



Report of the International Consultation on HIV-Related Legal Services and Rights

**Vienna
16 July 2010**



International Development Law Organization
Organisation Internationale de Droit du Développement

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- Southern Africa: AIDS and Rights Alliance for Southern Africa (ARASA).
- Middle East and North Africa: Egyptian Initiative for Personal Rights (EIPR).
- Latin America: Colectivo Sol.
- USA: Ford Foundation, Women Organized to Respond to Life-threatening Diseases (WORLD) and the Center for HIV Law and Policy (CHLP).

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Acronyms

GLBT	Gay, lesbian, bisexual and transgender
IDLO	International Development Law Organization
MENA	Middle East and North Africa
MSM	Men who have sex with men
NGOs	Non-government Organizations
SADC	Southern Africa Development Community
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
USA	United States of America

1 Background

This report documents the proceedings of the International Consultation on HIV-Related Legal Services and Rights, held in Vienna on 16 July 2010. The international convening was part of the project *Strengthening and Expanding HIV-related Legal Services and Rights*, implemented through a partnership between the Ford Foundation and International Development Law Organization (IDLO).

The project's objectives are to:

- (i) identify opportunities and challenges in using the law and legal mechanisms to address discrimination and other HIV-related legal issues for people living with and affected by HIV, and key populations;
- (ii) identify opportunities for advocacy at global and regional levels to influence key stakeholders (financing and technical institutions, such as the Global Fund, UNAIDS and UNDP, national governments, regional bodies, donors) to strengthen the enabling legal environment for the response to HIV;
- (iii) initiate or strengthen regional and sub-regional networks of lawyers and activists to strengthen the enabling legal environment through the sharing of information and experiences, and capacity building; and
- (iv) build capacity and momentum, and plan for work in priority areas.

The two-year project commenced in January 2010. Activities of the project include four regional convenings, the Vienna international convening and ongoing activities at regional and global levels. Anticipated results of these activities are:

- (i) strengthened civil society capacity to provide legal services for people living with HIV and key populations; and
- (ii) greater networking and advocacy to address legal and policy challenges at national, regional and global levels.

Each of the four regional convenings brought together between 15 and 40 stakeholders. The convenings took place in March-May 2010.

Representatives of the following 35 countries participated in the regional convenings:

- (i) Southern Africa Development Community (SADC) (Johannesburg, 11-12 May 2010): Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Swaziland, Tanzania, Zambia, Zimbabwe, South Africa, Seychelles.
- (ii) Middle East and North Africa (MENA) (Cairo, 2-3 May 2010): Algeria, Egypt, Lebanon, Jordan, Morocco, Tunisia.
- (iii) Latin America (Mexico City, 2-27 April 2010): Argentina, Brazil, Colombia, Costa Rica, Chile, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, Dominican Republic, Venezuela.
- (iv) United States of America (USA) (New York, 25-26 March 2010).

Participants were primarily people working in non-government organizations (NGOs) that provide HIV-related legal services or engage in HIV-related human rights advocacy. Representatives of people living with HIV organizations, government agencies and international organizations also attended the meetings. The international convening brought together 48 lawyers and activists from the four regions and the sponsoring organizations.

2 Introductory session

During the introductory session, all participants introduced themselves and there were brief statements from representatives of IDLO and Ford Foundation.

Director of Programs, IDLO, addressed the objectives of IDLO in supporting the meeting. He described the nature of IDLO as an organization of Member States and its focus on the rule of law and the intersection of law and development. He emphasized IDLO's commitment to improving the lives of people living with and affected by HIV through its work in the legal sector.

Vice President, Democracy Rights and Justice, Ford Foundation, addressed the objectives of the Ford Foundation in supporting the meeting. The Foundation's focus on fairness, equity and opportunity for the most marginalized was emphasized. Human rights issues for HIV are as compelling, pressing, and as under-resourced as they've ever been. The convening is an opportunity to inform the Foundation to be more strategic and more coordinated in its work.

HIV and Human Rights Project Officer, Ford Foundation, expressed the hope that the meeting will help to define and clarify priorities regarding access to legal services, law reform and networking in a time of limited resources. These are complex and difficult problems, so there is not an expectation that solutions will be found immediately. It is sufficient that the participants help to identify problems and challenges, as this will inform the Ford Foundation's future work. It is not expected that the meeting will produce lengthy recommendations.

3 Presentations from the three regions

3.1 Southern Africa Development Community (SADC)

Epidemic context

Southern Africa is the most heavily HIV-affected region in the world. The region accounts for over two thirds (67%) of all people living with HIV and for nearly three quarters (72%) of AIDS-related deaths in 2008. Women and girls continue to be disproportionately affected by HIV and account for 60% of all HIV infections. Heterosexual intercourse has long been recognized as a driving force of the epidemic, but it has also become increasingly clear in recent times that the epidemic is diverse. This is indicated by rising HIV prevalence among sex workers, injecting drug users, men who have sex with men (MSM). This indicates the need to be specific and targeted in programming of prevention and treatment.

Legal and policy context

There are many laws and policies in the region that are discriminatory. There are some laws that offer protection from discrimination, but there are other harmful laws including:

- (i) criminal laws affecting MSM, sex workers and injecting drug users have negative impacts on the ability to reach these groups in terms of programming of prevention and treatment;
- (ii) laws requiring mandatory testing during pregnancy;
- (iii) mandatory disclosure of HIV status;

- (iv) laws that pose obstacles to non-nationals accessing treatment. There is an example of refugees in a Botswana refugee camp (Dukwi) being unable to access treatments because of restrictive laws;
- (v) discriminatory policies in workplaces, including in the military, which has given rise to litigation;
- (vi) denial of condoms to prisoners;
- (vii) criminalization of exposure and transmission.

Difficulties have been created by the N'Djamena model law, developed in West Africa with USAID funding in 2004. This model law includes disturbing provisions on mandatory disclosure, testing, and broad criminalization provisions that can be applied to criminalize mother to child transmission of HIV. This model law has been replicated across Africa including in the SADC region. SADC has also developed a different model HIV law, which is good on the face of it, with non-discrimination provisions and no criminalization. However, some Southern African governments have been adopting aspects of the N'Djamena model law rather than the SADC model. As a result, several countries in Southern Africa have adopted or are in process of considering the adoption of HIV-specific laws that criminalize transmission.

Legal services and litigation

HIV legal services are mostly provided by non-government organizations (NGOs). There are very few government services. AIDS and Rights Alliance for Southern Africa (ARASA) prepares an annual report on HIV and human rights in the region. The last report identified barriers to legal services to include:

- (i) lack of resources for funding;
- (ii) stigma, meaning that people are reluctant to approach lawyers;
- (iii) lack of knowledge about legal rights;
- (iv) NGO services that are difficult to access.

