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# **Review of country progress in addressing legal and policy barriers to universal access to HIV services in Asia and the Pacific**

Report for the UN Regional Interagency Team on AIDS

May 2016

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# Acknowledgements

The *Review of country progress in addressing legal and policy barriers to universal access to HIV services in Asia and the Pacific* aims to highlight progress, challenges and future priorities in addressing legal and policy barriers to achieving universal access to HIV services in Asia and the Pacific. It will inform country preparations for the United Nations General Assembly High-Level Meeting on Ending AIDS (HLM) to be convened in New York, 8-10 June 2016, as well as subsequent actions at regional and country level towards ending AIDS, promoting human rights and achieving the Sustainable Development Goals (SDGs).

It highlights significant examples of progress of countries in removing legal and policy barriers to accessing HIV services since 2012. It draws from a desk review of data reported from countries on legal and policy reviews and consultations, and related developments in legal and policy environments for HIV responses in Asia and the Pacific.

The report benefited from review and inputs from government representatives, civil society organizations, UNAIDS and UNDP country offices, and other development partners. Their contributions are gratefully acknowledged.

Data for this report is based on country responses to two regional surveys conducted in January 2015 and February 2016, from the following countries: Afghanistan, Bangladesh, Bhutan, Cambodia, China, Cook Island, Federated States of Micronesia, Fiji, India, Indonesia, Lao PDR, Mongolia, Myanmar, Nauru, Nepal, Pakistan, Palau, Papua New Guinea, the Philippines, Samoa, Thailand, Vanuatu and Viet Nam.

Commissioned by the Ad Hoc Regional Interagency Team on AIDS (Ad Hoc RITA) on Enabling Legal Environments, the development of the report was managed by Brianna Harrison, Human Rights and Law Advisor, UNAIDS Asia Pacific Regional Support Team; Edmund Settle, Policy Advisor, UNDP Bangkok Regional Hub; and Tristram Price, Associate Social Affairs Officer, UN ESCAP. The Ad Hoc RITA is co-chaired by Nadia Rasheed, Team Leader, HIV, Health and Development, UNDP Bangkok Regional Hub and Srinivas Tata, Chief Social Policy and Population Section, UN ESCAP. Special thanks to John Godwin the author of the report.

# Executive summary

Countries in Asia and the Pacific have made significant progress in removing legal and policy barriers to universal access to HIV services since 2012.

Concerted actions resulting from reviews and consultations have resulted in improvements to policies, laws and law enforcement practices. Solid progress has occurred through laws and policies supporting expanded availability of HIV treatment and prevention options, including antiretroviral therapy (ART), condoms, needles and syringes, and opioid substitution therapy (OST).

Actions have also had broader impact in other areas crucial for inclusive and human rights-based development, particularly in reducing social inequalities, promoting gender equality, fulfilling rights in employment and education, and improving access to justice, thereby advancing progress towards the Sustainable Development Goals (SDGs) and promoting human rights.

In many countries, reviews and consultations have led to increased availability of data on legal and policy barriers to HIV responses, and mobilization and engagement of stakeholders to address barriers through partnerships and collaboration.

However, much work remains to be done. Progress has been slow and inconsistent in the reform of criminal laws that deter key populations from accessing services (i.e. removal of penal code provisions relating to sex work, drug use, and same-sex sexual conduct). Significant work has occurred in raising awareness of the importance of expanding access to justice, however the vast majority of people living with HIV and key populations are still unable to access legal aid services. Key populations and women affected by HIV remain highly stigmatized, continue to face discrimination and high levels of violence that often goes unreported, and have limited access to justice.

In some country contexts, the legal and policy environment for key populations has deteriorated significantly since 2012, presenting new barriers to accessing HIV services. It is critically important that countries maintain participatory national processes that focus on removing legal and policy obstacles to universal access to HIV services to ensure progress towards the Fast-Track targets including Zero Discrimination and the target set by SDG 3 (healthy lives and well-being) of ending AIDS by 2030.

National and regional accountability mechanisms should proactively monitor progress of each country in developing and implementing action plans for removing legal and policy barriers. People living with HIV and key populations should play a central role in these accountability mechanisms.

Countries preparing for the 2016 UN High-Level Meeting (HLM) on Ending AIDS are urged to be guided by the Secretary-General's HLM Report *On the Fast-Track to End the AIDS Epidemic* in using the SDGs and Member States' pledge to 'leave no-one behind' as entry points for advocacy and follow-up activities flowing from legal and policy reviews and consultations.

Countries should grasp the opportunity of the HLM to strengthen intergovernmental commitments to address the specific issues and recommendations that were raised through the national consultations, reviews and follow-up actions to remove legal and policy barriers. Political leadership and engagement of people living with HIV, key populations, religious leaders and other civil society champions are crucial to preserve the policy gains that have been made, address complacency and resolve law reform bottlenecks.

Chapter 1

# Introduction



The purpose of this report is to highlight progress, challenges and future priorities in addressing legal and policy barriers to achieving universal access to HIV services in Asia and the Pacific. It will inform country preparations for the United Nations General Assembly High-Level Meeting on Ending AIDS (HLM) to be convened in New York, 8-10 June 2016, as well as subsequent actions at regional and country level towards ending AIDS, protecting human rights and achieving the SDGs.

At least 28 countries in Asia and the Pacific have conducted national legal and policy reviews of their HIV responses in the period 2012-2016.<sup>1</sup> Most of these reviews were informed by extensive, participatory consultations engaging governments, civil society stakeholders, including people living with HIV and key populations, UN and development partners.

The report draws from a desk review of data reported from countries on these legal and policy reviews and consultations, and related developments in the legal and policy environment for HIV responses in Asia and the Pacific. The main sources of information for this report were survey responses received by the UN Economic and Social Commission for Asia and the Pacific (ESCAP), the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Development Programme (UNDP) from countries in the period 2014-2016,<sup>2</sup> and country and regional reports of legal and policy reviews and consultations conducted since 2012. Based on this information, the report highlights significant examples of progress of countries in removing legal and policy barriers to accessing HIV services since 2012.

## Background

The 2011 UN *Political Declaration on HIV and AIDS* included the commitment to review laws and policies that adversely affect the delivery of HIV services as one of the actions towards advancing human rights to reduce stigma, discrimination and violence related to HIV.<sup>3</sup> To support countries to meet this commitment, in 2012 Asia-Pacific countries attending an Intergovernmental Meeting on HIV and AIDS<sup>4</sup> agreed to the *Regional Framework for Action on HIV and AIDS to 2015*, which required countries to organize multi-sectoral national reviews and consultations on removing policy and legal barriers to universal access, in accordance with ESCAP resolutions 66/10 and 67/9.<sup>5</sup>

In conducting their reviews and consultations, countries were encouraged to consider the recommendations made in the report of the Global Commission on HIV and the Law.<sup>6</sup> The Global Commission found that the ability of governments to develop effective HIV responses has been restricted by stigma, discrimination and punitive legal and policy environments that are hostile to people living with HIV and key populations. The Commission's report included a comprehensive set of recommendations for creating legal environments that facilitate rather than hinder effective HIV responses.

1 Afghanistan, Bangladesh, Bhutan, Cambodia, China, Cook Islands, Federated States of Micronesia, Fiji, India, Indonesia, Kiribati, Lao PDR, Malaysia, Mongolia, Myanmar, Nauru, Nepal, Pakistan, Palau, Papua New Guinea, Philippines, Samoa, Solomon Island, Sri Lanka, Thailand, Tuvalu, Vanuatu, Viet Nam. All finalized reports and documentation are available at: <http://www.aidsdatahub.org/Thematic-Areas/Legal-Environment>. The reports of the reviews and/or consultations from Lao PDR, Pakistan and Nepal are in draft form. The report from Afghanistan's 2012 consultation meeting is not available. A consultation meeting was held in Federated States of Micronesia in 2014 but did not result in a report. Cook Islands considered legal and policy barriers in meetings held in the development of the National Strategic Plan on Sexual and Reproductive Health 2014-2018. A report of the consultation meeting held in Viet Nam in 2012 on the law on administrative violations is not available. Reports of two consultation meetings held in India in 2015 on transgender people and the law and on legal aid services for people living with and affected by HIV are not available.

2 Data is based primarily on (i) responses from 13 Asia-Pacific countries to a survey distributed in 2015 (Survey monitoring country follow up of actions from Expert Group Meeting on Legal Reviews and Consultations, March 2014, Pattaya, Thailand). Countries responding to the 2015 survey were: Afghanistan, Bangladesh, Bhutan, Cambodia, China, Fiji, Indonesia, Nepal, Pakistan, Philippines and Thailand; and (ii) responses from 18 Asia-Pacific countries to a survey distributed in February 2016: Bangladesh, Cambodia, China, Cook Island, Federated States of Micronesia, Fiji, India, Indonesia, Lao PDR, Mongolia, Myanmar, Nauru, Palau, Papua New Guinea, Samoa, Thailand, Vanuatu and Viet Nam.

3 UN General Assembly (2011), *Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS*, A/RES/65/277, para. 78.

4 The Framework was agreed at the 2012 Asia-Pacific High-Level Intergovernmental Meeting on the Assessment of Progress against Commitments in the Political Declaration on HIV/AIDS and the Millennium Development Goals.

5 In 2010, ESCAP resolution 66/10 called on members to ground universal access in human rights and undertake measures to address policy and legal barriers to effective AIDS responses. In 2011, ESCAP resolution 67/9 called on members to initiate reviews of national laws, policies and practices to enable the full achievement of universal access with a view to eliminating discrimination against people at risk or living with HIV, in particular key populations.

6 UNDP (2012), *Risks, rights and Health*. New York: UNDP.

In this report the term 'key populations' is used to refer to sex workers and their clients, people who use drugs, men who have sex with men (MSM), transgender people, prisoners and migrants. These key populations are at higher risk of acquiring or transmitting HIV in most countries in the region and their engagement is critical to a successful HIV response. An enabling legal and policy environment for HIV responses also requires particular attention to be given to the needs and human rights of key affected women and girls. The term 'key affected women and girls' is used to refer to women and girls who are living with HIV, female sex workers, women and girls who use drugs, transgender people, mobile and migrant women, female prisoners, women with disabilities, women in sero-discordant relationships, and intimate female partners of men who engage in behaviours that put them at higher risk of HIV infection.<sup>7</sup> Key affected women and girls often face additional legal and policy barriers to access to services that need to be considered as part of efforts to identify and address barriers to effective HIV responses.

Key populations and key affected women and girls are more likely to engage in HIV prevention efforts and access HIV testing and treatment if legal environments (laws, law enforcement and access to justice) are protective and stigma, discrimination and violence are reduced. Supportive, non-discriminatory laws and policies enable key populations to participate openly in planning and delivering HIV services, which ensures that services are accessible and acceptable to their communities.

## Beyond 2015: new frameworks, commitments and targets

In 2015, progress of countries in conducting national legal and policy reviews was a prominent agenda item of the Asia-Pacific Intergovernmental Meeting on HIV and AIDS convened by ESCAP. Country representatives attending the Intergovernmental Meeting were provided with a background paper describing good practices in conducting national reviews and consultations drawn from country experiences.<sup>8</sup> The background paper and discussions during the meeting itself confirmed that national reviews and consultations conducted since 2012 had been effective in galvanizing national interest in and ownership of actions to address legal issues that have sensitive cultural and political implications and are critical to successful HIV responses. They also recognized the added value of a regionally-supported framework for action and the associated supportive implementation mechanisms and platforms for exchange between countries in the region on models, progress and challenges.

