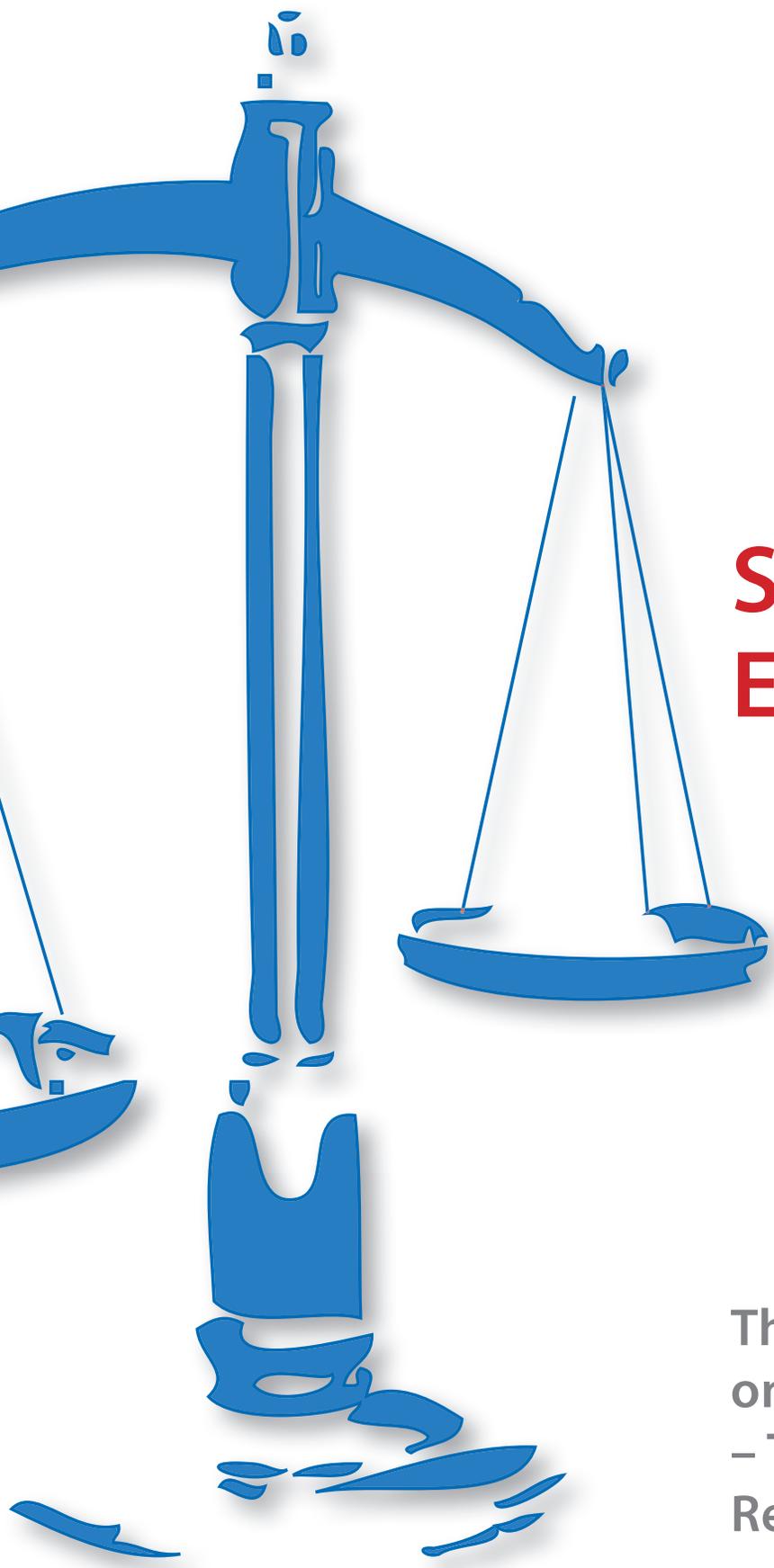




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SUMMARY OF E-DISCUSSION

The Global Commission
on HIV and the Law
– Taking the Commission’s
Recommendations Forward

United Nations Development Programme

HIV, HEALTH AND DEVELOPMENT

Disclaimer

The views expressed in this publication are those of the authors and do not necessarily represent those of the United Nations Development Programme (UNDP).