There are few examples of HIV-specific litigation in the region. The ARASA report identified 6 of 12 SADC countries with no HIV-related litigation; of these, 4 were employment related, 3 criminal related and 2 were related to access to treatment

Reasons for lack of litigation include:

- (i) stigma;
- (ii) the extremely slow nature of litigation – it is not a 'quick fix';
- (iii) the issue of standing (locus standi), which means that litigants must have a direct interest in a case, so NGOs cannot take up a case without a litigant;
- (iv) people's ignorance of their rights;
- (v) scarcity of willing lawyers. Lawyers do not want to forego high private incomes, and some are uncomfortable in being associated with HIV and issues involving sex between men or sex work.

An example of strategic litigation is a case in South Africa's Labor Court that considered whether a sex worker is an employee. In South Africa, sex work is illegal. On appeal, it was found that sex workers are entitled to protections of the Labor Court.

The NGO 'Section 27' was involved in litigation regarding employment discrimination against South Africa's Defence Force (exclusion on the basis of HIV status). Similar litigation has been brought against Namibia's Defence Force. Litigation also challenged forced HIV testing

in Zambia's Defence Force. These cases have been largely successful in establishing principles regarding non-discrimination by defence forces.

A challenge confronted in litigation is balancing individual versus organizational interests in mounting cases. Human rights organizations are often looking for a client to bring a case on a specific issue, and sometimes this gives rise to a conflict between what is in the interests of clients and what is in the interests of the broader cause being pushed through litigation. This conflict can be difficult to reconcile.

Another challenge is ensuring access to precedents, which can be difficult as many cases are only brought at the level of magistrates courts. Lack of accessible records or reports of magistrates court proceedings and decisions means that it is difficult to learn from litigation strategies or to access heads of argument and pleadings. Other challenges include locus standi issues, costs and funding to support litigation.

What is needed

Priorities discussed at the SADC convening were:

- (i) know your rights campaigns;
- (ii) training of lawyers, police, judges, magistrates. (For example, in Mauritius, non-discrimination provisions exist, but police are not trained what the law is or how to enforce it);
- (iii) pro bono services;
- (iv) involvement of students and paralegals in delivering services;
- (v) advocacy for government to play a greater role in providing HIV-related legal aid, mainstreaming HIV with other legal services;
- (vi) funding to cover advocacy and litigation costs, including for contingencies and disbursements associated with mounting court cases.

The SADC meeting discussed development of generic training for paralegals, to save costs, and to rationalize the approach by using common training materials. There is a desire to pool resources regionally and to be more strategic about developing partnerships and exchanges (real and virtual), using precedents and sharing resources, knowledge and expertise regionally.

Questions arising from SADC presentation

What deters women from going to court and why are more women not accessing legal services?

Women are not accessing legal services for the same reasons that most people living with HIV are not accessing legal services– stigma, lack of resources and lack of services. But these factors are more pronounced for women because of the difficulties they confront in accessing services. The power imbalance within relationships can deter women from seeking redress from outside relationships. If domestic violence occurs, law enforcement authorities may think it needs to be sorted out in the home, rather than at court. Women who experience this attitude from law enforcement authorities conclude that it is not worth their while to pursue a legal remedy, because nothing is going to come of it.

Despite the high prevalence of HIV in Africa, it seems very few legal cases are brought to international forums. Why is this?

Lawyers and advocates involved in HIV litigation do not use international mechanisms enough. This was discussed at the SADC convening. In Zimbabwe, there has been a process of weighing the pros and cons of pursuing a case at an international forum. A factor that needs to be considered is whether all domestic remedies have been exhausted. The process of exhausting domestic legal remedies gives rise to fatigue because of the length of time it takes. Another major factor is the cost of proceeding in an international tribunal. On balance, it is often concluded that scarce NGO resources would be better used in pursuing cases in the domestic sphere, rather than at the international level.

A major legal obstacle is that for individuals to resort to international tribunals, States must have signed the relevant optional protocol relating to the treaty or convention that has been violated. Many countries, for example, those of the Arab region, have not signed optional protocols attached to treaties, so this mechanism cannot be used by individual litigants to access international forums. To resolve this issue, it is important to advocate for the establishment of another mechanism for individuals to use to access international tribunals.

3.2 Middle East and North Africa (MENA)

Epidemic context

There are around 400,000 people known to be living with HIV in the MENA region, but there is also understood to be significant under-reporting of actual HIV cases so the actual number is likely to be higher. There are hidden epidemics among injecting drug users, sex workers and MSM. Factors that contribute to vulnerability to HIV in the region include the population profile with large numbers of young people in MENA countries, poverty, lack of health services, displacement because of conflict, domestic violence affecting women and children, and excessive reliance on religious and traditional values that instill the false belief that these values protect society from HIV. There is a high level of complacency regarding HIV, with the result that people do not take protective measures. There is also a dangerous silence about HIV because of stigma.

Legal context

Positive aspects

National constitutions include human rights protections relevant to HIV including rights to equality, health, work and privacy. Most countries have ratified international conventions that guarantee human rights, and theoretically conventions are part of domestic law. There have been widespread efforts at international, regional and local levels by organizations to promote human rights-based approaches. The UNDP HIV/AIDS Regional Program for Arab States developed a model HIV/AIDS law in 2005, which has been adopted by Yemen and Djibouti. The Regional Program also prepared a draft convention on the rights of people living with HIV and a legislators' guide, and held workshop for parliamentarians to promote the draft model law. IDLO and Ford Foundation have also supported efforts to encourage provision of legal services for people living with HIV and most-at-risk populations.

Negative aspects

There is a weak culture of respect for human rights in MENA countries. Often human rights violations are accepted by authorities and individuals without objection.

As in Southern Africa, there are laws criminalizing vulnerable groups, and in some countries people living with HIV are denied the right to employment.

There is a lack of awareness of the rights of people living with HIV in the community generally and among legal professionals. There are no specific protective laws, and some laws criminalize non-disclosure of HIV status.

There are few legal services for HIV-related problems, insufficient given the scale of the problem. Services are restricted to uncoordinated efforts of a small number of voluntary groups.

There are examples from Lebanon of efforts by lawyers and volunteers to limit the impact of discriminatory laws and to engage the judiciary. There is a scarcity of qualified lawyers able to provide litigation services to people living with HIV and vulnerable groups. People are unaware of their rights and accept human rights violations. They fear stigma and that their status may be disclosed if they access legal services. Many are simply unaware of legal services.

Organizations that offer legal assistance come under pressure from authorities who disapprove of their work.

Lawyers, judges and prosecutors need to be sensitized to HIV issues, as they generally do not understand issues affecting people living with HIV and vulnerable groups.

There is a lack of resources for legal services.

There is a culture of stigma and discrimination and violations of human rights are widespread in society. Civil society organizations fear stigma if they advocate for rights, this is a cultural issue.

The commitment of governments to provide legal service programs is very weak.

Solutions

Advocates need to hold governments accountable to respect their commitments to human rights.

States have to sign Optional Protocols so that individuals can access international mechanisms for redress.

Advocates need to pressure ministries of interior, justice, education and health to take into account legal aspects of HIV and to support efforts to involve legal issues in national HIV responses.

Advocates can network with law firms and mainstream human rights organizations to persuade them to take on HIV issues.

