV and co-

For more information about the Global Commission and its work, please consult its website:

Salakhov and Islyamova v. Ukraine

on suspicion of robbery. He was placed in pre-trial detention, where after a few months his

applicant's lawyers to the ECtHR, the European Court issued an *interim measure under* 

health sharply deteriorated. A medical specialist diagnosed him with pneumonia and candidosis and concluded that the HIV infection was at the fourth clinical stage, but that

there was no urgent need for hospitalization. Following the application of the first

Rule 39 of its Rules requiring the first applicant's immediate transfer to hospital for

facilities from March 2008, the State has failed to provide the first applicant with adequate medical care, which was limited to several sporadic ambulance calls, submitting no evidence to the contrary. Moreover, even after the confirmation of his HIV-positive status at the hospital, the seriousness of his health condition was underestimated and, subsequently, his hospitalization was delayed. The Court also highlighted that the national court in charge of the first applicant's criminal trial turned a blind eye to the extreme gravity of his condition even though the prosecution had acknowledged this during the trial. Nevertheless, the first applicant continued to be deprived of his liberty, while being placed in the hospital, even after the pronouncement of the judgment imposing a fine instead of a custodial sentence. In the light of the abovementioned statements, the Court found that there had been

violations of Article 3 (prohibition of torture) of the European Convention on Human *Rights (ECHR)* in respect of the inadequate medical assistance provided in the detention facilities (ITT and SIZO) and hospital and due to the first applicant's handcuffing in the

circumstances of his death. Lastly, it found a violation of *Article 3 (prohibition of torture)* 

hospital. It also found violations of Article 2 (right to life) ECHR in respect of the authorities' failure to protect his life and to conduct an effective investigation into the

*ECHR* in respect of the mental suffering endured by the second applicant – the first

applicant's mother.

The Court granted EUR 50 000 and EUR 10 000 in respect of non-pecuniary damages suffered by the first and the second applicants respectively. Final text of the judgment Salakhov and Islyamova v. Ukraine. Unofficial translation of the judgment into Russian is available <u>here</u>. Examples of other ECtHR cases related to access to medical care for people living with HIV in closed institutions: 1) Center of Legal Resources on behalf of Valentin Câmpeanu v. Romania (Grand

<u>Unofficial Russian translation</u> Rights of persons living with HIV – Rights of persons with mental disabilities – Women prisoners The lack of access to medical care in pre-trial detention causing death. 3) Aleksanyan v. Russia, 22 December 2008

The International Guidelines on Human **WUNAIDS** World Health Organization **Rights and Drug Policy** (hereafter – the Guidelines) were adopted on 15 March 2019 at the 62nd session of the United Nations Commission on Narcotic Drugs

"For countries who are ready to place human dignity and sustainable development at the heart of their drug control policy, these guidelines offer valuable guidance to promote more effective and humane drug control policy." – Mandeep Dhaliwal, Director of the UNDP's HIV, Health and Development Group. "Human rights should not just inform critiques of the response to drugs worldwide, they should also be the main drivers of its reform, underpinning checks and balances to break cycles of abuse," said Julie Hannah, Director of the International Centre on Human Rights and Drug Policy, University of Essex, United Kingdom of Great Britain and Northern Ireland. "Fighting inequality and injustice is a more effective way of addressing the global drug problem than prisons and police," she added. The Guidelines does not constitute a model "toolkit" on drug policy, but, rather, takes into account the diversity of state approaches and sets out minimum international standards with regard to human rights and drug control. It respects the prerogative of national authorities to determine respective policies and legal regimes aligning them with their human rights commitments, including by introducing more favorable protection than provided by international law.

human rights obligations and relevant principles of treaty interpretation. The Guidelines contain two Annexes. **Annex I** leads the reader through the Guidelines and provides three thematic reference guides related to development, criminal justice, and health listing the key set of guidances pertaining to the relevant subject areas. Annex II features the methodology applied for the development of the Guidelines. The Guidelines are available in **English**, **Spanish**, **Russian** and **Portuguese**. Since the adoption of the Guidelines, remarkable progress has been made in strengthening the implementation of human rights across a range of drug control areas. With the aim of providing an informational space for national and regional stakeholders to discuss and map out progress achieved and challenges for the implementation of the Guidelines, as well as to strengthen the reflection of and compliance with human rights in

