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## 2014-2015 UBRAF thematic report

### Ending punitive laws

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## ACHIEVEMENTS

From 2010 to 2014, there was an increase in the number of countries reporting the existence of general anti-discrimination laws and mechanisms applicable to sex workers, migrants, people in prison, women and young people. From 2006 to 2015, the number of countries criminalizing same-sex sexual acts fell from 92 to 75. However, the elimination of punitive laws and counterproductive legal and policy frameworks around HIV is far from being achieved. Almost every country in the world still criminalizes some aspect of sex work and drug use. Overly broad prosecutions for HIV non-disclosure, exposure and transmission have been recorded in all regions, while some 72 countries have adopted legislation that specifically allow for HIV criminalization. To advance the commitments of UN Member States in the 2011 Political Declaration on HIV and AIDS and the recommendations of the Report of the Global Commission on HIV and the Law, the Joint Programme undertook the following activities in 2014-2015:

- Supporting reform of punitive laws, policies and practices: The Joint Programme worked with governments and civil society to conduct national dialogues on HIV and the law in 62 countries, including reviewing legal and policy barriers to HIV services for people living with HIV and key populations as well as legal reform for adolescent health and rights. In Pakistan, this contributed to the passage of Singh's Provincial AIDS Law and in Bangladesh to a policy recognizing transgender persons. UNDP developed a tool to undertake Legal Environment Assessments (LEAs) and led the undertaking of LEAs in partnership with the joint programme's co-sponsors and the UNAIDS Secretariat in 52 countries. Follow-up to LEAs saw positive changes, including the government adoption of Chad's revised HIV law and approval of DRC's revision to remove criminalisation of HIV transmission. The Joint Programme provided advisory support to law development and reform processes in 52 countries. It also supported dialogue for the protection and access to health services for key populations, including a dialogue between OHCHR, the UNAIDS Secretariat and the Inter-American and African Commissions on Human Rights on the protection of the human rights of lesbian, gay, bisexual, transgender and/or intersex (LGBTI) people in Banjul in 2015. In September 2015, UNAIDS, UNDP and OHCHR led the issuing by 12 UN agencies, including several Joint Programme co-sponsors, of a powerful joint statement calling for action on ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) adults, adolescents and children. The Joint Programme has supported national coalitions in the removal of legal barriers hindering access to HIV services for men who have sex with men (MSM) in 71 countries, sex workers in 74 countries, people who inject drugs in 49 countries and transgender people in 50 countries. UN Country Team intervention led to removal of proposed punitive bills regarding key populations from consideration in Kazakhstan and Ukraine and deferring similar legislation in Kyrgyzstan; drafting of a bill recognizing sex work as work in the Dominican Republic; the shelving of punitive legislation in Chad; and the release of individuals detained under anti-gay laws in the Gambia and Nigeria. Legal review and advocacy by the UNDP and the UNAIDS Secretariat supported ratification of the Arab Convention for HIV Prevention and Protection of the Rights of PLHIV by

Djibouti. UNICEF partnered with Southern Africa AIDS Trust (SAT) to address restrictive age-of-consent to health services laws in 22 countries and improve access to HIV services;

- Strengthening capacity of judiciary, legislature and law enforcement agencies on HIV, human rights and the law: UN Joint Teams in 50 countries contributed to building national capacity among law-makers. The ILO, UNDP and UNHCR trained 36 magistrates in Jamaica on the labour rights of people living with HIV, while the ILO trained approximately 300 judges from the Community of Portuguese-speaking countries on labour rights of people living with HIV and key populations, leading to a judgment in a Brazilian labour court in favour of a worker dismissed due to their HIV status. The UNAIDS Secretariat, WHO, UNODC, UNDP and UNFPA co-sponsored a global dialogue on police and HIV convened by the Law Enforcement and HIV Network (LEAHN) and International Development Law Organization (IDLO) in Amsterdam. In 2014, the UNAIDS Secretariat filed amicus curiae briefs on behalf of the joint programme in cases before Malawi's High Court on constitutionality of laws criminalising homosexuality and in a European Court of Human Rights case challenging Russia's OST ban;
- Expanding access to justice and legal literacy initiatives: UNDP supported provision of free legal aid for people living with HIV and key populations through a national network of HIV legal aid centres in China and a regional HIV legal network in 9 Eastern European and Central Asian (EECA) countries. UNDP, UNAIDS Secretariat and ILO collaborated to support development of a manual on LGBT workers' rights, published in 2014;
- Producing guidance documents, tools and knowledge products: The UNAIDS Secretariat, WHO, the Global Network of People living with HIV (GNP+) and International Community of Women living with HIV (ICW) developed a tool for human rights, gender equality and community engagement aspects of certification of countries' elimination of mother to child transmission of HIV and syphilis. UNDP published guidance documents on undertaking LEAs and national dialogues. UNDP also developed a guidance document for UN Staff titled, 'Preventing and Responding to HIV-related Human Rights Crises' with the UNAIDS Secretariat, UNFPA, UNODC, ILO, UNHCR, UNICEF and the Global Fund.

