

Evaluation of the Global Commission on HIV and the Law: **Executive Summary**



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USC Institute on Inequalities in Global Health



Introduction

In 2010, UNDP, on behalf of the Joint UN Programme on HIV/AIDS (UNAIDS), convened the Global Commission on HIV and the Law (the Global Commission) to examine legal and human rights issues through an HIV lens, increase awareness among key constituencies on issues of rights and law, and engage with and strengthen civil society. The Global Commission spent 18 months on extensive research, consultation, analysis and deliberation so as to inform action-oriented recommendations to strengthen work around HIV and the law. The Commission's findings and recommendations remain relevant and important to the HIV response, not only historically but moving forward

This independent Global Commission was comprised of fourteen distinguished individuals from diverse disciplines and nationalities, each with extensive experience and expertise on matters of public health, human rights, law or development, and a Technical Advisory Group (TAG). The Global Commission was created at the behest of the UNAIDS Programme Coordinating Board and UNDP served as the Secretariat.

This executive summary presents abridged findings from an external evaluation of the impacts and legacy of the Global Commission on HIV and the Law. It explores the fulfilment of the Commission's objectives, taking into account the perspectives and experiences of representatives from government, including law and policy makers, civil society including those most marginalised and affected by HIV, as well as United Nations agencies and other development partners. The full evaluation report goes into much more detail of the evaluation findings, allowing for more in depth and nuanced exploration of the themes covered in this executive summary.

In the run up to the publication of the Global Commission's landmark report *HIV and the Law: Risks, Rights and Health* in July 2012, there was an 18-month preparatory process. This work was shaped by mutually reinforcing axes: written submissions and multi-stakeholder regional dialogues, the analysis of relevant materials by the TAG, and the synthesis, findings and recommendations of the Commissioners.¹ The report is a thorough examination of the relationship between HIV and the law, and includes recommendations covering the breadth of the HIV response. Following the release of the 2012 report, UNDP supported follow-up activities to implement recommendations of the

¹ Global Commission on HIV and the Law. (2017, July 12). Commission Overview. Retrieved from <https://hivlawcommission.org/overview/>

Global Commission globally, regionally, and nationally. This included engaging global level initiatives in addition to leveraging financial and technical support for regional and national level activities. In July 2018, the Commission released a supplementary report titled the *Supplement on HIV and the Law*. This Supplement highlights developments since 2012 in science, technology, law, geopolitics, and funding that affect people living with or at risk of HIV and its coinfections. The recommendations encapsulate new developments and add to and amplify those of the Commission's 2012 report *Risks, Rights & Health*, and taken together they offer an optimal blueprint for what is needed to shape appropriate HIV-related legal environments.^{2 3}

The Global Commission's concern with having a tangible impact on the world, beyond a simple publication of the report, has shaped all of its activities to date. In that, it stands alone from every other global commission. In seeking to further understand these impacts, in 2019, UNDP contracted the Program on Global Health and Human Rights (GHHR), Institute on Inequalities in Global Health (IIGH), University of Southern California to carry out an external evaluation of the impact, success factors, challenges and good practices of the Global Commission, with a particular focus on what has been accomplished at the global and regional level

The intended impacts of the Global Commission work were defined as the creation of an enabling legal environment as it relates to HIV with improved health outcomes and lived experiences, especially for vulnerable and key populations. Where impact is discussed in this evaluation, this refers to the tangible effects of the Global Commission in addition to the way these were achieved.

Conceptual Framework

Human rights are core components of the conceptual framework for this evaluation, and serve to shape understanding of both the Global Commission's impact and the processes through which it functioned. Key human rights principles such as inclusion, participation, equality and non-discrimination, and accountability were given considerable attention in the processes of the Global Commission and resulting reports. Beyond simply

2 Inception Report.

3 Global Commission Terms of Reference

documenting the outcomes and impacts of the Commission, this evaluation therefore sought to understand the processes through which it worked, and to identify the enabling factors and challenges inherent to its work. Such an understanding can in turn aid in the sustainability of the work of the Global Commission moving forward, in addition to the planning of other commissions in the future. Beyond the human rights lens, the conceptual framework has also been informed by UNDP's standard evaluation criteria—relevance, effectiveness, impact, and sustainability as outlined in the UNDP Evaluation Guidelines.⁴

Methodology

A range of methodologies were adopted in order to meet the evaluation objectives while also striving to ensure an optimal balance of efficiency, stakeholder participation and ability to answer the key questions of interest through document review, interviews, and fieldwork. Published and unpublished data were made available by UNDP and colleagues, which acted as a complement to the qualitative and other data collected by the evaluation team. All data were analyzed using a mixed-methods approach designed to maximize learning.

