

# Punitive laws hindering the HIV response in Asia and the Pacific (October 2014)

	Has punitive law Contradictory information Does not have punitive law Not illegal (generally not prohibited but exceptions apply) No information available	MEN WHO HAVE SEX WITH MEN	SEX WORKERS	PEOPLE WHO USE DRUGS	PEOPLE LIVING WITH HIV		
		Reported to criminalize same-sex sexual activities between consenting adult males	Reported to criminalize sex work in private	Reported to maintain compulsory detention centres for people who use drugs	Reported to impose the death penalty for drug-related offences	Reported to maintain some form of restriction on entry, stay and residence on the basis of HIV status	Reported to specifically criminalize HIV transmission or exposure
South and South-West Asia							
Afghanistan	●	●	●	●	●		
Bangladesh	●	●	●	●	●		
Bhutan	●	●	●	●	●		
India	●	●	●	●	●		
Maldives	●	●	●	●	●		
Nepal	●	●	●	●	●		
Pakistan	●	●	●	●	●		
Sri Lanka	●	●	●	●	●		
East and North-East Asia							
China	●	●	●	●	●		
Japan	●	●	●	●	●		
Mongolia	●	●	●	●	●		
People's Democratic Republic of Korea	●	●	●	●	●		
Republic of Korea	●	●	●	●	●		
South-East Asia							
Brunei Darussalam	●	●	●	●	●		
Cambodia	●	●	●	●	●		
Indonesia	●	●	●	●	●		
Lao People's Democratic Republic	●	●	●	●	●		
Malaysia	●	●	●	●	●		
Myanmar	●	●	●	●	●		
Philippines	●	●	●	●	●		
Singapore	●	●	●	●	●		
Thailand	●	●	●	●	●		
Timor-Leste	●	●	●	●	●		
Viet Nam	●	●	●	●	●		
Pacific							
Australia	●	●	●	●	●		
Fiji	●	●	●	●	●		
Kiribati	●	●	●	●	●		
Marshall Islands	●	●	●	●	●		
Micronesia, Federated States of	●	●	●	●	●		
Nauru	●	●	●	●	●		
New Zealand	●	●	●	●	●		
Palau	●	●	●	●	●		
Papua New Guinea	●	●	●	●	●		
Samoa	●	●	●	●	●		
Solomon Islands	●	●	●	●	●		
Tonga	●	●	●	●	●		
Tuvalu	●	●	●	●	●		
Vanuatu	●	●	●	●	●		
<b>Totals (of 38 Member States)</b>		<b>18</b>	<b>18</b>	<b>33</b>	<b>15</b>	<b>10</b>	<b>10</b>

## Recent progress towards zero discrimination in Asia and the Pacific

Punitive approaches to sex work, drug use and sexual relations between men; criminalization of HIV transmission; and enforcement of restrictions on entry, stay and residence against people living with HIV hinder access to HIV prevention and treatment services, and can contribute to the increase of HIV-related stigma and discrimination. Over the past years, over 10 countries in Asia and the Pacific have removed or revised a number of such punitive laws or policies. These actions are helping to enable more people to access HIV services.

### China

#### Removed HIV-related restrictions on entry, stay and residence

The Government of the People's Republic of China lifted the HIV restrictions on entry, stay and residence in April 2010. With this reform, China joined a growing list of countries that are aligning migration laws and policies with international public health standards.

### China

#### Eliminated policy on re-education of sex workers through labour

On November 15 2013, China followed up 2012 changes to some local laws with a national announcement that re-education through labour would be ended. Previously this form of punishment had been applied to sex workers and their clients, among others. China's re-education through labour system allowed police to sentence people to forced labour without trial for minor crimes. The November 2013 announcement potentially indicates a step towards ending punitive approaches to sex work in the country.

### China (Guangdong)

#### Removed restrictions preventing people living with HIV from being employed as teachers

In 2013, restrictions preventing people living with HIV from being employed as teachers in the province's schools were removed, as well as restrictions on people with other STIs entering the teaching profession.

