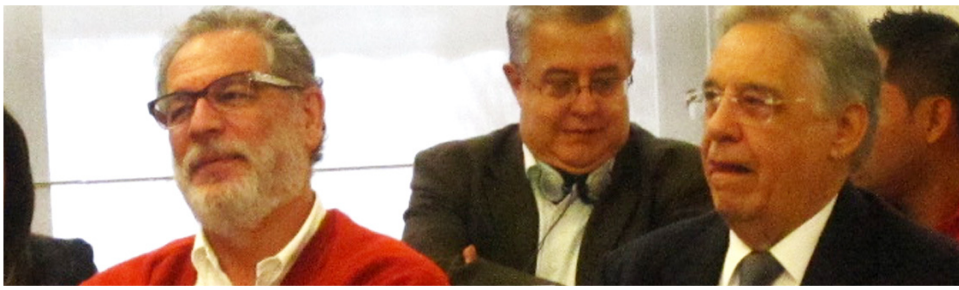


Report of the

Latin America Regional Dialogue of the Global Commission on HIV and the Law

São Paulo, Brazil, 27 June 2011

GLOBAL COMMISSION ON
HIV and the LAW

Regional Issue Briefs and video of the Latin America Regional Dialogue are available on the Commission's website at www.hivlawcommission.org.

UNDP Regional Centre LAC
Latin America & Caribbean
HIV Team
UN HOUSE | Building 129, City of Knowledge | P.O. Box 0816-1914
Tel: +507 302-4717

Global Commission on HIV and the Law - Secretariat
UNDP, HIV/AIDS Practice
Bureau for Development Policy
304 East 45th Street, FF-1180, New York, NY 10017
Tel: (212) 906 6590 | Fax: (212) 906 5023

Design: Ian Mungall and Rodrigo Domingues.

Report of the Latin America Regional Dialogue of the Global Commission on HIV and the Law

Sao Paulo, Brazil, 26-27 June 2011

Empowered lives.
Resilient nations.

GLOBAL COMMISSION ON HIV and the LAW

Contents

Acknowledgements

The Global Commission on HIV and the Law expresses its deep appreciation to all those who made submissions to the Latin America Regional Dialogue of the Commission, and those who supported the Regional Dialogue process (Annex I and Annex II).

The Latin America Regional Dialogue was hosted by UNDP Latin America and the Caribbean Regional Service Centre (LAC-RSC) HIV/AIDS Practice Area, Panama, and was jointly organised by UNDP LAC-RSC, UNDP Brazil and the Secretariat of the Global Commission on HIV and the Law, hosted at the UNDP HIV Group in New York.

The Latin America Countries Dialogue benefited from the skillful and engaged moderation of Jorge Gestoso. The Commission would like to acknowledge the support from Jeffrey O'Malley, Director, UNDP HIV/AIDS Practice, Bureau for Development Policy, New York.

The Commission would like to acknowledge the support and commitment from Heraldo Muñoz, Assistant Secretary-General and Assistant Administrator and Director of the Regional Bureau for Latin America and the Caribbean of the United Nations Development Programme (UNDP), Jorge Chediek, Resident Coordinator of the UN System in Brazil and UNDP Resident Representative in Brazil, Arnaud Peral UNDP Brazil Deputy Resident Representative, and Pedro Chequer, Brazil UNAIDS country office.The Regional Dialogue also benefited from the support of IDLO), GIZ, ILO, International AIDS Allliance, UNODC, The Global Forum on MSM & HIV (MSMGF), UNDP Focal Point from Chile and Dominican Republic, UNAIDS Latin America and UNAIDS Switzerland.

Special thanks to Commissioners Fernando Henrique Cardoso and Ana Helena Chacón Echeverria for actively participating in the Dialogue.

In particular, the Global Commission on HIV and the Law would like to recognise the UNDP HIV/AIDS Group in New York for providing unwavering support and the staff members of the Secretariat of the Global Commission on HIV and the Law for their overall guidance, planning and support: Mandeep Dhaliwal, Vivek Divan and Emilie Pradichit. Maria Tallarico, David Ruiz Villafranca, Virginie Leclerc, Adela Hive and Ernesto Kraus from the UNDP LAC-RSC and Andrea Bosi, and Joaquim Fernandez from UNDP Brazil were instrumental in organising the Regional Dialogue.

The Latin America Regional Dialogue profited from the excellent contribution and guidance of the Regional Advisory Group (RAG) convened by the Commission's Secretariat, which informed the content of the Dialogue and peer-reviewed the submissions to the Commission: Arely Cano, Pedro Chequer, Jacqueline Cortes, Federico Duarte, Ezio T. Santos-Filho, Victor Madrigal, Samira Montiel, Cesar Nunez, German Rincon Perfetti, Maria Tallarico and Hege Wagan.

Many thanks to the following individuals who offered invaluable assistance and support: Natalie Amar, Dominic Bocci, Meagan Burrows, Megan Cribbs, Reeti Desai, Amy Edwards, Laura Goldsmith, Brianna Harrison, David Levy, Rumbidzai Maweni, Kathleen Meara, David Ragonetti, Rohan Sajnani, Aaron Scheinwald, Ji-Eun Seong, Dimitri Teresh, and Nadeah Vali.

The Global Commission on HIV and the Law and UNDP are grateful for the support provided by the American Jewish World Service (AJWS), Australian Agency for International Development (AusAID), Ford Foundation, Health Canada – International Affairs Directorate, Norad, Office of the High Commissioner for Human Rights, Open Society Foundations, Sida, UNFPA, UNICEF, and the UNAIDS Secretariat.

This report was prepared by Norma García de Paredes and Leah Utyasheva. Neither the authors nor the Global Commission on HIV and the Law, UNDP, or UNAIDS can vouch for the accuracy of submissions and statements made in relation to this Regional Dialogue. The content, analysis, opinions and recommendations in the document do not necessarily reflect the views of the Global Commission on HIV and the Law, UNDP or UNAIDS.

Thanks to Ian Mungall and Rodrigo Domingues for design of this publication.

Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
ART	Antiretroviral therapy
GFATM	Global Fund to Fight AIDS, Tuberculosis and Malaria
HIV	Human Immunodeficiency Virus
IAPG	Inter-American Parliamentary Group on Population and Development
LGBT	Lesbian, gay, bisexual and transgender
NGO	Non-governmental organisation
OST	Opioid Substitution Therapy
STI	Sexually Transmitted Infections
TRIPS	Trade-related Aspects of Intellectual Property Rights Agreement
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV and AIDS
UNDP	United Nations Development Programme
US	United States of America

1. Introduction

"The law can have a profound impact on people's lives, especially on those people who are marginalised and disempowered. The law, its implementation and access to justice can be powerful tools to challenge stigma, protect people from violence, promote public health and protect human rights.

There is still much to learn from our diverse region on the interaction of the law, legal reform, practical application of the law, access to justice and the public health response. Many of these lessons are positive. There are examples on how leadership can transform problematic legal environments, such as the ones that put limits on the production of antiretroviral therapy, or those that criminalise certain populations based on their sexual orientation; and turn those into settings that promote and protect the rights of the populations most vulnerable to HIV. Regretfully, there are also examples of clear human rights violations that prevent progress to address HIV."

- Heraldo Muñoz, Assistant Administrator and Director of the Regional Bureau, for Latin America and the Caribbean, UNDP

1.1. Nature and Purpose of the Regional Dialogue

This report summarises the proceedings and deliberations of the Latin America Regional Dialogue of the Global Commission on HIV and the Law (the Commission) held on 26-27 June 2011 in Sao Paulo, Brazil.

The report also draws on the written submissions that were made to the Commission from civil society and individual stakeholders and research undertaken on laws and legal frameworks in relation to HIV in Latin America.[1]

The Commission was launched in June 2010 to develop actionable, evidence-informed and human rights-based recommendations for effective HIV responses that promote and protect the human rights of people living with and most vulnerable to HIV. To this end, the Commission focused on some of the most challenging legal and human rights issues in the context of HIV. The objectives of the Global Commission were to:

- Analyse existing evidence and generate new evidence on rights and law in the context of HIV and foster public dialogue on the need for rights-based law and policy in the context of HIV;
- Increase awareness amongst key constituencies on issues of rights and law in the context of HIV and engage with civil society and strengthen their ability to campaign, advocate and lobby; and
- Identify clear and actionable recommendations with a concrete plan for follow-up.

The purpose of the Latin America Regional Dialogue was to further efforts to improve HIV responses by addressing key legal barriers and promoting enabling legal environments on national, regional and

1 The research concentrated on four focus areas: criminalisation of key populations at higher risk, access to medicines and intellectual property law issues, women and HIV, and young people and children and HIV.

international levels. The Dialogue addressed laws, policies, law enforcement practices, and access to justice in relation to HIV and related conditions, and public health approaches in this area. It examined the extent to which human rights of people living with HIV and affected groups are protected in the region, and how laws and policies facilitate or impede their access to HIV-related services.

In order to fully implement its mandate in 2011 the Global Commission on HIV and the Law convened seven Regional Dialogues to generate policy debate, with a view to giving a voice to the critical HIV-related human rights and legal issues in regions, and improving HIV responses by strengthening legal environments. Regional Dialogues were held in Asia-Pacific (16-17 February 2011), Caribbean (12-13 April 2011), Eastern Europe and Central Asia (18-19 May 2011), Latin America (26-27 June 2011), Middle East and North Africa (27-29 July 2011), Africa (3-4 August 2011), and High-Income Countries (16-17 September 2011). The Dialogues were held to learn from individuals, communities, policy and lawmakers, judges and law enforcers. The Dialogues presented an opportunity for those profoundly and directly affected by and vulnerable to HIV, including those whose voices are silenced by restrictive legal environments, to be heard. These also provided an opportunity to share and learn from positive examples of enabling legal and social environments for people living with HIV and those vulnerable to it, and to discuss how the law can be a powerful instrument to challenge stigma, promote public health and protect human rights.

Two Commissioners represented the Commission at the Latin America Regional Dialogue: Chairperson Fernando Henrique Cardoso (Brazil) and Ana Helena Chacón Echeverría (Costa Rica). Mandeep Dhaliwal, Vivek Divan and Susan Timberlake from the Commission's Technical Advisory Group were present at the dialogue.

1.2. Focus and scope of the Regional Dialogue

The Regional Dialogue was informed by written and video submissions received prior to the Dialogue. Civil society organisations and affected individuals were invited to make submissions in relation to the following areas:

1) Laws and practices that effectively criminalise people living with HIV and vulnerable to HIV;

2) Laws and practices that mitigate or sustain violence and discrimination as lived by women;

3) Laws and practices that facilitate or impede HIV-related treatment access; and

4) Issues of law and HIV pertaining to children.

Countries included in the Dialogue were: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela.

78 submissions were received from across the region (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, México, Nicaragua, Panamá, Paraguay, Perú, Uruguay, Venezuela). Activists, community workers, people living with HIV, members of other key populations, researchers and lawyers made submissions.

1.3. How the Regional Dialogue was conducted

The Dialogue was moderated by Jorge Gestoso. The Dialogue was preceded by the civil society and government preparatory meeting on 26 June 2011, where civil society groups and government representatives met separately with Commissioners, UNDP officials and others to assess their expectations from the Dialogue and to prepare to effectively interact with each other in a constructive and meaningful way.

The Regional Dialogue was conducted in the style of a moderated 'town hall' meeting. A list of participants in the Regional Dialogue is provided at Appendix I.

The Dialogue started with the moderator welcoming participants and inviting them to conduct the deliberations in tolerant and respectful manner. Heraldo Muñoz, Director for the UNDP Latin America and Caribbean Regional Office, addressed the meeting through a video message. Former President of Brazil and Chairperson of the Global Commission for HIV and the Law, Fernando Henrique Cardoso provided opening remarks, followed by Commissioner Ana Helena Chacón Echeverría.

The moderator invited regional civil society network representatives to provide context to the discussions. This was followed by interventions, in person or on video from civil society and government experts participating at the Dialogue, which took place over seven hours.

2. HIV and the Law in Latin America

"Faced with the expansion of the HIV epidemic in the 1990s in Brazil, there was a decision to take a series of necessary actions. One of these actions that was adopted by the Congress, made the decision to provide free ARV therapy to people living with HIV in Brazil. To do it we had to produce generic drugs here in Brazil, and we did it. Second, Brazil is a country with a Catholic majority, nonetheless a decision was made to promote the use of condoms, and teach the population how to use them on the TV. This was controversial but necessary if we wanted to put emphasis on prevention. At the beginning there was a series of negative reactions, which later disappeared. Thirdly, country's NGOs and affected stakeholders were invited to help to audit the progress of the government HIV programme, to ensure that HIV -related issues were addressed in a correct manner. There has been progress, but much more is yet to be done…"

- Fernando Henrique Cardoso (former President of Brazil), Chairperson, Global Commission on HIV and the Law

HIV prevalence among adults in Latin America is estimated at 0.4%; prevalence is considerably higher among the transgender population, men who have sex with men, sex workers and people who inject drugs. Transgender people have been reported to comprise up to 34% of new HIV infections. Among men who have sex with men, HIV prevalence may reach 20.3% in some countries, and exceeds 5% in all countries of the region. HIV prevalence among sex workers in Brazil is 4.9%, with considerably higher rates among male sex workers (up to 22.8%). For people who inject drugs the rates exceed 5% prevalence.[2]

The rates of new HIV infections appear to be exceptionally high among men who have sex with men: surveys in five Central American countries showed an annual HIV incidence of 5.1 per 100 persons among men who have sex with men.[3] In El Salvador and Nicaragua, men who have sex with men were 21.8 and 38 times more likely to be HIV-positive than the general population, respectively. 39% of men who have sex with men surveyed in the region reported that they do not consistently use condoms with casual partners and only 29% reported having been reached by HIV prevention programmes.[4]

Sexual transmission appears to be the most common mode of HIV transmission in the region. This together with apparent low level of knowledge of HIV and risks of transmission presents a significant problem. According to demographic surveys, the percentage of people aged 15 to 49 years who have had an HIV test conducted in the last twelve months and who know their HIV status is exceptionally low: between 4% and 30%[5].