survey results and cases collected by ECOM's network of consultants as a part of the monitoring of violations of the rights to health carried out in 2020 in 11 cities of the seven countries of the Eastern Europe and Central Asia (EECA) region (Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan and Uzbekistan) in the light of the impact of the COVID-19 pandemic

collected. Unlike in the previous years (2017, 2018 and 2019), in 2020 the monitoring

showed that in 2020 the situation with the observance of the human rights of LGBT(3) people in EECA countries remained rather difficult. Since the beginning of the COVID-19 pandemic, there has been no significant progress on human rights. Due to the efforts of activists and NGOs, it became possible to prevent significant deterioration of the situation. Yet, a number of states of the region were marked by a regress towards ensuring access to certain rights and attacks on democratic values. Gay men and other men who have sex with men (hereafter – MSM) who hide their sexual orientation from relatives and friends in traditional and patriarchal countries, especially those living far from capitals, are the most vulnerable since they are the first to become the target of extortion. It is noteworthy to mention that during this year activists also reported on small victories with regard to the protection of rights of LGBT community members. For instance, in 2020, the Russian Federation (hereafter – RF) adopted amendments(4) to the procedure for conducting

In the opinion of the authors of the report, analysis of the situation in countries of the region

teams managed to collect data beyond capitals, in large cities and small towns.

preventive medical examinations, including HIV testing, for certain categories of

him/her under full or partial guardianship and into an adoptive or a foster family.

decreases in services due to quarantine measures and other related restrictions.

According to the replies provided by the respondents, first and foremost the decrease

affected HIV (39%) and sexually transmitted infections (30%) testing and a number of other

22

Refusal of employment,

dismissal, other violations of the right to work

119

VIOLATIONS

(14)

Source: https://ecom.ngo/

Hate speech

Refusal to provide medical services/provision of

Disclosure of personal data

Requirement by employer to undergo HIV testing

Refusal to issue/

amend documents

(SOGI and/or HIV+ status)

services of insufficient

specialists, which previously could have led to the dismissal of people who were diagnosed with HIV, as well as the new Decree of the Government of the RF(5) that gave people living with HIV, who are on antiretroviral treatment (hereafter – ART), a right to adopt a child, take

The global pandemic and the Governments' response to it have hit the most marginalized groups, including LGBT people, the hardest. The survey of NGOs showed changes and

more clearly revealed issues related to the lack of effective remedies, including the antidiscrimination legislation, and the police impunity. In 2020, not only the number but also the quality of the collected cases increased, while more and more situations that were previously hushed up by members of the community themselves are now recorded and documented. Belarus Kazakhstan Kyrgyzstan Moldova Russian Federation Tajikistan Uzbekistan Domestic violence Abuse of power (including cases of 47 blackmail, threats to disclose status, and

services.

leads to refusals of treatment and/or deterioration of health. **EXAMPLES OF CASES PRESENTED IN THE REPORT** taken to a branch of the Republican Center for Traumatology and Orthopedics, where he was prescribed medical tests, including an HIV test. The Center, after had progressed to AIDS), refused to carry out the surgery and continue his treatment. The Center suggested that the victim looks for another clinic where

Minsk, Belarus: Citizen C., a gay man, went to the City Clinical Hospital of Infectious Diseases for viral load and immune status tests, where he had registered in advance through the website of the Hospital. When he arrived at the appointment, they refused to accept him, and he was told that there was quarantine now and that such tests could not be run. He asked when such services will be resumed, or where it can be done now, but did not receive any answer.

non-governmental organization open to non-profit organizations and activists working in the areas of prevention and treatment of HIV, care and support for men who have sex with men and transgender people in the EECA region. The network currently has 76 members from 19 countries, covering countries from Estonia to Tajikistan. More information about the organization and other publications on the human rights situation of gay, other MSM and trans people in the EECA region is available at the ECOM's website: https://ecom.ngo/ (2) SOGI - sexual orientation and gender identity. (3) LGBT - Lesbian, Gay, Bisexual, Transgender. (4) Decree of the Government of the RF dated 17 June 2020 No.868 "On invalidation of certain acts and certain provisions of some acts of the Government of the Russian Federation and on the abolition of some acts of federal executive bodies containing mandatory requirements, compliance with which is assessed when carrying out control measures for the implementation of state control of the quality and safety of medical activities": http://publication.pravo.gov.ru/Document/View/0001202006220013

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We hope that you enjoyed the Second Issue of the Newsletter!

