

ADVANCING HUMAN RIGHTS, EQUALITY AND INCLUSIVE GOVERNANCE TO END AIDS

Supporting countries to implement the recommendations of the Global Commission on HIV and the Law

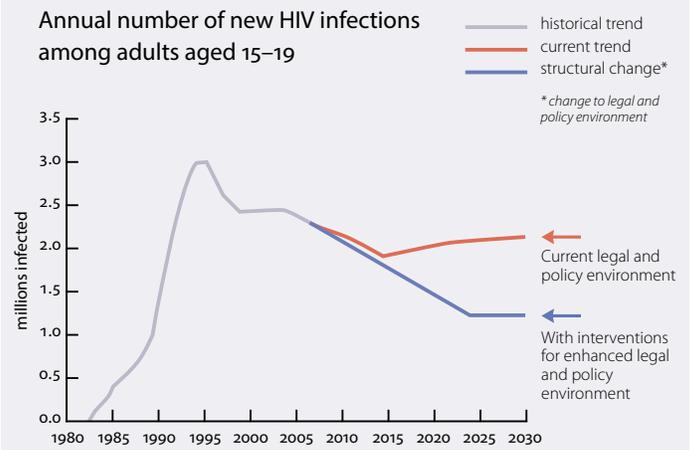


UNDP is helping Malawi create an enabling environment so that national responses are more effective. Photo: UNDP Malawi.

The [2030 Agenda for Sustainable Development](#) (Agenda 2030) and the 17 [Sustainable Development Goals](#) (SDGs) contain important pledges by 193 UN Member States to end the epidemics of AIDS, TB and malaria by 2030 and to leave no one behind.¹ UNDP supports these commitments by assisting countries to eradicate poverty and reduce inequalities while respecting, protecting and fulfilling the human rights of people living with HIV and vulnerable populations, and promoting gender equality.^{2,3,4} The 2016-2021 Strategy [On the Fast Track to End AIDS](#) of the Joint UN Programme on HIV/AIDS (UNAIDS), the 2017-2022 Strategy of the Global Fund to Fight AIDS, TB and Malaria [Investing to the End the Epidemics](#), and the Strategy of the United States President's Emergency Plan for AIDS Relief [PEPFAR 3.0 – Controlling the Epidemic: Delivering on the Promise of an AIDS-free Generation](#) all note the [centrality of human rights](#) and investing in human rights programmes in the context of HIV.^{5,6,7} There is also a growing recognition of the need for a rights-based response to tuberculosis.⁸

Three decades of experience in the global response to HIV show that human rights-based approaches to HIV prevention, treatment, care and support – coupled with enabling legal environments to safeguard rights – help reduce people's vulnerability to HIV. A rights based response to HIV helps ensure that services are accessible to those most at risk, and enables key populations and other affected communities to participate in deciding an enabling legal and policy environment, which can also have a direct impact on reducing HIV transmission (Fig. 1).

Fig 1: Why the law matters in the HIV response



Source: Results for Development Institute, Costs & Choices: Financing the Long-Term Fight Against AIDS, An AIDS 2013 Project, 2010

By contrast, laws that criminalize HIV transmission, non-disclosure and exposure, consensual homosexual sex between adults, gender expression, sex work and drug use, as well as legal and policy frameworks and practices that fail to protect the rights of people living with HIV, women, girls and key populations, increase risk and act as major barriers to services for the people who need them most. The lack of enabling legal frameworks

for HIV responses, together with punitive laws, policies and practices, also perpetuates stigma, discrimination, violence and other human rights violations.

Grounded in its comparative advantage as a development actor working multi-sectorally, UNDP is a convener/co-convener of outcome areas on human rights, enabling legal environments, key populations, women and girls and gender-based violence under the UNAIDS Division of Labour (Fig. 2).⁹ As a founding cosponsor of UNAIDS, UNDP supports countries to ensure that sectors beyond health are engaged in HIV responses, and that action on HIV leverages progress across Agenda 2030. At country level, UNDP has a unique capacity to convene national stakeholders across sectors, including civil society and key populations, and to support policy development and programmes, including in its role supporting the implementation of Global Fund grants and providing implementation support to other health programmes.

Fig 2: UNDP in the UNAIDS Division of Labour



Remove punitive laws, policies, practices, stigma and discrimination that block effective responses to HIV.



Empower men who have sex with men, sex workers and trans people to protect themselves from HIV and to fully access ART (with UNFPA).



Meet the needs of women and girls and stop sexual and gender-based violence (with UNFPA).

Building the evidence base: The Global Commission on HIV and the Law

In 2010, UNDP, on behalf of the Joint UN Programme on HIV/AIDS, convened the [Global Commission on HIV and the Law](#) (Commission).¹⁰ The mandate of this independent Commission was to develop evidence-informed, rights-based recommendations for effective responses to the HIV epidemic. Supported by scholarly research, the Commission consulted widely including through a series of seven regional dialogues.¹¹ The Commission's [Final Report, HIV and the Law: Risks, Rights and Health](#), published in 2012, contained recommendations covering the breadth of HIV response.