2 UNAIDS (2011), *Prevalence of HIV in Latin America.*

3 Ibid.

4 UNAIDS (2009), *AIDS Epidemic Update.*

5 UNAIDS (2011) Consolidated regional analysis of UNGASS reports submitted by 17 Latin American countries in 2010 available in Spanish at http://www.portalsida.org/repos/book%20onusida%20V7.pdf

2.1. On law, HIV and human rights

The Latin America Regional Dialogue started with a discussion about the links between HIV, the law, human rights, and their relevance in the regional context. Dialogue participants remarked that Latin America, like other areas of the globe, has bad laws, gaps in policy and legal frameworks that leave affected people without protection, and good laws that are not implemented properly.

It was pointed out throughout the Dialogue, that many countries of the Latin American region have made significant advances in developing a comprehensive and human rights-oriented legal and policy framework. However, in many instances, a population's mentality, including the views of law enforcement personnel, may not be supportive of these progressive developments, clinging to outdated notions of morality and tradition. As the representative of Grupo de Apoio à Prevenção à AIDS da Bahia pointed out, even though the country has advanced greatly in some areas, what is written in the law is not guaranteed. Other participants from Brazil mentioned that while their country may have many good laws, the political will does not always exist to enforce them. This lack of political and institutional will, and structural deficiencies, can make it difficult to convert laws and policies to priorities and fully implement them.[6] It was also underlined that implementation is subject to the personal interpretation of law enforcement officers who frequently have limited understanding of the issue.[7] Participants noted that a positive legislative and policy framework is frequently undermined when a new government comes to power, which causes previous agreements and memorandums of understanding to be forgotten, policies changed and new government officials who need to be educated on HIV issues.[8]

When discussing the laws in the context of HIV, participants agreed that it is necessary to assess the different areas of the legal frameworks where laws are not implemented due to the lack of political will. This includes legal provisions aimed at preventing violence against women, laws aimed at protection from violence, harassment and discrimination of lesbian, gay, bisexual and transgender (LGBT) communities and other key populations at higher risk, and other laws and policies which are not of significant impact due to the implementation failures (such as the constitutional guarantees for equality). The lack of implementation of those laws incites and worsens many social inequalities, which have a negative implication on health and social development. As one participant mentioned, the law may be an effective tool if used correctly, but this tool will not solve problems by itself. The law has to be paired with supporting policies and programmes that can be implemented.[9]

In some cases, the negative impact of laws and policies on the HIV response is indirect and perhaps not immediately obvious. In other cases, especially in the case of punitive laws, the negative consequences for vulnerable populations are more obvious. During the debate it was noted that training on human rights, including analysis of possible direct and indirect negative impact of legislation and policy on people's lives, should be conducted for lawyers, law students, government officials, policy makers.

The participants reflected on the role of government bodies, civil society organisations, human rights institutions and the importance of alliances between civil society and state in formulating an effective response to HIV.[10] The importance of the role of the media, including skills to work with journalists and present HIV-related issues in an adequate manner, was discussed.

2.2. On Stigma and Discrimination

The participants remarked that discrimination and stigma play a significant part in contributing to the negative legal and policy environment for people living with HIV and key populations at higher risk. As a representative of the Latin American Network of Trans from Argentina remarked *"Discrimination kills…*

6 Written submission of Perceval Nunes de Carvalho Filho, Sociedade Terra Viva (STV), Brazil.

7 Iris Isabel López Velásquez, CONASIDA, Guatemala.

8 BITRANSG, Costa Rica.

9 Juan Carlos Valdes Triguero, HIV Support Line, Cuba.

10 Samira Montiel, Special Prosecutor for Sexual Diversity, Nicaragua.

because there are no new laws, and because the laws are not adjusted to the situation we live in Latin America."[11]

In Chile, discrimination is rampant, but the anti-discrimination law submitted to parliament six years ago has not been discussed and remains on the shelf.[12] As one participant pointed out, anti-discrimination protection with the inclusion of protection for people of African descent, indigenous populations, LGBT communities, sex workers, people living with (or perceived to be living with), people who use drugs, people with disabilities, and women, needs to be adopted with no further delay. This law also needs strong enforcement and monitoring mechanisms, in order to ensure access to justice and services for the vulnerable and disadvantaged populations. In addition, the burden of proof needs to be reversed (i.e. the person discriminated against should not have to prove that s/he was discriminated against) in order for this law to be functional.

In the process of the debate regarding protection against discrimination, participants noted the important role played by the judiciary. Apart from protection itself, some saw it as an opportunity to broaden the space for debate. It was noted that judiciary in Brazil and Mexico had rendered some positive judgments in discrimination cases, effectively protecting the rights and interests of the disadvantaged.

2.3. Best practices and recommendations

The participants shared information regarding new developments in the legislative and policy framework related to HIV, and talked about their successes and challenges. The Deputy Minister of Human Rights of Honduras talked about the recent legislative review that had been carried out in his country. A representative of the Labour Ministry of the Dominican Republic told the audience about the newly adopted law on HIV, which includes some positive developments, such as participation of representatives from vulnerable communities in the National Council on HIV. A representative of El Salvador's Ombudsman office mentioned the active involvement of civil society in drafting the new HIV Law as a positive example of governmental/ non-governmental cooperation in the sphere of HIV in his country.[13]

A representative of the Defensoria del Pueblo (Ombudsman Office) in Peru[14] talked about his office's outreach efforts to encourage applications from people living with HIV. In 2002-2006, the Ombudsman's office received very few complaints related to rights and interests of people living with HIV (only 22 in a four-year period). In 2007, an effort was made to encourage people living with HIV to be part of the mechanism. The result was a sharp increase in the number of complaints – in 2010 alone, the office received more than 250 complaints. Complaints are investigated and considered on an on-going basis, providing people with effective method of human rights protection.

The most frequent cases brought to the notice of the legal aid non-governmental organisation (NGO) Socieda de Terra Viva from Brazil are violations of women's and children's rights, attacks against the LGBT community, and abandonment and lack of social and economic support for minors and elders. The service frequently solves cases by means of extra-judicial proceedings such as conflict mediation, which has advantages of shorter processing times, reduction of legal costs and a greater flexibility in the resolution of the problems in question.

There are other examples of the use of conflict mediation which show effectiveness in protecting human rights, offer reduction of time and resources, and a greater flexibility to solve the problems of the attended population. Socieda de Terra Viva from Brazil offers free legal services, counselling, and conflict mediation for people affected by violence, as well as monitoring cases post-resolution, and providing follow-up services in case they are needed.[15] Through conflict mediation, a significant number of legal agreements have been reached. Another NGO talked about its experience in addressing gender-based violence: the AGORA Association in Peru through their joint work with the Ministry for Women's Affairs implements a care service

11 Marcela Romero, Latin American Network of Trans (REDLACTRANS), Argentina.

12 Eduardo Ubilla, Movimiento de la Minoría Sexual (MOVILH), Chile; written submission of Ramón Gómez Roa, MOVILH, Chile.

13 Antonio Aguilar, Ombudsman Office, El Salvador.

14 Luisa Fernanda Cordova, Ombudsman Office, Peru.

15 Written submission of Perceva Nunes de Carvalho Filho, Sociedade Terra Viva (STV), Brazil.

model for women who suffer sexual abuse.[16]

The representative of the Fundacion Huesped from Argentina told the audience about a case, in which it presented an 'amicus curiae' brief ('friend of the court' or 'interested party' brief) to the Judicial Branch of the Province of Buenos Aires, in a case of alleged poor conditions and inadequate health care for imprisoned people living with HIV. The court decision acknowledged the problem and requested immediate improvement of health care services in all the prisons under the authority of the province of Buenos Aires.[17]

Luis Gerardo Falla, Deputy Defender of Citizens Rights of Costa Rica, stated that any reform needs to start with education to promote respect, protection and promotion of human rights. It needs to start at home, promoting equality and respect to differences; and at schools educating students on tolerance, dignity and diversity. Domestic public policies need to be in compliance with international human rights law.[18]

16 Written submission of Rita del Rosario Renteria Ruiz, AGORA/ Center for Promotion and Defense Studies of Fundamental and Generational Rights, Peru.

17 Written submission of Ignacio Maglio, Fundacion Huesped, Argentina.

18 Luis Gerardo Falla, Deputy Defender of Citizens Rights, Costa Rica.

3. Women and HIV

"There is a need to aid countries to transform themselves, to rectify injustices done daily in our Latin American region… The constant desire must remain to understand one another and reach agreements not based on our differences, not based on bitterness, but on the common dream of a joint struggle that has to start at this moment and that will have a positive impact for each of you."

- Ana Helena Chacón Echeverría, (former Parliamentarian of Costa Rica), Commissioner, Global Commission on HIV and the Law

In Latin America, approximately 40% of people living with HIV are women with sexual transmission being the main mode for the spread of HIV[19]. Argentina, Chile, Costa Rica, Ecuador, Nicaragua and Uruguay provide antiretroviral (ART) therapy to 80% of pregnant women. The situation is less encouraging in other countries: fewer than 50% of pregnant women diagnosed with HIV receive ART in Bolivia, Colombia, Guatemala, Honduras, Mexico, Paraguay and Venezuela[20].

Gender inequalities, lack of protection from gender-based violence, and poverty all contribute to women's vulnerability to HIV.[21] Overall, participants emphasised that lack of legal protection of the human rights of women and girls contributes to their inequality socially and in personal relationships, which has consequences for their HIV vulnerability. Women and girls are often less able to insist on monogamous relationships and negotiate condom use. Poverty also fuels the spread of HIV by limiting access to prevention and treatment[22]. In Latin America, there is a close link between poverty among women and transgender women and sex work. The same is true for drug use.

Additionally, it was pointed out that the region possesses many laws and customary practices which contribute to women's vulnerability to HIV, including laws and practices relating to inheritance, access to credit and financial loans. Some new laws and practices that have been adopted in response to the HIV epidemic may violate the human rights of women living with HIV, such as mandatory pre-marital HIV testing, and the practice of non-consensual abortions and forced sterilisation of women living with HIV[23].

Overall, participants emphasised that the positive steps being taken include adoption by some countries of laws to protect women and reduce their vulnerability including comprehensive domestic violence and

19 UNAIDS (2011) Regional Consultation Report on the Progress in Latin America to the Access To prevention, treatment, care and support HIV / AIDS available in Spanish at http://unaidspcbngo.org/wp-content/uploads/2011/04/Informe-Consulta-Regional-sobre-Acceso-Universal-en-LA-Marz.pdf

20 UNAIDS (2011) Consolidated regional analysis of UNGASS reports submitted by 17 Latin American countries in 2010 available in Spanish at http://www.portalsida.org/repos/book%20onusida%20V7.pdf

21 UNAIDS, (2010), *Global Report on the Global AIDS Epidemic, Central and South America.*

22 *The International Association of Women Judges (IAWJ), The Gender and Legal Dimensions of HIV/AIDS: Women's Access to Justice and the Role of the Judiciary*

23 *UNDP –IAPG (2010) Comparative Legislation HIV in Latin America and the Caribbean: From a Human Rights Perspective.*

Challenges, according to Argentina, are the following:

- Lack of health services with qualified and sensitised specialists;
- Lack of information and services for both positive and sero-discordant couples;
- Provision of tubal ligation as a contraceptive method for women living with HIV or AIDS;
- High rate of violation of confidentiality;
- High stigma in hospitals with infectious diseases service.

Annual country report of Argentina to UNAIDS (2010)

sexual assault laws, and laws that grant women equity in inheritance, labour and education rights.

The following two broad areas were named as main concerns for women's rights in Latin America, which directly or indirectly contribute to women's increased vulnerability to HIV:

3.1. Sexual and Reproductive Rights

Violations of sexual and reproductive rights were pointed out as the number one cause accentuating women's vulnerability to HIV, and as a significant factor hindering access to health care for HIV-positive women and women belonging to key populations at higher risk. Areas of concern include (1) lack of comprehensive protection of sexual and reproductive health, such as emergency contraception, safe abortion and post-exposure prophylaxis by state funded programmes, (2) limited capacity of law enforcement authorities to treat women affected by sexual violence; and (3) lack of government guarantees of sexual and reproductive rights for people living with HIV.[24]

Respect of sexual and reproductive rights for women is hindered by outdated negative attitudes towards contraception and abortion. Access to both is severely restricted, as most Constitutions in Latin America are based on the *American Convention on Human Rights*, which states in Article 4 that the right to life must be respected and guaranteed *"from the moment of conception."* There are some positive developments, but the overarching stereotype against abortion and contraception remains. In Colombia, the Constitutional Court reached a decision to decriminalise abortion based on the argument that being forced to have abortion in unsafe conditions women's violates rights to life and dignity. The Peruvian Constitutional Court, in a case concerning free provision of emergency contraception, decided that the Ministry of Health had failed to comply with a regulation that mandated it to provide unhindered access to emergency contraception.[25]

However, non-medical abortion constitutes a crime in all criminal codes in the region, except for Cuba. The most restrictive laws prohibit abortion in any situation. The new Constitution of the Dominican Republic determines *"the right to life is inviolable from conception to death."* This resulted in amendments to the criminal code prohibiting medical abortion. In countries like Panama, Paraguay and Venezuela abortion is allowed only to save mother's life. In Latin America, unsafe abortions account for more than 95% of all pregnancy terminations.[26] Unsafe abortion accounts for approximately 13% of global maternal deaths,[27] with higher proportions in many developing countries (e.g. Argentina 20%).[28] Additionally, all contraceptive methods are considered to be abortion-like, and thus require medical prescription and counselling.

24 GraciaVioleta Ross Quiroga, Bolivian Network of People Living with HIV, REDBOL, Bolivia.

25 http://www.ippfwhr.org/en/node/1663

26 Center for Reproductive Rights (2010), *A ten-year retrospective: Reproductive rights at the start of the 21st century*, New York, Center for Reproductive Rights.

27 World Health Organisation (WHO) (2007), *Unsafe Abortion: global and regional estimates of incidence of unsafe abortion and associated mortality in 2003*, 5th edition.