Having first designed the scope of the evaluation in consultation with UNDP, the evaluation process continued with a desk review consisting of available relevant project documents such as papers, tools, conference presentations, proposals, communication materials and reports, as well as materials produced by others where the Global Commission or its work is explicitly mentioned or referenced. Additionally, the evaluation team mapped the Global Commission website, then reviewed and summarized its contents to identify key events, outputs, programs and follow-up activities with a goal of looking for impact. Key informants were selected to provide a range of perspective: they were diverse with respect to geography, type of organization, and the role that they played in relation to the Global Commission's work. Interviews were carried out on the phone, on Skype or, where possible, in person. Initial findings from the desk review informed interview guides, which were then tailored to each individual key informant. Data were collected and thematically analyzed in an iterative process which drew from different sources.

4 Final Technical Proposal

Findings

Process

The Global Commission positioned itself well from the outset to accomplish its goals, ensuring very widespread participation in the process of creating its recommendations that also served to foster broad-based and long-term buy-in and ownership. Consultations, research, and analysis were central processes through which the Global Commission gathered data to make its recommendations. Nearly 700 individuals across 140 different countries submitted testimonials about their experience with their surrounding legal environment. Experts on HIV, health, and the law also contributed. The Global Commission's decision to include testimony and civil society voices in conjunction with more traditional forms of evidence is acknowledged to have expanded the idea of what constitutes evidence in this space.

Several key meetings and activities that occurred prior to the commencement of the Global Commission, such as the Commission on Social Determinants of Health and the Global Commission on Drug Policy, helped to influence its approach and processes. Tangible manifestations of these lessons included the independence of the Global Commission, the approach to shaping relevant information for synthesis by the Commissioners, and strategic structuring of dialogues between communities and Commissioners. By situating the Global Commission as an independent body with UNDP as the Secretariat, the Commission could leverage the comparative advantage of UNDP – namely its knowledge of the political landscape, credibility and convening power – while operating completely autonomously.⁵

The proficiency and regional representation of the fourteen distinguished individuals that comprised the Global Commission across an array of HIV, public health, law, and development issues identified them as highly respected candidates to serve as Commissioners. The Commissioners were advised by a Technical Advisory Group of 23 experts with backgrounds in law, human rights, and public health representing a range of organizations and communities such as people living with HIV, key populations, civil society, academia, and the UNAIDS secretariat.

The Global Commission also convened a series of tailored regional dialogues with the intent of stimulating rigorous policy debate. Central to these dialogues were the operationalization of such human rights principles as inclusion and participation,

5 Key Informant Interview 2, 3, 8

particularly of key populations and vulnerable communities, in addition to the inclusion of many duty bearers such as policy and law makers, judges, and law enforcement officers, as well as the engagement of many Commissioners. Rather than having simply in-country dialogues, the decision to host meetings at the regional level allowed for safe interactions between duty-bearers and individuals who might normally experience oppressive legal environments to safely voice their lived experiences.

Global Impact

The impacts of the Global Commission's work at the global level are multi-faceted and complex. There are three areas where its impacts have been particularly visible: other global level processes, the advancement of substantive discussions related to HIV and the law, and the promotion of collaborative learning and action. In the following section, examples are provided that showcase global processes and relevant stakeholders, global HIV, health and development agendas, and the use of the Global Commission website as a resource for valuable information.

Impact on global processes and stakeholders

The Global Commission acted as a critical platform to open up the global response around HIV and the law, influencing global discussions and actions and facilitating other partners' exploration and financing of these issues.⁶ The Global Commission's influence on other global initiatives has had subsequent spill-over effects on legal environments in the areas of criminalization of HIV, intellectual property, drug policy, sex work and sexual minorities, and access to medicines.⁷ ⁸ This occurred very rapidly after the release of the 2012 report, which was credited with having broken down topical silos in how legal environments are considered, allowing for individuals from across different thematic areas to draw from a much broader evidence base than previously available.

The influence of the Global Commission on UNDP's work is also evident: leveraging the Commission's work, UNDP expanded its HIV and health portfolio and used its findings

6 Key Informant Interview 2

7 Key Informant Interview 8

8 Key Informant Interview 2

to inform institutional strategies such as the UNDP HIV, Health and Development Strategy 2016-21 and the UNDP Strategic Plan 2018-21. There is also clear subsequent alignment between the priorities and strategies of some other global institutions such as UNAIDS and the Global Fund with the Global Commission's work and recommendations, including with respect to legal environment assessments at country level.