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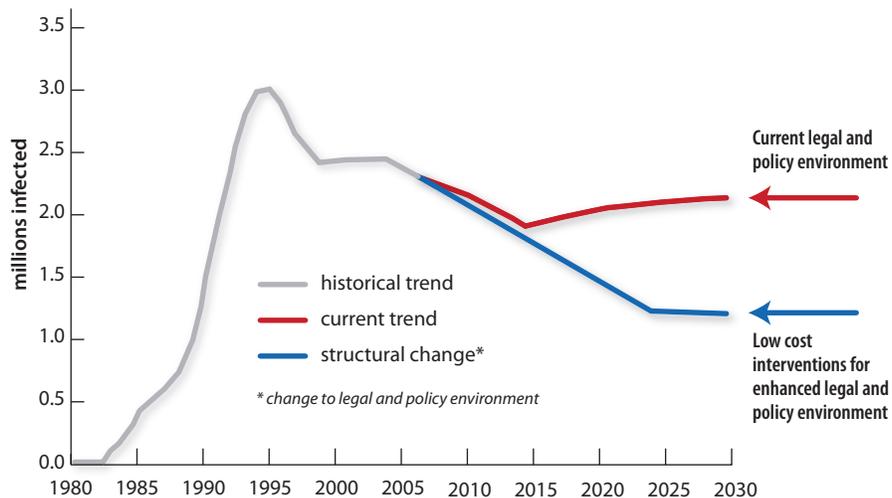
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1. Introduction

The **Global Commission on HIV and the Law** (hereafter: the Commission), convened by the **United Nations Development Programme** (UNDP) on behalf of the Joint United Nations Programme on HIV/AIDS (UNAIDS) and chaired by the former president of Brazil, Mr. Fernando Henrique Cardoso, examined the relationship between HIV, human rights and legal environments. The Commission's key findings are:

- Punitive and discriminatory laws, policies, and practices exacerbate stigma, thereby fuelling the spread of HIV, while undermining the effectiveness of HIV investments and;
- Effective laws grounded in human rights and based on evidence do exist and should be replicated in other to strengthen the AIDS response.

Why the Law Matters: Annual number of new HIV infections among adults aged 15–49



Source: Results for Development Institute, *Costs & Choices: Financing the Long-Term Fight Against AIDS*, An aids2031 Project, 2010.

The Commission's final report, *HIV and the Law: Risks, Rights & Health*, contains several actionable recommendations relating to discrimination; the criminalization of HIV transmission, exposure and non-disclosure; key populations at greater risk of HIV, including people who use drugs, sex workers, men who have sex with men, transgender persons, prisoners, and migrants; women and children and youth; and intellectual property regimes and HIV and related medicines.

To further advance the implementation of the Commission's recommendations, UNDP Administrator Helen Clark and UNAIDS Executive Director Michel Sidibé sent a **joint letter** to UN Resident Coordinators in June 2013, requesting their leadership and support to advance efforts on HIV and the law.

The e-discussion "**The Global Commission on HIV and the Law – Taking the Commission's Recommendations Forward**", organized by UNDP's HIV, Health and Development Group in collaboration with the Democratic Governance Group and the Gender Team, aimed to analyze experiences in implementing the Commission's recommendations one year after the launch of the Commission's final report, while identifying challenges, good practices and lessons in addressing human rights and legal frameworks in the context of HIV.

The e-discussion took place from 27 June to 31 July 2013 on a **public discussion space** and was also circulated by email on 10 UN(DP) and civil society knowledge networks.¹

Suki Beavers, Policy Advisor and Cluster Leader for Democratic Governance and Crisis Prevention and Recovery and Gender-Based Violence in the UNDP Gender Team, and **Tracy Robinson**, Senior Lecturer in the Faculty of Law, University of the West Indies, Jamaica, moderated the first phase of the discussion. **Michaela Clayton**, Director of the AIDS and Rights Alliance for Southern Africa (ARASA) and **Vivek Divan**, Policy Specialist for Key Populations and Access to Justice, in UNDP's HIV, Health and Development Group, moderated the second phase of the discussion. In total 80 contributions were received. 64% of contributions were received from UNDP staff, 28% from representatives of Civil Society Organizations/networks and academics. Other UN programmes and agencies, including UNAIDS, UNICEF and UNFPA, also participated in the discussion, as well as one Government Minister.²

Most contributions came from Asia Pacific and Africa (29% and 26% respectively), followed by contributions from Eastern Europe and the Commonwealth of Independent States (CIS) (21%), Latin America and the Caribbean (14%), and the Arab States (3%). 8% of the contributions came from people or organizations with a global or headquarters affiliation.