In order to make sure we deliver the best and most relevant content, we ask for your honest feedback. This helps us to make sure the Newsletter is useful for Forum members and other readers. Your suggestions and comments will be greatly appreciated!

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The Global Commission's concern with having a tangible impact on the world, beyond a simple publication of the report, has shaped all of its activities to date. In that, it stands alone from every other global commission. In seeking to further understand the impact of the Commission, and with the support of UNDP, the work on the external evaluation, with a particular focus on what has been accomplished at the global and regional levels, started in 2019. The evaluation was carried out by the Program on Global Health and Human drug policy, sex work and the rights of sexual minorities and people experiencing gender discrimination. The Global Commission succeeded in establishing open spaces for dialogue between communities and policymakers facilitating links, advancing substantive discussions, exchange and, subsequently, contributing to joint actions on the humanization of the issues related to HIV and the law. Nearly 700 individuals across 140 different countries submitted testimonials to the Commission about their experience with their addressing HIV. Regional platforms provided opportunities and safe spaces for on HIV and the law and promoting a more sustainable and open collaboration among different partners. By the end of 2019, UNDP had provided funding and support to 89 countries striving to implement recommendations of the Commission. 34 national dialogues were held to address HIV-related issues and ensure better human rights protection of the affected populations. Across many countries, these discussion platforms have resulted in increased interactions and collaboration between civil society actors and

https://hivlawcommission.org/report/ **ECtHR Case Law** Access to medical care for people living with HIV in closed institutions In the case Salakhov and Islyamova v. Ukraine, the European Court of Human Rights (hereafter - ECtHR or the Court) examined access to medical care in the context of longterm illness of one of the applicants. The case was brought to the Court by Ms Islyamova, a mother of the deceased Mr Salakhov, on behalf of both of them. Mr Salakhov, who was HIV positive at the time of apprehension, was arrested by the police

**Chamber)**, 17 July 2014 **Unofficial Russian translation** Rights of people living with HIV – Rights of persons with severe mental disabilities The lack of access to adequate health care in psychological institutions causing death of the applicant.

Rights of persons living with HIV The lack of access of an HIV-positive person to medical assistance in detention, as well as the State's failure to comply with the ECtHR request for interim measures (Rule 39). **International Guidelines on Human Rights and Drug Policy** 

The Guidelines consist of five Sections. They are developed in a way that allows the reader to navigate through it focusing on a specific drug policy theme or right he/she is **Section I** presents general cross-cutting, or "foundational", human rights principles underpinning the Guidelines, which may be seen as applicable irrespective of the issue or specific right in question, such as: human dignity, universality and interdependence of rights, equality and non-discrimination, meaningful participation, accountability and the right to an effective remedy. Section II sets out universal human rights standards in the context of drug policy. It includes a brief overview of each standard related to a specific right through the prism of relevant drug policies. It focuses on such rights as the right to the highest attainable

drug policies at national and regional levels, a chain of regional dialogues has been organized worldwide. Following the two meetings for Latin America and Southeast Asia that took place in 2020, a <u>regional dialogue for Eastern Europe and Central Asia was</u> held on 2 and 3 September 2021 (virtually). The event aimed at introducing participants to the substantive content of the International Guidelines on Human Rights and Drug Policy and identifying connections to national and regional priorities. It also provided space for brainstorming in an informal setting on practical ways in which the Guidelines can be implemented both locally and regionally. **ECOM Regional report on violations of the right to health of** 

2020

**ECOM** 

**REGIONAL REPORT** 

on violations of the right to health

in the EECA region in 2020

In May 2021 the **Eurasian Coalition for Human Rights, Gender and Sexual** 

Diversity (ECOM)(1) published its annual Regional report on violations of the right to

health of gay and other MSM and trans people in the EECA region for 2020. The

emphasis of the report is on three main

including policies and laws related to HIV;

legislation and SOGI(2). The research was

blocks of issues: the right to health,

laws on gender expression and their implementation; anti-discrimination

based on the research of different materials on countries of the region,

The collected in 2020 cases confirmed the ECOM's hypothesis about the interconnection of the level of stigma and discrimination based on SOGI in EECA countries and the access of gay men, other MSM and trans people to the enjoyment of their right to health. In turn, the restrictions linked to the COVID-19 pandemic have led to an even greater marginalization of members of the community, hitting two rights at once – the right to health and the right to work (and, accordingly, to a decent standard of living), as well as even