Translating the Global Commission's recommendations into action

Since the release of the Commission's report in 2012, UNDP – in collaboration with governments, civil society, the Joint UN Programme on HIV/AIDS and other UN partners has worked in 88 countries to support the implementation of the Commission's recommendations to remove human rights and legal barriers to HIV services and increase rights-based programming. More specifically, this has included work on key human rights

programmes including law and policy review and reform, sensitisation of those who enact, interpret and enforce laws, access to justice programming, training of health workers and other programmes to reduce stigma, discrimination and violence. A few highlights are described below.

Global Fund regional grants on human rights in Africa and the Caribbean

With support from the Global Fund, UNDP is working with leading civil society organisations working on HIV and human rights in Africa (AIDS and Rights Alliance for Southern Africa (ARASA), Enda Santé, Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN) and the Southern African Litigation Centre (SALC) and the Caribbean (Caribbean Vulnerable Communities (CVC) and Centre for Integral Orientation and Investigation COIN) to scale up programmes that aim to remove human rights and legal barriers to HIV services and reduce stigma and discrimination in 18 countries.

Achieving law and policy reform through Legal Environment Assessments

UNDP has conducted Legal Environment Assessments (LEAs) for HIV in 22 countries, mainly in sub-Saharan Africa, with another 20 ongoing, or planned. A LEA employs a rights-based approach for analysing the extent to which legal, regulatory and policy frameworks support or hinder national and local responses to HIV. The LEA enables a country to build a comprehensive picture of the strengths and weaknesses of its laws and legal practices, including its compliance with regional and international HIV, human rights and health commitments. The assessment also focuses on policies and practices of law enforcement agencies and officials. The LEA usually leads to recommendations and an action plan for reforms or other measures needed to promote better access to HIV services and to support rights-based responses to the HIV epidemic. UNDP has published an in-depth Manual on how to conduct an LEA for HIV at the country level; Stop TB Partnership is working with UNDP and other partners to develop a manual for LEAs on TB; TB LEAs are planned for Kenya, Nigeria and seven other priority countries.¹² Among other achievements, LEAs have contributed to:

- Decriminalizing consensual same-sex relationships in the Seychelles.
- Revision of laws to strengthen the protection of women's rights in Chad.
- Adding lubricants to national Essential Medicines List in the Democratic Republic of the Congo.
- The final passage of the HIV bill into law in Ghana.
- Revision of laws on criminalization of unintentional HIV transmission in Mozambique.

Where LEAs have not been possible or necessary, UNDP often supported more focused legal reviews related to specific themes, issues or populations.¹³ Since 2012, 28 countries in Asia and the Pacific conducted national legal and policy reviews of their HIV responses through extensive, participatory consultations with civil society, supported by UNDP in partnership with UNAIDS and the UN Economic and Social Commission for Asia and the Pacific (ESCAP).¹⁴

Catalysing stronger national HIV plans

The rights based process of LEAs which fosters frank and constructive dialogue between those who make and enforce laws with those who are affected by laws have contributed to more effective and inclusive national strategic HIV plans. For example:

- In the Democratic Republic of the Congo, the National Strategic Plan on HIV (2014-2017) identifies men who have sex as a key population and calls for the prioritization of HIV prevention among LGBTI communities.
- In Nigeria, the LEA helped prioritize key population interventions in the new draft National Strategic Plan for HIV (2016-2020). At the same time, the country worked to ensure that key population priorities were better reflected in its Global Fund grant.

National Dialogues on HIV and the Law

During the seven regional dialogues held by the Global Commission as part of its consultative methodology, several countries expressed interest in convening dialogues at national levels. UNDP and partners have since supported some form of national dialogue on HIV and the Law in at least 21 countries. National dialogues have also been held in countries in sub-Saharan Africa, Latin America and Eastern Europe and a multi-sectoral dialogue on HIV and the law involving seven countries in the Asia Pacific was held in Fiji. In 2014, UNDP published a practical manual on conducting national dialogues.¹⁵ Some of the results arising from the convening of national dialogues include the following:

- In Guyana, following a national dialogue on HIV and the law, the government agreed to an amendment to the Prevention of Discrimination Act 1997 to include sexual orientation, gender identity and health status, to repeal punitive sections of labour laws and to prohibit HIV-related discrimination.
- In the Dominican Republic, one of the main recommendations of the national dialogue was to create the Equality and Non-Discrimination Act, which includes articles on sexual orientation and gender identity. Enactment of the law has been included as a goal in both the National Human Rights Plan (2015-2020) and the Government HIV Plan (2016-2020).