28 Human Rights Watch (2010), *Illusions of Care: Lack of accountability for reproductive rights in Argentina.*

These limitations on women's sexual and reproductive rights contribute to their inequality and the unavailability of condoms hinders HIV prevention efforts. Women living with HIV encounter abuse and discrimination from health-care providers when they seek legal abortions. This situation becomes more dangerous in the presence of legislation criminalising HIV exposure and transmission. Due to the stigma and misconceptions surrounding childbearing by HIV-positive women in many places, women living with HIV have found themselves tricked and pressured into sterilisation by health-care providers. In Chile, a case that has now been submitted to the Inter-American Commission on Human Rights concerns a woman who was sterilised during a caesarean section without having given her consent.[29]

Every country in the region has committed to prevent vertical transmission, which in several countries resulted in instituting mandatory HIV tests for pregnant women. International standards advise against such measure as it does not bring positive public health results, violates peoples' rights to integrity and autonomy, and may push people away from seeking health care services. On a positive note, some countries have instituted a written consent form to ensure that all procedures are compliant with international human rights standards[30].

Another concern that participants expressed during the Dialogue was the lack of training of health care service providers, particularly in handling cases of sexual violence and HIV. Many participants mentioned discrimination of HIV affected populations by health care providers[31]. Also, a lack of specific HIV related health services for lesbians was mentioned as a concern in the region. The Nicaraguan group of lesbians, SAFO, pointed out that there is a lack of women-oriented, gender and sexual orientation specific information regarding HIV and HIV-related services.

3.2. Gender-based violence

According to participants, gender-based violence plays a significant role in contributing to women's inequality and is widely spread in Latin America. Inconsistent legislative and policy frameworks in this area aggravate the situation.[32] Countries of the region do not, as a rule, have comprehensive and cross-sectoral national policies ,which allow for effective protective remedies and encourage empowerment and capacity building for women and women's organisations. It was said that there is fragmentation of policies and lack of resources for their implementation. Even though all Latin American countries have legislation countering domestic violence, not all include marital rape as a crime (the positive exemptions are Argentina, Costa Rica, Dominican Republic, Mexico, Paraguay, Peru, Uruguay.)

As participants from Brazil and Chile noted, problems of gender-based violence are low on the government agenda, and implementation of the existing laws is inadequate. For example, as participants from Brazil noted, despite the adoption of the comprehensive "Maria Da Penha law", law addressing domestic violence and protecting women regardless of sexual orientation and other characteristics, the situation has not improved dramatically, with the new law not being fully implemented.[33]

Forms of gender-based violence that manifest as femicide[34] are also important to address in relation to the situation with women and human rights in Latin America. This phenomenon exists and constitutes a grievous violation of women's rights, contributes to women's disempowerment, inequality and lack of human rights protection, and enhances their vulnerability to HIV. It is said to have started in Mexico's Ciudad Juarez, where according to the Inter-American Commission on Human Rights *"the victims of these crimes have preponderantly been young women, between 12 and 22 years of age. Many were students, and most were*

29 Center for Reproductive Rights (2010), *Demanding Rights for HIV-Positive Women*, available at http://reproductiverights.org/en/feature/demanding-rights-for-hiv-positive-women. Comments for CESCR Day of General Discussion on *the right to sexual and reproductive health*. Comments provided by IPAS, NGO in Special Consultative Status with ECOSOC, International Alliance of Women, NGO in General ECOSOC Status. 15 October, 2010.

30 *UNDP –IAPG (2010) Comparative Legislation HIV in Latin America and the Caribbean: From a Human Rights Perspective.*

31 Sergio Vasquez, Asociación Ombres, Guatemala

32 Maria Eugenia Calvin Pérez, Observatorio de Equidad de Género en Salud (OEGS), Chile.

33 Gilvan Nunes, Grupo de Apoio à Prevenção à AIDS da Bahia, Brazil.

34 Femicide is defined as the systematic killing of women for various reasons, usually cultural.

maquiladora workers. A number were relative newcomers to Ciudad Juarez who had migrated from other areas of Mexico. The victims were generally reported missing by their families, with their bodies found days or months later abandoned in vacant lots, outlying areas or in the desert. In most of these cases there were signs of sexual violence, torment, torture or in some cases disfigurement."[35]

More than 3,800 women and girls have been murdered in Guatemala since the year 2000.36 Guatemala's femicide is notable for its brutality as well as the impunity with which perpetrators continue to exist. Countrywide, a mere 1-2% of crimes against life are effectively prosecuted, meaning that someone who commits murder in Guatemala has a 98-99% chance of escaping prosecution and punishment. In Chile, two million women suffer from gender based violence and one dies every week at the hands of their partners and former partners.

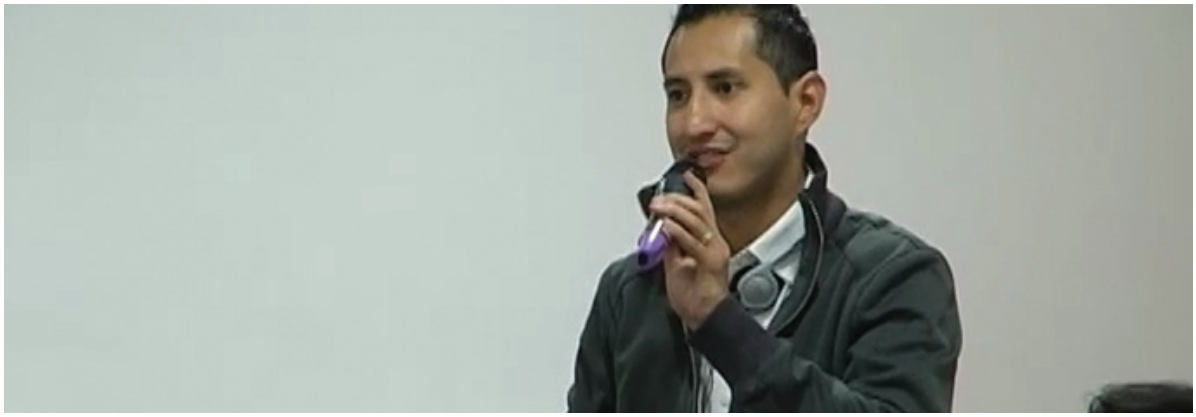
In 2010, Chilean President Sebastian Piñera signing the Femicide Law committed to effective and speedy resolution of the problem. *"In our country, in 2010, the year of the bicentennial, one in three women are still victims of domestic violence,"* said Piñera. *"And every week, a woman is killed by someone with whom she has had a relationship. We cannot tolerate this any longer."*[37] In Guatemala too, a specific law against femicide and other forms of violence had been adopted. Regional Dialogue participants emphasised that in order to successfully reduce and eliminate gender based violence in the region, it is necessary not only to adopt progressive laws, protecting women from violence and empowering them to achieve equality, but also to educate population about the necessity of these measures and about women's human rights.

35 Inter-American Commission on Human Rights. OEA/Ser.L/V/II.117 Doc. 4,7 march 2003 Original: Spanish - The situation of the rights of women in Ciudad Juarez, Mexico: The right to be free from violence and discrimination.

36 Center for Gender and Refugee Study (2006), http://cgrs.uchastings.edu/campaigns/femicide.php

37 Law 20.480; the President's statement is available from the Santiago Times, http://www.santiagotimes.cl/news/human-rights/20376-chilean-president-enacts-femicide-law

4. Men who have sex with men and transgender persons



Most HIV epidemics in the Latin American region are concentrated in and around networks of men who have sex with men. Surveys conducted in groups of urban men who have sex with men have found HIV prevalence of at least 10% in 12 out of 14 countries. In five Central American countries, the annual HIV incidence was 5.1% among men who have sex with men, while an incidence of 3.5% has been found among men who have sex with men who attended public health clinics in Lima, Peru (which is higher than those observed among the men who have sex with men in Europe and North America).[38] In Nicaragua, HIV prevalence of 37% is reported among transgender population.[39]

It is reported that social stigma, has kept the HIV epidemic among men who have sex with men hidden and unacknowledged. Several countries, especially in Central America and in the Andes, continue to have few preventative programmes for men who have sex with men. Fear of being stigmatised can compel many men who have sex with men to also have sexual relationships with women. In Central America, for example, more than one in five men who said that they had sex with other men reported having had sex with at least one woman in the previous six months.[40] Condom use among these men was also low with less than half reporting condom use at last sex with a woman.

There are reports of egregious cases of violence, intimidation, and human rights violations in relation to LGBT community. According to MOVILH's Annual Report on Human Rights of Sexual Diversity, between January and June 2010, global media reported 93 cases of murder of transgender people. 80% of these reported murders (74 cases) occurred in Latin America: 40 in Brazil, 14 in Guatemala, eight in Mexico, four in Venezuela, two in Argentina, Honduras and Dominican Republic, and one in Ecuador and Colombia. Most of the transgender people killed were sex workers. According to the report, between 2005 and 2009 there were no sentences in relation to any of the 168 reported acts of violence and intimidation against sexual minorities, including murder, illegal detention, excessive use of force and threats. At least 40 of these cases were allegedly committed by the police and other law enforcement institutions.[41] According to other reports, in the 18-month period from 2010 to 2011, 34 people were brutally murdered in Honduras because of their sexual orientation.[42]

Participants underlined that the situation is compounded by low economic, educational and employment opportunities for the LGBT persons, especially for transgender people. It is reported that the situation in which LGBT communities live is endangered by multiple human rights violations, poverty, lack of redress, and abuse by law enforcement and government officials. A study on the situation of LGBT in Nicaragua showed that:

38 UNAIDS, (2010), *Report on the Global AIDS Epidemic,* p. 46.

39 Silvia Martínez, Redtrans - BR Mosaico Producciones, Nicaragua.

40 UNAIDS, (2010), *Report on the Global AIDS Epidemic*, p. 46.

41 MOVILH, Annual Reports on Human Rights of Sexual Diversity.

42 See http://www.cubadebate.cu/noticias/2011/02/23/los-asesinatos-de-homosexuales-se-disparan-en-honduras/

- 76.7% of LGBT people are living in poverty on two dollars or less per day. Of these, 45% live on less than a dollar a day, placing them in an extremely vulnerable situation.
- One in four LGBT people are unemployed, compared to the national average of 3.9%. 25% of LGBT people have been discriminated against at work because of their sexual identity.[43]

4.1. Laws

Although Latin America is still a region where conservative views and macho cultures often prevail, homophobia leads to stigma, discrimination, and hate crimes, all countries in the region decriminalised homosexuality, or consensual sexual relations between adults. Nicaragua was the last Latin American country to decriminalise homosexuality in 2008.

A 2009 Joint United Nations Programme on HIV and AIDS (UNAIDS) study[44] set up an index in regard to legal frameworks in relation to sexual diversity in low- and middle-income countries. Countries are categorised either as prohibitive, neutral or protective of the rights of sexual minorities. Of the 17 Latin American countries included in the index, nine were characterised as protective; among them, four (Argentina, Brazil, Colombia and Uruguay) had 'recognition measures' which explicitly prohibit discrimination against sexual minorities and include positive rights (such as marriage, civil unions and transgender rights recognition), and three (Costa Rica, Ecuador, Peru) had 'protection measures' which include sexual minorities under the rubric of general anti-discrimination instruments. The study found five countries with neutral systems (Bolivia, Chile, Guatemala, Honduras and Paraguay) and three with prohibitive systems (El Salvador, Nicaragua and Panama). Brazil and Mexico have national policies in place to protect LGBT rights and combat homophobia.

4.2. Law enforcement practices and public health impact

It was underlined during the Dialogue, that in some cases, societal attitudes and understanding of LGBT issues lag far behind the more progressive legal framework in Latin America. This affects the correct implementation of the law; and also results in some stark inconsistencies in the legal framework and implementation practices.

In Colombia, transgender persons may still be considered suffering from a medical illness.[45] Chile is being sued in the Inter-American Human Rights Court by Karen Atala[46], a lesbian mother who was stripped of custody of her daughters on the grounds of her sexual orientation.

Many participants talked about high levels of stigma, internalised homophobia related to the macho culture, stereotypes, double standards and violence. They underlined that homophobia is widespread in some countries of the region. Men who have sex with men and transgender people continue to be stigmatised and ostracised by society, and are excluded from educational and employment opportunities. They are exposed to harassment from police, government officials and general public. The view of homosexuality as a curable disease contributes to discrimination and reinforces the stigmatic link between homosexuality and HIV. This is further exacerbated by religious ideologies, which characterise homosexuality as a deviant abomination.[47]

Participants talked about the detrimental impact of social attitudes, and negative policy and legal decisions

43 IDSDH - Center for International Studies (CIS) (2010), *Action Research for the Construction of a Human Rights Agenda and the Transformation of Discrimination and Violence in the LGBT Community and Strengthening the Movement of Sexual Diversity in Nicaragua*, presented at the Norwegian Embassy.

44 Caceres, C et al (2009), *Review of Legal Frameworks and the Situation of Human Rights related to Sexual Diversity in Low and Middle Income Countries*, UNAIDS.

45 Santamaría Fundación y Referente para Colombia de la Redlactrans.

46 Informe No. 42/08 Admisibilidad Peticion 1271-04 Karen Atala E Hijas, available at http://www.cidh.oas.org/annualrep/2008sp/Chile12502.sp.htm

47 Several participants mentioned the influence of the Catholic church as having a significant impact on the promotion of outdated ideas and attitudes towards those who do not conform with its norms, especially as it preserves considerable power in the political sphere. Sexual Diversity Movement (MUMS) from Chile, reported that some health care providers offer curative therapies for homosexuals promoted by the Andes University (Opus Dei University).

on the effective HIV response. It was pointed out, that there is a direct link between the cultural disavowal of same sex sexual activity and heightened HIV prevalence. Stigma and discrimination of men who have sex with men and transgender people fuels the HIV epidemic. These groups are already marginalised, which creates a barrier to their access to HIV-related services, including HIV testing. Discrimination also leads to risky sexual behaviour, as men who have sex with men and transgender people engage in furtive sexual encounters, where condoms may not be used. There is also a strong current of mental, physical and emotional trauma among men who have sex with men and transgender youth, which leads to problems with addiction and mental health, both of which increase the risk of HIV infection. This cycle of stigma and discrimination increases HIV related risks, which further increase stigma and discrimination.