At this Intergovernmental Meeting, Asia-Pacific countries adopted a road map to ending the AIDS epidemic by 2030 (*Regional Framework for Action on HIV and AIDS Beyond 2015*), which included a commitment to continuing national reviews and multi-sectoral consultations on legal and policy barriers. It also contained two additional, inter-linked commitments, namely:

- to undertake national stakeholder consultations to promote access to affordable medicines, diagnostics and vaccines; and
- to develop evidence-based national HIV investment cases and plans to ensure sustainable financing of the AIDS response.<sup>9</sup>

Conducting national, multi-sectoral and participatory reviews and consultations to address legal and policy barriers enables countries to advance implementation of their obligations under international human rights law. The *International Covenant on Economic, Social and Cultural Rights* requires States to respect, protect and fulfil the rights of all people to the highest attainable standard of health<sup>10</sup> and provides that States must guarantee that people are able to enjoy the right to health and the other rights guaranteed by the Covenant without discrimination.<sup>11</sup> Further, the *International Covenant on Civil and Political Rights* requires States to enact laws prohibiting discrimination and to guarantee to all persons equal and effective protection against discrimination,<sup>12</sup> and the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) requires States to ensure access to health services throughout the lifecycle and prohibit all forms of discrimination against women. Most countries in the region have

7 Unzipping the policies for key affected women and girls (2015), <http://www.aidsdatahub.org/sites/default/files/publication/Unzipping-the-Policies-for-Key-Affected-Women-and-Girls-April-2015.pdf>

8 ESCAP (2015). Overview of good practices in conducting national reviews and consultations on policy and legal barriers to universal access to HIV prevention, treatment, care and support in Asia and the Pacific, E/ESCAP/HIV/IGM.2/2.

9 Regional framework for action on HIV and AIDS beyond 2015, endorsed at the 71st session of ESCAP, E/ESCAP/HIV/IGM.2/4.

10 International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 12.

11 ICESCR Article 2.

12 International Covenant on Civil and Political Rights (ICCPR) Article 26.

signed and/or ratified these international treaties.<sup>13</sup> Implementation of International Labour Organization (ILO) Recommendation 200 on HIV and the World of Work is also advanced by these processes.

The commitment to conduct reviews and consultations is also critically important to ensure countries achieve the UNAIDS Fast-Track targets as part of the 2030 Agenda for Sustainable Development. The Fast-Track targets relate to elimination of HIV-related discrimination,<sup>14</sup> achieving the 90–90–90 treatment targets<sup>15</sup> and the HIV prevention targets by 2020.<sup>16</sup> These commitments support achievement of SDG target 3.3 (end the AIDS epidemic by 2030) and also support progress towards the SDGs relating to gender equality, reducing inequalities, peace and partnerships (further discussed below). Action in this area also aligns with sub-regional commitments made by governments in the Association of South East Asian Nations (ASEAN) *Declaration on Getting to Zero*, the South Asian Association for Regional Cooperation (SAARC) *Regional Strategy on HIV/AIDS 2013-2017*, the 2006 *Auckland Declaration of the Pacific High Level Consultation on HIV and the Law, Ethics and Human Rights* and the 2004 *Suva Declaration on HIV/AIDS* by Pacific parliamentarians.

New commitments relating to enabling legal environments are likely to be made in the 2016 HLM Political Declaration, including a framework for setting new regional targets. The HLM provides countries with an opportunity to consider regional indicators and targets to measure progress in conducting further reviews and consultations, and in taking specific actions to expand access to justice and to improve laws, policies and law enforcement practices.

## Country-led approaches within a regional framework

The approach adopted for conducting the reviews and consultations has emphasized the importance of country-led responses tailored to national needs. The scope of national reviews, consultations and follow-up activities has been defined at country level, with regional agencies providing support including guidance on processes and issues to consider as well as opportunities for cross-country exchange. Country-level actions and outputs have in turn influenced further progress at regional and global levels. This approach continues to be applied under the framework for reviews and consultation beyond 2015. This dynamic relationship between activities at national, regional and global levels, and the history of regional and global commitments that frame these activities, are depicted below in Diagram 1.

Where requested, technical support and assistance in mobilizing resources (technical and otherwise) for reviews and consultations was provided from the regional level. The Ad-Hoc UN Regional Interagency Team on AIDS subgroup on Enabling Legal Environments ('Ad Hoc RITA on Enabling Legal Environments') served as a focal point for oversight, monitoring progress and coordinating support from regional agencies and external partners where needed. This group is co-chaired by UNDP and ESCAP with UNODC, UNESCO, UNFPA, WHO, UN Women, ILO and UNICEF participating and UNAIDS acting as the secretariat. The regional offices of UNDP and UNAIDS generally took the lead role in providing support to country-level activities, and UNODC, UNESCO, UNFPA, WHO, UN Women, ILO and UNICEF also provided support in their areas of expertise through regional and country level engagement.

Regional civil society organizations including those representing people living with HIV, key populations and women affected by HIV also played an important role providing guidance, technical support and capacity building for their country members, supporting members to engage effectively in consultations, reviews and follow-up

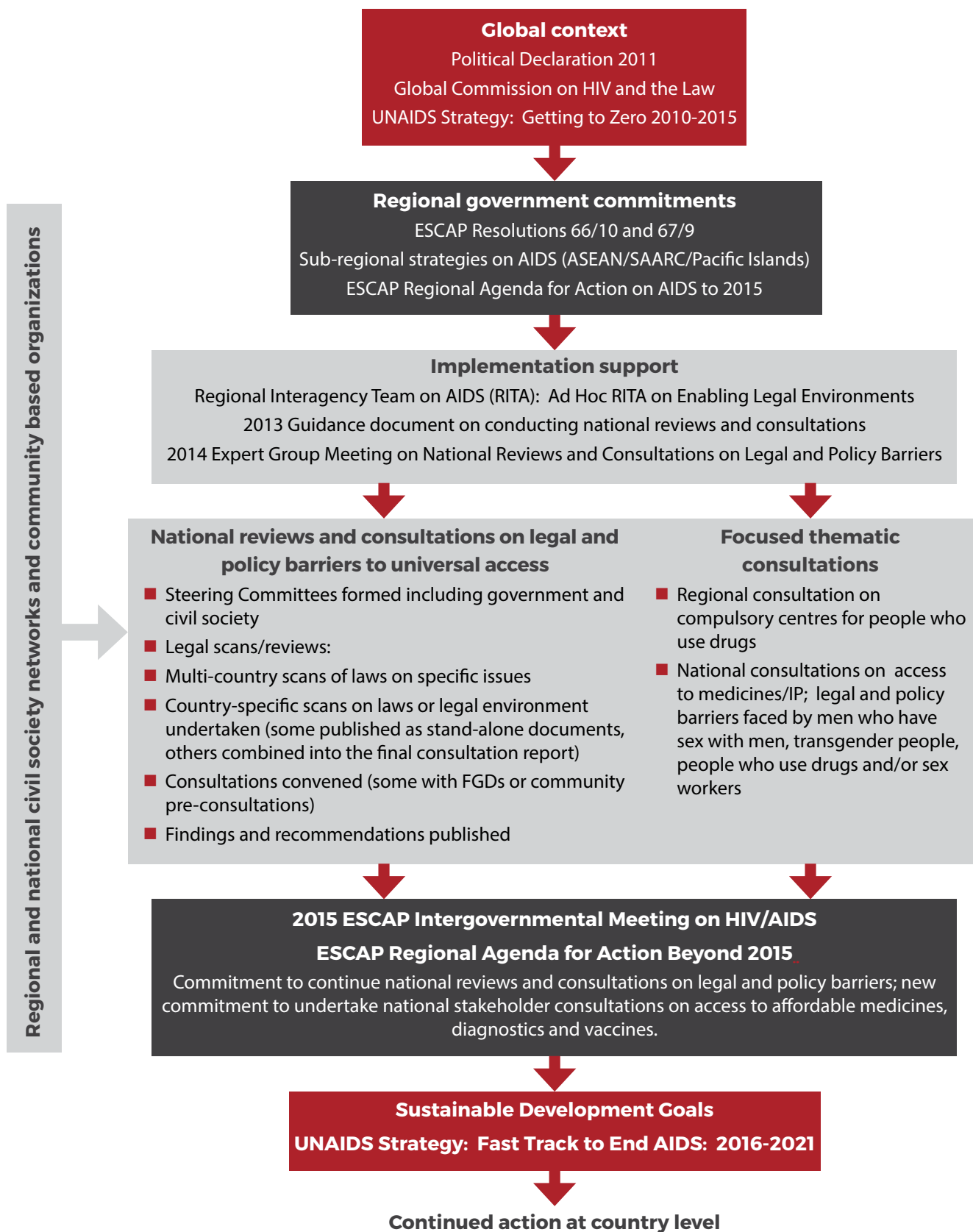
13 ICESCR has been ratified by most countries in Asia and the Pacific but has not been signed or ratified by Bhutan, Brunei Darussalam, Malaysia, Singapore, Cook Islands, Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, Niue, Samoa, Tonga, Tuvalu and Vanuatu. ICCPR has been ratified by most countries in the region, but has not been signed or ratified by Bhutan, Brunei Darussalam, Malaysia, Myanmar, Singapore, Cook Islands, Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, Niue, Solomon Islands, Tonga and Tuvalu. CEDAW has been ratified by all countries in the region except Niue, Tonga and Palau.

14 Fast-Track targets specifically on discrimination are: 90% of people living with, at risk of and affected by HIV report no discrimination, especially in health, education and workplace setting; 90% of women and girls living free from gender inequality and gender-based violence to mitigate risk and impact of HIV. Other targets, including the prevention and treatment targets will not be achieved without significant progress on removing social and structural barriers to service uptake.

15 Treatment targets for 2020 are: ensuring that 90% of people living with HIV know their HIV status, 90% of people who know their HIV-positive status are on treatment, 90% of people on treatment have suppressed viral loads.

16 Fast-Track HIV prevention targets for 2020 include reducing the annual global number of new HIV infections by more than 75% – to 500,000; 90% of key populations, including sex workers, MSM, people who inject drugs, transgender people, prisoners, and migrants, have access to HIV combination prevention services, 90% of women and men, especially young people and those in high-prevalence settings, have access to HIV combination prevention and sexual and reproductive health services; 90% of young people are empowered with the skills, knowledge and capability to protect themselves from HIV.

**Diagram 1: Regional dynamic of reviews and consultations under the ESCAP Regional Framework**



actions.<sup>17</sup> Advocacy by national and regional civil society organizations was critical to government endorsement of the progressive and action-oriented commitments included in the two ESCAP roadmaps.

Important examples of regional support to country-led processes included:

- *Guidance Document for Asia and the Pacific Region on Creating Enabling Legal Environments: Conducting National Reviews and Multi-Sector Consultations on Legal and Policy Barriers to HIV services*, produced in 2014 by UNDP, UNAIDS and ESCAP with inputs from the members of the Ad Hoc RITA on Enabling Legal Environments.<sup>18</sup>
- In 2014, country stakeholders from 13 countries from across Asia and the Pacific participated in an Expert Group Meeting on Legal Reviews and Consultations convened by ESCAP, UNDP and UNAIDS to share lessons learned in conducting reviews and consultations, identify effective strategies and discuss future priorities.<sup>19</sup>
- In the Pacific, regional support from UN agencies and the Secretariat of the Pacific Community was particularly important, given limited institutional capacity and relevant policy expertise in some of the small Pacific island countries and territories. A consultation and action planning workshop for Pacific island countries involving Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tuvalu and Vanuatu was held in 2013.