Sincere thanks to all contributors to the discussion: **Ahmed Sehata**, International Development Law Organization (IDLO); **Alesandr Khodanovich**, East Europe & Central Asia Union of people living with AIDS, Belarus; **Ali Salman**, UNDP Bahrain; **Alka Narang**, UNDP India; **Amara Bou**, UNDP Cambodia; **Ana Palacios**, UNDP Democratic Republic of Congo; **Andrea Pastorelli**, UNDP China; **Andrei Usatii**, the Minister of Health of the Republic of Moldova; **Andrew Gasozi Ntwali**, UNFPA Rwanda; **Bob Verbruggen**, UNAIDS Cambodia; **Boyan Konstantinov**, UNDP Europe and CIS Regional Centre; **Brianna Harrison**, UNAIDS Asia-Pacific; **Bwijo Bwijo**, UNDP Tanzania; **Charles Chauvel**, UNDP New York; **Cheryl Overs**, Michael Kirby Centre for Public Health and Human Rights, Australia; **Claudia Dubon de Morales**, UNDP El Salvador; **Carol Flore-Smrecznik**, UNDP Malawi; **David Owolabi**, UNDP Nigeria; **David Patterson**, IDLO; **Deni Ahmad Fauzi**, UNDP Indonesia; **Dieudonné Ruturwa**, UNAIDS Rwanda; **Edmund Settle**, UNDP Asia-Pacific Regional Centre; **Elisa Slattery**, IDLO; **Erick Ngoie**, UNDP Democratic Republic of Congo; **Evghenii Golosceapov**, UNDP Moldova; **Ferdinand Strobel**, UNDP Pacific Regional Centre; **Gisella Camoriano**, UNDP Honduras; **Ian Milimo**, UNDP Zambia; **Kamila Fathyhova**, East Europe and Central Asia Union of People living with AIDS, Uzbekistan; **Kerry L. Neal**, UNICEF New York; **Khemtip Khemsaksit**, UNDP Thailand; **Kordzo Sedega**, UNDP Ghana; **K. Fatihova**, East Europe and Central Asia Union of People living with AIDS; **Laila Alberto Jose Sueye**, Mozambique; **Ludfine Opudo**, UNDP Kenya; **Lucrecia Mendez**, UNDP Guatemala; **Maung Maung Kyaw**, UNDP Myanmar; **Meena Sheshu**, SANGRAM, India; **Miguel A. Ramiro Aviles**, Universidad de Alcala, Spain; **Moses Mulumba**, Center for Health, Human Rights & Development (CEHURD), Uganda; **Naomi Burke-Shyne**, IDLO; **Narcisse Saturnin Chimi**, UNDP Cameroon; **Narmada Acharya**, UNAIDS Cambodia; **Nick Crofts**, Law Enforcement and HIV Network (LEAHN); **Ninoslav Mladenovic**, Health, Education, and Research Association (HERA), Macedonia; **Olya Alesandrova**, 'Real World, Real People', Armenia; **Peterson Magoola**, UNDP Papua New Guinea; **Phauly Tea**, UNAIDS Cambodia; **Philip Castro**, UNDP the Philippines; **Rachel Morrison**, UNDP Jamaica; **Robert Gass**, UNICEF Thailand; **Rosemary Kumwenda**, UNDP Malawi; **Sirirath Chunnasart**, UNICEF Thailand; **Tinaye Mmusi**, UNDP Botswana; **Umesh Chawla**, UNDP India; **Vladimir Gordeiko**, UNDP Ukraine.

Many contributors noted that the Commission's establishment, consultative process and recommendations provided a strong framing and structure within which to advance a rights-based approach to the HIV response in their countries. At the same time, a number of contributors mentioned that their work on HIV and the Law has been ongoing for many years, and should not necessarily be exclusively seen as a 'follow up' to the recommendations of the Commission.

1 UNDP's HIV, Health and Development-Net, the Network for UNDP's Partnership with the Global Fund, the UN Human Rights Policy Network – HuriTALK, Democratic Governance Practice-Net, Gender-Net, the Asia Pacific Community of Practice on HIV, Gender and Human Rights (HIV-APCoP), the joint United Nations Initiative on Mobility and HIV/AIDS in South East Asia (JUNIMA), the UNICEF HIV/AIDS Community of Practice, the Interagency Task Team HIV and Young People Community of Practice and the Global Commission on HIV and the Law mailing list.