The support of the judiciary and security authorities is important, although in some countries magistrates do not accept training so different strategies may be required. Work with parliamentarians is also crucial, building on successes in Yemen and Djibouti.

Questions arising from MENA presentation

To what extent do MENA states have National HIV/AIDS Strategies, and if they have them, is protection of human rights built into strategies?

Countries do not have legal strategies for addressing HIV but rather they are required to take measures to guarantee protection of human rights, and are required to present reports on human rights every four years. Often these reports are inaccurate and do not reflect reality. Some civil society groups present their own reports of state compliance with human rights, which may be more accurate. Capacity building in this area does not occur because states do not want to hear about human rights.

Religion is a very important aspect in cultures of the region. What is the experience of inclusion of human rights within religious contexts?

There are positive and negative aspects of religion. There has been progress through the HIV/AIDS Regional Program, which has provided training to faith-based groups and there have been supportive declarations of religious authorities, including the Cairo Declaration and Tripoli Declaration.

Negative aspects of religion include traditional values that forbid extra-marital sex, drug use and homosexuality. The danger is that this breeds complacency: people think that their religious values offer protection from HIV but this is naive. HIV does not ask about marriage contracts when sex occurs.

Egypt has a national HIV/AIDS program, but it is limited. Most MENA countries have HIV/AIDS programs led by Ministry of Health. Other ministries relating to education and the interior do not participate in the national HIV response. Meanwhile, people working on the ground providing services to sex workers and drug users are arrested. This indicates the need for agreements with the ministry of interior not to arrest people who are working with these groups. National HIV/AIDS programs need to be strengthened by working through other ministries that can develop appropriate legal and policy responses. The reality is that there are strong conservative religious movements in MENA countries and governments do not want to risk alienating religious authorities.

There is one example of a successful regional network of Muslim and Christian people working on HIV.

3.3 Latin America

Epidemic context

HIV prevalence is between 0.5% and 1.0% in the region. The number of people living with HIV in Latin America is estimated to be 2 million. In 2009, almost 77,000 people died by AIDS.

The coverage of ARVs in Latin America region was estimated in 2008 to be 54%, exceeding the world average. ARV coverage is higher in South America than in Central America.

The HIV epidemic is concentrated in MSM, transgender persons, female sex workers and their clients, and drugs users. Other vulnerable groups are displaced mobile populations, women, indigenous population and prisoners.

HIV infection in men is higher than in women. There are three HIV positive men for every one women. The HIV prevalence of MSM and transgender populations is very high, around 35% prevalence of MSM in some countries.

29 percent of 2 million drugs users in Latin America are estimated to have HIV.

Between 0.2% and 1.5% of the female population participate in sex work. In Central America, HIV prevalence of female sex workers is 4.3% in Guatemala and 3.2% in El Salvador. In Argentina, HIV prevalence of male sex workers is estimated at 22.8%.

Legal and human rights context

HIV prevention programs do not consistently address the needs of most-at-risk populations and especially there is insufficient attention to human rights, rights of sex workers and evaluation of programs.

The legal environment in the region is complex and sometimes contradictory. National and regional conventions are relevant.

Global trends affect local contexts. So it is important to identify global trends relevant to local contexts. The regional meeting identified issues and the actions that have made a difference in countries such as Brazil and Costa Rica that led to recognition of right to health and to work.

In Mexico there has been a clear strategy on rights protection. Some employees in the military were dismissed from work because of HIV status. A verdict from the Supreme Court stated that having HIV is not an obstacle to maintain employment even in the army and the national health system is obliged to provide care.

A complaint was lodged against the government of Colombia for denial of pension rights to the surviving partner of a homosexual couple. The United Nations Human Rights Committee ruled in favor of the man who sought his deceased partner's pension. In *X v. Colombia*, the UN committee concluded that by denying a partner in a same-sex couple pension rights on the basis of sexual orientation, Colombia had violated the right to equality and non-discrimination as protected by the International Covenant on Civil and Political Rights. This was a landmark case settling the right of homosexuals to live together, to participate in pensions and inherit.

In El Salvador, a case on treatment rights reached the Inter American Commission. The result was that, in effect, El Salvador had to ensure a policy of providing ARV drugs and protecting people affected.

A report is soon to be published by a regional inter-parliamentary group about legal services and capacities related to HIV, which identifies some of the weaknesses in the response.

Advocacy should pressure for guarantees of equality in national human rights laws to apply to people living with HIV.

Criminalization is a major concern and independent institutions to defend HIV-related rights have not been identified. Other rights such as housing, medical insurance, economic rights are not guaranteed for people living with HIV.

Opportunities

A range of civil society organizations work on human rights issues affecting most-at-risk populations. There are several NGO coalitions working on HIV, advocacy for access to services and human rights.

There are legal systems operating at national, regional and international levels, including a regional jurisdiction specialized in human rights.

In recent years, specific laws against all forms of discrimination have been implemented in countries of the region.

What is needed

- (i) Conduct a comprehensive study of the situation of legal services related to HIV in Latin America.
- (ii) Create networks to influence and build capacity of public institutions.
- (iii) Support attorneys to engage universities and the academic sector in HIV and the law.
- (iv) Establish a network of NGOs working in HIV legal services.
- (v) Strengthen strategic litigation in national and regional levels.
- (vi) Establish a Regional Observatory on HIV related rights.

Questions arising from Latin America presentation

In Colombia and El Salvador, who represented the litigants?

In Colombia it was a team of attorneys led by Germán Humberto Rincón Perfetti (G&M de Colombia Abogados y Asociación Líderes en Acción Colombia).

In El Salvador, the case was assisted by international organizations. To pursue a case in the Inter-American Commission on Human Rights requires travel to Washington to bring the case. The case had support from the region, involving coordinated team work between the attorney and national and international groups.

There is trend towards criminalization, and the most vulnerable people are affected by criminalization. Although access to treatment is good, there are also barriers. When people access medical services they are often unwell, at terminal stage. There is fear in the population to come out as HIV positive, and fear of double discrimination as a sex worker or MSM and as a person living with HIV.

Advocates from different countries reported a positive experience in working together with Mexico in the HIV and Human Rights Citizens Observatory. Human rights are universal, but not every country is at the same level. It is important to conduct further research on the range of legal services offered in Latin America and how we can improve the context for advocacy and obtain justice in individual cases.