In most cases, national consultations included representatives of people living with HIV and key populations, government representatives (e.g. the national HIV/AIDS coordinating authority, ministries responsible for law and justice, social affairs, women, youth, police and public security), the national human rights institution (NHRI), legal aid providers, UN agencies, NGOs and development partners. In some countries, in-depth interviews were conducted with individual stakeholders and separate consultations or focus group discussions were held with the main stakeholder groups (i.e. government agencies, development partners, NGOs, people living with HIV and key populations) prior to the national consultation meeting (e.g. Cambodia, Lao PDR).

In some countries, focused thematic consultations occurred where these were considered a priority. For example, China's Red Ribbon Forum convened separate national review meetings focused on laws and policies relating to people who use drugs (2013), female sex workers (2014) and MSM (2015), with participation from government, civil society, people living with HIV and key populations. Several countries conducted consultations on legal and policy barriers to access to medicines focusing on intellectual property and flexibilities under the World Trade Organization Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS).

In some countries, consultations on legal and policy issues occurred as part of national planning processes. For example, in Viet Nam, consultations were conducted with ministries, development partners and civil society organizations in the development of the Investment Case on Optimizing Viet Nam's HIV Response, which guides national policy development related to HIV.

Parallel to country-level consultations and reviews, several initiatives have been implemented that engaged national stakeholders in regional processes focused on specific legal and policy themes with a view to further supporting countries to take forward reviews and consultations at country level in these areas (see 4.3, Box 3).

In most of the countries that completed reviews and consultations in the period 2012-2015, a structured follow-up process has been established to support ongoing work on the legal and human rights aspects of the HIV response, including further reviews and consultations on specific priorities (see 4.1).

17 E.g. Asia Pacific Network of People Living with HIV/AIDS (APN+), Asia Pacific Coalition for Male Sexual Health; (APCOM), Asia Pacific Transgender Network (APTN), Asia Pacific Network of Sex Workers (APNSW), Asian Network of People who use Drugs (ANPUD), Women of Asia Pacific+, 7 Sisters.

18 The Guidance document is available at: <http://www.aidsdatahub.org/creating-enabling-legal-environments-conducting-national-reviews-and-multi-sectoral-consultations>.

19 Expert Group Meeting on the Implementation of National Reviews and Consultations on Legal and Policy Barriers to Universal Access to HIV Services 4-5 March 2014 Pattaya, Thailand.

## Linking action on enabling legal environments to the SDGs

National and regional activities implemented under the *Regional Framework for Action on HIV and AIDS Beyond 2015* will contribute to the achievement of the SDGs. Addressing laws and policies that hinder effective HIV responses also fulfils the SDG pledge to leave no-one behind, through focusing on the human rights of the most marginalized key populations and affected women and girls, and ensuring that these populations are supported to participate meaningfully in legal reviews and consultations as well as follow up activities and accountability processes.

Addressing the legal, policy and human rights aspects of HIV can contribute to a range of SDGs including on poverty elimination, health, gender equality, decent work, reducing inequalities, healthy cities, justice and inclusive institutions and partnerships. The SDGs reflect the need to take an integrated approach across the social, economic and environmental dimensions of development, and highlight the interconnection of human rights with efforts to improve health outcomes, eliminate inequalities and reduce poverty.

The UN Secretary-General's report to the HLM (*On the Fast-Track to End the AIDS Epidemic*) calls on all partners to work together more coherently in all of these areas across political, cultural, religious and institutional divides. The Secretary-General's report and the *UNAIDS 2016-2021 Strategy* propose that countries give particular attention to the following five SDGs in organizing their responses. The legal reviews and consultations in many countries directly addressed several of the outcome areas described below, and in some cases have already resulted in progress:

### ■ **SDG 3: Health and wellbeing**

Comprehensive laws and policies relating to HIV prevention, testing, treatment, care and support, with attention to accessibility, affordability and quality of services. Targets under SDG 3 include ending AIDS by 2030, universal health coverage, universal access to sexual and reproductive health services, and access to affordable medicines using TRIPS flexibilities.

### ■ **SDG 5: Gender equality**

Addressing gender inequality in property and inheritance rights; protection against gender-based sexual and intimate partner violence; freedom from discrimination on grounds of sex, gender, gender identity and gender expression; promoting women's sexual and reproductive health rights and investing in women's leadership in HIV responses.

### ■ **SDG 10: Reduce inequality**

Promoting the rights of all people to equally access HIV services and commodities (e.g. condoms, needles and syringes, essential medicines) without discrimination, with particular attention to key populations, women and young people; engaging these populations as a force for transformation in governing, designing and implementing accessible services.

### ■ **SDG 16: Promote just, peaceful and inclusive societies**

Strengthening of laws and policies to protect against stigma, discrimination, violence and hate crimes; removal of punitive laws and policies including travel restrictions and mandatory HIV testing, and punitive laws related to HIV transmission, same-sex sexual relations, sex work and drug use; legal literacy programmes to empower people to know their rights; access to legal services; and sensitization of law makers, police and health-care workers.

### ■ **SDG 17: Revitalize the partnership for sustainable development**

Policy responses and implementation plans built on principles of partnership and cross-sector collaboration, including partnerships and issue-based coalitions that engage governments, civil society, faith communities, the private sector, the scientific community, academia, foundations and local authorities. Achievement of this SDG is supported by policies relating to resource mobilization, human resources for health, technology transfer, engagement with the private sector, costed national plans and country-owned targets.

### Box 1: Using the SDGs as entry points for legal and policy priorities

Removing legal and policy obstacles to access to HIV services aligns with national health, poverty reduction, rule of law, governance, human rights and equality agendas. The following observations regarding the relevance to the SDGs of work to address legal and policy barriers that impede access to HIV services were made by UNDP and UNAIDS country offices in response to the survey completed with partners in 2016:

In **Cambodia**, follow-up actions arising from the legal review will contribute to SDG 3 on health and well-being and SDG 10 on reduced inequality. Improving legal literacy and increasing access to legal services for key populations will contribute to SDG 16 on peace, justice and strong institutions. Implementation of protective labour laws including the ministerial regulation on the health of entertainment workers will contribute to SDG 8 on decent work. Forging of partnerships with a wide range of stakeholders in creating a more enabling legal and policy environment for HIV responses will contribute to SDG 17.

Legal and policy priorities for **China** will be integrated into the UN Theme Group's work plans on SDG 3, SDG 10 and SDG 16, with the main entry point being reducing inequality in China.

**India** emphasized that poverty eradication requires protection of the human rights of all people, and therefore noted the links between ending poverty and hunger (SDG 1 and 2), ensuring quality healthcare (SDG 3) and education (SDG 4), achieving gender equality (SDG 5) and reducing inequalities (SDG10). All these SDGs address underlying factors that create HIV vulnerability.

**Papua New Guinea** noted that decriminalization of sex work and sodomy and removal of travel restrictions will provide the legal basis for equal and accessible preventive measures for marginalized populations at greater risk of HIV. This will contribute to progress on SDG 3 (to ensure equality and universal coverage in HIV and health services for all), SDG5 on gender equality; SDG 10 on reduced inequalities; SDG 16 on peace, justice and strong institutions; and SDG 17 on partnerships. HIV programming in Papua New Guinea is inextricably linked to all these issues.

**Viet Nam** highlighted the inter-related nature of the SDGs on health, rights, gender equality and strong institutions. The UN will work in partnership with Government of Viet Nam to assure that the most vulnerable populations do not get left behind as the country strives to enhance prosperity, including through follow up to reviews and consultations on barriers to universal access to HIV services.

Chapter 2

# **Overview of progress and emerging challenges**



## Areas of progress

Reports from countries confirm that there has been solid progress in strengthening laws and policies supporting expanded availability of HIV treatment and prevention options, including antiretroviral therapy (ART) for treatment and prevention, condoms, needles and syringes, opioid substitution therapy (OST) and community-based HIV testing. Several countries have also introduced or strengthened legal protections for people living with HIV in the key areas of protections from discrimination, breach of confidentiality and rights to informed consent.

Issues regarding sex work, drug use, sexual orientation, gender identity and gender equality remain sensitive in many countries. Achieving progress in relation to removal of punitive laws in these areas and introduction of laws that are protective of the human rights of key populations has been highly challenging in most countries. Nonetheless, as chapter 3 illustrates, much progress has been achieved. Multiple stakeholders across the region have engaged in a broad range of activities to advance the human rights of key populations. The significant progress that has occurred has been a result of engagement and leadership of communities, NHRIs, parliamentarians, service providers and government (particularly the justice and health sectors).

Important measures have been taken that lay the foundations for ongoing improvements to the enabling legal environment, including:

- community mobilization, advocacy and campaigning on legal and policy priorities;
- systematic documentation of human rights violations, legal research and analysis;
- dialogues on thematic issues engaging government and civil society in discussions of specific legislative options;
- legislative drafting and introduction of legislative bills into parliament for debate;
- use of justice systems for seeking justice and structural change; and
- raising legal and policy reform proposals through UN human rights reporting mechanisms.

Further, countries have made notable progress in sensitizing law enforcement bodies to HIV and the issues affecting key populations (3.3.2), and important steps have been made in providing people living with HIV and key populations with information about their rights and access to legal services (3.4.2).

In a few countries, breakthroughs have been achieved of global significance, such as new constitutional protections in the area of sexual orientation and gender identity in Fiji and Nepal. Thailand has passed a gender equality law prohibiting discrimination on the ground of gender expression and India's Supreme Court issued a landmark judgment on the human rights of transgender people. In relation to sex work, Cambodia has paved the way for other countries in moving to a model of regulation based on a labour rights and public health approach, rather than criminalization. Myanmar's parliament acted quickly to decriminalize possession of needles and syringes in response to a recommendation of the national review. Mongolia has updated its national AIDS law to strengthen protections for people living with HIV and remove travel restrictions. Some of the most progressive examples of reform have occurred at provincial and local level, such as anti-discrimination ordinances introduced in the Philippines and establishment of state Welfare Boards for Transgender People in India.

## Continuing and emerging challenges

Despite significant improvements to laws, policies and practices in many areas, in some countries leadership on these issues is faltering and there are examples of a return to punitive approaches that drive key populations underground and away from services. For example, developments of concern since 2012 that highlight the need for creating enabling legal and policy environments for access to services include:

- In some localities, needle and syringe programmes (NSPs) have been suspended due to political pressure and lack of enabling legal frameworks.
- Some countries or provinces have introduced corporal punishment for same-sex sexual relations and cross-dressing.

- Some apex courts of countries in Asia have upheld penal code provisions that criminalize consensual sex between men.
- The UN and others continue to document widespread physical and psychological violence and discrimination against lesbian, gay, bisexual, transgender and intersex people in the region.<sup>20</sup>
- There have been reports that local government authorities in some countries have forcibly evicted thousands of sex workers from brothels in areas where sex work had previously been tolerated.
- Incidents have been reported in several countries in which sex workers, people who use drugs, MSM and transgender people have been arbitrarily arrested and detained without legal basis.
- Reports by many civil society organizations and networks across the region point to a shrinking of the space in which to conduct advocacy. There is a trend towards increased regulation of foreign organizations, local NGOs and community-based organizations including those active on human rights issues affecting key populations.
- In some countries, national HIV bills that recognize and protect the rights of people living with and affected by HIV and provide clear remedies for violations of such rights have languished in the parliament without necessary political support to be passed into law.