International Guidelines on Human Rights and Drug Policy

As just one example presented in depth in the Evaluation Report, UNDP and a group of UN Member States, World Health Organization (WHO), International Centre on Human Rights and Drug Policy (HRDP), the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the Joint United Nations Programme on HIV/AIDS (UNAIDS), jointly released the International Guidelines on Human Rights and Drug Policy in 2019. There was explicit acknowledgment in the Guidelines that they drew extensively from the recommendations and follow-up activities of the Global Commission, in that they were designed to act as international standards that serve to advance human rights protections in the context of drug control policy. These Guidelines in turn were explicitly cited in a 2019 court ruling on drug use in Colombia by a Constitutional Court judge.

Global HIV, Health and Development Agendas

It is worth recalling that the Millennium Development Goals (MDGs) were the global standard for development at the time the Global Commission began its work. While the Commission was still active, the 2030 Agenda for Sustainable Development was established, with the Sustainable Development Goals (SDGs) replacing the MDGs. Two key parts of that commitment were the goal to “leave no one behind,” and a push for universal health coverage (UHC) by 2030. The Global Commission's work can be seen to have informed key components of both. For example, building on the Global Commission recommendation that countries remove legal barriers that impede women's access to sexual and reproductive health services, a similar SDG target maintains that states must “ensure universal access to sexual and reproductive health and reproductive rights,” and a UHC key ask suggests that states must “establish resilient, responsive and inclusive health systems that are accessible to all.”⁹

9 United Nations. United Nations. (n.d.) Transforming Our World: The 2030 Agenda for Sustainable Development. Retrieved From <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

High-Level Panel on Access to Medicines

The High-Level Panel on Access to Medicines (High-Level Panel) is a useful example of how the Commission influenced global agendas. The 2012 Global Commission report noted that despite achievements in legal strategy, global advocacy, and widespread generic competition, intellectual property regimes still limited access to medicines, and high income countries often pressure low- and middle-income countries to adopt TRIPS-Plus measures in trade agreements with the effect of impeding access to life saving treatments. As a remedy, the Commission suggested the creation of a High-Level Panel on Access to medicines, which was ultimately convened by the Secretary General of the UN Ban-Ki Moon in 2015 after a joint request from UNDP and UNAIDS.¹⁰ The High-Level Panel was tasked to “review and assess proposals and recommend solutions for remedying the policy incoherence between the justifiable rights of inventors, international human rights law, trade rules and public health in the context of health technologies.” The High-Level Panel would go on to have a wide array of impacts globally, regionally and nationally, featuring prominently in the decisions of a range of multilateral organizations, global trade agreements and civil society organizations. For instance, the United Nations General Assembly, members of MERCOSUR, and the Chilean government have all been documented as citing the High-Level Panel in a variety of resolutions. In line with the Commission’s initial recommendations, its recommendations have also galvanized more cohesive action by intergovernmental and nongovernmental organizations concerning accessibility and affordability of medicines, as well as intellectual property issues around access to medicines.

Safeguarding civil society space

The contraction of civil society space around the world is a worrisome trend and UNDP’s Global Commission follow-up work has deliberately prioritized the creation of safe spaces for civil society to gather, strategize and mobilize. This has also contributed to broad-based civil society action on issues such as challenging HIV-related criminalization.

¹⁰ UNDP; UNAIDS, (2013, September 4-5), UNDP-UNAIDS Strategy Meeting to Advance the Intellectual Property Recommendations of the Global Commission on HIV and the Law.

Global Efforts to Challenge HIV-related Criminalization

The Global Commission is widely considered a catalyst in efforts to address HIV-related criminalization around the world, which are explored in more depth in the Evaluation Report. HIV-related criminalization takes many shapes and forms: and is reflected in problematic legal responses to sexuality, reproduction, gender and drug use. Efforts to tackle HIV-related criminalization were strengthened through the use of HIV as an entry point for addressing the rights and health of key populations and people living with HIV. Through the consultation processes, networks and synergies created through Global Commission processes, clear momentum was built around tackling these issues. Additionally, the 2012 report provided stakeholders with a critical advocacy tool. Organizations such as Amnesty International, in conjunction with CREA, Realizing Sexual and Reproductive Justice, and Accountability International, for example, have worked together using recommendations from the Commission to challenge criminalization around sexuality, reproduction, gender and drug use.

The Global Commission Website: An Information Resource

Today the Global Commission website remains an active resource. In addition to updates on activities that have been implemented as follow-up to the Commission's initial report, it also includes a host of information, including a suite of tools and resources that can facilitate replication and adaptation of follow-up and other activities by others.