Strengths of Latin America country responses

Country	Strength
Argentina	<ul style="list-style-type: none"> · Specific Law · Public Politic interventions
Brasil	<ul style="list-style-type: none"> · Recognize rights of PWHIV · Jurisprudence law
Colombia	<ul style="list-style-type: none"> · Case in UN · Recognize rights to same sex couples · Specific Law · Legal actions from Positive Women Network
Costa Rica	<ul style="list-style-type: none"> · Public Politic · Law against discrimination · Jurisprudence · Guaranties to access to justice
Central America	<ul style="list-style-type: none"> · HIV and Human Rights Citizens Observatory
El Salvador	<ul style="list-style-type: none"> · Case in CIDH · Public Politic and specific law
Guatemala	<ul style="list-style-type: none"> · Legal Network and Human Rights Observatory · Case of Legal Protection · Educative process to civil and public sectors
Honduras	<ul style="list-style-type: none"> · Specific legislation
Nicaragua	<ul style="list-style-type: none"> · Specific Law · Compromise of civil society
Mexico	<ul style="list-style-type: none"> · Universal Access to ARV · No discrimination Rights and Law · Experience based in Military law case
Panama	<ul style="list-style-type: none"> · Public Politic in HIV · Compromise and participation of Key actors · Specific Law
Peru	<ul style="list-style-type: none"> · Legal actions and trials · Public Politic in HIV · Specific Law
Venezuela	<ul style="list-style-type: none"> · New General Health Law · National Program of HIV · Participation of civil society and HIV organizations

3.4 United States of America (USA)

Epidemic context

1,106,400 adults and adolescents are living with HIV in the USA. This represents an 11% increase in the period 2002-2006.

The epidemic has its most severe impact on marginalized populations. Most of the disease burden falls on African Americans, MSM, women, sex workers and injecting drug users. Issues include poverty, high rates of incarceration and stigma and discrimination. 46% of black MSM were found to be HIV positive in one study, and 64% of all women living with

HIV are black. Latino women are also disproportionately affected. African Americans represent 75% of HIV in the South of USA. The South has the highest rate of HIV infections and AIDS deaths in the country, yet has access to the fewest resources of any region in the USA.

Access to medicines and services are significant issues. Medicaid is riddled with restrictions. The AIDS Drugs Assistance Program is contingent on funding and there are waitlists of over 1800 people waiting for drugs in 11 states.

Legal services context

There is no guarantee of legal representation in civil cases. In criminal cases, legal representatives are appointed. Congress provides funding for legal services, but it is restricted. Agencies cannot use federal funds for grass-roots lobbying, or representing undocumented immigrants or prisoners. NGOs fill gaps left by restricted federal funding. NGOs provide direct legal services. Income eligibility for legal assistance is unrealistically low, and as a result only 20% of the demand by people living with HIV for lawyers is being met.

Funding provided under the Ryan White Care Act provides small amount of funds for non-criminal legal services, usually only for wills and trusts. There is no macro-level strategic plan for legal service programs.

Interrelated issues include discrimination, entitlements to housing, and rights of immigrants.

Key organizations involved in litigation include Gay and Lesbian Alliance against Discrimination (GLAD), Lambda Legal, American Civil Liberties Union (ACLU) and the HIV Law Project. Historically, LGBT (lesbian, gay, bisexual, transgender) organizations have often played a leadership role. There is very little national strategic thinking on impact litigation. There is some communication, but no strategic approach.

Challenges are lack of funding, funding restraints on federal money and capacity issues that constrain ability to think strategically.

Cases

Bragdon v. Abbott, U.S. Supreme Court, 1998: Asymptomatic HIV can be defined as a 'disability' under the Americans with Disabilities Act.

Taylor v. Rice, 2008: a case brought by Lambda Legal, which resulted in the US government changing their policies to allow hiring of people with HIV in the foreign service.

Franke v. Parkstone Living Centre, Inc: an ongoing case in which a retiree was evicted from an assisted-living facility due to HIV status. Lambda Legal is representing the client in the District Court.

Early cases by the HIV Law Project were pioneering, especially in relation to women's rights.

Key Advocacy Issues

Priorities include:

- (i) National AIDS Strategy (2010): this is the USA's first national strategy and NGOs played a role in its development.
- (ii) Criminalization of transmission and exposure: 32 states specifically criminalize HIV transmission and/or exposure.
- (iii) Housing.
- (iv) Access to health care (services and medications).
- (v) Health care reform.
- (vi) Comprehensive sex education.
- (vii) Involvement of people living with HIV in decision-making bodies.
- (viii) Immigration.
- (ix) Funding for legal services.
- (x) Sexual and reproductive health rights.
- (xi) Intersecting issues, e.g. housing, LGBT/MSM, immigration, racial discrimination.

Key advocacy platforms include Congress, White House, President's Advisory Council on HIV and AIDS (of which the positive women's network is a member), Department of Health and Human Services, and grass roots mobilization.

A Southern HIV Legal Providers Meeting was held, which was the first opportunity for an interstate discussion of legal service issues for the South. Spaces for advocacy have been created by Ford Foundation and others. It has been important for women to have space to come together to identify issues, particularly the intersection of HIV and sexual and reproductive health rights, and the impact of criminalization on women and gay men. These discussions led to recommendations on the priorities of the National Strategy.

Other advocacy opportunities have been provided through the federal AIDS Policy Partnership, the Treatment Access project, and the International Community of Women Living with HIV (ICW) and other NGOs

There is a continued need for funding of:

- direct legal services, to address restrictions in federal funding;
- spaces for strategic thinking on advocacy and legal services (both on civil and criminal matters); and
- information sharing and to bring marginalized groups into the conversation, including how to track cases and identify precedents such as criminalization cases, which are difficult to track.

Support is required to building organizational capacity for NGOs on how to access human rights frameworks as a coherent strategic tool. This includes building the capacity of positive people's organizations and networks on the application of human rights frameworks with regard to HIV.

A broader range of legal activities need to be considered – not just litigation, but also educating judges, decision makers and policy makers.

Questions arising from USA presentation

Does criminalization emanate from the law itself or is it due to practices? Do we need to change the law or to target law enforcement practices?

Criminalization arises from the law itself and from enforcement practices. Judges have made poor decisions based on wrong information e.g. interpreting spitting as a risk for HIV. Prostitution-free zones in Washington DC have led to police using condoms as evidence of illegal sex work. Some states rely on existing state criminal laws for HIV transmission prosecutions, whereas some states have enacted new HIV-specific laws, which often result in harsher penalties. Sometimes proof of HIV transmission is not required for a conviction.

In the USA, asymptomatic HIV can be considered a disability – does this undermine our argument that asymptomatic people should not be restricted in work? Is there a contradiction?

There are two different legal definitions of disability in the USA. Anti-discrimination laws adopt a broad definition of disability so that people living with HIV are protected by from discrimination. However, different, much stricter functional definitions are applied for the purpose of accessing federal benefits for medical benefits and income support. This makes it more difficult for a person living with HIV to claim federal benefits than it is to claim protection from discrimination.

The USA has a new 1st National AIDS Strategy- does it address legal issues?

There is very little mention of legal services in the Strategy. The Strategy has three goals, to reduce HIV incidence, guarantee access to care, and address racial disparities. The essential role of legal services as a form of support service falls within the second goal. However, there is no major mention of housing, legal services, or availability of case management in the Strategy.

What is the situation for people living with HIV seeking asylum in the USA?