These developments underscore the importance of avoiding complacency and investing in leadership. They also reinforce the importance of a regional approach, since approaches taken in one country in the region can influence others. Leadership and political engagement are key to resolving law and policy reform bottlenecks. Political resistance to law and policy reform proposals often arises due to arguments based on morality, culture, religion and tradition and there is often pressure to avoid issues perceived as controversial. Therefore, continued progress in these areas will require sustained leadership.

An area in which progress has been slow is strengthening legal and policy protections for key affected women and girls. In some cases, national reviews and consultations have not yet considered many of the legal and policy priorities affecting women and girls, such as inadequate protections from sexual and intimate partner violence, inequalities in property and inheritance rights, lack of access to post-exposure prophylaxis for rape survivors, stigma and discrimination in healthcare settings, especially for women who use drugs, and failure of health care services to address the sexual and reproductive health needs of women and girls living with HIV. To address these gaps, countries can consider convening specific consultations focused on key affected women and girls and integrating processes designed to assess national HIV responses from a gender perspective into general reviews and consultations. For example, guidance on integrating gender into assessments of HIV responses<sup>21</sup> could be used to inform discussions on legal reviews and consultations.

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20 See: Joint United Nations Statement, Ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex people, September 2015, available at: [http://www.ohchr.org/Documents/Issues/Discrimination/Joint\\_LGBTI\\_Statement\\_ENG.PDF](http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF)

21 UNAIDS (2014). UNAIDS gender assessment tool: Towards a gender-transformative HIV response. Geneva: UNAIDS;



Chapter 3

# **Key country-level recommendations since 2012**

## 3.1 Law and policy reform

### 3.1.1 Priorities recommended by reviews and consultations

The law and policy reform priorities identified by reviews and consultations can be categorized under the following headings, as described below:

- i. Access to rights-based HIV treatment and prevention services.
- ii. Strengthening of protective laws and policies.
- iii. Removal of punitive laws.
- iv. Mobilizing public support for legal and policy reforms.

### HIV treatment and prevention

Most national reviews and consultations generated recommendations on improving access, availability and quality of HIV treatment and prevention services. Legal and policy measures recommended by countries included:

- Policies guaranteeing universal access to anti-retroviral therapy (ART) to eligible patients (Indonesia, Lao PDR, Myanmar) including for prevention of mother-to-child transmission (PMTCT).
- Adoption of the recommendations of the World Health Organization (WHO) on pre-exposure prophylaxis (PrEP), and 'treatment as prevention' including access to ART immediately after diagnosis (Lao PDR) and community-led HIV testing and services (Nepal).
- Integration of HIV services in primary care, sexual and reproductive health, maternal and child health services and health systems (Bangladesh, Cambodia, Malaysia, Fiji).
- Laws and policies enabling access to ART for migrant workers (Lao PDR, Thailand).
- Inclusion of HIV treatment services in national health insurance schemes (Indonesia, Thailand, Viet Nam).
- Addressing institutional discrimination by providing HIV in general hospitals, rather than infectious disease hospitals (China), and ending segregation of patients living with HIV in hospital care (Myanmar).
- Promoting access of adolescents to HIV testing, prevention and treatment services. Countries recommended that laws and policies be amended to recognize young people's rights to access HIV and sexual and reproductive health services, including a mature child's rights to consent to an HIV test independent of a parent or guardian (Cambodia, Indonesia, Malaysia, Nepal, Philippines).
- Policies promoting provision of condoms to key populations including sex workers, MSM and transgender people (Cambodia, China).
- Laws and policies supporting delivery of harm reduction services including NSPs and OST to reduce transmission of HIV to people who use drugs (Malaysia, Myanmar, Lao PDR, Nepal, Philippines, Viet Nam).
- Measures to address the rights of people in prisons and other closed settings to HIV prevention and treatment including ART, OST and other harm reduction interventions (Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Nepal, Philippines, Viet Nam).
- Laws and policies to enable migrants to access ART (Bangladesh, Lao PDR).

Recommendations of particular relevance to key affected women and girls included:

- Develop policies on the reproductive rights of women and girls living with HIV. Laws and policies should prohibit coerced sterilization or abortion and denial of reproductive health care (Cambodia, Indonesia, Myanmar).
- Remove restrictions on access to information on contraceptive services for unmarried women. Reduce the stigma that single women experience in accessing reproductive health services (Indonesia).
- Development of policies on HIV services for women whose husbands or intimate partners are HIV-positive, including couples testing and counselling services and treatment as prevention options (Lao PDR).
- Issue a national policy on post-exposure prophylaxis for survivors of sexual assaults (Cambodia).

Some countries highlighted the need for amendment of patent laws to enable countries to apply the flexibilities of the TRIPS Agreement to expand availability of drugs for treatment of HIV and related conditions such as tuberculosis and hepatitis C (Cambodia, Indonesia and Myanmar). Some countries also recommended scrutiny of trade agreements to ensure they do not restrict access to generic drugs by preventing countries from exercising TRIPS flexibilities (Malaysia, Myanmar). Other countries did not consider these issues in the national reviews or consultations due to the need for a different group of stakeholders to be consulted for accurate assessment of barriers and development of recommendations. Several countries chose to further advance this agenda through separate thematic consultations.

## Strengthening of protective laws and policies

National reviews and consultations recommended that a high priority be given to the enactment of protective laws and policies in the following areas:

- Discrimination protections. Improving legal and policy responses to discrimination was a common theme across all countries. Recommendations included actions to address discrimination in a range of contexts including public and private sector activities in health care, education, employment, insurance, accommodation, prisons and other closed settings. Protection from discrimination was recommended for people living with HIV, their families and carers, as well as for key populations and women and girls affected by HIV.
- Requirements for informed consent to HIV testing and treatment, and prohibition of any form of mandatory or compulsory HIV testing (including testing of migrants, pre-marital and pre-employment HIV testing) (Bangladesh, China, Malaysia, Myanmar).
- Requirements relating to confidentiality of HIV status (Bangladesh, Myanmar, Nepal).
- Legal recognition of transgender people (Bangladesh, Lao PDR, Malaysia, Myanmar, Nepal).
- Replace mandatory pre-marital HIV testing with voluntary confidential HIV testing and counselling and ensure sero-discordant couples retain the right to marriage (Malaysia).
- Policies to ensure gender-sensitive HIV services including the rights of all women and girls (including those living with HIV) to access HIV services including PMTCT, family planning and reproductive health services (Myanmar).
- Protections for all people from violence including sexual violence and hate crimes. Reviews stressed the importance of ensuring laws and policies respond to violence targeting key populations, taking into account reports of incidents of serious violence affecting MSM and transgender people (Bangladesh, Indonesia, Mongolia) and sex workers (Bangladesh, Malaysia, Myanmar, Pakistan, Viet Nam). Reviews also identified the need for comprehensive laws and policies relating to gender-based violence, given that sexual and intimate partner violence affecting women and girls increases the risk of acquiring HIV (Cambodia, Myanmar).
- Policies that allow for comprehensive sexuality education for school-age youth (Bangladesh, Mongolia).

- Addressing HIV and key populations in social protection policies. Reviews recommended that social protection policies address the social, housing, livelihood and welfare needs of people living with HIV, key populations, orphans and children made vulnerable by HIV (Bangladesh, Cambodia, Laos PDR, Myanmar, Nepal). For example, Nepal recommended amending the national mechanism for providing social security to ensure all women and girls affected by HIV can access allowances and other forms of state support. Lao PDR recommended that people living with HIV and key populations should be included in the National Social Protection Strategy, including special attention to the needs of women and children living with HIV, and orphans affected by HIV. Myanmar recommended that the National Social Protection Strategy should address the specific needs of women and girls living with and affected by HIV, female sex workers, women who use drugs or who are in prisons or detention centres.

Recommendations of particular relevance to key affected women and girls included:

- Develop an implementation plan under the *2nd National Action Plan to Prevent Violence Against Women* to address violence against women at district and commune level including the specific needs of female sex workers, women who use drugs, transgender women and women living with HIV (Cambodia).
- Ensure legal protections from gender-based violence for key populations and affected women and girls in domestic as well as non-domestic settings (Cambodia, Myanmar). Address gender-based and sexual violence in institutional, community, work and family settings (Papua New Guinea).
- Revise the Marriage Law provisions to strengthen women's position and create equal standing between men and women in marriage, recognizing that unequal power relations leads to sexual exploitation (Indonesia).
- Criminalize marital rape (Myanmar).
- Integrate rehabilitation services for women survivors of violence into health care services (Indonesia).
- Address rights of female sex workers in the National Women's Development Policy and National Social Protection Policy (Bangladesh). Prohibit discrimination on the ground of occupation, including as a sex worker (Bangladesh).
- Develop a policy response for women and girls who are at risk of HIV from their husbands or partners, which should address protections from gender-based violence as well as access to HIV testing, prevention and treatment services (Lao PDR).

## **Removal of punitive laws affecting people living with HIV and key populations.**

Recommendations of national reviews included:

- Decriminalization or reduction in penalties for sex work (Lao PDR, Myanmar, Nepal, Papua New Guinea, Viet Nam). Examination of models for the regulation of sex work venues (Cambodia, Malaysia).
- Decriminalization of same-sex sexual conduct (Bangladesh, India, Malaysia, Myanmar, Pakistan, Papua New Guinea).
- Decriminalization of cross-dressing (Malaysia) and introduction of laws that give legal recognition to transgender people (India, Indonesia, Lao PDR, Sri Lanka).
- Decriminalization of possession of needles and syringes (Philippines, Myanmar, Nepal), and decriminalization of drug use and possession of small quantities of drugs for personal use (China, Indonesia, Lao PDR, Myanmar, Nepal, Thailand).
- Closure of compulsory centres for detention of sex workers and people who use drugs (Cambodia, China, Lao PDR, Sri Lanka, Viet Nam). Nine countries attending a regional consultation on compulsory centres for people who use drugs (CCDUs) acknowledged the need for laws and policies to support a planned transition to an evidence-informed system of voluntary community-based treatment and services that are

aligned with international guidelines and principles of drug dependence treatment, drug use and human rights (Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand and Viet Nam).<sup>22</sup>

- Removal of compulsory registration requirements for people who use drugs (Lao PDR, Myanmar). Impose strict limits on the use and disclosure of information from the government database used to monitor people who use drugs or formerly used drugs, and set up clear criteria for people to exit the monitoring system (China).
- Ending the overly-broad criminalization of HIV transmission (Cambodia, Lao PDR, Nepal). Removal of legal requirements to disclose HIV status to a spouse (China).
- Removal of HIV from public health laws that require mandatory testing, disclosure and isolation (Myanmar, Nepal).
- Removal of requirements for HIV testing of applicants for entrance to university courses (Malaysia).
- Removal of migration and travel restrictions including laws that restrict entry or require mandatory HIV testing or other travel restrictions (Papua New Guinea, Mongolia).