## **MAJOR CHALLENGES AND HOW THESE WERE ADDRESSED**

Stigma and discrimination against people living with HIV and key populations remain serious barriers to effective HIV responses worldwide. Despite UN Member States' commitments in the 2011 Political Declaration, an increasing number of countries worldwide are debating and implementing punitive laws, policies and practices. Punitive laws remain in place against sex workers, men who have sex with men and people who use drugs in many countries. Lack of domestic resources, limited quantitative data and insufficient focus on key population programming perpetuates this discrimination and limits

the effectiveness of responses. Laws and policies must be continuously monitored since positive changes can be reversed when new political leadership gains power or from societal pressure. The Report of the Global Commission on HIV and the Law lays out the evidence and rationale for legal reform, sharpening focus on these efforts and facilitating best practices-sharing among countries. Advancing the Commission's follow-up activities in collaboration with governments, UN partners and civil society is critical for a coordinated, efficient, and effective HIV response that focuses on enabling legal environments. Limited availability of quantitative data on impact of punitive legal environments, stigma and discrimination on investments and access to HIV services hinders efforts to insert HIV sensitive programming into NSPs, national investment cases, Global Fund concept notes and M&E frameworks. Insufficient attention has been paid to the impact of drug control laws, policies and enforcement practices on sustainable development or to root causes of involvement in illicit crop cultivation, markets or use. UNDP published detailed analyses of development dimensions of drug policy to inform debates on drugs and development in the lead-up to UNGASS 2016 and highlighted human development as a central concern of drug control in UN presentations and interactions with Member States.

In many countries, partnerships with public/primary health care services were initiated, strengthened and maintained for sex workers, men who have sex with men and other key populations, despite punitive laws and policies posing substantial barriers. ILO constituents have expressed keen interest in judicial training but resource constraints have limited training amount and frequency. In Brazil, support from the Federal Superior Labour Court covered the cost of transportation and lodging for participating judges, facilitating the training.

Changing laws on "age of consent" requires working with legal and health and social protection experts as well including parents as part of the consultative process and in child rights education. Responding to and minimizing the adverse impact of punitive laws ranges from quiet diplomacy to visibly supporting affected communities, demanding justice and accountability. Pertinent examples are actions taken following the December 2013 adoption of anti-homosexuality laws in Nigeria and Uganda, including high-level engagement by UNAIDS Deputy Executive Director in Nigeria; engaging the President's offices, National AIDS Control Agencies, and line ministries in both countries; support to civil society organisations and to mitigation strategies, including community crisis response mechanisms, legal services and support for those arrested; monitoring impact of the laws/crises on national AIDS responses; and supporting a Constitutional petition challenging the legality of anti-homosexuality legislation in Uganda, filed by Uganda civil society organisations.

## KEY FUTURE INTERVENTIONS

Key future interventions in this area will include the following:

- The UNAIDS Secretariat will advance its Zero Discrimination initiative by partnering with WHO and others within and outside the Joint Programme to launch an agenda

and plan of action towards Zero discrimination in health care and by supporting a consortium of civil society organisations on an initiative to end HIV criminalization. The Secretariat will support the development and launch report of the African Commission on Human and Peoples' Rights on HIV, the law and human rights;

- UNDP, supported by OHCHR, civil society and academia, will develop the LGBTI Inclusion Index to measure inclusion of LGBTI people in countries' political, economic, security and health dimensions;
- UNDP will continue to advocate against punitive laws, policies and practices impeding the AIDS response for people who use drugs by highlighting these issues at UNGASS 2016 and working with OHCHR, Member States and civil society to develop international guidelines on human rights and drug control;
- ILO will continue to provide technical advisory support for the development of employment-related legislation and policy that safeguards the rights of workers living with or affected by HIV, and advocate for the removal of legislative provisions that impair rights. In addition an ILO-led working group will develop indicators to measure HIV-related stigma and discrimination in workplaces for use by private sector actors and ILO will finalize a guide for employers and workers on reasonable accommodation, including accommodation for persons living with or affected by HIV or AIDS to be published in 2016. The guide addresses employers' obligations to provide reasonable accommodation and includes practical examples of different kinds of reasonable accommodation in the context of HIV;
- UNODC will continue rolling out a training manual for law enforcement officials on HIV services for people who inject drugs, including supporting its translation and adaptation for integration within police academies and implementation of capacity building and advocacy for laws and policies that can facilitate access to equivalent health care for people who use drugs in prisons and other closed settings, with priority given to the implementation of the 15 interventions outlined by UNODC, ILO, UNDP, WHO and UNAIDS in the policy brief, "HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions";
- UNDP will support efforts to ratify the Arab convention for HIV prevention that provide good regional framework for harmonizing national laws;
- UNICEF and partners will continue to map "age of consent" laws relating to marriage, sex and medical access, to ensure they are aligned with international human rights law and that efforts are being made to progressively realize the agency of the child. UNICEF and the Southern Africa AIDS Trust will also develop a resource kit to guide countries on addressing age of consent as a barrier to access to services.

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