There are successes in the courts, but the standard of proof is very high. If you are gay, then overlapping issues can assist by claiming HIV status plus fear of persecution based on sexuality. It takes a lot of work to educate judges on how HIV impacts people globally. It is complex because it creates a dichotomy around whose system is better. It may not be helpful to a case to highlight the gains made in other countries regarding access to services, for example it may not be helpful to the person's case to show that in some poor countries, such as Haiti, there has been good access to treatment in some circumstances.

Comment on role of litigation involving women:

Cases brought by women have been focused on sexuality and reproductive health and rights. Litigation was required to broaden the definition of HIV and AIDS and to take account of a broad spectrum of diseases affecting women, including TB and cervical cancer. Women of child-bearing age were barred from clinical drug trials, so medications were not trialled on women. Litigation helped to change these standards. Historically, there has been a failure to acknowledge women's sexuality and reproductive health rights in the HIV response.

4 Advocacy at regional and international levels

Lawyers have limited capacity to change the world. But lawyers can provide solutions. There is a tendency to believe we can only find solutions within the domestic sphere. In Zimbabwe, the need to seek solutions from regional and international mechanisms is recognized. The importance of taking these cases to judicial or quasi-judicial bodies is not always obvious.

In Zimbabwe, section 79 of the Criminal Code criminalizes HIV transmission. The way the law is framed means that a client currently being represented will almost certainly be convicted under this domestic law. The only other option is regional or international bodies that can refer to international commitments and the harms caused by criminalization. If the client's case fails before the domestic Constitutional Court, then the remaining option is to lodge a claim at the regional SADC Tribunal. This may set a legal precedent that helps others as well. If the case succeeds at the SADC tribunal or the African Commission and receives a favorable judgment it can give other jurisdictions some soft law that countries can refer to in domestic or international challenges. Regional approaches can also promote access to justice for people who have no hope within the domestic arena.

Using regional or international remedies can mean that governments are held accountable for their commitments made at international forums. International bodies can strengthen domestic jurisdictions in terms of the quality of the law that applies. Lawyers can take advantage of the depth of experience of members of international bodies. There are enforceability issues faced by relying on international or regional bodies, but at least half justice is better than no justice.

Questions arising on regional and international bodies

Can you elaborate on strategic thinking in selecting regional rather than international bodies?

How long does it take to get a case to SADC mechanism?

What are the cost considerations?

The experience from Colombia was that to present cases to the international court can be cheap in terms of lodging a complaint by mail or email. Many people are afraid of going to international courts because they fear disclosure of identity but international bodies can protect identity as happened in *X v. Colombia*, where the litigant was concerned about disclosure of homosexuality.

The SADC case is still in process at the domestic level before the Supreme Court in Zimbabwe. The client was charged in January with transmission of HIV, it is hoped that the matter can be brought before the SADC Tribunal in early 2011. The experience from Africa is that international litigation it is very costly.

The difficulty faced by choice of forum depends on the issues that are being litigated. SADC has its own charters and regional instruments, which may be better than domestic options in the case of Zimbabwe. Enforcement of findings from regional bodies is assisted by peer pressure from neighboring countries who belong to the regional body. Going to the African Commission may be expensive, in that it requires travelling to the Commission's headquarters in Banjul for oral arguments. It is popular among African governments to travel for face-to-face hearings. Appearing in person may provide better opportunities to obtain concessions from government representatives, who may be more amenable when they are outside of their country. It may be difficult to convince the client that a solution lies outside the country. In the case currently being considered, the client wants the injustice of her case to be documented and the regional body provides an opportunity to do this.

The African Commission and SADC Commission have been quite progressive on HIV. They may be very useful bodies to challenge the wave of criminalization and to address LGBT issues. Options for strengthening enforceability have been considered by the African Commission, the African Union and the African Court. The SADC Tribunal has been instrumental in allowing groups to come back and ask for further pressure for enforcement when there has been non-compliance. Accountability arguments should be made at regional bodies.

In the Americas, a special mechanism exists for taking a case to the Inter-American Commission on Human Rights when the human right to life is at stake. The Commission only makes a recommendation, and it should be clarified that cases have not yet gone to the regional Court. The Commission has not pronounced on HIV-related issues in the same way as it has on other human rights issues such as migrant rights. Advocates would like the Commission to issue a formal pronouncement on HIV and human rights.

The experience of the Inter-American Commission on Human Rights in its consideration of the case arising in El Salvador on right to treatment was that the Commission did not impose a sanction on the government of El Salvador. The case was filed and the state realized that they were not complying with legal obligations so apologized and delivered treatment. This led to real results within the country by pressuring the government of the country to act.

It is important to consider how lawyers can proceed to have emblematic cases considered at the regional level. A board of lawyers could consider which issues should be documented in a way that is useful.

The focus of discussion has been on litigation strategies, but litigation may not be as effective as proactive law reform work in promoting human rights and justice for HIV-affected communities. Latin America, especially Central America, has undertaken much work on national policies relating to HIV. Argentina has passed gay marriage laws. Mexico City has interesting laws and training is being implemented with judges, police, and attorneys general relating to LGBT issues. It is important to do policy and legal work at the same time. There may be a good HIV law but a bad immigration or labor law so the advocacy agenda is broad and complex. The rights of migrants living with HIV are a key policy issue in Latin America.

To resolve cultural obstacles to human rights advocacy, it may be more powerful and strategic to engage with regional mechanisms, rather than global or international bodies. Findings from a regional body based in the global South cannot be so easily dismissed by national actors as irrelevant northern perspectives.

5 Global Commission on HIV and the Law

The Commission is intended to respond to issues such as criminalization and the impact of law on women. These issues require a comprehensive response from the international community - not just country-by-country actions but rather global action through leadership of the UN.

What is needed is a package of evidence to provide to countries to demonstrate that human rights-based responses provide effective solutions, and to engage legal sector actors in the dialogue (not just health sectors).

The Goal of the Commission is to develop actionable, evidence-informed, human rights-based recommendations for effective AIDS responses that promote and protect the human rights of people living with and most vulnerable to HIV.

Objectives of the Commission are to:

- (i) Analyse existing evidence and generate new evidence on the interactions between law and HIV.
- (ii) Develop rights-based and evidence-informed recommendations to address the impact of punitive laws and practices on enabling legal frameworks to support effective AIDS responses.
- (iii) Increase awareness amongst key constituencies, especially law- and policy-makers and civil society about the impact of punitive laws and practices & enabling legal frameworks to support effective AIDS responses.
- (iv) Engage with civil society to achieve the above, and in the process strengthen civil society's ability to campaign, advocate, lobby for the required changes in law and practice. (Including giving a voice to populations such as sex workers, drug users, MSM and transgender people, who are sometimes marginalized by other parts of civil society).

The Commission is based on three mutually reinforcing axes: a high level Commission that will add insight and weight to findings and recommendations, a Technical Advisory Group to help generate and build consensus around the evidence base, and Regional Dialogues to ensure participation and inclusion of affected communities and law- and policy-makers.

The Commission comprises 14 members including 2 members with expertise in AIDS and law. Members are eminent people who will provide global leadership on the issues. There will be 3 Commission meetings over 18 months including planning for at least 2 meetings in developing countries. Commissioners will be invited to visit regions to participate in Regional Dialogues and be informed by Regional Issues Papers and the Technical Advisory Group.