Most of the national AIDS programmes under states' health ministries have established initiatives targeting men who have sex with men and transgender people, including education and prevention (e.g. access to free condoms). In some countries, the LGBT community and organisations are key actors in the development of national health policies. However, there are few programmes addressing the realities faced by this sub-population. There are no laws, regulations and policies which facilitate, voluntary pre- and post-test counselling, quick tests, prevention (availability and access to information, condoms and lubricants), treatment, care and the support to the groups in greater risk of infection such as men who have sex with men and transgender persons. The programmes that exist suffer from under-funding, marginalisation, prejudice and outright violence, perpetrated by both authorities and citizens. People continue to experience limited access to quality health services and reported acts of discrimination because of their sexual orientation.

4.3. Transgender people

Many interventions during the Regional Dialogue focused on the situation of transgender people, and challenges and risks they face in obtaining legal recognition of their identity, rights and access to health care services. Several participants at the Dialogue noted that the transgender community is even more vulnerable to HIV and more overlooked by official policies than men who have sex with men. In discussions about HIV, law, and human rights, transgender persons are frequently lumped together with men who have sex with men, which is a mistake.[48] A representative of a transgender organisation in Guatemala emphasised that transgender people are different from the men who have sex with men community as they face different challenges and difficulties in overcoming the HIV epidemic and even more hostile social and policy environment.

This conflation of problems faced by transgender people with issues surrounding men who have sex with men, and their consistent invisibility in country reports about the epidemiological trends (since all of them are grouped under the denomination of men who have sex with men), prevents the correct enforcement of the law regarding access to services, and does not allow for a follow-up on the evolution of the epidemiological trends since there are no segregated data.

Specifically precarious is the situation of transgender women in Latin America. Dialogue participants emphasised that there is a lack of statistical information about the HIV burden in this community, however there are fears that HIV prevalence rates among this group may be exceedingly high. This population feels neglected, as there are no health care services specifically tailored to them and no sensitisation training for health care workers and government officials. When transgender women are arrested and jailed, they are put in male institutions where they are subject to sexual and physical violence by inmates, with no protection from prison authorities.

Representatives of Latin American transgender communities participating in the Regional Dialogue noted the lack of laws allowing for a change of gender in the identification documents, and protection of people's human rights and dignity.

According to the submission of the Fundación Santamaría from Colombia,[49] between 2005 and March 2011,

48 Johana Esmeralda, OTRANS Reinas de la Noche, Guatemala.

49 Written submission of Valentina Riascos Sanchez, Fundación Santamaría.

around 45 homicides of transgender women were recorded in Santiago de Cali, most of whom were sex workers. There is a selective approach in the implementation of the law: in the cases involving transgender women as defendants, the system is fast and it works; in the situation where transgender women are victims, the system is inefficient and it does not work. Since 2005, 76 cases of police abuse against transgender sex workers have been identified and reported. However, only ten of those cases have been investigated. This population does not have protection from the State Attorney General's Office, which instead often penalises transgender persons. In another submission, a Honduran activist stated that hate crimes based on sexual orientation and/or gender identity generally go unnoticed and are registered by the investigating authorities as "passion crimes". The pattern of the crimes committed against transgender people and men who have sex with men include offences committed by the police, sex workers' clients, their families, neighbours or strangers.[50]

In Panama, there have been cases of police harassment and arrests of transgender persons even when they did not commit any offence, but only because of who they are. According to the Asociación Panameña de Personas TRANS from Panama, transphobia of the police prevents transgender people even from going outside or using public spaces.

Because of these hate crimes, transgender individuals and even organisations representing transgender communities are afraid for their very lives and existence.[51] There are no laws that guarantee access to comprehensive health care services for transgender population. Additionally, they do not have access to education, places to live in or decent jobs, much less if they live with HIV.[52]

4.4. Best practices and recommendations

Several ways to decrease stigma and homophobia against LGBT communities were suggested during the Regional Dialogue, founded on a human rights approach. The Honduran Human Rights Vice-Minister pointed out that in his country, a crosscutting human rights policy is in place. The government is working on strengthening the legislative response to hate crimes - an initiative was put forward to include hatred as an aggravating factor in crimes, including murder.

In Colombia, as a result of collaboration between police and the Santa Maria Foundation, guidelines aimed at protecting the LGBT community from violence and human rights violations, including discrimination, has been drafted.

Participants also expressed a wish that governments not limit themselves only to adopting human rights frameworks, but also work to implement them, including providing special funding and budgets for human rights activities.

50 Written submission of Sandra Antonia Zambrano Munguia, APUVIMEH, Honduras.

51 Written submission of Oswaldo Rada-Senderos Asociacion Mutual, Colombia; Samira Montiel, Special Prosecutor for Sexual Diversity, Nicaragua.

52 Written submission of Venus Tejada, Asociación Panameña de Personas Trans, Panama.

5. Drug use

HIV predominantly affects marginalised populations in Latin America including people who inject drugs. However, given that HIV transmission in Latin America is predominantly sexual, most countries do not pay much attention to prevention for people who inject drugs. Yet, statistics on HIV prevalence among people who use drugs is worrisome: an estimated 29% of the more than two million Latin Americans who inject drugs are infected with HIV. Epidemics among injecting drug users in Latin America tend to be concentrated in the Southern Cone of South America and in the northern part of Mexico, along the border with the United States (US).[53] HIV prevalence rates among people who inject drugs are as high as 20 - 50% in Argentina and Brazil; and up to 20% in Colombia, Mexico, Nicaragua, Paraguay and Peru. In Brazil, the Hepatitis C prevalence rate among injecting drug users is more than 50%.[54]

Cocaine and its derivatives are the most commonly used drugs in this region, with the exception of Northern Mexico and parts of Colombia, where heroin is widely used. Injecting drug use is associated with HIV transmission in several countries and recent evidence shows a link between non-injecting drug use and HIV, due to impaired mental capacity and increased risk taking.[55]

Some governments in the region are supportive of harm reduction in policy and/or practice. Argentina, Brazil, Colombia, Mexico and Uruguay make explicit supportive reference to harm reduction in national policy documents. Countries that have operational needle and syringe exchange programmes include Argentina, Brazil, Mexico, Paraguay and Uruguay.[56]

The vast majority of needle and syringe programmes operate in Argentina and Brazil although there are some small projects in other countries. Mexico, with substantially more heroin users than other Latin American countries, prescribes opioid substitution therapy (OST), although coverage is low. Where harm reduction services exist, the heavy stigma surrounding drug use, as well as a fear of arrest, often deter people from accessing them. There are no countries reporting drug consumption rooms, needle exchange or OST programmes in prisons.[57] OST was introduced in Colombia in 2008 and there are now four operational sites providing methadone maintenance treatment in three districts.[58]

53 UNAIDS, (2009), AIDS epidemic update

54 Harm Reduction International, *Global State of Harm Reduction (2010) Latin America Regional Overview*

55 Ibid.

56 Cook, C (2009), *Harm Reduction Policy and Practice Worldwide*, International Harm Reduction Association

57 Ibid.

58 CND Blog (2010), CND Day 4: USA's plenary statement on drug demand reduction, available at www.cndblog.org/2010/03/cnd-day-4-usas-plenary-statement-on.html [accessed on 1 April 2010].

5.1. Laws

Since its inception in the middle of 20th century, the United Nations (UN) legal framework on drug control has been based on repressive laws and law enforcement, and not public health concerns. UN drug control agencies have successfully guided the UN member states towards the conclusion that the only answer to drug use must consist of punitive actions to eliminate illicit drug use and punish dealers, sellers, buyers and users. At the end of the 20th century, after the advent of AIDS and the discovery of its connection with injecting drug use, a progressive interpretation had been given to the current prohibition allowing countries flexibilities in their national legal and policy frameworks, aimed at reducing barriers to effective harm reduction services. Despite this, some of the countries in the Latin American region use the UN Drug Conventions to justify highly punitive legal measures and do not implement services for people who use drugs. For example, government and non-governmental participants from Brazil noted a lack of harm reduction-oriented laws and policies aimed at making the HIV response more effective for people who inject drugs.[59]

In recent years the region was forced to stop ignoring its deteriorating drug situation and was pressured to adopt progressive and far-reaching drug policies. In Mexico, on 21 August 2009 a new drug law, proposed by President Felipe Calderón in response to increasing violence, organised crime and drug use, came into effect. The law distinguishes drug dealers from people who use drugs, decriminalises people who use drugs and preserves the right of indigenous people to the traditional use of certain substances.[60]

On 25 August 2009, the Argentinean Supreme Court voted unanimously in favour of decriminalising personal consumption of illegal drugs, declaring it unconstitutional to punish a person for possessing or using illegal drugs if it does not endanger others. Although the court order specifically refers to cannabis, it opened the door to judicial reform of national drug laws. In 2010, the Scientific Advisory Committee of the Ministry of Justice published a key report on drug use and proposed a suggested response. The National Commission on Drug Policy was created and tasked with launching the national drug plan and exploring possibilities for law reform.

In Ecuador, where previously harsh sentences of between 12 and 25 years imprisonment were given for small scale drug trafficking, in an effort to ensure proportionality of punishment, the government approved an amnesty for small-scale drug traffickers in 2008. As a result, approximately 1,500 people incarcerated for offences related to small-scale drug trafficking were released from prison. There are also indications that decriminalisation of drug use and harm reduction may soon form part of the national response to drugs.[61]

Unfortunately, the region has been under immense political pressure from the US government to reduce drug cultivation and production. This has overridden public health concerns and responses to drug use and in many cases infringed on rights and economic stability of local farming communities cultivating coca crops.[62]

Additionally, not all Latin American countries have adopted a progressive approach. It was mentioned that Colombia moved somewhat backwards on the previous progressive framework. Since Colombia's Constitutional Court decision in 1994, personal drug use has not constituted a criminal offence – adults found with up to 20 grammes of cannabis and 1 gram of cocaine were not prosecuted. Despite the moves toward the decriminalisation of drug use in neighboring countries, a constitutional amendment re-criminalising drug use passed in the Colombian Congress in 2009. Only administrative measures will be applicable.[63]

It was also pointed out during the Regional Dialogue that legal frameworks, such as those adopted in Argentina and Mexico, still contain gaps and may lead to unintended consequences that the lawmakers did

59 Dirceu Greco MD, Ministry of Health, Secretary, Office for Surveillance, Brazil.

60 Malchy L et al (2008), *Documenting practices and perceptions of 'safer' crack use: A Canadian pilot study*, International Journal of Drug Policy 19(4): 339–41.

61 DeBeck K et al (2009), *Smoking of crack cocaine as a risk factor for HIV infection among people who use injection drugs*, Canadian Medical Association Journal 181(9): 585–9.

62 Cook, C (2009), *Harm Reduction Policy and Practice Worldwide*, International Harm Reduction Association.

63 Transnational Institute (2010), *Drug law reform in Colombia*, available at http://www.tni.org/article/drug-law-reform-colombia.

not envisage. For example, observers noted, that the Mexican law does not sufficiently protect the rights of people who use drugs and has several negative consequences, including toughening of sentences for small scale drug dealers, many of whom belong to poor communities.64 In Argentina, the system sends users to compulsory drug dependence treatment, which in itself violates human rights, and as practice shows is extremely ineffective. Additionally, it was reported that some states in Argentina are lacking an institutional health system for this compulsory treatment – and when the health system cannot accept an "offender" this person goes to prison. It was also reported that drug rehabilitation facilities do not pay adequate attention to rights and interests of people in treatment.65

There are also other laws and policies that violate human rights of people who use drugs, and by criminalising, marginalising and stigmatising them push them away from health care services and harm reduction measures, thus increasing their risk and vulnerability to HIV. As participants pointed out, Mexico has a law called *Decreto ley de narcomenudeo*, which defines people who use drugs as someone with a priori intent to distribute illicit drugs; and provides for measures that violate their rights to privacy and voluntary access to treatment.66

5.2. Law enforcement practices and public health impact

Several participants mentioned that despite a sufficiently progressive legal framework in relation to drugs, the implementation of laws is lagging behind, due to the lack of political will, lack of understanding of the law, or due to embedded stereotypes and attitudes of the implementers.

Regional Dialogue participants underlined the negative consequences of repressive frameworks, which still exist in some countries including social isolation, marginalisation, disproportionate incarceration of people who use drugs, violence and violation of fundamental human rights. A participant from Guatemala linked absence of adequate health care services for people who use drugs with their disadvantaged situation. In fact, frequent denial of ART to people who use drugs amounts to serious discrimination against this group, which detrimentally impacts their rights to health and life.[67]

In some countries, police and judicial authorities may target and punish people for personal consumption or micro-traffic, because these offences are easier to prosecute; but not pay due attention to crimes that are harder to prosecute – such as money laundering, or large scale trafficking of precursors and substances. According to a submission from Argentina, on average, 70% of criminal convictions in that country have been for personal consumption, 20% for simple possession and only 10% for drug trafficking. Additionally, within that 10% of sentences for drug trafficking, it is not clear how many cases had been of small-scale neighbourhood dealing, and how many offences were related to international trafficking.[68]

A representative of the *Intercambios Sociedad Civil*,[69] explained that criminalisation of drug use has consequences at individual, societal and national levels, and that it generates stigma towards people who use drugs by linking them to criminality. He pointed out that drug policies in the region need to be reviewed, re-designed and streamlined, turning drug use and possession of drugs for personal consumption from a criminal issue to a social development and public health issue.

5.3. Best practices and recommendations

Discussions at the Regional Dialogue elicited the view that a way of achieving the correct implementation of the law is through litigation – civil society and individual stakeholders need to be empowered to take

64 Malchy L et al (2008), *Documenting practices and perceptions of 'safer' crack use: A Canadian pilot study*, International Journal of Drug Policy 19(4): 339–41.

65 Marcela Romero, REDLACTRANS, Argentina.

66 Aram Barra, ESPOLEA, Mexico.

67 Sandra Ramírez Fernando, Iturbide Foundation, Guatemala.

68 Written submission of Alejandro Corda, Intercambios Sociedad Civil, Argentina.

69 Alejandro Corda, Intercambios Sociedad Civil, Argentina.

their claims to court, and use all available legal remedies to protect their rights. A representative of the Supreme Court of Justice of Mexico[70] mentioned that court and Justice Department lawyers and judges need to provide the public with necessary tools for successful litigation, and also be able to respond to legal challenges. They, as well as the general public need to be educated about the issues facing key populations at higher risk, remedies available and the correct way of using them. Civil society, on the other hand, needs to learn how to conduct strategic litigation, rights must be claimed and the guarantees should be effective.