## Mobilizing community support

The Fiji, Papua New Guinea and Pakistan reviews and consultations highlighted the importance of generating community support for legal and policy reforms. Proposed actions included media campaigns, and the education of journalists and the public on human rights-based approaches and the public health benefits of proposed law reforms. HIV organizations were urged to strengthen cooperation with mainstream groups including human rights NGOs, women's NGOs and lawyers' groups. Papua New Guinea proposed identifying political champions to promote women's equality, economic empowerment of women and to fight gender-based violence.

### 3.1.2 Examples of progress

#### Legal and policy progress: HIV treatment and prevention

- Availability and quality of HIV services
  - China: The standard package of HIV treatment and prevention services offered by the State was amended to include services designed specifically for MSM.
  - Indonesia: Government use licences were issued for local production of ART and hepatitis B medicines in 2012.
  - Malaysia and Thailand: National policies on PMTCT were successfully implemented to enable rapid progress towards virtual elimination of new HIV infections in children.
  - Mongolia: ART costs have been covered by the government since 2013.
  - Thailand: The criteria for initiating ART were changed in 2014 so that people are eligible for ART regardless of their immune system status (CD4 count). Three national health insurance schemes were harmonized to ensure standardization and full access to ART, including for migrant workers. A PrEP programme for MSM and transgender women is being piloted.
  - Viet Nam: Since 2015, ART has been provided to people living with HIV from key populations and their partners, and to people living with HIV in mountainous, geographically disadvantaged and island areas regardless of CD4 count. Viet Nam adopted lessons from a Treatment 2.0 pilot to decentralize

22 Report of the Third Regional Consultation on Compulsory Centres for Drug Users in Asia and the Pacific, 21-23 September 2015, Manila, Philippines.



HIV testing and treatment services to commune level and confirmatory testing to district level in some areas. Viet Nam piloted community-based testing using lay providers in 2015.

- Rights of children and young people to access HIV testing, treatment and prevention services
  - Bangladesh: A Ministry of Health memo issued in 2015 authorizes provision of HIV prevention, testing and treatment services to most-at-risk adolescents without parental consent, subject to consent of the adolescent.
  - Philippines: The draft revised HIV law proposes that young people 15 years of age or over be given the right to consent to HIV testing independent of their parents.
  - Thailand: Guidelines were issued enabling independent access to HIV testing and services for mature young people aged under 18.
- Access to harm reduction services
  - Cambodia: The *First National Strategic Plan for Reduction of Harm Related to Drug Use 2016-2020* includes approaches to expand harm reduction services and promote a more enabling environment. A revised policy and guideline for operation of NSPs was adopted by the National Authority for Combating Drugs in 2014.
  - Malaysia: New policies have been developed on Voluntary Drug Rehabilitation Centres and policies that are informing scale-up of OST in prisons.
  - Myanmar: In 2015, Myanmar's Parliament removed the legal prohibition on possession of needles and syringes in the *Excise Act* in order to support people who use drugs and health workers to implement NSPs. This was one of the 'quick wins' endorsed by the joint Parliamentarian and Community Network Consortium Committee on Human Rights and HIV as part of the legal review.
  - Thailand: In 2013, a new harm reduction policy was implemented and harm reduction committees were established in 19 provinces.
  - Viet Nam: In 2015, a prison methadone maintenance therapy programme was piloted.
- Removal of intellectual property barriers to treatment access
  - Cambodia: The draft law on Compulsory Licenses for Public Health is being reviewed by the Council of Jurists before submission to the Inter-Ministerial level to ensure the law maximizes use of TRIPS flexibilities.
  - Myanmar: TRIPS flexibilities were included in the drafting of the new patents bill.

## Progress in strengthening of protective laws

- HIV and AIDS laws addressing discrimination, confidentiality and informed consent.
  - All countries have committed to addressing discrimination, yet many countries still do not have comprehensive enforceable national laws against discrimination on the grounds of HIV status in key areas such as healthcare, employment or education (e.g. Bangladesh, China, India, Malaysia, Myanmar, Pakistan, Sri Lanka).
  - China: Policy proposals were presented to government to prevent HIV-related discrimination in health-care settings. In 2013, as a result of advocacy efforts, including by UNAIDS, UNESCO and ILO, Guangdong Province removed restrictions that prevented people living with HIV from working as teachers. The policy change enabled a shift from previous regulations that excluded people living with HIV and people diagnosed with a sexually transmitted infection (STI) from working as teachers.<sup>23</sup>

23 'China's Guangdong province to lift HIV restrictions on teacher recruitment', UNAIDS media release, 13 June 2013.

- Cook Islands: A comprehensive HIV Bill was drafted in 2013.
- India: A comprehensive HIV Prevention and Control Bill was tabled in the upper house of parliament in 2015.
- Mongolia: The Revised National AIDS Law of 2012 took effect in 2013, with new provisions to protect privacy and confidentiality of people living with HIV, and removal of restrictions that prevented people living with HIV from undertaking certain jobs, including in the food industry. Amendments to the Labour Law were drafted to prohibit workplace discrimination against sexual and gender minorities. Amendments to the Family Law are under consideration to remove HIV discriminatory provisions.
- Myanmar: In 2015, a draft national HIV law was prepared and consultations with ministries, parliamentarians and the community are planned in 2016. The 2015 Universal Periodic Review (UPR) submission of the UN Country Team in Myanmar recommended legal protections against discrimination on the grounds of HIV status.
- Nepal: An HIV Bill was drafted based on consultations and is being revised to take into account Nepal's new Constitution.
- Pakistan: Protections for people living with HIV were included in the province of Sindh's HIV and AIDS Act of 2014, informed by the legal review. An AIDS Bill for Islamabad was drafted and revised based on inputs from the review and a range of partners in 2015.
- Palau: The Regional Rights Resource Team of the Secretariat of the Pacific Community provided technical assistance for drafting a human rights law on HIV and STIs.
- Papua New Guinea: The National AIDS Commission Secretariat and UNAIDS held consultations on updating the HIV/AIDS Management and Prevention Act 2003.
- Philippines: The Revised HIV and AIDS Prevention and Control Bill was drafted to update the 1998 HIV and AIDS law. It was tabled in parliament in 2015. In several cities and provinces, local Anti-Discrimination Ordinances were introduced addressing discrimination on the grounds of health status, sexual orientation, gender identity and/or gender expression (Angeles City (2013), Bacolod City (2013), Candon City (2014), Cebu City (2012), Davao City (2012), Quezon City (2003, updated 2014), Vigan City (2014), Province of Agusan del Norte (2014), Province of Cavite (2014)).<sup>24</sup> A national anti-discrimination bill that includes HIV, sexual orientation and gender identity was drafted and awaits consideration by Congress.
- Thailand: Although there is no national HIV law, there are protections under human rights laws. In 2015, a *Gender Equality Law* was passed that prohibits discrimination on the grounds of gender expression, thereby protecting transgender people. Sexual orientation, gender identity, HIV status and drug use issues were included in the 3rd National Human Rights Plan 2014-2018. In 2013, the National Human Rights Commission declared that a negative HIV test result cannot be required as a pre-condition of employment.
- Viet Nam: A Decree on Penalties for Administrative Violations in the Healthcare Sector (2013) stipulates a range of fines and remedies for discrimination due to HIV status.
- Constitutional protections
  - Fiji: The new Constitution of 2013 includes prohibition of discrimination on the grounds of health status, sexual orientation, gender identity or gender expression.<sup>25</sup>
  - Nepal: The new 2015 Constitution prohibits discrimination on the grounds of health status, and recognizes citizenship based on gender identity and the rights of sexual minorities to employment in state structures on the basis of the principle of inclusion.<sup>26</sup>

<sup>24</sup> Copies of the ordinances are available at: <http://pages.upd.edu.ph/ejmanalastas/policies-ordinances>

<sup>25</sup> Constitution of Fiji (2013), Article 26.

<sup>26</sup> Constitution of Nepal (2015), Articles 12, 18 and 42.

- Viet Nam: The new constitution of 2013 states: “All people are equal before the law; no one is subject to discriminatory treatment in political, civil, economic, cultural or social life.”<sup>27</sup>
- Education
  - India: In 2014, the Supreme Court directed the government not to discriminate against children living with HIV in schools and to declare children living with HIV and children whose parents or guardians are living with HIV as disadvantaged groups under the *Right of Children to Free and Compulsory Education Act*.<sup>28</sup>
  - Myanmar: The 2015 UPR submission of the UN Country Team referred to the national review report and recommended action to prevent homophobic bullying in schools.
  - Nepal: Sexuality education was included in the school curriculum in 2014, including components on sexual orientation and gender identity.
  - Sri Lanka: The country’s Supreme Court ruled in 2016 that all children have a right to education, and therefore a child living with or affected by HIV should not be refused education at a government school.<sup>29</sup>
- Violence protection
  - Cambodia: The *Second National Action Plan to Prevent Violence Against Women* was launched in 2015 and addresses violence against entertainment workers, lesbians, bisexual and transgender women. Cambodia’s *National Strategy on Gender Equality and Women’s Empowerment 2014-2018* commits to action across ministries to reduce gender inequalities and foster gender equality in health and HIV programmes. It addresses vulnerabilities of lesbian, gay, bisexual and transgender (LGBT) people and women who experience sexual violence, including sex workers.
  - Indonesia: The *National HIV Strategy and Action Plan 2015-19* includes actions to increase public awareness of gender-based violence and to implement campaigns against homophobia and transphobia to reduce HIV vulnerability.
  - Mongolia: In 2015 the *Criminal Code* was amended to include offences relating to hate crimes against sexual minorities and discrimination on the grounds of sexual orientation and gender identity. Amendments were also made to the *Domestic Violence Law* to include all genders.
- HIV-sensitive social protection
  - Bangladesh and Cambodia: People living with HIV were included in the national social protection policies of these two countries following the national reviews.
  - Cambodia held a national conference in 2015 on persons in street situations, which included discussion of the needs of homeless women living with HIV, sex workers and people who use drugs.
  - Viet Nam: In 2014, the Government issued a Decision regarding granting of credit loans to households of people living with HIV, people who inject drugs post-drug treatment, people who inject drugs who are receiving OST, and former sex workers.<sup>30</sup>
- Legal recognition of transgender people
  - Bangladesh: In 2014, Cabinet agreed to a proposal from the Ministry of Social Welfare to give legal recognition to *hijras* as a third gender. This enables *hijras* to access rights in relation to education, health and housing.

27 Constitution of Viet Nam (2013), Article 16.

28 SC notice against HIV-positive children, *The Hindu*, 4 March 2014, <http://www.thehindu.com/todays-paper/tp-in-school/sc-notice-on-discrimination-against-hivve-children/article5747513.ece>

29 HIV or not, all kids should be in school, *Sunday Observer*, 20 March 2016, <http://www.sundayobserver.lk/2016/03/20/fea04.asp>

30 Decision No. 29/2014/QĐ-TTg dated 26th April 2014 issued by the Prime Minister of Viet Nam.

- India: The Supreme Court of India issued a judgment in 2014 declaring that *hijras* and other transgender people should be recognized as a third gender, enjoy freedom from discrimination, and receive education and employment benefits.<sup>31</sup> Several of India's states have established Transgender Welfare Boards, to support implementation of the judgment. The Ministry of Social Justice and Empowerment drafted a *Transgender Persons Bill* in 2015, informed by the national legal review meeting. The Bill allows for change of gender on official documents, subject to a controversial requirement for medical assessment.
- Nepal: In 2013 the Supreme Court of Nepal issued a ruling requiring the state to issue passports that reflect the applicant's preferred gender identity, and in 2015 the government confirmed that the passport regulations had been changed to allow a third gender.<sup>32</sup>
- Viet Nam: A law was enacted that allows people to register under the gender appropriate to their gender identity from 2015. However, this right is limited to individuals who have undergone gender reassignment surgery.
- Legal aid
  - Viet Nam: Amendments to legislation were proposed to enable people living with HIV to access legal aid for a range of legal needs. The draft amendments are under consideration.