- In Panama, a national dialogue resulted in a government pledge to strengthen HIV prevention and care in prisons, and to develop a new national HIV law. The new HIV bill was drafted and is currently being reviewed prior to enactment.
- In Zambia, following a national dialogue, the National AIDS Strategic Framework (2017-2021) was revised to include a section on key populations, even though most remain criminalized. Zambia used the Global Commission's report to renew the mandate of the national Human Rights Commission in HIV.

Strengthening capacity of lawmakers, the judiciary, and law enforcement

Supporting those who enact, interpret and enforce laws is essential to creating enabling legal and policy environments for the response to HIV, promoting greater acceptance of and sensitivity to key populations, and preventing human rights violations. Building on its broader strengths and capacities in inclusive governance, UNDP and partners have worked with members of parliament to strengthen capacity and to help guide legislative processes related to HIV, especially at regional levels.



UNDP has also worked with the judiciary to promote dialogue and to disseminate evidence and information about HIV that has strongly informed judicial decision-making. Since 2013, UNDP has supported annual judicial consultations on HIV, human rights and the law in Africa. At the request of participating judges, UNDP maintains a judicial database which shares good practice

from around the world on judgements, as well as relevant laws and other materials on HIV and TB prevention, treatment and care. Judges participating in the fora are contributing to good judicial practices in their countries. For example:

- The High Court of Kenya found the law criminalizing HIV transmission to be unconstitutional.
- The High Court of Botswana determined that foreign prisoners were entitled to receive life-saving antiretroviral therapy.
- The High Court of Malawi set aside a lower court's sentence of an HIV-positive woman to nine months in prison for breastfeeding a baby, opening the door for a constitutional challenge to the criminalization of HIV exposure.

Judicial consultations in Tajikistan addressed the reduction of stigma and discrimination against people living with HIV. Also, building on the first ever regional consultation on HIV and human rights with the judiciary in the Caribbean, UNDP and partners supported a human rights forum for Magistrates Court judges in Jamaica.

UNDP has also worked with law enforcement authorities, including police and prison authorities at country levels. In the Middle East and North Africa, UNDP, together with the United Nations Office on Drugs and Crime (UNODC), International Development Law Organisation (IDLO) and the UNAIDS Secretariat, conducted a policy dialogue between civil society organizations working with marginalized groups and law enforcement officers from six countries. The policy dialogue resulted in the commitment for civil society and law enforcement to work jointly at country level to address legal barriers that hinder access to services for vulnerable populations. UNDP supported an initiative in Thailand to provide HIV education to junior cadets in the Royal Thai Police, which has since evolved into a train-the-trainer programme for police officers to gain knowledge about HIV transmission, prevention and treatment and HIV in the workplace.

Gender equality and gender-based violence

Gender equality and women and girls' empowerment are key drivers of sustainable development and central to UNDP's mission of eradicating poverty and reducing inequalities and exclusion. Gender inequality also has direct implications for women and girls' risks of acquiring HIV. Strategies to address negative male and female gender norms, eliminate sexual and gender-based violence, promote women's economic and legal empowerment, increase access to sexual and reproductive health services, HIV prevention and treatment for women and adolescent girls are essential to ending the HIV epidemic. Addressing sexual and gender-based violence against women and girls and promoting access to justice for women and girls is a particularly high priority in UNDP's HIV and health work. For example:

- UNDP supported national authorities in Kenya to undertake a comprehensive audit of the legal framework and policies that address gender-based violence in the context of HIV, the findings of which informed guidelines to integrate gender-based violence in HIV programming.
- In South Sudan, where on-going conflict means that displacement and violence are rife, the UNDP-Global Fund partnership has supported programmes that train health workers to respond to gender-based violence, including the referral of gender-based violence survivors to appropriate services.
- With support from UNDP, Cote d'Ivoire set up a gender desk in 11 police stations to improve prevention and response to gender-based violence.
- UNDP and WHO organized the first nine-country regional consultation in East and Southern Africa on linkages between the harmful use of alcohol, gender-based violence and HIV.
- UNDP and the United Nations Population Fund (UNFPA) partnered with civil society groups such as the Sex Workers' Advocacy and Rights Network (SWAN) in eight countries in Eastern Europe and Central Asia to document and respond to experiences of violence towards sex workers from state and non-state actors.

Empowering key populations to fight HIV, access justice and promote human rights

Equipping civil society organizations and key populations to advocate for their rights, to access legal services and to tackle HIV-related stigma and discrimination is vital to effective HIV responses. This work is especially important in the context of a trend towards shrinking space for civil society, which can adversely affect HIV prevention and advocacy efforts.

UNDP supports a wide range of organizations to combat stigma and discrimination; provides capacity building for key population groups and networks; develops and provide guidance on human rights, legal literacy and access to justice programming; and supports activities to mitigate and prevent HIV-related human rights crises.