Another means of achieving correct implementation of laws and policies is meaningful civil society and stakeholder representation in decision-making and implementing bodies. If civil society has an easy way of addressing government officials when people have concerns and complaints, and if government officials have an easy way of drawing on the experience and opinions of civil society representatives, this two way street may accelerate the development of supportive laws and policies, and ensure their correct implementation.

70 Jorge Roberto Ordóñez Escobar, Secretario de Estudio y Cuenta de la Suprema Corte de Justicia, Mexico

6. Sex work

HIV prevalence among sex workers in Latin America is higher than in the general population. Seroprevalence surveys in Central America in recent years have indicated HIV prevalence among female sex workers of 4.3% in Guatemala and 3.2% in El Salvador. A significant percentage of Central American sex workers are infected with sexually transmitted infections (STI), with especially high rates of herpes (up to 85%).[71]

Most Latin American countries pay attention to HIV prevention among sex workers. Most countries reporting data (seven of ten countries) report over 50% of sex workers have been tested for HIV and know their results. According to surveys, the percentage of sex workers who are reached by prevention programmes ranges from 21% to 93%. However, the percentage of sex workers who know how to prevent sexual transmission of HIV and reject major misconceptions about HIV transmission is below 50% in seven of the eight countries for which data is available (Bolivia, Brazil, Colombia, Guatemala, Honduras, Paraguay and Peru.), except for Panama, where it is 92%. In countries that reported data on sex work, more than 65% of sex workers used a condom with their last client in ten countries (Argentina, Brazil, Bolivia, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, and Panama) and more than 75% did so in three countries (Guatemala, Honduras and Uruguay).[72]

6.1. Laws

Laws regarding sex work vary throughout Latin America. Overall, no country has legalised sex work as a profession[73] with full social rights, worker protection, pensions and other benefits.[74] In many countries of the region sex work (i.e. exchange of sex for money) itself is legal, but most forms of procuring services of sex workers are illegal (Argentina, Brazil, Chile, Costa Rica, Cuba, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua). Also, there are laws against soliciting in a public place such as a street or advertising sex work, making it difficult to engage in sex work without breaking any law.[75] This criminalisation of activities associated with sex work, means de facto criminalisation of sex work itself, which leads to significant negative results for sex workers.[76]

In Bolivia, Colombia, Ecuador, Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela, sex work is legal and

71 UNAIDS (2009), AIDS epidemic update

72 UNAIDS (2011), *AIDS Epidemic in Latin America, Prevalence of HIV in Latin America*.

73 Only Argentina has a sex workers union member of the Central Union of Workers of Argentina.

74 The Latin American Sex Workers Network described their organisational objective to have the law recognise sex work as a dignified job, with recognised obligations and labour rights and adequate government protection to protect them from abuse and respect their human dignity.

75 UNDP-IAPG (2010) *Comparative Legislation HIV in Latin America and the Caribbean: From a Human Rights perspective.*

76 *Prostitution – Regimes of Prohibition, Criminalization and Regulation*, available at http://law.jrank.org/pages/1880/Prostitution-Regimes-prohibition-criminalization-regulation.html

regulated, though activities like pimping and street walking are generally illegal. Most of these countries require mandatory health checkups. Sex workers are required to obtain a mandatory health certificate, which is revoked if they test HIV-positive.[77]

In Argentina, solicitation conducted in a clear and overt manner within 200 metres of houses, schools or temples is prohibited, and may be punished by imprisonment for up to 20 days.[78] The offer of sexual services however, may be carried out from inside buildings not in view of the public. In all cases, STI tests and treatment are required.[79]

Although this framework is fairly progressive in comparison to many other regions of the world, Dialogue participants mentioned, that no matter whether prostitution is legal or not, criminal justice and other social control strategies in the region are directed against social acceptance of sex work, which in itself leads to human rights violations and higher vulnerability to HIV.

6.2. Law enforcement practices and public health impact

Criminalisation of activities related to sex work reinforces existing societal stigma against sex workers. This drives an already vulnerable population underground, away from services including prevention, treatment and testing. It also exposes them to abuse and violence, as there is no regulatory framework in place to protect their rights. Countries worldwide and within the region, which have decriminalised and regulated sex work have seen little to no increase in the sex trade, while HIV prevalence rates, violence and illicit trafficking have dropped.

The issue of abuse faced by sex workers at the hands of police was mentioned in several of the submissions received by the Commission. Sex workers attending the Regional Dialogue also reported police abuse, and the fact that they are frequently reluctant to complain to the police, because of fear of retaliation. One of the participants observed that police officers carry out daily raids, roundups, arrest, harass, humiliate, and ridicule sex workers, make them strip and demand sexual services in exchange for freedom.[80] Also, sex workers are mistreated by clients, especially if they try to negotiate condom use. This violence rarely gets reported to police, as sex workers are sure that there will be no redress. In Guatemala, a representative of LAMBDA organisation mentioned that his organisation finds it difficult to carry out prevention activities because it is also targeted by the police and in some cases threatened with violence.

Sex workers from transgender populations face even worse treatment, they are harassed and subjected to violence and persecuted by police.[81] For example, the transgender community in Honduras is denied even the right to stay in public places, as they are targeted by the police as soon as they appear on the street.

In several Latin American countries, sex workers report not having adequate access to health care, including HIV prevention and treatment.[82] At the same time, compulsory STI testing and treatment may be carried out in relation to sex workers. It was reported that in Honduras sex workers are required to have monthly appointments at the Comprehensive Care Clinic for STI checkups. The police department has access to health care records, where this information is kept, and has used records to arrest women who fail to meet their appointments.

Stigma and discrimination associated with sex work consists of many factors and leads to increased intake of drugs and alcohol, vulnerability, and violence. Sex workers report being discriminated against in health services, justice, and education as they are perceived to be a bad example for the society. Many of them have been raped in prison. As one of the participants at the Dialogue observed, sex work is not an easy thing, it generates income but also many negative things. However, it should not be this way: *"[Sex work] is a*

77 HIV Law, Section 19, paragraph "b". (Bolivia)

78 Grupo de Cooperación Técnica Horizontal (Horizontal Technical Cooperation Group).

79 Código de faltas, Artículo 44 (Argentina)

80 Dulce Ana, Latin America and the Caribbean Sex Workers Network (RedTraSex), Panama.

81 Claudia Spellmant Medina, Colectivo TTT/REDLACTRANS, Honduras.

82 Dulce Ana, Latin America and the Caribbean sex workers network (RedTraSex), Panama.

respectable job, what is undignified are the working conditions we live in."[83]

There are other instances where societal attitudes towards sex work dictate discriminatory attitudes and practices.[84] For example, in several Latin American countries it is very difficult to obtain legal personality for an NGO, considering that the organisation of sex workers is not viewed as contributing to "common welfare". In Peru, the special security group known as "Black Panthers", created and funded by the Municipality of La Victoria with the aim of eradicating sex work in the area, has succeeded in increasing violence against women engaged in sex work in this district of Lima. Violating constitutional requirements, the "Black Panthers" limit free movement of sex workers, even when they are not working.

6.3. Best practices and recommendations

Several positive examples of adoption of legal and policy framework addressing HIV-related risks of sex workers, and reducing stigma and discrimination directed against them have been mentioned during the Dialogue. For example, the National Plan on HIV/AIDS of Ecuador includes promotion of human rights, HIV and STI prevention and development of skills for safe sex for sex workers and their clients.[85] In Panama, the 2009–2014 National Multisectoral HIV, AIDS and STI Strategic Plan includes sex workers as priority groups to intervene.[86]

Several positive developments have been reported in Colombia. After police reform, human rights focal points were appointed in each police department, dealing among others with issues related to most at risk populations, such as sex workers. Sensitivity, diversity and human rights training is carried out for police officers. There is a zero tolerance policy for discriminatory behaviour by police officers, punishable as a disciplinary offence.[87] Another representative from Colombia talked about a positive result of a legal action, undertaken by a sex worker who appealed the termination of her employment contract with a bar. The Supreme Court ruling ordered the owners of the bar to reinstate her.

83 Elena Eva Reynaga, Latin America and the Caribbean Sex Workers Network (RedTraSex), Argentina.

84 Violencia Institucional y Social contra las Trabajadoras Sexuales de Latinoamérica y el Caribe – Diagnóstico de Situación, 2008, REDTRASEX.

85 Ministry of Public Health -UNAIDS, *Multisectoral Strategic Plan for the national response to HIV and AIDS, 2007 -2015.*

86 Ministry of Health-CONAVIH, *Multisectoral Strategic Plan for STI, HIV, AIDS, 2009-2014.*

87 Colonel José Alejandro Garcia Romero, Police Healthcare Directorship, Colombia.

7. Children and young people

Regional data[88] reveals that there are 1,400,000 adults and children living with HIV in the region. Around 4000 children were newly infected with HIV in 2009, but it appears that new infections among children are declining in the region.[89]

7.1. Laws

The age of majority in Latin American countries is 18 years old. In some cases, for example, if a minor wants to get married, emancipation enables them reach the age of majority earlier.[90] Minors are under guardianship of parents or legal representatives, which means that they cannot receive medical assistance without prior authorisation.

Some countries in the region, in order to rectify the above situation where minors cannot receive medical help without prior consent of their guardians, have amended their legal framework regarding the age of access to health services, recognising the rights of minors to privacy and confidentiality, especially in cases involving sexual health.

- In Venezuela the Organic Law for the protection of children and adolescents, states that adolescents over 14 years of age have the right to seek and receive health care services without authorisation from their parents or guardians.[91]
- Argentina's law recognises that minors at age 14 have access to confidential contraceptive services.[92]
- Chilean law specified that in order to access sexual and reproductive health services, minors after 14 years old do not need a prior permission from their parent or guardian. This law was challenged before the Constitutional Court, and the Court's ruling stated that State's actions on sexual and reproductive health (such as the disputed provision) do not contradict the right of parents to educate their children.[93]
- The recently adopted Guatemalan law provides for access to contraceptives for everyone including adolescents.[94]
- In Mexico, the Ministry of Health established a programme on prevention of teenage pregnancy. Its main interventions are directed at promoting awareness among health service providers about the

88 UNAIDS, *Report on the Global AIDS epidemic (2010) Annex 1 Central and South America.*
89 Ibidem
90 Family Code, Article 352 (Panama)
91 Organic Law for the Protection of Children and Adolescent (1998) (T), LOPNA, Article 50 (Venezuela)
92 Reproductive Health and Responsible Procreation Law, Law 13.066 (May 28, 2003) (Argentina)
93 Ministry of Health (2007), Supreme Decree 48: Approves establishing national standards regulation of fertility.
94 Law on Universal and Equitable Access to Family Planning Services (Guatemala)

importance of their role in the prevention of unintended pregnancy, STIs and HIV; and their obligations to provide friendly sexual and reproductive health services to adolescents, with full respect for their sexual and reproductive rights. The programme also promotes family planning and guarantees the provision of emergency contraception (ages ten to 19 years old).[95]

- The National Strategy for Sexual and Reproductive Health of Adolescents in Nicaragua recognises the ability of adolescents to decide freely and autonomously about their sexual and reproductive health.[96]
- The National Plan of Public Health 2007 – 2010 in Colombia recognises adolescents and young people as subjects of rights and tend to their sexual and reproductive health, with the assumption that it is a complete physical, mental, spiritual and social condition.[97]

Despite these significant advances, some countries have inconsistent legislative and policy frameworks, and gaps in linking human rights of minors with effective HIV response.[98] In Chile and Paraguay, the age of sexual consent is unequal for heterosexual and homosexual youths: it is 18 for homosexuals and 14 or 16 for others. In Paraguay, teenage girls can have consensual sex with a male from the age of 16, but there is no minimum age for teenage boys to have consensual sex with women. A Peruvian lawyer indicated that there is a problem in the region regarding the age of sexual consent - the law considers sexual relations among adolescents as felony rape.[99]

7.2. Law enforcement practices and public health impact

During the International AIDS Conference in Mexico City in 2008, Ministers of Education and Health from Latin American and Caribbean countries adopted a "Declaration on Prevention through Education" to make quality sexuality education available in their countries. The Declaration pledges to implement intersectoral strategies, comprehensive sex education, sexual health promotion, including prevention of HIV and STIs, integral sexual education with the human rights perspective including ethical, biological, emotional, social, cultural and gender aspects, as well as issues relating to diversity, sexual orientation, and identity. The countries that signed the Declaration promised to update the contents and methodologies of their educational curricula for inclusion of comprehensive sex education before the end of 2010. By 2015, the countries pledged to adopt training programmes for teachers, incorporate the contents of the new curricula for comprehensive sexuality education, ensure that health services are youth friendly and provided with full respect for human dignity, ensure effective access to STI and HIV counselling and testing, comprehensive care of STIs, and provide education on condoms, counselling about reproductive decisions, HIV and drug and alcohol dependence treatment[100].