Global Impact: Conclusion

Global Commission recommendations align considerably with key health, HIV, gender, development and governance frameworks at the global level. Global institutions such as UNDP, UNAIDS, and The Global Fund have taken this framing of law's relevance to the HIV response and expanded it into other areas of health such as tuberculosis, malaria, and sexual and reproductive health. Civil society actors have also picked up this work, taking advantage of the safe spaces that have been created to promote collaborative action. Such progress points to the mutually reinforcing nature of alignments like these, where stakeholders can rely on their comparative advantages to pursue diverse entry-points and synergies across issues.

Regional

Regional level engagement has been a central tenet of the approach of the Global Commission, as can be seen starting with the consultative process leading up to its 2012 report and through to its many follow-up activities. This section comprises an overview of regional activities including initiatives, grants leveraged by UNDP that supported regional efforts to implement the recommendations of the Global Commission, an analysis of some of the key African regional follow-up activities and their impact, and finally an examination of the lasting impact of the Global Commission and its recommendations on regional laws, policies, and resolutions.

Regional Initiatives

At the regional level, UNDP has been an integral facilitator of funding and technical support helping to support follow-up activities in support of the Global Commission's recommendations. The Global Commission leveraged UNDP's comparative advantage as a convening power, especially in regard to its credibility among government, civil society, and regional networks, to achieve buy-in across sectors. This approach, with a pointed focus on regional level entry points, proved to be highly effective, as evidenced in the follow-up work particularly in Sub-Saharan Africa and the Caribbean.

Many stakeholders are credited with sustained action in this space, and the active involvement of UNDP in these regional activities has been crucial to their success. There have been eight regional grants across Africa, Asia the Caribbean, Eastern Europe, and the Western Pacific since 2013 that act as direct follow-up to the Global Commission. There is substantial evidence that these projects have achieved tangible results, including completion of legal environment assessments in several countries; strengthened capacity related to human rights and HIV amongst the judiciary, national human rights institutions, law enforcement agencies as well as among affected communities; greater inclusion of LGBTI people, adolescent girls and young women, people living with HIV, sex workers and people who use drugs (PWUD) in national and regional processes; law review and reform; and greater involvement of Regional Economic Communities (RECs) and the African Union Commission (AUC) in addressing human rights and legal challenges pertaining to HIV and AIDS. Some of the regional level activities that have contributed to these impacts are further explored below.

Legacy of the Regional Dialogues

► Introduction

In the regional dialogues that took place around the world preceding publication of the Global Commission's 2012 report, the need for sensitization and capacity building for both duty bearers and rights holders was repeatedly highlighted.

Regional sensitization and trainings of duty-bearers

The diverse roles of different duty bearers were acknowledged necessitating sensitization of Parliamentarians who create the law, law enforcement and health workers who implement it, lawyers who defend it and judges who interpret it.

The Africa Regional Judges' Forum, created in response to the Commission highlighting the need to engage the judiciary in the HIV response, provides an excellent example. With a focus on HIV, the participating judges determined the forum's goals and set the agenda for their annual meetings with a view to ensuring access to up-to-date medical and public health evidence as well as exposure to the stories of key populations about how HIV-related laws have affected their lives. These meetings created an environment of peers where judges could ask questions and learn outside the structures of their courtroom and country.

At least 129 judges and magistrates from over 30 African countries have participated in the Forum, a number of whom have gone on to hand down precedent-setting judgments protecting the rights of people living with HIV, TB survivors and key populations. Through a process of south-south collaboration, regional judges' fora have recently been created in Eastern Europe and Central Asia and the Caribbean with technical support from some of the judges who have been central to the Africa Regional Judges' Forum.

The box below provides illustrative examples of landmark rulings at national level that were influenced by the Global Commission or its follow-up work.

In Africa, regional workshops for lawyers have also been held, bringing together purposefully selected groups of lawyers from across the continent to develop their capacity to successfully litigate cases relating to HIV and TB so as to improve the lives of key populations. Since this training began in 2016, lawyers across Africa have worked on HIV-related cases in countries such as Botswana, Malawi, and Zambia and on issues as diverse as prisoners' health, police abuse of key populations, and HIV criminalization. A key impact of these trainings was the formation of a network of regional peers in which lawyers from across the continent can consult one another on cases and increase the capacity of others.

Landmark Rulings

India

In 2018, the Supreme Court overturned Section 377 of the Indian Penal Code which stated that “carnal intercourse against the order of nature” was a criminal offense punishable by life imprisonment.¹¹ The case effectively decriminalized homosexuality in India while simultaneously recognizing the identities of LGBT persons within the country. Evidence presented by the Commission report was used by the court in the lead-up to their ultimate decision.¹²

Botswana

In 2015, the Botswana Court of Appeal upheld a ruling that foreign prisoners should receive free HIV treatment.¹³ In this case, judges who had attended the Regional Judges’ Forum were presiding.