### Fiji

#### Decriminalized sex between men

Fiji became the first Pacific Island nation with sodomy laws to formally decriminalize sex between men when it passed the Fiji National Crimes Decree in February 2010. It is expected that the elimination of this punitive law will help reduce stigma and discrimination on grounds of sexual orientation, which experts and civil society claim hinder access to HIV services by men who have sex with men in Fiji.

### Fiji

#### Eliminated HIV-related restrictions on entry, stay and residence and specific criminalization of HIV transmission

In August 2011, the Government of Fiji removed all restrictions on entry, stay or residence based on HIV status. Fiji also removed HIV-specific criminal offences for HIV transmission or exposure on the basis that, as prosecutions could occur under general criminal laws, there was no need to provide an HIV-specific offence. The reforms (made through an amendment to the HIV/AIDS Decree) followed a review of the Decree and consultations between government, UNAIDS and other partners including civil society.

### India

#### Progress made for transgender people

In April 2014, India's Supreme Court decided to grant transgender people the right to formal recognition as a third gender. This landmark decision not only introduces the third gender recognition, but also gives transgender people access to the same rights to social welfare schemes as other minority groups in the country. Despite this progress, there are still challenges related to sexual orientation and gender identity issues, including the Supreme Court decision in December 2013 to reinstate Section 377 of the Indian Penal Code, which provides for the criminalization of same-sex conduct.

### Indonesia, Malaysia, and Thailand

#### Issued compulsory licenses to increase access to affordable antiretroviral medicines

Since 2004, and most recently in October 2012, three countries in the region (Indonesia, Malaysia and Thailand) have issued compulsory licenses or other government use orders for the production of antiretroviral medicines, thereby increasing the availability of affordable treatment for many people living with HIV.

### Malaysia

#### Moving away from punitive approaches to drug use

Although some compulsory drug detention centres still exist in Malaysia, the leadership of the Malaysian Government is setting the pace in the region for evidence-based drug dependence treatment and policy reform, thereby strengthening its HIV response. In response to high drug-use relapse rates associated with compulsory detention of people who use drugs, the Government began gradually to introduce a number of voluntary and community based treatment services in 2010 through innovative open access clinics, called Cure and Care 1 Malaysia clinics. Since then, Malaysia has made considerable progress in the provision of voluntary drug treatment services. Malaysia is also supporting other countries in the region to show similar leadership through hosting high-level delegations from Viet Nam, Cambodia, Myanmar and Thailand to learn more about the innovative methods applied and the strategies developed to build political commitment for reform.

### Mongolia

#### Eliminated HIV-related restrictions on entry, stay and residence and other punitive laws

In December 2012, the Mongolian Parliament passed the Law on Prevention of Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome. The new law, which took effect on January 15, 2013, enforces zero tolerance of HIV-related stigma and discrimination. Among the reforms contained in the

new law, all HIV-related travel restrictions on entry, stay and residence have been removed, meaning foreigners applying for residency visas are no longer required to disclose their status or face deportation if they are found to be HIV positive. The law also removed previous employment restrictions that prevented HIV positive people from undertaking certain jobs, including in the food industry. The law also provides for the establishment of a multi-sectoral body to be comprised of government, civil society and private sector representatives to oversee the country's HIV and AIDS efforts and help put in place the reforms.

### Nepal

#### Strengthened rights to protection for lesbian, gay, bisexual and transgender people

In November 2008, Nepal's Supreme Court ruled in favour of guaranteeing full rights to lesbian, gay, bisexual and transgender people as 'natural persons' under the law, and directed the Government of Nepal to enact new laws and amend all discriminatory laws so that all individuals with different sexual orientations and gender identities can exercise rights equal to other citizens of Nepal. It is expected that these changes will create a more enabling environment for access to HIV services by people of all sexual orientations and gender identities.