Regional dialogues will not just be hearing testimony but rather a two-way discussion and will occur in at least in 4 regions (Africa, Asia, Caribbean and Eastern Europe). Interface will occur between the Commissioners, policy/law makers and affected communities.

Deliberations of the Commission will be informed through submissions and evidence-informed inputs, supported by Regional Issues Papers, civil society mobilization, social networking and new media technology.

The Commission has a Technical Advisory Group of 20 members, co-chaired by a Commissioner. Members are experts on law, human rights, HIV, public health, marginalized communities, people living with HIV and UNAIDS Secretariat. The Group's role is to advise the Commission on key issues to be considered, to review evidence and working papers to inform the Commission, and advise on political strategy and follow up.

Outcomes sought to be achieved include:

- (i) Compilation of a consolidated, coherent and compelling evidence base.

- (ii) Greater awareness among lawmakers, key officials responsible for criminal justice, national AIDS programmes, civil society and donors, on the impact of punitive laws and practices and enabling legal frameworks on AIDS responses.
- (iii) Leadership: Engagement of law and policy makers on addressing the impact of punitive, laws and practices and enabling legal frameworks on HIV responses.
- (iv) Public dialogue on social attitudes, human rights and legal issues relating to HIV – communication strategy to foster civil society engagement.
- (v) Civil society engagement: more cohesive, effective advocacy through engagement in the Commission process and strengthened capacity for subsequent campaigning, advocacy and lobbying.

Process

The pre-inception phase involved consultation with a range of constituencies, with civil society inputs such as human rights activists, donors, UN co-sponsors and engaging leadership and support. The idea germinated and received impetus from the UNDP Administrator, and by the Executive Director of UNAIDS.

The inception phase involved developing and clarifying concepts, a planning meeting involving civil society and UNAIDS Secretariat, selection of the Commissioners based on geographic representation, gender, expertise and influence, and selection of the Technical Advisory Group, based on expertise in HIV, law, human rights, public health, work with and representative of key populations and people living with HIV.

The First meeting of Technical Advisory Group (17-18 June 2010) generated suggestions for Key Areas of Enquiry. Three key areas have been proposed by the Group:

- (i) Punitive laws and practices that effectively criminalize lives.
- (ii) Laws and practices that sustain violence and discrimination as lived by women.
- (iii) Laws and practices that impede treatment access.

Regional dialogues will be embedded in pre-existing regional mechanisms so that engagement occurs e.g. UN Economic and Social Commission in Asia Pacific. A resolution will be sought from UN General Assembly when recommendations are made.

Governments such as India and Brazil are offering assistance in hosting meetings. The Commission has a diverse funding base drawing from foundations, governments, in-kind support and academic institutions. Civil Society will be engaged through the World AIDS Campaign's Light for Rights campaign.

Within the UN, UNDP is supporting the Commission and engaging with the UNAIDS Secretariat, the UNAIDS Human Rights Reference Group and the UNAIDS High Level Commission on HIV Prevention.

Next steps

Background papers are being prepared on the three focus areas. Calls will be made for submissions from civil society and UN Reference Groups. There will be later opportunities for submissions, it will be an ongoing process.

The first Commission meeting will be held on 6-7 October in Brazil. Preparation for Regional Dialogues will include engaging civil society for preparing submissions. Regional Dialogues will be held from February-June 2011.

The Commission was launched on 24 June 2010 in Geneva. For more information, see: <http://www.undp.org/hiv/comisiononhivandthelaw/index.shtml>

Questions arising from Global Commission on HIV and the Law presentation

What can lawyers do to help the Commission's work?

Well-substantiated advocacy papers are important. Submissions by the end of August are important. If networks of lawyers want to prepare submissions, UNDP would welcome this and be prepared to present a joint submission to the Commission. A collective submission based on experience of participants in today's consultation would be welcomed.

6 Reports from groups

The meeting divided into groups to discuss the themes of (i) access to legal services, (ii) networking, (iii) impact litigation, and (iv) law reform.

6.1 Access to legal services

State agencies should have a greater role in financing and delivering HIV-related legal services. Different levels of development of different countries need to be considered.

States should be obliged to fund or provide legal services as these services contribute to fundamental human rights protections.

States agencies should have direct responsibilities for HIV-related legal services including offices of Public Attorneys, Ombudsman and Public Defenders. In some states, Public Attorney Offices are entitled to pursue legal complaints, in some cases the victims are people living with HIV and public prosecutors could play a greater role. Ombudsman's offices often lack enforcement powers. The capacity of Ombudsman to propose laws to the parliament or Congress can potentially be a powerful tool.

National human rights institutions often have broad mandates to create human rights programs, which could be used to address HIV.

It would be useful to develop a database on access to legal services and on the nature and outcomes of cases litigated. A database or electronic bulletin could report cases won or lost in each country – this was discussed in the context of Latin America.

NGOs need to be supported to play a greater role in providing information on legal rights and on access to legal services, and in ensuring that the NGO promotes rights within the organization. NGOs are fundamental to this process and should create networks with other human rights organizations. NGO roles include advocacy to repeal discriminatory laws such as workplace laws. States have a responsibility to fund NGOs.

Not all the countries are willing to comply with their duties with regard to these matters. Laws criminalizing sex workers, MSM and drug users are obstacles to state provision of legal aid to these populations.

A common complaint is lack of understanding of public officers, judges and lawyers of international human rights law, and related obligations and commitments.

Building of coalitions is important to improve access to legal services, including coalitions with other NGOs working on other human rights issues, with universities and public interest law clinics.

National programs on HIV should include legal services as well as health services and address capacity building of lawyers and judges.

Use of a standardized methodology is important for documentation of human rights violations to present to court or the authorities. There have been useful experiences in creating standards for documentation, for example through the Central America Observatory on Human rights. Sharing of information about successful cases is not just about precedents but sharing litigation approaches.

An electronic bulletin could be useful to report cases of human rights violations, and information about human rights and legal remedies. The purpose will be to grant general access to this information to NGOs and people living with HIV.

The work of the Central American Organization of Parliamentarians on HIV is an example of use of a regional mechanism to promote laws addressing human rights of people living with HIV.

National AIDS programs should include legal as well as health services.

6.2 Networking

Challenges to networking include:

- (i) Gender is insufficiently taken into account. Men are taken more seriously than women in many countries, and women are expected to stay at home rather than engage with policymakers and professionals. For example female sex workers faced resistance in attempting to forge partnerships in Mozambique for this reason.
- (ii) There are differing levels of capacity to engage in networking, due, for example, to differing educational levels. The African Sex Workers Association reported that Zimbabwean sex workers are more educated than in other African countries, which is a challenge for sex worker networks.
- (iii) Legal constraints on sex workers may mean that a person's status as a sex worker is a barrier to networking e.g. it may result in travel restrictions for women with a criminal record or who are considered to have been involved in trafficking.
- (iv) Ideological differences present a barrier to networking.
- (v) Cooperation between agencies is difficult in Egypt and China because of the lack of flexibility of organizations and/or funding issues, particularly if organizations are competing over the same pot of money.
- (vi) Too much information can be a barrier to effective networking. Information overload from e-mails, twitters etc is not helpful.
- (vii) Lack of resources.