Regional sensitization of health workers and law enforcement helped create cadres of duty bearers within countries known by key population members to be supportive whom they might call on as necessary. In countries where various types of duty bearers participated in regional sensitization efforts, a synergy was created that helped promote a supportive legal and policy environment and more positive experiences for people living with HIV and members of key populations.

Regional Sensitization and trainings of Rights Holders: Strengthening Communities

Regional dialogues and written submissions leading up to the report combined to give communities a platform in entirely unexpected ways. The diverse representation of stakeholders present, from civil society and affected communities, to duty bearers such as parliamentarians, judges, and law enforcement meant that for many from key populations

11 UNDP. (n.d.) Innovative judges forum sensitizes African judges on HIV, TB, SHR, law & human rights. Retrieved from <https://www.undp-capacitydevelopment-health.org/en/legal-and-policy/case-studies/innovative-judges-forum>.

12 O’Neill Institute. (2018, September 20). ‘History owes apology to the LGBT community’ – Supreme Court of India reads down colonial era Section 377. Georgetown Law. Retrieved from <https://oneill.law.georgetown.edu/history-owes-apology-to-the-lgbt-community-supreme-court-of-india-reads-down-colonial-era-section-377/>

13 BBC News. (2015, August 26). Botswana prisons: Foreign inmates win case for free HIV treatment. Retrieved from <https://www.bbc.com/news/world-africa-34064945>.

this was the first time they were provided with an opportunity to meet and engage with such an audience.

Communities then harnessed the 2012 Commission report as an advocacy piece around which they could organize, learn, forge alliances and develop programs. In the context of shrinking civic space around the world, the impact the Commission has nonetheless had on supporting the strengthening of communities cannot be overstated.

Africa Key Populations Expert Group

The Africa Key Populations Expert Group (AKPEG) was formed in 2014 as direct follow up to the Global Commission with the purpose of developing interventions to advance engagement of key populations in the HIV response and help the Regional Economic Communities develop regional HIV strategies for key populations.¹⁴ The AKPEG has grown to more than 105 members since its inception with members from 16 countries. Members include men who have sex with men, people who use drugs, transgender people, and sex workers. Annual meetings revolve around updates across national, regional, and global level developments in the HIV response and the best way to understand and utilize the latest in scientific evidence and data, advocacy, and strategy. The AKPEG is widely known to have aided the representation of key populations in regional and national responses to HIV and to have been central to the development of the Southern African Development Community (SADC) key population strategy. The success of AKPEG and the work it promotes showcases the continued importance of the Global Commission's original decision to focus on inclusion, participation, and engagement of key populations as well as the need to support their abilities to effectively navigate the complex legal, politics and social environments that impede an effective HIV response.

Impact on regional laws, policies, resolutions and governance

Since the release of the 2012 *Risks, Rights and Health* report, a series of regional-level HIV-specific initiatives and law and policy reform efforts have been carried out with different regional entities around the world including the African Union Commission, the African Regional Economic Communities, the South Asian Association for Regional Cooperation, the South American Regional Economic Organization and the Caribbean Community.

¹⁴ Personal Communication, Member of AKPEG

While each effort differs, key initiatives have included the adoption of model laws, development of regional strategies, mobilization of civil society and key populations, and strategic litigation on issues raised during Global Commission consultation. These efforts, documented in the full Evaluation Report, have helped to facilitate deeper thinking around legal environments and HIV, with improved cross-sectoral engagement and increased civil society action.

Regional Impact: Conclusion

Regional level activities spurred by the Global Commission have been heralded for their emphasis on participation from a variety of stakeholders. Leaning on this human rights principle ensured maximum input and engagement from communities and duty bearers. The follow-on work spurred by Global Commission activities was built on and continues to stay grounded in local realities, thus ensuring a context-appropriate approach. That many of these initiatives have taken a life of their own outside of the umbrella of UNDP shows the lasting impact and sustainability of work initiated as a result of the Commission.

National

Introduction

In this section, the focus remains on broader activities which together can be seen to have fostered legal and policy impacts. These will be explored in respect to in-country implementation, the creation of a safe space for civil society, government receptivity to collaborative work on HIV and the law, and collaborations between government, civil society and other partners.