The collected in 2020 cases showcase not only the wide variety of violations of the right to health: the refusal to provide medical care (urgent and planned) – the refusal of ART, the absence or lack of access to testing and ART treatment and disclosure of the diagnosis or SOGI of patients – but also the vulnerability of LGBT people to more global health issues, such as the COVID-19 pandemic and its consequences. 33 out of 119 cases (28%) related to the refusal to provide urgent medical care, refusal to provide treatment when the doctor learns of the patient's status (SOGI and/or HIV), and to the refusal to provide and/or sell medication. Despite the fact that the disclosure of medical information is prohibited in all countries covered in this report, in 2020 there were 13 cases recorded. This often happened right in front of victims and was accompanied by hate speech and public humiliation. After such incidents, typically, the victims decide not to seek medical care out of fear of re-victimization and/or another disclosure of their status. This **Samarkand, Uzbekistan:** At the beginning of February, Citizen B, a gay man, was receiving the results of the HIV test (the patient was informed that he had HIV that «they would agree to treat such patients». In addition, the patient was not provided with any relevant documents, including test results, the hospital discharge form, or X-ray images.

(5) Decree of the Government of the RF dated 11 July 2020 No. 1023 "On amendments to the list of diseases that do not allow adoption of a child, full or partial guardianship, taking him or her into an adoptive or a foster family": <a href="http://publication.pravo.gov.ru/Document/View/0001202007210016">http://publication.pravo.gov.ru/Document/View/0001202007210016</a>

Our mailing address is: HIV, Health and Development Team UNDP Istanbul Regional Hub, Merkez, Abide-i Hürriyet Cd No:142, Istanbul 34381

2) Kats and others v. Ukraine, 18 December 2008 Unofficial Russian translation launching a landmark set of international legal standards aimed at transforming and International reshaping global responses to the world GUIDELINES on drug problem. **HUMAN RIGHTS** and DRUG POLICY The Guidelines came at an important moment when high-level government representatives were convening at the Commission on Narcotic Drugs to shape a new global strategy on drugs under the mounting weight of precedents that showed the systemic failures of the dominant punitive paradigm on the drug policy, including widespread human rights violations. It was developed over three years after convening six expert and global consultations reflecting the inclusive participation of affected communities and other stakeholders. They are grounded in decades of evidence from a range of policy areas, including development, criminal justice and public health, as well as introduce a comprehensive catalogue of human rights standards in the context of drug control. These Guidelines provide UN Member States, UN agencies and other international organizations and civil society with an accessible and rigorous resource to support negotiations and advocacy efforts, as well as to assist in policy development, implementation and review aligned with countries' international commitments and objectives set for the 2030 Agenda for Sustainable Development.

interested in. standard of health, the right to benefit from scientific progress and its application, the right to life, freedom from torture, freedom from arbitrary arrest and detention, the right to a fair trial, the right to privacy, etc. Section III addresses human rights concerns arising out of drug policy as it affects a number of specific groups: children, women, persons deprived of their liberty and indigenous peoples. Though, of course, the provided list of relevant vulnerable groups is not exhaustive and the universal standards described in these Guidelines also apply equally to other individuals and groups. **Sections IV and V** conclude by outlining general matters related to the implementation of

gay and other MSM and trans people in the EECA region for on members of the community and observance of their rights. A total of 119 cases were

> violence by police and medical workers) Hate crimes (including cases with selfish motives) (cases of abuse and public manifestations of hate speech in the media) Country and thematic division of 2020 cases.

It is also important to note the significantly increased level of psychological and physical violence, along with cases of blackmail and extortion by law enforcement agencies, in particular, in countries where there is not only the criminalization of HIV transmission, but also criminal prosecution for voluntary same-sex relations still remains. Many such cases were documented in Kyrgyzstan, Tajikistan, and Uzbekistan. This abuse of power is the main reason why members of the community refuse to file complaints with the police and other government agencies, which, among other things, allows human rights violations against members of the LGBT community to remain unpunished. A separate unresolved problem remains the lack of specific and highly specialized medical services for trans people. In countries where there are no protocols for the provision of medical services to trans people, and, accordingly, there are no trained specialists, the trans community remains in a vacuum and is especially vulnerable. In 2020, such cases were also supplemented by cases of refusals to issue and/or amend documents. (1) Eurasian Coalition for Health, Rights, Gender and Sexual Diversity (ECOM) is an international

**Feedback**