Even though legislation has incorporated sexuality education in some countries of the region, there are still countries with prohibitive, or nonexistent legislation regarding sex education. Although HIV, STI and teenage pregnancy prevention are considered crucial in health programmes, the education system of some Latin American countries focuses on and promotes abstinence-only based interventions among adolescents in government sexual education programmes.[101]

Only Argentina, Brazil and Mexico, report condom distribution and/or access to condoms in secondary and high schools for students between 15 and 17 years old. In Guatemala the manual "As teenagers for teenagers, reproductive health manual", which explains in detail topics such as masturbation, homosexuality,

95 Report 2007-2009, *A Mexico appropriate for Children and Adolescents*, available at http://portal.salud.gob.mx/sites/salud/descargas/pdf/difusion/informe_COIA-2007-2009.pdf

96 National Strategy on Sexual and Reproductive Health (2008), (Nicaragua), available at http://www.unfpa.org.ni/files/titulo/1296588897_ENSSR%202da.%20version.pdf

97 Ley 1122 de 2007 y el Decreto 3039, por el cual se adopta el Plan Nacional de Salud Pública 2007-2010, (Colombia).

98 Gestión y avances en el sector salud Un panorama de América latina y México. XIV Congreso de Investigación en Salud Pública Cuernavaca Morelos, 4 de marzo de 201, Mtro. Héctor Sucilla Centro Nacional para la Prevención y Control del VIH (México)./SIDA

99 Beatriz Ramírez, PROMSEX, Peru.

100 First Minister of Health and Education's Meeting to Stop HIV and STI in Latin America and the Caribbean: "Prevent with Education" available at http://data.unaids.org/pub/BaseDocument/2008/20080801_minsterdeclaration_es.pdf

101 HIV Law, Article 8 (Paraguay)

bisexuality, contraceptive use, sexual intercourse and condom use, was taken out of the curriculum. The Minister of Education decided that that the manual's content was excessive, and did not comply with the country's sex education policy[102]

Lack of participation of young people in the design and implementation of HIV programmes, lack of sufficient protection of young people's sexual and reproductive health rights, and the absence of programmes specifically tailored for adolescents and young people living with HIV, were raised as significant gaps in HIV programming in Brazil by the National Network of Teenagers and Young People Living with HIV and AIDS.[103]

102 Instituto de Estudios de la Mujer "Norma Virginia Guirola de Herrera"- CEMUJER (2003) available at http://www.angelfire.com/il/cemujer/notisasex2.html

103 Kleber Fabio Mendes, Rede Nacional de Adolescentes e Jovens Vivendo com HIV e AIDS, Brazil.

8. HIV non-disclosure, exposure and transmission

8.1. Laws

In the past, most countries in the region had HIV-specific laws criminalising HIV non-disclosure, exposure, and transmission. These laws have undergone changes due to pressure from civil society and activists, and bolstered by the UN recommendations that general criminal law, and not HIV-specific law, be used in cases of willful HIV transmission. Consequently, criminalisation of HIV transmission has been eliminated from most HIV-specific laws. However, prosecution for HIV non-disclosure, exposure or transmission is still possible by applying general criminal law provisions or public health laws. Prosecutions can be based on provisions related to endangering person's health, public health, public security, or collective security. In most Latin American countries specific mention of HIV has also been removed from public health laws[104].

Some examples of national laws that directly or indirectly criminalise HIV non-disclosure, exposure, and transmission are the following:

- In Chile, *"dissemination of pathogens in order to produce a disease"* is punishable by imprisonment and a fine.[105] Malicious spread or facilitation of the spread of a disease is punishable by imprisonment from three to eight years.
- In Panama, the punishment for spreading a contagious disease is from ten to 15 years in prison.
- In Peru, a person who knowingly spreads dangerous or contagious disease shall be punished by imprisonment from three to ten years. In case of serious injury or death of the affected party, and if the source of the infection is proved, the penalty shall be from ten to 20 years imprisonment.[106]
- In Colombia, according to the criminal code,[107] if after being informed about his/her HIV or Hepatitis B status, a person engages in practices, which can contaminate another person, or donates blood, semen, or organs, s/he shall be liable to imprisonment for three to eight years. This particular definition goes beyond the intent to cause harm, but penalises reckless behaviour.[108]

Brazil, Chile, Colombia, Cuba, Ecuador, Honduras, Panama and Uruguay, may also prosecute HIV non-disclosure, exposure and transmission using offence under the concept of: *"endangering public health by violating health regulations issued by the authority."* Brazil, Bolivia, Colombia, Ecuador, Panama, and Peru, punish intention to *"cause an epidemic."* Bolivia, Brazil, Ecuador, Guatemala, Mexico and Panama, can also use *"danger*

104 UNDP-IAPG (2010) *Comparative Legislation HIV in Latin America and the Caribbean: From a Human Rights perspective.*

105 Section 316, Crime Code, Offences and Summary Offences against Public Health (Chile)

106 Section 289, Crime Code, Crimes against Public Security/ Public Health (Peru)

107 Section 368, Crime Code, Crime against Public Health (Colombia)

108 Section 370 and 371, Crime Code, Crime against Public Health (Colombia)

of exposure" or *"spread of venereal infectious or dangerous diseases."*[109]

All HIV-specific laws require people living with HIV to inform their sexual partners of their status; in some cases this obligation extends to health care workers (doctors, nurses, dentists, etc.). A Colombian decree authorises health care workers to disclose the HIV status of a person if they consider that person to be at risk of infecting their spouse, life partner, partner or offspring.

8.2. Law enforcement practices

According to Associacao Brasileira Interdisciplinar de AIDS, Brazil may serve as a hypocritical example of the use of criminal law in cases of HIV exposure.[110] Despite the fact that it does not have specific mention of criminalisation of exposure or transmission of HIV in its criminal code, the law can still be interpreted as including this offence. Since 2000, Brazilian jurisprudence has considered consensual sexual activity of a person living with HIV, without a condom and without revealing his/her HIV-status, whether or not HIV infection occurs, as manslaughter or an attempted homicide by insidious or vicious means. This interpretation has received endorsement from investigators, prosecutors and judges and at least ten convictions in three Brazilian states have been recorded.

Brazil's criminal justice system has also interpreted sexual transmission of HIV as (a) serious bodily harm as a result of transmission (Article 129, second paragraph Penal Code), (b) injury resulting in death (Article 129, third paragraph Penal Code), (c) attempted homicide, or (d) manslaughter. Exposure to HIV may be seen as a crime that endangers the life or health of others (Article 132 of the Penal Code).

In one Brazilian case, the family of a man who died from AIDS filed a suit against a female former sex worker. The accusation was based solely on witness statements (the man alleging that he had been infected by the accused, the victim's ex-wife, the victim's brother, the victim's cousin and the sister of the accused). The investigation testified to the death of the victim and stories of betrayal by the accused and infection of other men. The woman was convicted of injury resulting in death. There was no presentation of technical evidence based on scientific data that confirmed the transmission of the virus. The proof of intent to injure and proof of causal links between the two were not thoroughly examined; despite reasonable doubt, the accused was sentenced instead of being acquitted.

In this case, the Brazilian criminal justice process failed to meet the technical requirements of establishing a criminal offence. As participants at the Regional Dialogue indicated, this broad application of criminal law violates the constitutional principle of presumption of innocence, due process, legal defence and the right to be heard.

8.3. Public health impact

It was pointed out during the Dialogue, that by engaging in sexual relations without a condom, a person living with HIV is not necessarily acting with the intent to endanger, harm or transmit STIs, serious illness or HIV, nor do they necessarily have the intent to kill. The legal assertion that people living with HIV, by engaging in sexual relations without a condom, intend to commit a criminally reprehensible act represents a discriminatory act by the State. It stigmatises persons living with HIV as criminals and danger to society. This image of persons living with HIV as potential criminals is frequently supported by popular media.[111]

The laws and practices described above criminalise people living with HIV. These policies dehumanise people living with HIV, interpreting sex without a condom as equal to the intention to transmit HIV. They

109 UNDP-IAPG (2010) *Comparative Legislation HIV in Latin America and the Caribbean: From a Human Rights perspective*

110 Information in this section was submitted to the Global Commission on HIV and the Law by Marclei da Silva Guimaraes on behalf of Associacao Brasileira Interdisciplinar de AIDS.

111 A recent publication in Mexico stated that, *"950 people with AIDS have abandoned their treatment. They roam around and are a risk to the population, reported the head of the Department of Prevention and Control of Human Immunodeficiency Virus (HIV) or AIDS. He reported that these people are hiding from the health authorities and continue spreading the disease."* 7 March, 2011, available at www.reygal.com.mx/wordpress/?p=280

push people away from health care services, marginalise persons living with HIV and increase stigma and discrimination against them. Criminalisation of HIV exposure and transmission generates a huge negative impact on HIV prevention and treatment by creating disincentives to testing, since not knowing one's status is an absolute defence against the crime of intentional transmission. As Regional Dialogue participants mentioned, it is inappropriate, inadequate and ineffective to use the criminal law as a tool to inhibit or modify sexual practices.

9. Discrimination in health care, employment and access to health services

9.1. The law and law enforcement practices

All Latin American countries have signed or ratified major human rights treaties and conventions. However, in many instances courts seldom enforce these human rights, whether due to ignorance or lack of training.

As per most constitutions in the region, all persons have the right to access to health services, as a part of the right to the enjoyment of the highest attainable level of physical, mental and social wellbeing.[112] Every person has the right to work, protection against unemployment, and protection from discrimination.[113] However, in reality there are laws and policies that limit and restrict these rights as they apply to people living with HIV; and many of these proclaimed rights are not fully implemented. As Regional Dialogue participants mentioned, there is a need to initiate discussion regarding the non-implementation of laws affecting people living with HIV in the region.

Dialogue participants repeatedly raised the non-implementation of the elemental right to equality when providing health services to people living with HIV. Direct and indirect discrimination was reported in health centres and educational facilities.[114] In addition, there are laws and policies that on their own constitute discrimination against people living with HIV or perceived to be living with HIV.

Compulsory HIV testing: Several countries of the region require mandatory pre-marital HIV testing. For example, in Panama, there are requirements of compulsory diagnostic tests for STIs including HIV in order to get married. However, in order to mitigate the impact of this article, the Ministry of Health explains that the authorised officer has discretion not to ask for the laboratory results, but should verify that the couple is aware of these results. A positive HIV test result is supposedly not an impediment to marriage. The Ministry of Health Prenuptial Health Certificate Form is to be completed and signed by a qualified physician and by the groom and the bride as acknowledgement of the results.[115]

In Honduras, according to Decree No. 147-99, HIV testing is required as a prerequisite for marriage. In the case of a pre-existing union, such tests may be performed as a request of spouses if there is a suspicion that the other may be infected, in which case a practice test would be mandatory.

Dialogue participants underlined that these practices do not protect people from HIV (as HIV may not be immediately detectable, and thus remain undetected by the test), but create a false sense of security, and

112 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", Section 10

113 Universal Declaration on Human Rights, Section 23

114 Sergio Vásquez, Ombres Association, Guatemala.

115 Law3, "About Human Immunodeficiency Virus, Acquire Immunodeficiency Syndrome and STIs", Section 6, paragraph 6.

violate the rights of people living with HIV to autonomy, integrity of a person, and the right to form a family.

Employment discrimination: Despite Venezuela's well-developed legislation related to HIV, discriminatory practices are reported in the employment and health care spheres.

For instance, despite a prohibition of discrimination in relation to the workplace, occurrences have been reported, especially at the pre-hiring stage, when employers ask candidates to submit to an HIV test. Particular contexts within which HIV-positive people cannot find employment include private security firms and health care.[116] It was reported that employment discrimination against people living with HIV persists in the Dominican Republic as businesses ask for an HIV test before signing a contract with a candidate.[117] The Network of People Living with HIV in the Dominican Republic made a strong call to look for mechanisms that will help ensure rights to access HIV prevention and treatment services in the work place. The REDVIHDA and REDBOL Foundation have undertaken several legal actions in order to protect employment and educational rights of people living with HIV in Bolivia.

Access to health services: One participant drew the attention of the meeting to homeless people, who represent 3.5% of HIV prevalence in some areas of Bolivia.[118] This section of society is often forgotten and does not receive health care and necessary treatment, as well as other components of the right to health, such as housing, food and social assistance.

It was also mentioned that HIV laws in the region have many gaps in relation to mandating health care providers to preserve a patient's confidentiality and making them responsible and accountable for non-consensual disclosure of patient's diagnosis. Non-consensual disclosure not only violates a patient's right to privacy, but may also subject that patient to discrimination, stigma, abuse and violence.

Access to essential medicines: The majority of countries in Latin America provide their citizens with free ART with the assistance from the Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM). However, gaps do exist. Civil society representatives made reference to important issues such as access to healthcare services in rural communities. According to a participant from the Building HIV Alliances in the Rural World in Central America,[119] people living with HIV in rural communities have to travel great distances to get their therapy, which is a vastly different experience from that of urban dwellers. In Colombia, rural communities do not have access to HIV testing and doctors in rural areas do not have sufficient training.

In Peru, a 2008 audit of the health system, uncovered problems with access to drugs. According to study results, frequent stock-outs of ART affected more than 60% of the health service units.[120] The supply chain of drugs in the country is designed in a very complex manner, resulting in delays in drug distribution from what could be 3 weeks to up to 7 months.

LLAVES Foundation of Honduras[121] reported that only first-line ART is available in the country. There are no diagnostic laboratories to measure the effectiveness of treatment.

According to a representative from Ecuador, civil society organisations in his country have undertaken legal action in order to achieve uninterrupted access to essential medicines. This action unfortunately did not result in immediate success. The Association for the Defense of Life in Ecuador[122] appealed to the court challenging Ministry of Health actions resulting in shortage of ART supplies. The judge in the case accepted claimants arguments and ordered the Ministry of Health to solve the problem with stock-outs and make the medicine available within 15 day of the date of the decision. However, after two months the problem persists. The Constitution establishes that if a judge ruling is not observed, the same judge can order the dismissal of the government official that has not complied, but this also did not happen. In order to solve the problem, the organisation decided to appeal to the Inter-American Commission on Human Rights.

116 Jesús Rondón, ASOVIDA, Venezuela.
117 Ramón Acevedo, REDOVIH+, Dominican Republic.
118 Juan Carlos Rejas Rivero, Bolivian network of people living with HIV (REDBOL), Bolivia.
119 Amarili Mora, Building HIV alliances in the rural world in Central America Project, Nicaragua.
120 Luisa Fernanda Cordova, Ombudsman Office, Peru.
121 Rosa Amelia González, LLAVES, Honduras.
122 Santiago Jaramillo, ASOVIDA, Ecuador

According to the NGO ASOVIDA from Venezuela, in 1999 the Supreme Court of Justice ordered the state to provide free ART and medicines for opportunistic infections and specialised tests, for all people living with HIV in the country. Nevertheless, that order has not been fully implemented. In 2010 and 2011 alone, seven cases of stock-outs of ART have been reported, amounting to violation to the right of health.[123]

Indeed, countries in the region do their best to use flexibilities allowed by the current global intellectual property regime – the Trade-related Aspects of Intellectual Property Rights (TRIPS) Agreement – in order to provide their population with access to affordable generic versions of ART. As mentioned during the Regional Dialogue, in Ecuador[124] intellectual property laws do not need to constitute limitations on access to medicines – there is a public policy that a compulsory license can be issued, if it is in the interests of society.