In-Country Implementation

National level implementation of follow-up activities built on the success at the regional level in the form of national and sub-national activities. By the end of 2019, UNDP had either provided funding or support to 89 countries striving to implement Global Commission recommendations. Atop this list with seven follow-up activities is Malawi, followed by Botswana, Kenya, Madagascar, Nigeria, Tanzania, and Zambia with six each. The range of activities includes empowering key populations to promote human rights based HIV approaches, Legal Environmental Assessments; dialogues with and capacity

strengthening of law enforcement officials; national dialogues; dialogues with and capacity strengthening of parliamentarians; law review and legal scans; dialogues with members of the judiciary; sensitization and dialogues with other key stakeholders; and civil society engagement scans.

Creating safe spaces for civil society

Again building on regional successes, Global Commission activities have fostered an inclusive, participatory approach that brought together government and civil society actors with the effect of establishing useful connections regionally *and* within national-level contexts. The regional dialogue approach has also been replicated in the form of national dialogues in 34 countries.¹⁵ In the Democratic Republic of the Congo, a national dialogue has been credited with bringing together a wide range of stakeholders and led to the formation of a multi-stakeholder technical working group that has since led a range of national activities around HIV and the law. Across many countries, this type of success has resulted in increased interactions and safe spaces for civil society to interact and collaborate with government at the national level.

Government receptivity to collaborative work on HIV and the Law

A key outcome of the regional consultation processes has been engagement with government and establishing buy-in that transferred to the national level. Follow-up activities such as LEAs and national dialogues built on this foundation and resulted in increased evidence and collaboration as well as reported changes in government attitudes relating to how the law affects the HIV response and the lives of members of key populations. Governmental receptivity to this collaborative work can be seen in the institutionalization of follow-up activities and the creation of structures that have become embedded within national institutions, thereby helping to foster their sustainability.

Some duty-bearers have acknowledged that the grounding of this work in human rights expanded their understanding of rights as a constructive framework for responding to HIV, rather than simply a mechanism through which they might be accused of human rights violations. For example, in Malawi, the capacity building initiatives undertaken as follow-up activities are understood to have led to a significant increase in the ability of duty bearers to understand issues around human rights, the law and the HIV epidemic.

¹⁵ Supplemental Document 1

Collaborations between government, civil society and other partners

National-level follow-up activities are dependent on political buy-in, national ownership, and multi-stakeholder groups that bring together government and civil society. The LEA process has been highlighted as particularly useful in this regard because it constitutes a process of generating broad-based buy-in, introducing the notion of assessing laws and policies, and promoting ownership of the process, outputs and follow-on agenda. Through the LEA or National Dialogue processes, a critical mass of stakeholders can be created who recognize the importance of law and human rights to the HIV response. In Malawi, longer-term benefits of this type of collaboration included an alliance formed between the National AIDS Commission (NAC) and sex workers, which facilitates access to HIV prevention and treatment services. This combination of different stakeholders can open channels for deeper communication and advocacy towards more positive legal environments.

Landmark rulings

Many examples exist of court rulings at national level that were influenced by the Global Commission or its follow-up work. For example, in 2018, the Supreme Court overturned Section 377 of the Indian Penal Code which stated that “carnal intercourse against the order of nature” was a criminal offense punishable by life imprisonment.¹⁶ The case effectively decriminalized homosexuality in India while simultaneously recognizing the identities of LGBT persons within the country. Evidence presented by the Commission report was used by the court in the lead-up to their ultimate decision.¹⁷ In addition, in 2015, the Botswana Court of Appeal upheld a ruling that foreign prisoners should receive free HIV treatment.¹⁸ In this case, judges who had attended the Regional Judges’ Forum were presiding.

National Impact: Conclusion

The sheer number and range of follow-up activities carried out following the Global Commission, including at national level, is a testament to the relevance of its work.

16 UNDP. (n.d.) Innovative judges forum sensitizes African judges on HIV, TB, SHR, law & human rights. Retrieved from <https://www.undp-capacitydevelopment-health.org/en/legal-and-policy/case-studies/innovative-judges-forum>.

17 O’Neill Institute. (2018, September 20). ‘History owes apology to the LGBT community’ – Supreme Court of India reads down colonial era Section 377. Georgetown Law. Retrieved from <https://oneill.law.georgetown.edu/history-owes-apology-to-the-lgbt-community-supreme-court-of-india-reads-down-colonial-era-section-377/>

18 BBC News. (2015, August 26). Botswana prisons: Foreign inmates win case for free HIV treatment. Retrieved from <https://www.bbc.com/news/world-africa-34064945>.