2 The Minister of Health from the Republic of Moldova.

2. Highlights: Activities to Advance the Commission's Recommendations

Countries seeking to implement an enabling legal environment to improve their responses to HIV undertook a range of activities that were generally encompassed within the following categories:

- Legal Environment Assessments or Legal Audits, including related advocacy
- Legislative Review or Legislative Reform, including related advocacy
- National Dialogues on HIV and the Law, including action planning
- Human Rights Training, Capacity Strengthening, and consultations with members of the judiciary
- Outreach to Parliamentarians, capacity development and consultation
- Access to Justice and Legal Services, including rights based trainings for law enforcement
- Community Based Advocacy on Stigma and Discrimination, including through the media and community and religious leaders.

A multisectoral approach to establishing enabling legal environments meant that activities carried out in one category often built upon, complemented, or were informed by activities occurring in other categories.

Additionally, some countries approached legal reform from a thematic perspective, focusing on the rights and needs of people living with HIV or key populations at higher risk of HIV such as men who have sex with men, transgender people, or sex workers. Some national reform efforts were also encompassed within broader regional activities facilitated by UN regional centres or other partners. These often provided capacity building and awareness trainings to attendees from multiple countries; encouraged sharing of model laws, policies and practices between countries; and provided multilateral fora for discussions on best practices towards integrating human-rights based principles in national HIV responses.

Ultimately each country adopted its own unique approach to legal reform depending on the particular circumstances of its epidemic, including its existing laws and policies, the general awareness and engagement of its policy leaders, the level of empowerment of its civil society organizations and networks of key affected populations, and the practical political realities for legislative action.

Activity Summary

In many countries (including Cambodia, El Salvador, Guatemala, Malawi, Russia and Ukraine) the **Commission's report has been widely disseminated** at the national level with key decision makers, including parliamentarians and civil society, and at national HIV conferences with a view to persuading decision makers to promote a favourable legal environment to respond to HIV.

Another frequent follow-up activity noted in the e-discussion by at least **18 countries**, was the organization or planning of a **National Dialogue on HIV and the Law**, following the Commission's example of organizing regional dialogues with a wide variety of stakeholders. National Dialogues include representatives of the government and state institutions, UN agencies, and civil society organizations and provide opportunities for a constructive exchange between various participants, including key

populations, to directly engage with government agencies and ministries around common issues of legal gaps and gaps in service provision.

Legal environment assessments or **legal audits** involving a wide range of stakeholders were also reported in **41 countries** via the e-discussion. These reviews examined laws regulating and protecting the rights of people living with HIV, key populations at higher risk of HIV, or other vulnerable populations. Often, these reviews were coupled with or preceded by stigma index surveys of HIV-positive people and key populations, which resulted in identification of the difference between the *de jure* (in law) and *de facto* (in practice) legal frameworks, and legal gaps that prevent effective protection of the rights of people living with HIV and key populations.

Many countries have also sought to implement the Commission's recommendations through **legislative reviews** examining implementation of existing laws, and **legal reform** involving the introduction or enactment of new legislation. Legal reviews and reform were reported by **18 countries** through the e-discussion. Such efforts often focused on strengthening HIV prevention programmes and access to HIV services by expanding protections against discrimination, improving mechanisms for seeking legal redress, addressing access to medicines through patent reform, and establishing or strengthening medical privacy and confidentiality laws. In some cases, legal reform included attempts to repeal existing provisions in law that directly discriminate against people living with HIV, such as HIV related travel restrictions. Legal reform was pursued both through legislation amending existing general laws and through comprehensive HIV-specific legislation providing for distinct rights, protections and prohibitions in particular circumstances.

National dialogues and legal environment assessments to advance the recommendations of the Commission often led to the **development of national action plans** or **revision of existing National HIV Policies**, incorporating suggestions for changes to existing laws and policies, setting targets and timelines, and dividing responsibility for reform efforts. In some cases, national action plans were thematic in character, focusing on people living with HIV, the prevention of violence against women, the needs of men who have sex with men and transgender persons, or more broadly on human rights.

Nearly all submissions referred to **partnerships with key stakeholders** to further dialogue, support participatory consultations, raise awareness, and advocate for human rights-based approaches to legal frameworks and HIV responses more broadly. Facilitating dialogue and consultations on HIV and the law at national, sub-national, regional and sub-regional levels and bringing together a wide variety of stakeholders featured strongly in the examples of responses to the legal and human rights challenges faced by people living with HIV and key populations.

Many initiatives also focused on **strengthening the capacities of civil society, people living with HIV and human rights activists, together with the authorities** to claim their rights, advocate for change and implement international human rights requirements. In some cases, direct technical support and funding from UNDP and partner agencies, including the Global Fund to Fight AIDS, Tuberculosis and Malaria, also facilitated the participation and involvement of people living with HIV and key po-

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