## Progress in removal of punitive laws affecting people living with HIV and key populations

### Sex workers

- Cambodia: In 2013, the Ministry of Justice confirmed that the sale of sex in private is not criminalized by the anti-trafficking law and clarified the rights of entertainment workers to carry condoms.<sup>33</sup> In 2014, the Ministry of Labour and Vocational Training issued a regulation on the labour rights of entertainment workers including access to health information and services, rights to sick leave and protection from violence and harassment.<sup>34</sup>
- China: After the legal review was conducted, the Red Ribbon Forum presented a document to the State Council, Municipal People's Congress and Public Security Bureau regarding the adverse health impact of police use of condom possession as evidence against sex workers. The government was persuaded to reduce reliance on detention of sex workers and several cities have stopped detaining sex workers in Custody and Education Centres.
- Fiji: Discussions occurred with parliamentarians on a cabinet submission and lobbying strategy to make the case for decriminalization of sex work.
- Indonesia: The national AIDS programme and the national network of sex workers are supporting documentation of the impact of brothel closures on access to HIV services as a strategy for addressing the closure of official 'red light' districts (sex worker tolerance zones or *lokalisasi*) in view of concerns that this drives the sex industry underground, making it more difficult to reach sex workers with HIV services.
- Lao PDR: In 2015, representations were made to the government's Penal Code taskforce by UN agencies and the Ministry of Health calling for removal or reduction of penalties for sex work.
- Myanmar: Amendments to the *Suppression of Prostitution Act* were proposed by the Ministry of Home Affairs and announced for public comment in 2015. The UN and sex worker groups provided comments.

31 National Legal Services Authority v. Union of India & Ors., Writ Petition (Civil) No. 400 of 2012.

32 Nepal Court Orders Change in Passports for Third Gender People. ZeeNews, 11 June 2013; Pandey, L. (2014) Passports Set to Mention Third Gender. Himalayan Times, 17 March 2014; Stout D. (2015) Nepalese Passports Are Going to Feature a Third Gender Option. Time Magazine. 7 January 2015.

33 Ministry of Justice (Cambodia)(2013), Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation.

34 Ministry of Labour and Vocational Training, Prakas/Guidelines No. 194 KN/Pr.K of 20 August 2014 on Working Conditions, Occupational Safety and Health Rules of Entertainment Service Enterprises, Establishments and Companies.

The proposed amendments were delayed to allow multi-sectoral inputs and provision for healthcare and other non-punitive aspects in the law.

- Papua New Guinea: A Sex Work Decriminalization Bill was presented for parliamentary debate in 2016 and was referred to the relevant line Ministries for comments before voting.
- Viet Nam: As a result of the introduction of a new *Law on Handling Administrative Violations*, compulsory detention centres for sex workers were phased out in 2013. Sex work remains an administrative offence, but the government now sanctions only a minimal fine instead of detention.

### Removal of punitive laws: People who use drugs

- Cambodia: In 2015 the National Committee on Drug Treatment and Rehabilitation was established to lead service provision in drug prevention, treatment and the provision of a continuum of support encompassing harm reduction, rehabilitation, vocational training and reintegration.
- Indonesia: In 2014, the National Narcotics Agency, the Health Ministry, the Supreme Court, the Attorney General's Office, the National Police and the Social Affairs Ministry agreed to coordinate in implementing diversion of people who use drugs to drug treatment services as an alternative to prison. Implementation of this agreement remains challenging, as most people arrested on charges of drug use or possession are still imprisoned. Community stakeholders have made submissions to government calling for decriminalization of drug use and possession of drugs for personal use.
- Lao PDR: Formal representations were made to the government's Penal Code drafting committee in 2015 calling for an amendment to the draft to prevent people from being criminalized for possession of small quantities of drugs for their personal use.
- Myanmar: Consultations were conducted on a new Drugs Law in 2015. The law was redrafted to remove the requirement for people who use drugs to be registered, provide a legal framework for harm reduction interventions, provide for diversion to voluntary drug treatment as an alternative to prison, and reduce the penalties for possession of small quantities of drugs. The redrafted law is yet to be approved by parliament.
- Thailand: In 2014, the Foundation for AIDS Rights prepared a draft code of laws to decriminalize drug use and enshrine harm reduction in national law. The proposal has been presented to the Office of the Narcotics Control Board.
- Viet Nam: The revised Law on Administrative Violations (2012) provides due process protections for people who are drug dependent facing detention in CCDUs, including the right to view the evidence against them, have legal representation and have their case considered by a judge. UNAIDS supported the Supreme Court in the development of a Judges' Handbook to ensure the judiciary are informed of these new legal protections.

### Removal of punitive laws: men who have sex with men

- Bangladesh: Local NGOs called for decriminalization of same-sex sexual conduct in the 2013UPR process and continue to press for reform.
- Bhutan: The national consultation on MSM and transgender people convened in 2012 resulted in the development of a national framework for guiding advocacy on removing legal and policy barriers to access to services.
- India: There are ongoing efforts to decriminalize consensual same-sex sexual conduct through a Supreme Court case challenging the constitutionality of section 377 of the Penal Code. In 2016, the Supreme Court agreed to hear a curative petition, which provides an opportunity for the Court to consider removal of criminal penalties for sodomy.

- Myanmar: The UN Country Team's 2015 submission to the UPR and a civil society shadow report called for decriminalization of same-sex sexual conduct.<sup>35</sup> The UN Country Team referred to the report of the national review in its submission and recommended systematic documentation of discrimination based on sexual orientation.
- Nepal: The UN Country Team's 2015 submission to the UPR raised concerns about the inclusion of 'unnatural sex' in the draft Penal Code. The Penal Code is still under consideration.
- Palau: Following the 2011 UPR cycle in which various stakeholders raised concerns on criminalization of same sex practices, the State of Palau accepted recommendations to decriminalize sexual relations between consenting adults of the same sex, and the offence of sodomy was removed from the Penal Code in 2014.
- Papua New Guinea: A Bill on decriminalization of sodomy has been drafted.
- Sri Lanka: The UN Country Team recommended that Sri Lanka decriminalize consensual same-sex relationships in its submission to the 2012 UPR. Although Sri Lanka did not accept this recommendation, in 2014 the government confirmed to the UN Human Rights Committee that it interprets the non-discrimination clause of the country's Constitution to prohibit discrimination on the grounds of sexual orientation and gender identity.<sup>36</sup>
- Viet Nam: Although same-sex sexual marriage is not legal, the article that forbids same-sex marriage was removed from the amended Law on Family and Marriage in 2014.

## Travel and migration restrictions

- Mongolia's revised National AIDS Law of 2012 lifted all HIV-related travel restrictions.
- In Papua New Guinea, a guide for the Immigration Service has been drafted on the legal requirement not to impose mandatory HIV testing on persons applying for entry, residence or citizenship.
- Samoa has agreed to review any HIV-related travel and migration restrictions.

## Criminalization of HIV transmission

- In Lao PDR, proposals for removing the HIV-specific offence for disease transmission were submitted by the Ministry of Health and UNAIDS to the Penal Code drafting committee in 2015.
- In Nepal, community stakeholders made submissions requesting removal of a provision of the draft Penal Code that criminalizes HIV transmission.

## Prisoners and detainees

- In Nepal, government authorities, in coordination with national and international partners, developed standard operating procedures (SOP) on HIV prevention, treatment and care services in prisons. The SOP was finalized in 2015 and includes a comprehensive package of interventions including OST, NSPs and condoms.<sup>37</sup>

35 Kaleidoscope Australia, Myanmar LGBT Rights Network, Equality Myanmar (2015), Submission to the UN Universal Periodic Review regarding the protection of the rights of LGBTI persons in the Republic of the Union of Myanmar 21st session of the Universal Periodic Review, March 2015.

36 Human Rights Committee, 112th session, List of issues in relation to the fifth periodic report of Sri Lanka, Addendum, Replies of Sri Lanka to the list of issues, 3 September 2014.

37 Standard Operating Procedures (SOP) for HIV Prevention, Treatment, Care and Support in Prison Setting in Nepal, National Centre for AIDS and STD Control, Nepal 2015.). Source: [http://www.unaids.org/sites/default/files/media\\_asset/20151012\\_UNAIDS\\_PCB37\\_15-21\\_EN.pdf](http://www.unaids.org/sites/default/files/media_asset/20151012_UNAIDS_PCB37_15-21_EN.pdf)

- Nine countries have committed to a planned transition to voluntary, community-based drug treatment and services and agreed to share data on the number of people in such centres.<sup>38</sup> Progress has been made in expanding access to voluntary treatment options in Malaysia, although CCDUs continue to operate.<sup>39</sup>
- In 2015, OST was being provided in some prisons in Indonesia, Malaysia and Viet Nam.<sup>40</sup>

## Box 2: Civil society leadership in law and policy reform

NGOs and organizations of people living with HIV and key populations have been at the forefront of advocacy efforts for law and policy reform across the region. For example:

- Cambodia's National Entertainment Workers' Network played a central role in the development and implementation of the regulation introduced in 2014 on the health and safety of entertainment workers.<sup>41</sup>
- Naz Foundation (an Indian HIV NGO) is the plaintiff in an ongoing court case challenging the constitutionality of Section 377 of the Indian Penal Code, which criminalizes consensual sex between men. Numerous civil society groups have joined a public campaign backing the Naz Foundation's case and calling for decriminalization of same-sex sexual conduct in India.
- Myanmar Positive Group (the national organization of people living with HIV) played a key role in ensuring that access to medicines was supported in the drafting of Myanmar's Intellectual Property Law. Myanmar Positive Group participated in the Core Working Group on the Intellectual Property Law, alongside government representatives.
- Blue Diamond Society (a Nepalese NGO) led advocacy efforts that resulted in the inclusion of rights relating to sexual orientation and gender identity in the new Constitution of Nepal, introduced in 2015.
- In Viet Nam, civil society groups including ICS (an organization of LGBT people) and the Institute for Studies of Society, Economy and Environment (iSEE) led advocacy efforts for the rights LGBT people, resulting in amendments to the Law on Family and Marriage and the Civil Code.

## 3.2 Strengthening enforcement of protective laws

### 3.2.1 Priorities recommended by reviews and consultations

In several countries, national reviews found that although protective laws are in place, enforcement of the law is weak (e.g. Cambodia, Lao PDR, Philippines). Reasons for weak enforcement of protective laws include lack of knowledge about the law and the process for seeking redress among law enforcement agencies and the community. Punitive laws against certain behaviours were also reported to interfere with access to legal protections technically available to all.

Most countries included recommendations relating to sensitization and education of law enforcement agencies and the judiciary on the rights of people living with HIV and key populations under protective laws. Bangladesh

38 Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand and Viet Nam. See Report of the Third Regional Consultation on Compulsory Centres for Drug Users in Asia and the Pacific 21-23 September 2015, Manila, Philippines.