In October 2009, the President of Ecuador signed a decree allowing compulsory licenses in this country. The President justified his decision based on the guarantee of the right to health in the Ecuadorean Constitution, as well as Article 31 of the TRIPS Agreement and the Doha Declaration on Public Health. In April 2010 IEPI, the Ecuadorean intellectual property office granted its first compulsory license for the ART combination lopinavir/ ritonavir, to Eskegroup, a local distributor for the Indian generic pharmaceutical Cipla. The compulsory license is valid until 30 November 2014 (the date of patent's expiration).

As a participant from Brazil mentioned, Brazil has a policy that guarantees people the right to essential medicines. Cost of therapy is financed from the national budget without grants from the GFATM. 200,000 people have access to treatment in Brazil, and 71 of the generic drugs have compulsory licenses on them.[125] This accomplishment required bold actions on the part of Brazil's leaders, including the signing of Presidential Decree 6108, declaring the annulment of a patent on Efavirenz of Merck, Sharp & Dohme, based on the need to protect public interest. Efavirenz was at that time the most widely used HIV drug in Brazil with 75,000 people using it.[126]

Dialogue participants talked about many proactive petitions, litigation and other methods used by civil society to ensure access to essential medicines and use of TRIPS flexibilities, and fighting against unfavourable for public health free trade agreements.

In several Latin American countries, access to accessible medicine had been achieved as a result of legal actions undertaken in international organisations and courts. In the case reported by the representatives of Bolivia in 2002, the Inter-American Commission on Human Rights made a decision in favour of people living with HIV in Bolivia, acknowledging their right to access to ART. As a result, the government included guarantees of access to generic drugs in national legislation.[127] The REDVIHDA and REDBOL Foundation in Bolivia has filed 23 complaints against the Ministry of Health to ensure the provision of ART.

9.2. Best practices and recommendations

Positive examples of anti-discrimination legislation and policies mentioned by the participants include the new Constitution of Ecuador, which not only mentions the prohibition of any discrimination including on the grounds of HIV and sexual orientation, but explicitly includes sexual health and reproductive health services being provided by the State. Other Constitutions like Brazil, Colombia, Mexico, Paraguay and Peru recognise the right of every person to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so.

Regional Dialogue participants aforementioned litigation, and also direct lobbying and public education as a means to achieve improved access to essential medicines. One case was recounted by Germán Humberto Rincón Perfetti from Colombia,[128] who reported that as a result of civil society lobbying and public pressure

123 Written submission of Jesús Rondón Gallardo, Asociación por la Vida - ASOVIDA, Venezuela
124 Andres Ycaza, President, Ecuadorian Institute for Intellectual Property (IEPI), Ecuador
125 Dirceu Greco MD, Ministry of Health, Health Surveillance Secretariat, Brazil
126 ICEX, Spanish Foreign Trade Institute, Social and Economic Office, Embassy of Spain in Brasilia
127 Julio Cesar Aguilera Hurtado, REDVIHDA and REDBOL Foundation, Bolivia.
128 Written submission of Germán Humberto Rincón Perfetti, Colombia.

in mass media, the Ministry of Social Protection managed to negotiate a considerable price reduction with Abbott Laboratories to reduce the price of Kaletra from US$ 3,000 to US$ 1,000 per person annually.

Dialogue participants recommended that training and education on human rights and non-discrimination for law students, lawyers, judiciary, public prosecutor's offices, public defenders, and other government officials could have a strong impact on the effective implementation of the existing regulations, and would help in the mainstreaming of non-discrimination policies, and international human rights standards.

10. Prisons

10.1. Laws

HIV in prisons is a major concern for governments, especially in relation to tuberculosis and hepatitis co-infection.[129] Currently, Latin American countries have a low HIV prevalence in prisons, but considering the sub-standard conditions in many of its correctional facilities, this situation could rapidly change.[130] Overall, most Latin American HIV laws include prisoners as a priority group, guaranteeing access to treatment, prevention, education and information, as well as prohibiting compulsory HIV testing.

In Chile, HIV testing for prisoners is confidential and voluntary, requiring written consent and pre- and post-test counselling.[131] Guatemala treats prisoners as people in special situations, along with people living with HIV, and people in mental facilities.[132] In Colombia, the law states that, *"prisoners shall not be required to undergo laboratory tests to detect infection with Human Immunodeficiency Virus (HIV)."*[133] In the Dominican Republic[134] and Honduras *"prisoners cannot be subject to mandatory testing, except those whose judicial process warrants, maintaining confidentiality of the result."* It establishes prisoners' right to receive medical care in hospitals in conditions that do not impair their dignity or obstruct their treatment. Nicaragua[135] ensures prisoners' rights inherent in the human condition of people living with HIV. In their legislations, Costa Rica[136] and Panama[137] have dedicated a chapter entitled *"Rights and Care for prisoners"* to ensure not only rights for prisoners, including the right to be attended by specialists and to get medication, but also obligations for custodians. Uruguay[138] includes universal coverage of ART to all people with AIDS in both the public and private sector. There is also an agreement that provides medical care to detainees, including ART and viral load monitoring.

129 The Monitoring Centre for HIV and Prisons in Latin America and the Caribbean. See www.observatoriovihycarceles.org.

130 UNODC-ILANUD (2008), *Rapid diagnosis of HIV / AIDS in the penitentiary systems of Chile, Costa Rica, Ecuador, Guatemala and Dominican Republic. Prevention, Care, Treatment and Support Programme for people living with HIV / AIDS in Prison Systems in Latin America*, available at http://www.unodc.org/documents/hiv-aids/publications/Diagnostico_Chile_Ecua._CR_Guate_y_Re._Dom_2008.pdf

131 Section 5, HIV Prevention Law, Number 19779 (Chile)

132 Section 47, General Law to combat HIV and AIDS, and the promotion, protection and defence of Human Rights (Guatemala)

133 Act 972 of 2005 to take measures by the Colombian state, to improve care of the population suffering from ruinous and catastrophic diseases, especially HIV/AIDS (Colombia)

134 Act 55-93 (Dominican Republic)

135 Section 20, Act 238. Promotion, Protection and Defense of Human Rights related to AIDS (Nicaragua)

136 General Law on HIV / AIDS in the Republic of Costa Rica. ACT 7771 (Costa Rica)

137 General Law on STI, HIV and AIDS, Act 3, 2001 (Panama)

138 Resolution 171/1997 (Uruguay)

10.2. Law enforcement practices

Regional Dialogue participants identified overcrowding and general unhygienic conditions in prisons, widely spread sexual and other violence, sub-standard or lack of access to health care services (including harm reduction measures such as condoms, needle/ syringe exchange, OST and drug dependence treatment), and interruptions in ART as the main problems in relation to HIV in prisons and detention facilities. Indeed, although many laws in the region mandate health care to prisoners living with HIV including ART, overcrowding, malnutrition and poor hygiene conditions do not guarantee adherence to medication.

A UNDP – IAPG study in several countries of the region demonstrated that prison authorities do not take all necessary measures, including adequate staffing, effective surveillance and appropriate disciplinary measures, to protect prisoners from rape, sexual violence and coercion. Just one country (Bolivia), provides condoms to prisoners as part of prevention programmes. Panama is one of the few countries that provides for compassionate early release of prisoners in the final stage of AIDS.[139]

139 Other countries include Argentina, Chile, Colombia, Dominican Republic, Ecuador, Guatemala, Nicaragua, Paraguay, Peru, and Venezuela.

11. Closing remarks

"If we do not have laws that give an assured response to HIV, if our response is not based on human rights, humanitarian considerations, modern evidence and science, we are not going to have great progress in our work on human rights issues, on our efforts to eliminate all repression by the police or discrimination and stereotyping by general public of people living with HIV.

We want a more egalitarian and just society. What is special is not what gives us rights. We have laws in our countries that have contradictions, we have to denounce these contradictions and change them. The law is not enough, but without law reform there is no progress. If we do not have enforcement power, punishing power, if we do not have the law on our side, progress will be slow. We have to fight dogmas and religious prejudice that endanger lives. We have to talk about life, dignity and rights with our head held high because we are defending what is just and ethical.

Each one of the comments uttered at this Dialogue has great value and I will transmit each of your words to the Commission meetings in order for the Commission's report to become a document that will have all the force a United Nations document can have."

- Ana Helena Chacón Echeverría, Commissioner, Global Commission on HIV and the Law

Proposing concrete steps for follow-up to the Regional Dialogue, Maria Tallarico, HIV Practice Leader for UNDP Latin America and the Caribbean Regional Service Centre, concluded the meeting by thanking participants and reminding them that the meeting would greatly inform the Global Commission on HIV and the Law whose task was to listen to civil society and government experts and thereby develop its recommendations and report. She added that UNDP planned to follow up by supporting and working with ten countries to progress on issues discussed at the Regional Dialogue by 2012 with progressive expansion to work with 20 countries by 2015. The experience of law and its enforcement by civil society in this region is a good experience to share with the rest of the world, including lessons learned, good and bad experiences, achievements and disappointments. She pointed out that many of countries whose citizens were heard at the Regional Dialogue are leaving with plans for immediate and concrete actions and this was the added value of this process envisioned by the Commission.

Annex I: Participant list

COMMISSIONERS

Fernando Henrique Cardoso	Brazil
Stephen Lewis	Canada
Ana Helena Chacon-Echeverria	Costa Rica

CIVIL SOCIETY PARTICIPANTS

NAME	ORGANIZATION	COUNTRY	THEME
Alejandro Corda	Intercambios Civil Association	Argentina	HIV, Law and use of drugs
Marcela Romero	Latin American Trans Network (Redlactrans)	Argentina	Sexual Diversity
Ignacio Maglio	Huesped Foundation	Argentina	HIV and the Law
Elena Eva Reynaga	Latin America and the Caribbean Sex workers Network (RedTraSex)	Argentina	Sex work
Gracia Violeta Ross Quiroga	Network of People living with HIV in Bolivia (REDBOL)	Bolivia	HIV and the Law
Julio Cesar Aguilera Hurtado	REDVIHDA y REDBOL Foundation	Bolivia	Access to treatment
Juan Carlos Rejas Rivero	Network of People living with HIV in Bolivia (REDBOL)	Bolivia	HIV and the Law
ALBERTO MOSCOSO	ADESPROC LIBERTAD GLBT	Bolivia	Sexual Diversity
Marcela Fogaca Vieira	ConectasDireitosHumanos	Brazil	Intelectual property
Marclei da Silva Guimaraes	Associação Brasileira Interdisciplinar de AIDS	Brazil	Criminalization of HIV transmission
Gilvan Nunes	Grupo de Apoio à Prevenção à AIDS da Bahia	Brazil	HIV and the Law
Perceval Nunes de Carvalho Filho	STVBrasil – SOCIEDADE TERRA VIVA	Brazil	HumanRights
Kleber Fabio Méndes	Rede Nacional de Adolescentes e JovensVivendocom HIV e AIDS	Brazil	Youth
EzioTahora Santos Filho	REDE TB – RED brasileña de investigaciones en tuberculosis	Brazil	Access to treatment
Roberto Lizama	Movement for Sexual Diversity (MUMS)	Chile	HIV and the Law
Eduardo Ubilla	Sexual Minority Movement Chile (Movilh)	Chile	Discrimination
Maria Eugenia Calvin Perez	Gender and Health Equality Observatory(OEGS)	Chile	Women's Rights
Patricio Novoa	Vivo Positivo	Chile	Women's Rights

Leonardo Nilo Arenas Obando	Prisons, AIDS and lock up NGOs Coordinator –COASCE-	Chile	HIV and the Law, Prisons
Germán Humberto Rincón Perfetti	RincónPerfetti Attorneys & Consultants	Colombia	Intelectual property
Valentina Riascos Sanchez	Santamaría Foundation	Colombia	Transgender rights
David Morales Alba	Positive Communication	Colombia	Intelectual property
Oswaldo Rada	Senderos Mutual Association	Colombia	Men who have sex with men
Monika Galeano Velasco	Ethics and Human Rights specialized Attorney	Colombia	HIV and the Law
Carlos Alfaro Villegas	BITRANSG	Costa Rica	Sexual Diversity
José Jonás Hernández Cabalceta	ASOVIHSIDA/Demographics Associationof Costa Rica	Costa Rica	HIV and the Law
Santiago Jaramillo	Coalition of people living with HIV	Ecuador	
Maria Isabel Villegas	Christian Youth Association	El Salvador	HIV and the Law
Mónica Hernandez Rodriguez	Latina American Trans Network (RedLacTrans)	El Salvador	Transgender rights
Joel Estiwen Ambrosio Arrecis	Legal Network and Human Rights and HIV Observatory	Guatemala	Humans' Rights
Iris Isabel López Velásquez(MVV)	CONASIDA	Guatemala	HIV and the Law
Johana Esmeralda	OTRANS-Queens of the Night	Guatemala	Transgender rights
Sergio Vásquez	Ombres Association	Guatemala	Discrimination
Herbert Hernandez	Lambda	Guatemala	Discrimination
Telma Sánchez Aguilar	Friends against AIDS Collective	Guatemala	Sexual Diversity
Sandra Ramirez	Fernando Iturbide Foundation	Guatemala	HIV and the Law
Rosa Amelia González	Llanto, Valor y EsfuerzoFoundation – LLAVES	Honduras	Women's Rights
Taysa Fernanda	Unidad Color Rosa Collective	Honduras	Criminalization
Sandra Antonia Zambrano Munguía	Association for a better life of the Infected and Affected by HIV/AIDS in Honduras (APUVIMEH)	Honduras	Sexual Diversity
Claudia Spellmant Medina	TTT/REDLACTRANS Collective	Honduras	Transgender rights
Mario CutbertoLópez Rojas	VIH…ctoria A. C. Association	Mexico	Sexual Diversity
Aram Barra	ESPOLEA –Drug Policy and Risk Reduction Program–HIV/AIDS and Gender Program	Mexico	Drug use and youth
Amarili Mora		Nicaragua	Rural and indigenous population