In Eastern Europe and Central Asia, UNDP has supported the establishment of the Regional HIV Legal Network of 28 organizations that provide people with HIV and key populations in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia and Ukraine with access to quality free legal aid. The network served more than 4,000 clients in 2015. A joint publication with UNDP, the [Know Your Rights, Use Your Laws](#) handbook, enables people living with HIV and key populations to document rights violations and seek redress and quality free legal aid.



Since 2014, UNDP has worked with ministries of health and community groups in 12 countries in Asia to roll out [The Time Has Come](#) training package developed with WHO to address stigma and discrimination against men who have sex with men and transgender people in health care settings.¹⁶ This training package has now been adopted into national training programmes in Bhutan, Indonesia, India, the Philippines and Timor-Leste.

In Ghana, UNDP has worked with a range of partners including the National Commission on Human Rights and Administrative Justice to develop an innovative stigma and discrimination reporting system that allows key populations to file complaints about human rights abuses and seek redress.

- Through the Urban Health and Justice Initiative, UNDP and UNFPA have supported 42 cities worldwide to improve increased access to HIV prevention, treatment, care and support services for people living with HIV and key populations. Participating cities have improved health service delivery, addressed stigma and discrimination and improved legal and policy frameworks. For example, with the support of UNDP and other members of the UN Joint Team on AIDS, five Zambian cities developed Cities HIV and AIDS Investment Plans. In Nigeria, the city of Lagos – home to 200,000 people living with HIV – developed a Municipal Action Plan on AIDS and Key Populations based on information from a UNDP-supported needs assessment.

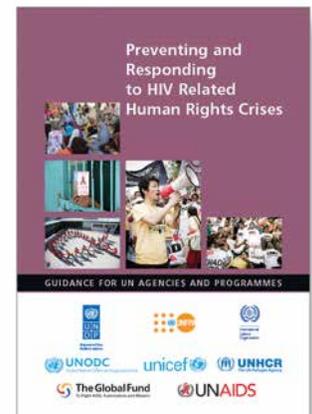
The efforts of UNDP and partners to support key populations in the HIV response is reinforced by UNDP's broader work on inclusive development. For example, the UNDP's lesbian, gay, bisexual, transgender and intersex (LGBTI) inclusion initiatives address inequality, violence and discrimination based on sexual orientation, gender identity or intersex status, and promote universal access to health and social services. These regional initiatives are implemented in collaboration with governments, civil society, regional institutions, bilateral development agencies, and other stakeholders, to advance the social inclusion of LGBTI people and promote LGBTI inclusive development.

The regional LGBTI initiatives contribute to development and implementation of anti-discrimination legislation and policies to address violence and discrimination. These initiatives have also generated research and data to provide evidence on the social cost of marginalization, and to strengthen meaningful inclusion of LGBTI people through development efforts. Regional LGBTI initiatives cover 33 countries in Asia and the Pacific and four countries in the Western Balkans. An initiative on sexual orientation, gender identity and rights is being implemented in nine countries in Africa in partnership between UNDP and the Office of the UN High Commissioner on Human Rights (OHCHR).

Preventing and responding to human rights crises in the context of HIV

A human rights crisis in the context of HIV may involve an immediate threat to the safety and security of an individual, for example, physical violence, harassment or incarceration of key populations, or a crisis involving a law or policy that jeopardizes a rights-based response to HIV, such as a proposal to criminalize HIV transmission. When such crises occur, the United Nations can play a constructive role in minimizing harms to individuals and brokering dialogue and possible solutions between governments and citizens. To support UN staff in this role, in 2014 UNDP, UNAIDS, the Global Fund and other partners published *Preventing and Responding to HIV-related human rights crises: Guidance for UN agencies and programmes*. The guidance describes how UN country staff can anticipate and prepare for the development of an HIV-related human rights crisis through the development of a crisis response plan, and how to effectively coordinate a response to such a crisis within the UN and with other partners.

UNDP has worked with UN and civil society partners in several countries to mediate during human rights crises related to HIV. For example, it worked through the Joint Team on AIDS in Kyrgyzstan and Tajikistan to prevent mandatory HIV testing among sex workers, and has advised against the adoption of homophobic laws in Kazakhstan, Kyrgyzstan and Zambia.



Conclusion

Human rights violations and stigma remain serious barriers to effective HIV and health responses. UNDP, together with UNAIDS co-sponsors, the UNAIDS Secretariat and other partners have important roles to play in assisting Member States to enact and enforce laws and policies that protect dignity, health and well-being. Scaling up human rights programmes to reduce inequalities and exclusion is also vital. Without greater focus on protecting and promoting the human rights of people living with HIV and those most affected by HIV, the central pledge of Member States to leave no one behind will not be realised.

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