Opportunities relating to networking include:

- (i) Memorandums of Understanding between agencies to partner on specific projects or activities can be helpful.

- (ii) International meetings enable coalition building as well as exchange of experiences.
- (iii) There is a need to use existing technologies more effectively, such as video conference calls, and hotlines for communities to participate in networks.
- (iv) Venues for meetings need to be considered carefully, as restrictions on visas prevent international travel to some meetings. In response, there is a need to expose the political entity that imposes travel restrictions.
- (v) Systematic mapping of stakeholders at country, regional and international levels would enable a database of stakeholders to be developed that can form the basis of coalitions and networks.

Networks can support litigation through cross-fertilization of ideas. Building a network of like-minded individuals can focus on thematic issues such as criminalization, ensuring a concerted effort in a particular area with lateral support from individuals with similar views. Lawyers need to consider developing a movement or consensus around specific issues. For example, legal networks could look at how we can use litigation to bring about change in relation to gender dynamics of the epidemic.

6.3 Impact litigation

Resources are required for funding of cases, payment of salaries to lawyers, and to ensure access to quality legal services. Impact litigation is supported by developing a litigation plan or strategy, which defines methods to synchronize objectives and includes pre- and post-litigation activities. This can address issues such as media engagement and rapport with stakeholders. The aim is to ensure that there has been planning for actions to be taken should the case win or lose, in advance of the court date.

Synergies with lawyers in private practice and pro bono initiatives can assist in sourcing expertise for impact litigation.

Community based trainings to mobilize community-based organizations to identify clients and support clients involved in litigation is another important aspect for impact litigation.

Capacity building is required at three levels:

- (i) Individual litigants: in African countries, travel costs are a major issue. In all regions, many people living with HIV are unaware of the availability of legal redress and of the availability of legal services.
- (ii) Lawyers: some are reluctant to advocate in HIV cases, due to stigma or lack of knowledge.
- (iii) Judiciary: Judges and magistrates need to have their capacity built through general education including workshops and interactions with other judges.

It is strategic to identify difficult judges and work closely with them to improve their approach, and to provide materials to judges including statistical data and information on how previous HIV-related cases have been dealt with by the courts.

UNDP, UNAIDS, AIDS Law Project and the International Association of Women Judges brought together senior judges from sub-Saharan Africa in 2009. It was agreed to focus on four issues: criminalization, access to treatment, gender based violence and other gender issues such as inheritance, and workplace issues. A report of the meeting is available on UNAIDS website. Briefing papers were prepared looking at southern African litigation.

It was difficult to bring judges together from different legal traditions. A progressive judge in Botswana made the point that law can be used as force for good or evil. A senior judge from another country disputed this approach saying there is only 'law', not 'good' or 'bad' law. No consensus was reached on MSM, sex work issues or HIV in the military. Participation included civil society activists and from the International Criminal Court, African Commission, and retired senior judges. One judge from the Supreme Court of Malawi asked "Why raise the issue of criminalization of MSM when it is a dormant issue?". This attitude contrasts with reality, as there have been recent prosecutions.

Judges do not like to be educated by non-judges. Training of judges should be conducted as a roundtable approach in an open way, not approaching with an ideological argument but rather encouraging discussion. A culture of strategic litigation is required so lawyers and judges feel that have had a valuable role in participating in progressive case outcomes.

6.4 Law reform

In addition to litigation, law reform advocacy can further the agenda of lawyers interested in human rights and social justice. Provision of routine casework services, impact litigation and law reform are multiple levels of the same strategy. There are domestic and international dimensions, and HIV-specific and non-HIV specific dimensions to social justice law reform.

It is important to be proactive rather than reactive in setting law reform agendas. Often our work is only reactive e.g. responding to bad court decisions.

Some issues need a global law reform strategy. Other issues are more locally specific.

Priority issues for law reform advocacy

Criminalization is a priority issue and has at least three forms: criminalization of HIV transmission, of failure to inform partners of HIV status, and of exposure of another person to HIV. What would it look like to address these issues from a globally consistent perspective? This is a key policy challenge. Other related issues are criminalization of populations such as MSM, sex workers, and people who use illicit drugs; and criminalization of the work of lawyers acting in the defense of these populations.

Laws that sustain violence against women must be addressed, particularly laws that restrict access to sexual and reproductive health services.

Issues relating to drug use include laws relating to syringe exchanges, harm reduction and compulsory treatment programs.

Laws need to be improved to ensure improved access to care and treatment for low-income and uninsured populations, and confidentiality rights.

Law reform can strengthen existing laws by creating more effective enforcement mechanisms.

Other laws discussed were laws relating to HIV testing, application of Constitutional rights in the context of HIV, social protection and social security laws, and laws relating to health insurance and health system reforms.

Law reform strategies

Forming broad coalitions with advocates working on issues beyond HIV is an important approach and can have an impact on systemic reforms. The process of law reform needs to build capacities and advocacy skills including of people living with HIV and affected populations.

Direct casework and impact litigation informs law reform. Mobilizing communities is essential. Opportunities arise to build social movements around reform agendas that are much bigger than just the individual case. The role of people living with HIV is central in law reform movements.

Funders are scared of supporting activism and 'advocacy' activities. Funders have to understand the limits and potential for advocacy of non-profit organizations. Lawyers and non-lawyers partnering in advocacy is an important approach.

Education of decision makers including international bodies on the potential of law is required. Litigation strategies need to include dialogue between litigants and law reform advocates so that settlements can include creative remedies such as training of employers. Creative settlement agreements can help to change the system.

The role of lawyers in sharing information and capacity building on law reform issues has received less attention than routine direct legal service provision and impact litigation. Opportunities exist for training, building capacities of NGOs, and building coalitions beyond the HIV community for proactive law reform.