Martha Lorena Villanueva	Nicaraguan Group of Lesbians SAFO	Nicaragua	Rights and Sexual Diversity
Silvia Martinez	Redtrans -BR Mosaico Productions	Nicaragua	Transgender rights
Venus Tejada Fernández	PanamenianAssociation of TRANS	Panama	Transgender rights
Juana Ramona Torres	Latin America and the Caribbean sex workers Network (RedTraSex)	Panama	Transgender rights and sex work
María José Rivas Vera	SOMOSGAY	Paraguay	HIV and the Law
Julio Cesar Cruz Requenes	PROSA Association	Peru	HIV and the Law
Rita del Rosario Renteria Ruiz	AGORA / Center for the promotion and defense of fundamental rights and generational studies	Peru	Women's Rights
Beatriz May Ling Ramirez Huaroto	PROMSEX	Peru	Youth
Ramón Acevedo	REDOVIH+	Dominican Republic	Humans' Rights
Lic. Salvador E. Estepan A.	Independent consultant	Dominican Republic	HIV and the Law
Maria de los Ángeles	Institute for legal and social studies of Uruguay (IELSUR)	Uruguay	HIV and the Law
Jesús Rondón	Association for the Defense of Life (ASOVIDA)	Venezuela	Human Rights
Diana Peñarete	Consultant	Colombia	Human Rights
Renate Koch	Citizens Action against AIDS (ACCSI)	Venezuela	Human Rights

GOVERNMENT PARTICIPANTS

NAME	SECTOR	COUNTRY
Pablo Perel	Supreme Court Buenos Aires	Argentina
Dr. Dirceu Greco	Ministry of Health Brazil, Health surveillance Department	Brazil
Ingrid Zabala Escobar	Member of parliament	Bolivia
Alfonso de UrrestiLongton	Member of parliament	Chile
Coronel Jose Alejandro Garcia Romero	Health Directorship, Police	Colombia
Ricardo Luque	Ministry of Social Protection, Public Health Directorship	Colombia
Luis Gerardo Falla	Deputy Public Defender	Costa Rica
Rosaida Ochoa	National Centre for STI/HIV/AIDS Prevention	Cuba
Juan Carlos Valdés Triguero	Legal counselor. Ministry of Health	Cuba

Andrés Ycaza	President of the EcuadorianIntellectual property Institute (IEPI)	Ecuador
Gina Godoy	Member of parliament	Ecuador
Jaime Ernesto Argueta Medina	NationalAssociation of Positive People"Vida Nueva" (Procuraduría para la defensa de los Derechos Humanos/Ombudsman Office)	El Salvador
ZoilaQuijada	Member of parliament	El Salvador
Antonio Aguilar Procuraduría de Derechos Humanos (Ombudsman Office)	El Salvador	
Barbara Romero Rodriguez	Sexual Diversity Directorship Ombudsman Office El Salvador	
Delia Emilda Back Alvarado	Member of parliament	Guatemala
Jenny Almendares	Deputy Minister of Human Rights	Honduras
Jorge Roberto Ordóñez Escobar	Supreme CourtSecretaryforStudies and Accounts	Mexico
Lic. Lorena Goslinga Ramirez	Supreme Court Secretary for Studies and Accounts	Mexico
Daniel Ponce Vásquez	Deputy General DirectorCONAPRED	Mexico
Lic. Samira Montiel	Special Attorney General for Sexual Diversity	Nicaragua
Alan Rivera	Member of parliament	Nicaragua
Marilyn Vallarino	Member of parliament	Panama
Carmen Rudas	Director for the Penitentiary Healthcare Department	Panama
Dra. Mercedes Buongermini	Magistrate/ Gender Department Coordinator of the Supreme Court	Paraguay
Dra. Laura Cerón Aragón	Drug policy, General Drug Directorship (DIGEMID)	Peru
YeniOtilió	Ministry of Health	Peru
Luisa Fernanda Córdova	Ombudsman Office	Peru
Roxanna Reyes Dra. Erika Suero	Magistrate Dominican Republic Ministry of Labor, Presidential AIDS Council (COPRESIDA)	Dominican Republic
Álvaro Garcé	Member of parliament	Uruguay
Deysi Matos	Ministerio del Poder Popular para la Salud (Ministry of Health)	Venezuela

COMMISSIONER SECRETARIAT

MandeepDhaliwal	USA
Vivek Divan	USA
Brianna Harrison	USA

David Ruiz	Panama
Maria Tallarico	Panama

OBSERVERS

NAME	ORGANIZATION	COUNTRY
César Núñez	United Nations Joint Program on HIV/AIDS (UNAIDS)	Panama
HegeWagan	United Nations Joint Program on HIV/AIDS (UNAIDS)	Panama
Susan Timberlake	United Nations Joint Program on HIV/AIDS (UNAIDS)	Switzerland
Olga Pérez	International Development and the Law Organization (IDLO)	Italy
AnaisMalbrand	United Nations Development Program (UNDP)	Chile
Ruth Hernández	United Nations Development Program (UNDP)	Dominican Republic
JoaquimFernández	United Nations Development Program (UNDP)	Brazil
Manuel Irizar	United Nations Development Program (UNDP)	Argentina
Claudia Herlt	Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)	Brazil
Eric Carlson	International Labor Organization (ILO)	
Ana MaríaBejar	International HIV/AIDS Alliance	United Kingdom
Nara Santos	United Nations Office against Drugs and Crime (UNODC)	Panama
Daniel De Castro	United Nations Development Program (UNDP) Communications Officer	Brazil
Gladys Almeida	Grupo de Apoio à Prevenção à AIDS da Bahia	Brazil
Maria Da Conceicao Alves Barbosa	Coordenadora do centro de referencia emDireitos Humanos	Brazil
Patrick Herbert	The Global Forum on MSM & HIV (MSMGF)	USA

Annex II: Written application list

APPLICATION	COUNTRY	NAME	ORGANIZATION
LA1	Peru	Julio César Cruz Requenes	Prosa Association
LA2	Mexico	David Fernández Uribe	Individual
LA3	Argentina	Ignacio Maglio	Huesped Foundation
LA4	Chile	Ramón Gómez Roa	Homosexual Integration and Liberation Movement(Movilh)
LA5	Costa Rica	Alberto Cabezas Villalobos	FundacionMundialDejameVivir en Paz (Global let me live in peace Foundation)
LA6	Dominican Republic	Nairovi Castillo	Trans andTransvestitesand Sex Workers Committee (COTRAVETD)
LA7	Venezuela	JesúsRondón Gallardo	Asociación por La Vida (ASOVIDA)
LA8	Honduras	Sandra Antonia ZambranoMunguia	APUVIMEH/Association for a better life of the Infected and Affected by HIV/AIDS in Honduras
LA9	Costa Rica	Luis Gerardo Mairena Rodríguez	Michael Vasquez Foundation
LA10	Costa Rica	Carlos Alfaro Villegas	BITRANSG Association (Bisexuals, transgender and gays)
LA11	Nicaragua	Silvia Martínez	REDTRANS – BR Mosaico Productions
LA12	Colombia		Individual
LA13	Peru	Luisa Fernanda Córdova Vera	Attorney Generals Office Peru
LA14	Argentina	Alejandro Corda	IntercambiosCivil Association
LA15	Colombia	Diego Leonardo Mora	Radio Diversia Foundation
LA16	Honduras	Letis Hernández Cruz	National Association of people living with HIV in Honduras (ASONAPVSIDAH)
LA17	Panama	Venus Tejada Fernández	Panamenian Trans Association (APPT)
LA18	El Salvador	María Isabel Villegas	Christian Youth Association El Salvador
LA19	Panama	Dulce Ana	Latin American and the Caribbean sex workers network (RedTraSex)
LA20	Bolivia	Julio Cesar Aguilera Hurtado	REDVIHDA and REDBOL Foundation (Bolivian Network of people living with HIV, Bolivia)
LA21	Nicaragua	Martha Lorena Villanueva Villanueva	Nicaraguan Group of lesbian women (SAFO)

LA22		Confidential	Latin American and the Caribbean sex workers network(RedTraSex)
LA23	Argentina	Mabel Bianco	Women's Studies and Research Foundation (FEIM)
LA24	Bolivia	ADESPROC LIBERTAD GLBT	ADESPROC LIBERTAD GLBT
LA25	Nicaragua	AngelSolval, Vanessa Morales,	
Amarilí Mora	Building HIV alliances in the Central American rural World Project		
LA26	Brazil	Gladys Almeida / GilvanNunes e OséiasCerqueira	Grupo de Apoio à Prevenção à AIDS da Bahia
LA27		confidential	
LA28	Guatemala	Telma Sánchez Aguilar	Friends against AIDSCollective
LA29	Guatemala	Herbert Hernández	LAMBDA
LA30	Guatemala	Luis Zapeta Mazariegos, Johana Ramírez	Trans Reinas de la NocheOrganization (OTRANS)
LA31	Bolivia	Juan Carlos RejasRivero	Un nuevo camino association (ASUNCAMI)
LA32		Confidential	Latin America and the Caribbean Trans Association (REDLACTRANS)
LA33	Guatemala	Joel EstiwenAmbrosioArrecis	Legal network and human rights watch and HIV
LA34	Brazil	Marclei Da Silva Guimaraes	ASSOCIAÇÃO BRASILEIRA INTERDISCIPLINAR DE AIDS
LA35	Brazil	Marcela Fogaça Vieira	ConectasDereitosHumanos
LA36	Honduras	Rosa Amelia González	Llanto, valor y esfuerzo (LLAVES)
LA37	Colombia	MónikaGaleano Velasco	Individual
LA38	Chile	María Eugenia Calvin Pérez	EPES Foundation and Gender Equality in Health Observatory (OEGS)
LA39	Guatemala	Sergio Vásquez	"OMBRES"Association
LA40	Dominican Republic	Ramón Acevedo	Dominican Network of people living with HIV (REDOVIH+)
LA41	Mexico	Mario CutbertoLópez Rojas	VIH…ctoria A. C. Foundation
LA42	El Salvador	Jaime Ernesto Argueta Medina	State attorney's office for the defense of human rights (Procuraduría para la defensa de los Derechos Humanos)
LA43	Colombia	ValentinaRiascos Sánchez	Santamaria Foundation

LA44	Peru	Rita del Rosario Rentería Ruiz	AGORA / Center for the promotion and defense of fundamental rights and generational studies
LA45	Nicaragua	Julio Cesar Mena Espinoza	Nicaraguan Association of positive people living fighting for life (ANICP +VIDA)
LA46	Dominican Republic	Félix Reyes	National Network of Youth living with HIV/AIDS (REDNAJCER)
LA47	Honduras	Claudia Spellmant Medina	TTT. REDLACTRANS Collective
LA48	Colombia	OswaldoRada	SENDEROS ASOCIACION MUTUAL
LA49	Chile	LukasBerredo y Fernando Muñoz	Movement for Sexual Diversity (MUMS)
LA50	United States of America	Monica ArangoOlaya y Suzannah Phillips	Center for Reproductive Rights
LA51	Italia	Olga Lucía Pérez	International Development Law Organization
LA52	Panama	Juana Ramona Torres	Mujeres con dignidad a vivirpor Panamá (Women with dignity living for Panama)
LA53	Nicaragua	Confidential	
LA54	Costa Rica	Carlos Alfaro	ASOCIACION BITRANSG
LA55	Brazil	PERCEVAL NUNES DE CARVALHO FILHO	SOCIEDADE TERRA VIVA (STV)
LA56	Costa Rica	José Jonás Hernández Cabalceta	ASOVIHSIDA
LA57	Nicaragua	Johan Alberto MayorgaOcampo	Individual
LA58	United Kingdom	Ana Maria Bejar	International AIDS Alliance
LA59	Dominican Republic	Salvador E. Estepan A.	Individual
LA60	Guatemala	Carlos Roberto Valdes Barrios	PROYECTO UNIDOS –ASI-
LA61	Honduras	Confidential	
LA62	Paraguay	Juan Godoy Arévalos	Libertad y Unión de Choferes en Acción. (LUCHA). (Federación de Sindicatos de Trabajadores del Transporte)
LA63	Uruguay	Gabriela Olivera	Secretaría Nacional de Drogas (National Secretariat on Drugs)
LA64	Costa Rica	United Nations Office on Drug and Crime - UNODC	United Nations Office on Drug and Crime - UNODC

LA65	Chile	Leonardo Arenas Obano	Coordinadora de ONGs de las Américas sobre SIDA, carcel y encierro- (COASCE) – NGO working with prisoners and AIDS
LA66	Nicaragua	Ramón Eugenio Rodríguez González	Individual
LA67	Bolivia	GraciaVioleta Ross Quiroga	Bolivian Network of people living with HIV
LA68	Colombia	David Morales Alba, ComunicaciónPositiva	Positive Communications
LA69	Paraguay	María José Rivas Vera	SOMOSGAY
LA70	Honduras	Confidential	
LA71	Guatemala	Iris Isabel LópezVelásquez	CONASIDA
LA72	Costa Rica	Gustavo Chinchilla	Individual
LA73	Colombia	Luz Marina Umbasia Bernal	Colombian Civil Society Organizations
LA74	Peru	Beatriz May Ling RamírezHuaroto	Centre for the Promotion and Defense of Sexual and Reproductive Rights (PROMSEX)
LA75	Guatemala	Alma de León	CIAT – ITPC
LA76	Brazil	Paula Vita Decotelli	LASER/DENSP/ENSP/FIOCRUZ – National School of Public Health
LA77	Bolivia	Frank EvelioArteaga Flores	ObservatorioJurídico de VIH y Derechos, ComitéNacional de Acceso Universal para GBT y HSH (Legal Observatory on HIV and Rights, National Committee for Universal Access for LGBT and MSM)

ANNEX III: Legal System in Latin America

The legal system in Latin America is based on written codes, known as Continental Legal System or Civil Law System; it is based on bylaws (regulations) coming from the Legislative and Executive Branch. These bylaws are interpreted and applied by the Justice Branch.

The legal rule is generic, comes from the law and is applied case by case by the courts. The sources for this are the Constitution, law, customs, the legal act, and general principles of law and doctrine.

Legal ordinance is hierarchical and graduated with the Constitution as the supreme rule of the State under which are all the other laws, bylaws, ordinances, government general dispositions, decrees, administrative acts, etc.

In this Region the Civil, Penal, Legal, Family, Administrative, Health, Labor and Commerce Codes among others are the rule.

Global Commission on HIV and the Law - Secretariat
UNDP, HIV/AIDS Practice
Bureau for Development Policy
304 East 45th Street, FF-1180, New York, NY 10017
Tel: (212) 906 6590 | Fax: (212) 906 5023

June 2012