### Pakistan

#### Transgender recognized

In 2009, Pakistan's Supreme Court issued an order recognizing the civil rights of transgender persons by including them in population registration under the status of a third gender. National identity cards can now display transgender as a gender category. The changes give hope for enhanced protection of fundamental rights and citizen entitlements including improvement in access to voting rights, employment, health care (including HIV services), education, inheritance and social welfare nets. However, there are significant challenges to the implementation of this measure that need to be addressed if concrete benefits are to be generated, particularly as same sex sexual relations are still prohibited in Pakistan.

### Philippines

#### National Human Rights Institution engaged to achieve zero discrimination; new protective laws enacted

In 2012, the Philippine Commission on Human Rights (CHR) committed to align its goals with the National HIV objectives of Zero Transmission, Zero Deaths and Zero Discrimination. Under the leadership of the Chair and with support from development partners, the CHR's HIV Working Group developed a Plan of Action with three priority areas:

- Development of an HIV policy to address internal knowledge, skills and attitudinal gaps within CHR;
- Advocacy for State accountability by developing national human rights standards relative to HIV and key populations at highest risk and;
- Strengthening redress mechanisms for HIV-related discrimination, hate crimes, etc.

The CHR has embedded the work within its mandate and expanded the scope and coverage of its work in this area through ensuring CHR staff have access to information on HIV-related issues and developing partnerships between the CHR and key affected populations, including groups of people living with HIV. Also in 2012, the cities of Cebu and Davao passed anti-discrimination ordinances which, among other things, expressly prohibit discrimination on the basis of health status (including HIV), sexual orientation and gender identity.

### Republic of Korea

#### Lifted HIV-related restrictions on entry, stay and residence

At the International AIDS Conference in Washington in July 2012, the Republic of Korea announced that all HIV-related restrictions on entry, stay and residence had been lifted. The United Nations Secretary-General, UNAIDS and others provided strategic and technical support to the Government on making the announcement and in the implementation and enforcement of the policy.

### Viet Nam

#### Ended compulsory detention of sex workers

In June 2012, the National Assembly of Viet Nam passed a new law relating to the administrative sanctions regime which effectively ended the practice of detaining sex workers in administrative detention centres.

The new legislation also allows drug users who are subject to compulsory treatment in drug detoxification centres to have court hearings on their cases and legal representation at the court. During the development of the law, government officials and National Assembly members sought policy advocacy and technical assistance from United Nations agencies — including UNAIDS, UNDP, UNICEF, UNODC, WHO and UNFPA under the framework of the One UN Initiative in Viet Nam. Acknowledging the United Nations' concerted assistance to the Government, Viet Nam's Vice Minister of Justice and Vice Chairperson of the Law's drafting committee said: "The United Nations has strong comparative advantage in providing legal support to Viet Nam because the United Nations always respects the country's ownership and leadership in legislation development." Following the law's passage, UNAIDS and other United Nations agencies are providing support to the development of enabling regulations and the alignment of existing policies that are required for the law to be implemented.

**Sources and Limitations:** The information and data in this table refers to countries in Asia, the Pacific and Oceania and is not limited to countries covered by the UNAIDS Regional Support Team for Asia and the Pacific. Refer to page 89 of HIV in Asia and the Pacific: Getting to Zero (UNAIDS, 2011) for the list of countries included. The information and data herein are based on research by Amnesty International, the Global Network of People Living with HIV, the International Harm Reduction Association, the International Lesbian and Gay Association, the International Planned Parenthood Federation, the Asia Pacific Coalition on Male Sexual Health, UNDP, UNFPA, UNODC, and UNAIDS. The data are maintained and updated as necessary based on additional information received by the UNAIDS Regional Support Team for Asia and the Pacific and the AIDS Data Hub, and were last updated on 30 September 2014. UNAIDS takes reasonable steps to validate information generated by other institutions and organizations.