National level work grounded in inclusion and participation has demonstrated that collaboration across multiple channels can yield tremendous results. By following a process that moved from generating buy-in to facilitating multi-stakeholder conversations and embedding activities in national plans, there is evidence that the in-country impact from a range of Global Commission activities is still ongoing. Implementing a deliberate mix of regional and national level activities has now been shown to be key to fostering change by maximizing the advantages of these synergistic levels of engagement. It is worth noting again that UNDP's comparative advantage in their convening power and the Global Commission's ability to harness this power has led to better results. Across many countries, the high levels of national buy-in have also led to externally funded Global Commission follow-up work as part of the national response.

Conclusions

The section presents some conclusions around the impacts of the Global Commission starting with some overarching findings, and then in relation to the UNDP evaluation criteria of relevance, effectiveness, and sustainability.

General Conclusions

To start, it is useful to reflect on whether the Commission has achieved its stated overarching aims, including to “contribute to the evidence base on the relationships between HIV, human rights and legal environments.” The success is evident from the wide use of the Commission report from 2012 to the present day as well as citations of the Global Commission's reports and recommendations across different types of publications, researchers, policy makers and implementers. From increasing understanding of the links between the law, human rights and HIV (and other areas of health) to expanding notions of what ‘counts’ as evidence to include testimony and civil society voices alongside more traditional evidence, the Commission provided a strong foundation on which others are already building.

The other primary aim of the Global Commission was to provide evidence-informed and actionable recommendations for law and policy reform. The Commission did indeed provide a long list of evidence-informed and actionable recommendations that have since been taken up at global, regional and national levels.

Relevance

Participatory Approach

Across all levels – global, regional and national – attention to human-rights was seen as critical to the success of the Global Commission’s work. This started with the inclusive, participatory approach fostered through the regional dialogues carried out around the world as a part of developing the Global Commission’s original report. These regional-level consultations, along with written submissions from around the world, not only enabled useful connections within and across regions, but generated buy-in by a wide range of stakeholders and, importantly, resulted in ownership and connections within countries, sowing seeds for collaborative follow-up to implement the Commission’s recommendations at the national-level actions.

Continued Relevance

Follow-up meetings and activities, including in relation to the supplement that was published in 2018, demonstrated the Commission was still a relevant body to external actors. While many of the topics from the original report remained relevant, as science had evolved other topics had also become relevant for analysis using the Global Commission’s lens. Perhaps most unusually and possibly as a result of the considerable effect that representation had on Commissioners in regard to fostering sustained follow-on, people still actively saw themselves as Commissioners in these follow-up activities. UNDP’s ongoing commitment to promoting action resulting from the work of the Commission, maintaining an updated website to serve as a resource for work in this area, and expanding attention to emerging areas of relevance within HIV and the law (e.g. interactions with responses to COVID-19) continues to contribute to the ongoing relevance and visibility of the work of the Commission today and into the future.

Effectiveness

Commitment to the follow-up work

From its inception, the Global Commission made clear it saw the report as part of a much larger strategy to improve HIV-related legal environments around the world which has ultimately contributed to its overall success. Senior UNDP leadership made clear that

following up on Commission recommendations was part of the institutional mandate at regional and national levels, which led to support for activities across UNDP globally.¹⁹ Many others, including civil society organizations and international development partners, have also invested time and resources in the recommendations and approaches championed by the Commission.

Respect for Commissioners and other key participants

The collective experience and capacity of the Commissioners, their independence, and clear investment in the work was a factor that contributed immensely to the report and its recommendations being taken seriously. The Commissioners and the Technical Advisory Group, along with affiliations to the United Nations provided for strong credibility for what they set out to accomplish. Civil society, strongly engaged from the beginning of the Global Commission, are seen to be key participants in this work and have been instrumental in follow-on work that continues today.

Adoption of a human rights-based approach

In grounding the Global Commission process in a human rights-based approach, follow-up activities and ensuing work has been organized according to the same principles of participation, equality, and non-discrimination and accountability. Participation was a major conduit to the effectiveness of the Commission in that it allowed for interventions to be tailored to respond directly to local realities and account for local factors such as politics, legal systems, epidemiological trends, and civil society capacity.

Meaningful engagement of communities: the value of personal testimony

Emphasis was placed on representation from civil society and communities in the form of fully integrated written submissions to as well as participation in the initial regional dialogues. This paved the way for direct engagement between communities and duty bearers, in addition to showcasing the value of personal testimony as data. Testimony had previously been valued primarily in legal work, rather than public health, policy or government offices more generally. Inclusion of this testimony alongside quantitative data and legal judgments in the Commission's report proved effective for the overall

¹⁹ Key Informant Interview 35

accessibility of the reports. Furthermore, it provided civil society with another advocacy tool and decision-makers with another type of evidence through which ongoing follow-up work could be evaluated.