39 Malaysian AIDS Council (2015), Drug harms in Malaysia: a technical brief, <http://idpc.net/publications/2015/06/sdp-technical-brief-on-drug-harms-in-malaysia>

40 OST provision is being piloted in Phu Son 4 Prison, Thai Nguyen, Vietnam. See: <http://www.vietnambreakingnews.com/2015/08/methadone-delivery-facility-launched-at-phu-son-4-prison>; Stone, K. (2015). Reviewing harm reduction for people who inject drugs in Asia: the necessity for growth, *Harm Reduction Journal* 12:32.

41 Ministry of Labour and Vocational Training, Prakas/Guidelines No. 194 KN/Pr.K of 20 August 2014 on Working Conditions, Occupational Safety and Health Rules of Entertainment Service Enterprises, Establishments and Companies.

recommended that an accountability mechanism be established to ensure that police enforce protective laws, including prosecution of perpetrators of violence including sexual violence against sex workers.

Other recommendations relating to strengthening of enforcement of protective laws included training of health care workers on gender equality (Indonesia), and on human rights and medical ethics related to HIV (Fiji), enforcing compliance of health care workers in implementing the protocols for reproductive health care and PMTCT to ensure that unmarried clients are not stigmatized (Indonesia), and developing briefs for government officials, health and education services on their legal obligations (Myanmar). Some countries recommended establishing new procedures or clarifying existing procedures for the handling of complaints of discrimination in employment, education and health care (Cambodia, Myanmar).

Some countries recommended documentation and research to better understand the circumstances of rights violations and the avenues for assistance, e.g. Indonesia recommended that a Stigma Index study be conducted to generate data on the nature and extent of discrimination.

### 3.2.2 Examples of progress

Progress of countries in implementing recommendations relating to enforcement of protective laws include:

- In India, a new national process for handling HIV-related health care complaints has been proposed that involves establishing an Ombudsman in each State with power to issue orders in relation to health care complaints.<sup>42</sup>
- In the Philippines, the Department of Labour and Employment provided training on legal obligations in the workplace. Although the Philippines has prohibited discrimination on the grounds of HIV since 1998, very few cases have been brought to court. An example of a successful case arose in 2016, when the National Labor Relations Commission found that a hairdresser who had been dismissed from work had been unlawfully discriminated against on the grounds of his HIV status and was granted compensation and reinstatement.
- Thailand's *Gender Equality Act* of 2015 provides for the establishment of a Committee for Ruling on Gender Discrimination Cases, which will consider complaints related to discrimination and decide on the remedies for those who are discriminated against (including transgender people).
- Communities have participated in systematic efforts to document rights violations and non-enforcement of protective laws. Examples include community participation in a regional study on violence against sex workers (communities from Indonesia, Myanmar, Nepal and Sri Lanka) and a regionally-supported study on discrimination in healthcare settings (communities from Cambodia, China, Myanmar and Viet Nam). These studies have included research, documentation and development of recommendations and action plans.<sup>43</sup>
- In Thailand, a survey conducted of more than 1,600 healthcare workers found that fear of HIV, stigmatizing attitudes and discrimination are still common. Based on the survey, the Public Health Ministry and its partners designed a stigma reduction programme including training for healthcare providers. The programme was piloted at a hospital in northern Thailand and the ministry plans to implement the programme in other provinces.
- Viet Nam: A second round of the Stigma Index study was conducted in 2014. The survey results were disseminated at provincial and national fora.

42 HIV and AIDS (Prevention and Control) Bill 2014 (India), Chapter X.

43 Bhattacharjya, M., Fulu, E. and Murthy, L. with Seshu, M.S., Cabassi, J. and Vallejo Mestres, M. (2015). *The Right(s) Evidence – Sex Work, Violence and HIV in Asia: A Multi-Country Qualitative Study*. Bangkok: UNFPA, UNDP and APNSW (CASAM); *Asia Catalyst* (2016), *FIRST DO NO HARM: Discrimination in Health Care Settings against People Living with HIV in Cambodia, China, Myanmar, and Viet Nam*.



## 3.3 Reducing police abuses in enforcing punitive laws

### 3.3.1 Priorities recommended by reviews and consultations

National reviews and consultations in many countries noted that abusive police conduct towards key populations impedes access to HIV services. Examples include confiscation of condoms from sex workers and MSM, confiscation of syringes from people who inject drugs, and police harassment, violence and other abuses directed at peer educators, sex workers, people who use drugs, MSM and transgender people.

Recommendations to address police abuses included education, training and sensitization of police about HIV and key populations (Myanmar, Lao PDR, Pakistan, Papua New Guinea, Thailand) including programmes to train police to respond to crimes involving sexual minorities (Mongolia) and official guidance to police to refrain from harassing peer educators (Bangladesh, Myanmar).

Several countries recommended that guidelines, standard operating procedures or instructions be provided to law enforcement agencies on access to condoms and syringes, including not to confiscate condoms or syringes or use them as evidence (Cambodia, China, Malaysia, Myanmar). Bangladesh recommended that police guidelines require the presence of a woman officer at the time of arrest of a female sex worker, and that legal representation be provided.

Some countries proposed that local cooperation arrangements be formalized between police, communities and HIV prevention services (Cambodia, Lao PDR, Malaysia, Indonesia). Bangladesh recommended that a mechanism be established to monitor police conduct and to ensure accountability to prevent police abuses affecting key populations.

### 3.3.2 Examples of progress

Progress in improving police conduct includes:

- Cambodia's Most-at-Risk Populations Community Partnership Initiative (MCPI) (also referred to as the Police Community Partnership Initiative (PCPI)) is an example of good practice as an intervention that supports HIV prevention by improving relations between police, prevention services and key populations. Following Cambodia's legal review, the government scaled-up the MCPI programme to 14 provinces. Challenges remain in implementing the programme, which needs to be standardized across implementing partners. To address this, a MCPI SOP will be developed in 2016.
- China's Red Ribbon Forum advocated for the police to stop the use of condoms as evidence of sex work offences, however the Public Security Bureau is yet to confirm follow-up actions.
- HIV organizations in Hong Kong SAR made representations to the judiciary and police to stop the practice of using condoms as evidence in prosecution of sex workers.
- In Myanmar, police attended trainings on HIV and drug use, and government officials attended an international best practice study tour on HIV and drug use in 2015. Information was also provided to police on existing instructions against use of condoms as evidence.
- In Thailand, police training has been implemented through a partnership between the Royal Thai Police, Ministry of Justice, Ministry of Public Health, Foundation for AIDS Rights and UNDP. Since 2013, the Innovative Learning Programme on HIV and Human Rights in the Context of Law Enforcement has sensitized police to issues concerning human rights, people living with HIV and key populations.

## 3.4 Access to justice

### 3.4.1 Priorities recommended by reviews and consultations

Reviews and consultations recommended the following range of measures to expand access to justice:

- Establish formal mechanisms for inquiring into complaints and redressing grievances (Myanmar). Provide legal redress through mediation, litigation, grievance procedures, or administrative proceedings (Philippines).
- Provide community legal education, legal empowerment and mobilization of communities to know their legal rights and how to enforce them (Cambodia, Indonesia, Malaysia, Mongolia, Myanmar, Nepal, Pakistan, Papua New Guinea). Provide widows with access to information about their legal rights to inheritance and legal aid services so that inheritance rights can be enforced (Myanmar).
- Capacity building of public prosecutors and lawyers in the public solicitor/attorney's office on HIV-related issues (Indonesia, Papua New Guinea, Philippines).
- Provide expanded access to legal advice through a hot line for out-of-hours access to lawyers (Papua New Guinea). Train community-based paralegals and provide access to free legal aid services (India, Indonesia, Nepal).
- Provide legal services and crisis centres for sex workers facing legal problems or who are survivors of violence (Cambodia, Indonesia).
- Promote the role of the Human Rights Commission as a source of assistance that can provide redress for discrimination complaints (Cambodia, Myanmar, Philippines).
- Sensitization and capacity building of legal aid officials (India). Preparation of a training manual and information materials for legal officials and other efforts to increase the capacity of legal professionals (India, Mongolia).
- Inclusion of HIV and key population issues in the law school syllabus (Sri Lanka).

### 3.4.2 Examples of progress

Progress in expanding access to justice for people living with HIV and key populations includes:

- In Cambodia, a community legal service provides free legal advice to sex workers in Phnom Penh and a legal advice hotline provides advice on violence protection and other legal issues using interactive voice software. Community networks have received training on documentation of human rights and legal rights violations. A toolkit on scaling up legal services for people living with HIV and key populations was published and disseminated.
- In China, workshops on HIV-related legal services were conducted. There were five legal service clinics operating in Yunnan in 2014, with new services are planned in other provinces.
- In Papua New Guinea, the PNG Development Law Association provides advice and representation to people living with HIV and key populations.
- India's national, state and district Legal Services Authorities increased their capacity to provide legal assistance in HIV cases. A National Consultation on Legal Protection for people living with and affected by HIV/AIDS was held in 2015 to share lessons.
- NGOs in Indonesia have made progress in piloting of legal aid services for sex workers through OPSI (Indonesian Sex Workers Network) and LBH Masyarakat (Community Legal Aid Institute). Legal aid services for people who use drugs were expanded by the use of paralegals through PKNl (Indonesian Network of People Who Use Drugs) and LBH Masyarakat. Funding for the Stigma Index and community-

led documentation of quality of and access to services for key populations (including stigma and discrimination) was provided by the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund).

- In Thailand, training to enable key populations to become paralegals was conducted and a Crisis Response Team for Sex workers and Drug Users was established in 2014.
- The Kuala Lumpur Legal Aid Centre provides HIV-related advice in Malaysia.
- In Nepal, a toolkit to empower women to protect their rights in healthcare settings has been rolled out, covering know your rights, how to access justice if rights are violated and how to improve transparency and accountability of health care service providers.<sup>44</sup> A similar initiative will be adapted in Cambodia.
- Viet Nam: Community legal education was provided to people living with HIV and key populations in five provinces from 2012 to 2014, using a training manual. A core team of trainers from members of the Vietnamese Network of People Living with HIV was established. Cases of discrimination due to HIV status were referred to two legal aid centres for legal support.

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44 UNDP (2016). Empowering Women Affected by HIV to Protect their Rights at Health Care Settings Positive Protection Training Manual – Facilitator’s Guide. Kathmandu: UNDP.

Chapter 4

# **Mechanisms for follow-up and accelerating progress**

## 4.1 National coordination and planning mechanisms

Many countries that held national reviews and consultations are engaging in ongoing activities to improve the legal and policy environment. Progress in implementing these ongoing activities has been supported by:

- i. Integration of outcomes of reviews into existing planning processes.
- ii. Multi-sectoral and participatory approaches to implementation engaging key populations.
- iii. High-level government engagement.
- iv. Prioritization and focus.
- v. Attention to sub-national contexts.