7 Recommendations

7.1 Networking

- (i) Address stigma and discrimination, which affect the availability of lawyers prepared to work on HIV issues.*
- (ii) International networking on criminalization is a priority, and should include a capacity building component.*
- (iii) Build a global coalition on HIV and the law, which includes participation of high risk, underprivileged populations.*
- (iv) Form a regional and global database of stakeholders to inform network membership.*

7.2 Access to legal services

- (i) Build a coalition globally to network on HIV-related legal issues and the impacts of law on high-risk underprivileged populations.*
- (ii) Create standards for documentation of human rights violations.*
- (iii) Support programs for NGOs to strengthen their capacity in human rights and legal remedies, and to improve access to this information to persons living with HIV, most-at-risk populations and their organizations.*
- (iv) Advocate for states to take issues relating to human rights of people living with HIV more seriously, in the same way as other issues are addressed.*

7.3 Impact litigation

- (i) Develop synergies and linkages with lawyers in private practice, and encourage them to take up cases.*

- (ii) *Support workshops and programs for training the judiciary, including magistrates, on HIV-related issues.*
- (iii) *Provide community-based trainings to mobilize community-based organizations to help identify clients and to offer psychosocial support for those individuals who decide to litigate.*
- (iv) *Provide general education and awareness on the possibility of litigation to community stakeholders on options for resolving HIV-related legal problems.*
- (v) *Foster a culture of strategic litigation in local bar associations.*
- (vi) *Garner resources from domestic and international sources, and to share resources where possible e.g. for international cases and strategic partners in litigation.*
- (vii) *Invite multilateral or other international organizations to provide material help for important litigation and to provide expertise on the domestic plane.*
- (viii) *Establish a network for impact litigators who can contribute to a pool of resources.*
- (ix) *Litigate more cases at the regional and international level, where there is no success at the domestic level.*
- (x) *Support regional networks, especially where similarities exist between jurisdictions. Close-knit regional networks should be formed that can enable lawyers to share lessons and visit each other where possible.*
- (xi) *HIV issues should be mainstreamed through defining the issues in terms of rights to housing, health and food, which have a direct bearing on the wellbeing of people living with HIV.*
- (xii) *Provide capacity building for community-based organizations on the use of strategic litigation as an integral part of their advocacy strategy.*

7.4 Law reform

- (i) *Support the development and implementation of:*
 - a. *a strategy or plan to integrate law reform activities into traditional legal service work;*
 - b. *reactive and proactive law reform agendas (for the issues that were identified) for advocacy at domestic and international levels.*
- (ii) *Support capacity building for law reform activities in NGOs, and provide training and opportunities to build the capacity of communities and coalitions for law reform activities.*

7.5 Discussion on recommendations and overarching points

The final discussion emphasized the need to establish a global network focused on HIV and the law, and to address specific priorities such as criminalization.

One perspective was that there is a need to focus our work on two issues that are globally important:

- (i) *the trend towards criminalization at a local, regional and global level, and responding to this through UN mechanisms and regional Commissions;*
- (ii) *creating greater awareness and visibility to issues affecting vulnerable populations, particularly MSM and women.*

For example, the US Government is providing funding for international efforts challenging discrimination on grounds of sexual orientation and gender identity.

Another perspective was that the first priority is to create the global network, after which the priorities can be defined. The litigation group was of this view. A global network can have regional components, with different regional priorities.

The following points were made in relation to criminalization as a cross-cutting priority:

- (i) It was suggested that a global network can draft a global report on criminalization in all countries that can be used in litigation in domestic courts or at the international level.
- (ii) Research has shown that criminalization is not the right way to solve the problems of people with HIV. As long as the law exists the criminal law may be applied especially with most vulnerable populations.
- (iii) In Zimbabwe, it is possible to prosecute a mother who fails to take ARVs to prevent HIV transmission to her child. Criminalization statutes negate the importance of people taking personal responsibility for their own health. It is legally beneficial not to know your HIV status, as it provides a defense to a criminal charge of transmitting HIV. Therefore repealing laws that criminalize is a priority issue.
- (iv) Resolving HIV transmission through the criminal law is the wrong approach – it masks the lack of state fulfillment of obligations to address a social and health problem.
- (v) Criminal laws are selectively enforced against poor and minority communities. Criminalization supports social control by the state and removes people who are already disadvantaged from the network of state- supported services.
- (vi) Criminalization affects sex workers, who fail to report being raped, because if they admit that they were selling sex they risk prosecution for sex work. MSM are often raped by other men to demonstrate that they are not “man enough”. MSM also fail to report sexual assault.

In addition to criminalization, access to health care is a common priority. Access to health care is a right not a privilege. Health as a human right is a common priority theme.

Closing reflection

Solidarity between activists is required: those working for women’s rights, MSM activists, and other; as well as solidarity between north and south, and south-south solidarity.

Some issues are arising that are common between regions, so opportunities for inter-regional cooperation and sharing of lessons and strategies need to be further explored.

Innovation is crucial when resources are scarce, to ensure programs are sustainable with or without extra funding.

“Do no harm” is an important principle. In the approach that we as lawyers and advocates take to our work, we need to avoid risking a backlash that may result in people being jailed and punished unnecessarily.

Laws and legal services, culture, norms, values, religion – all these factors contribute to the enabling environment that we need to create to support people’s capacity to advocate.

“A human being is part of the whole called by us the universe, a part limited in time and space. He experiences himself, his thoughts and feelings as something separated from the rest, a kind of optical delusion of his consciousness. This delusion is a kind of prison for us,

restricting us to our personal desires and to affection for a few persons nearest to us. Our task must be to free ourselves from this prison by widening our circle of compassion to embrace all living creatures and the whole of nature in its beauty.” (Albert Einstein)

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Participants are listed alphabetically by surname

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Annex II Agenda

International Consultation on HIV-related Legal Services and Rights
STEIGENBERGER HOTEL Herrenhof
Vienna, 16 July 2010
Toberg & Kafka & Loos

Agenda

Objectives of the Consultation

1. To identify the emerging opportunities and challenges in using the law and legal mechanisms to address discrimination and other HIV-related legal issues for people living with and affected by HIV, and key populations.
2. To identify opportunities for advocacy at international and regional levels to influence key stakeholders to strengthen the enabling legal and policy environment for the response to HIV and AIDS. These stakeholders include financing and technical institutions -- such as the Global Fund, UNAIDS and UNDP -- national governments, regional bodies, and major donors.
3. To initiate or strengthen regional and sub-regional networks of lawyers and activists to strengthen the enabling legal environment through the sharing of information and experiences, and capacity building.
4. To build capacity, momentum and plan for work in the upcoming period in priority areas, where appropriate.

Thursday, 15 July 18.00-18.30	Registration and per diems Toberg & Kafka & Loos
Friday, 16 July 8.30-9.00	Registration and per diems
9.00-9.30	Opening session Chair: Dr. Khadija Moalla Welcome Introduction of participants Review of objectives and agenda

9.30-10.30	<p>Presentation of regional reports</p> <p>Chair: Dr. Khadija Moalla</p> <p>Southern Africa Middle East North Africa Latin America USA</p>
10.30-11.00	Refreshment break
11.00-12.20	<p>Presentation of Regional Reports (continued)</p> <p>Linkages between regional and global action Ms. Michaela Clayton</p> <p>International Commission on HIV and the Law Dr. Mandeep Dhaliwal</p> <p>Plenary discussion</p>
12.20-12.30	Working group set up
12.30-13.30	Lunch
13.30-15.00	Working groups
15.00-15.30	Refreshment Break
15.30-16.15	<p>Working group reports</p> <p>Chair: Dr. Khadija Moalla</p>
16.15-16.45	<p>Recommendations</p> <p>Chair: Dr. Khadija Moalla</p>
16.45	<p>Concluding comments and next steps</p> <p>Evaluation</p>
17.00-18.00	<p>Networking reception</p> <p>Refreshments</p>