New partnerships and collaboration

The Global Commission was pioneering in bringing together such a wide range of stakeholders to collaborate on improving HIV-related legal environments. This multi-stakeholder approach is now much more common around the world. Perhaps one of the most influential partnerships catalysed by the Global Commission process is the HIV activist movement connection with the movement around the reform of intellectual property regimes, strengthening the advocacy base for access to HIV medications.²⁰

Sustainability

Incorporation of activities into national structures, laws, policies and plans

The Global Commission's investment in broad participation and country ownership of activities has helped to promote the sustainability of this work: with so many invested stakeholders at country level it has been possible to incorporate what started as UNDP-supported follow-up work into national strategies, plans and budgets as well as external funding proposals. This is equally true for project structures (such as Technical Working Groups) as outputs (such as action plans arising from the LEA and National Dialogue processes).

Sustaining and adapting regional level activities

Sustaining the regional efforts will be important to maximize the overall impacts at national level over time and it will require continued external funding. The value of peer learning outside the confines of a national context has proved invaluable in creating in-country traction and momentum for addressing challenging issues within and across all regions. The recent and ongoing adaptation of interventions carried out in sub-Saharan Africa as follow-up to the Global Commission in other regions (e.g. the regional judges' forum in Eastern Europe and Central Asia as well as the Caribbean, and interest in learning from

²⁰ Key Informant Interview 2

legal environment assessments to inform interventions relating to drug policy in Latin America) augur well for the sustainability of Global Commission processes and concerns moving forward.

Capacity Building

Capacity building and sensitization of a range of duty-bearers and rights-holders has been a cornerstone of the follow-up activities to the Global Commission. Not only has this served to expand knowledge around HIV and the law, which is critical for sustainability, but by making capacity building tools publicly available it also promotes the replicability of the work. That much of this work was carried out at the regional level supported the creation of peer networks of different types of duty-bearers and rights-holders across regions with the knowledge and commitment to drive work within and across countries to improve HIV-related legal environments.

Financial Sustainability

Although some activities have yielded impacts that constitute fundamental transformations to the landscape that may help this work to move forward even without continued financial investment, other activities initiated as follow-on to the work of the Global Commission will require continued funding in order to be sustained. This is true for capacity building activities, regional convenings and support to strategic litigation for example. Financial support for these activities is critical for advances to continue.

Weathering political winds

Politics and ideology continue to influence laws and policies regardless of solid evidence. Changes in government can erase hard fought wins. The Global Commission's effort to apply an evidence-informed approach to addressing the role of law in the HIV response together with efforts around capacity building help to ensure that where negative political shifts happen, these changes will not completely erase all progress. The multi-sectoral nature of follow-on work and the increased capacity of civil society have immense implications for sustainability and resilience in the face of negative political climates.

Looking Forward

The work of the Global Commission, inclusive of all that has followed since, has set a strong foundation for work on HIV and the law. Momentum generated over the years has

catalyzed tangible and positive change at national, regional and global levels bolstered by the Global Commission's initial work and publications. There now exists not only a blueprint for work specific to HIV but a model for work around the law and other areas of health on which people and institutions can continue to build.

The value in evaluating the type of work carried out by the Global Commission lies in understanding not only the impacts of this particular Commission but also its critical success factors and potential shortcomings with a view to informing future endeavors of relevance. The Evaluation Report can be useful for informing how UNDP and other institutions might design and implement future global commissions or convenings, partnerships with global and local partners, and engagements with civil society.

In the context of the global COVID-19 pandemic, the resolve of institutions to pay attention to rights and justice issues in addressing health issues across a range of sectors has been put to the test. Governments adjusting to the demands associated with curtailing a new infectious disease have implemented policies that work to mitigate its damage, but too often at the expense of the human rights of vulnerable and other populations. The need to address the legal and policy environment to ensure it helps and does not hurt the most marginalized and vulnerable has become more critical than ever before. Many of the lessons learnt and documented in this report about how and why the Global Commission was so effective might help assess and inform the ways in which governments address COVID-19 and future epidemics, and how best to engage civil society and their allies in their response.

The Global Commission's focus on capacity building in the context of HIV and the law provides lessons and tools about the power to strengthen voices across a range of stakeholders. From communities and the key populations who comprise them, to rights holders and duty bearers, to partners including UN and other international organizations, the Global Commission raised the voices of multiple groups in an epidemic context in order to draw attention to the needed law and policy response. This is exemplified throughout this Evaluation Report. The evidence shows that through human rights-based framing, principles such as inclusion and participation, can be key strategic entry points leveraged to tackle the most challenging global health inequalities and issues of our time.