### (i) Integration of outcomes of reviews into existing planning processes

Implementation can be supported by integration of planning of legal and policy measures into higher-level national plans relating to HIV, law and justice, human rights and Global Fund proposals and work plans. For example:

- In Cambodia, actions have been integrated into the National HIV/AIDS and STI Strategy and the National Action Plan on Violence Against Women, which specifically addresses issues of violence against sex workers and transgender women.
- In Fiji, implementation of the Action Plan is monitored as a component under *the National Strategic Plan on HIV and STIs*.
- Similarly, in Indonesia assessment of progress of implementing recommendations of the review was folded into the mid-term review of the national HIV strategy, and the development of the new strategy and action plan. The *National HIV Strategy and Action Plan for 2015-19* has a section relating to 'Critical Enablers', which was used as a basis for the development of the Global Fund concept note in 2015. Through this approach, programmatic recommendations were integrated into the national response with funding from the Global Fund, and grant recipients adopted a human rights and gender-sensitive programme design.
- In Mongolia, progress is assessed using existing mechanisms of the Global Fund Country Coordinating Mechanism, the UN Theme Group on HIV/AIDS, and annual review processes of the new *National Strategic Plan on HIV/AIDS*. Importantly, reporting will be integrated into national reporting on the SDGs.

### (ii) Multi-sectoral and participatory approaches

Implementation of recommendations from reviews has been supported by:

- Multi-sectoral engagement across government, e.g. engagement of ministries responsible for health, law and justice (including law enforcement and public security agencies, correctional services and the judiciary), education, labour and immigration.
- Engagement of a range of stakeholders including government, UN agencies, NGOs and civil society, including participation of people living with HIV and key populations.

Progress has occurred where formal, national processes have been established for engaging civil society and different sectors of government. These processes provided forums for sharing experiences and developing evidence-informed solutions. Inclusive and participatory processes ensured that a wide range of civil society and government stakeholders had ownership in the process and outcomes.

Civil society participation supports accountability and transparency and can also help to empower people living with HIV and key populations to play an ongoing role in advocacy, policy formulation and implementation of policy changes. In addition to participation at national level, there was a very high level of participation and engagement of civil society (including representatives of national and regional organizations and networks of key populations)

in the 2012 and 2015 intergovernmental meetings on HIV and AIDS and the creation of the ESCAP frameworks for action.

However, in some countries, engagement of key populations in reviews and follow-up work has been limited due to criminalization, stigma, discrimination and fear of disclosure. For example, it was reported that people living with HIV did not participate in planning mechanisms in the Federated States of Micronesia because of fear of public identification of their HIV status, and in Samoa sex workers did not participate in planning due to the fear of being stigmatized. This underscores the need for capacity building efforts to support community participation and sensitivity to confidentiality concerns. In some countries, key populations were engaged through pre-consultation meetings and focus group discussions, in which participants could opt not to be identified.

Other challenges in implementing participatory processes included: ensuring adequate representation of women and transgender people to ensure that the gender dimensions of legal and policy issues received attention; engaging young people, particularly young key affected populations; engaging people who are prepared to identify as people who use drugs; and enabling people in prisons and other closed settings to participate.

Examples of ongoing planning and implementation using participatory approaches include:

- Cambodia: The Joint Forum of Networks of People Living with HIV and Most-at-Risk Populations (FoNPAMs) was used as a platform for ensuring community participation in follow up, including development of a 'removing legal barriers' module for the Global Fund proposal. However, it was noted that people who use drugs were not well represented due to limited capacity.
- China: The action framework was implemented using the Red Ribbon Forum, which is a quasi-governmental organization with representatives of ministries, including health, public security and the State Council AIDS Working Committee, informed by ongoing consultations with key populations. The Red Ribbon Forum's expert committee and executive board acts as a multi-sectoral government advisory body.
- Fiji: An Action Plan was developed through a multi-sectoral and participatory dialogue with the involvement of the President of Fiji, clinicians, key populations and a lawyer. The Action Plan was adopted by the country's HIV/AIDS Board, which is a Board established by Decree with representation from ministries responsible for health, education, women, youth and police, and community representation including a person living with HIV.
- Indonesia: Implementation of the Action Plan on laws and human rights is guided by the National AIDS Commission Working Group on Human Rights and Gender. The Working Group is a multi-stakeholder mechanism and has met three times since 2014.
- Myanmar: A Human Rights and Gender Working Group was formed in 2014 with community, NGO and UN representation as a subgroup under the Myanmar Health Sector Coordination Committee. A symposium was held to consider HIV laws from other countries in Asia and the Pacific. Conclusions were presented to the Parliamentary Joint Committee meeting where key issues were discussed and prioritized. The committee members are parliamentarians and representatives from Myanmar Positive Group, Sex Worker Network in Myanmar, Positive Women's Network, Myanmar MSM network, National Drug User Network in Myanmar, Myanmar Interfaith Network on AIDS, and the National NGO Network. The Working Group collaborated with parliamentarians to develop a roadmap of priorities. Another mechanism for engaging government was the Core Working Group on the Intellectual Property Law, which included Myanmar Positive Group, Ministry of Health, Ministry of Commerce, Ministry of Science and Technology, Ministry of Information, UN agencies, NGOs and a law firm.
- Thailand: Since 2012 a National Sub-committee on Rights Promotion and Protection has operated with participation of people living with HIV, MSM, people who inject drugs and sex workers. Government sectors also participate in the Sub-Committee and meeting outcomes are reported to the meetings of the National AIDS Committee. Civil society organizations formed a sub-committee of the National Reform Council to take forward recommendations on drug law reform.
- Viet Nam: The National Committee for AIDS, Drug and Prostitution Prevention and Control is a national multi-sectoral coordination mechanism chaired by the Deputy Prime Minister. Policy issues are also addressed through the Viet Nam Country Coordinating Mechanism, which was re-structured in 2014 to

include more civil society representatives from key populations, people living with HIV and community-based organizations.

## UN leadership and collaboration

The UN played an important role in supporting follow-up in the majority of countries. In 2014, ESCAP, UNDP and UNAIDS co-organized the regional Expert Group Meeting to enable countries to share experiences and lessons learned in conducting reviews and consultations.<sup>45</sup> Examples of countries in which the coordinated engagement of the broader UN Country Team has been strong are Lao PDR, Myanmar and Viet Nam.

- In Lao PDR, UNAIDS, UNDP, WHO and UNODC collaborated with the Ministry of Health's Centre for HIV/AIDS and STIs to identify an agreed pathway for acting on priority recommendations from the review relating to laws on sex work, drug use and criminalization of HIV transmission. Recommendations were considered by the government taskforce responsible for drafting the new Penal Code and were referred to technical working groups under the *National Strategy and Action Plan on HIV and AIDS*.
- In Myanmar, follow-up activities on developing a national HIV law and related policies have been coordinated by UNAIDS and UNDP. UNODC played a key role in supporting a national consultation on reforming the narcotics law, and UNFPA coordinated country inputs to the regional study on violence and sex work. UNAIDS, UN Women, UNFPA, UNDP and UNICEF made joint representations to the Ministry of Home Affairs on sex work law reform.
- In Viet Nam, the UN Country Team provided technical support to the drafting committee for new laws relating to sex work and drug use. This provided a strategic opportunity for the UN to engage as one in supporting Government of Viet Nam. The UN Country Team reviewed consecutive drafts of the Law and provided joint UN comments. Civil society experts on sex work and drug use also participated in meetings.

### (iii) High-level government engagement to support outcomes

- Cambodia: The National Legal and Policies Technical Working Group of the National AIDS Authority presented recommendations to a meeting of the government's Council of Ministers in 2014, which endorsed the National Legal and Policy Review Report.
- China: The convening of the national consultation at Renmin University allowed for participation of public security officials and the National People's Congress. Proposals from the Red Ribbon Forum expert committee were presented to government departments, and as background documents for the Chinese Political Consultative Conference and the National People's Congress.
- India: UNDP facilitation of consultations in 13 states brought thousands of transgender women to interface directly with the senior state-level political leaders, judiciary and government officials to discuss the specific welfare needs of the transgender community.
- Viet Nam: The Ambassadors and UN Heads of Agency Coordination Group on HIV engaged in advocacy with the Deputy Prime Minister and government ministers on reform of laws on sex work and drug use. The Social Affairs Committee of the National Assembly organized policy dialogues on sex work and harm reduction, which enhanced the understanding of parliamentarians and it was agreed that the Social Affairs Committee would advocate for specific legal and policy changes. The UN in Viet Nam also played a broker role to engage civil society organizations in policy dialogues with government and to support their meaningful participation in policy advocacy.

### (iv) Prioritization and focus

National reviews generally resulted in comprehensive and detailed recommendations reflecting the various inputs received through consultations. The agenda for each country is potentially lengthy. It is therefore critically important that countries engage in an ongoing priority setting process, taking into account local political realities

<sup>45</sup> Expert Group Meeting on the Implementation of National Reviews and Consultations on Legal and Policy Barriers to Universal Access to HIV Services, 4-5 March 2014, Pattaya, Thailand.

and opportunities, potential impact on achieving zero discrimination and ending AIDS, and the likely timeframe for achieving results.

Country mechanisms in Lao PDR and Myanmar developed consensus on 'quick wins' that could be achieved in a two-year timeframe, as well as identifying medium and longer term goals. This enabled development of action frameworks with an immediate strategic focus on achievable changes (such as influencing Penal Code drafting processes in Lao PDR and amending the Excise Act in Myanmar), while ensuring longer term law and policy reform objectives remain on the agenda as part of ongoing planning processes.

Bangladesh also developed a time-bound action plan to guide follow-up of recommendations, and has proposed a consultation process for identifying the short and medium term priorities. Pakistan's review also distinguished short, medium and long term recommendations. Papua New Guinea has mobilized political support around three top legislative priorities, recognizing that these priorities may require several years of focused advocacy: decriminalization of sex work and sodomy, and removal of travel restrictions.

The scheduling of regular national meetings to take account of evolving political developments and to adjust approaches is an important strategy to ensure advocacy has a clear focus and does not lose momentum. For example, in Thailand, the Sub-Committee on Rights Promotion and Protection meets every two months, followed by an annual HIV situation and human rights meeting. Papua New Guinea's Legal Reform Reference Group convenes monthly meetings to support the progress of penal code reforms.

### **(v) Attention to sub-national contexts**

Some of the legal reviews have resulted in actions focusing on particular provinces and districts that are highly affected by HIV and/or that have locally-specific legal and policy obstacles. For example:

- In Cambodia, a Standard Operating Procedure is being drafted on enabling environment issues to assist reaching the 90:90:90 targets in 34 identified priority districts.
- In the Philippines, there has been a strong focus on addressing HIV policy through Local Government Units and drafting of provincial and city ordinances to support HIV responses and combat discrimination. Sub-national consultations were held in Mindanao and Visayas.
- In Indonesia, the national review identified a range of discriminatory local regulations that obstruct access to HIV services. To encourage local authorities to issue supportive regulations, the National AIDS Commission, UNAIDS and UNDP are compiling a good practice document of positive local laws that can be replicated by other local level administrations and used to contribute to guidance by the Ministry of Law and Human Rights for local legal drafters. In Indonesia's Papua province, UNFPA worked with officials to draft protective local laws.
- In Myanmar, sub-national dissemination meetings were held in the north (Mandalay Region) and Shan State to share the recommendations from the national consultation meeting with partners working at the local level.

## **4.2 Country inputs into global human rights reporting mechanisms**

Treaty reporting mechanisms and the UPR process provide an opportunity for country stakeholders to accelerate progress on removing legal and policy obstacles to access to HIV services. Several countries have used information and recommendations from national reviews and consultations to directly inform submissions to the UPR for their country.

Examples of effective use of the UPR process include:

- The UN Country Team submissions to the UPR for Myanmar referred to issues identified in the national reviews and consultations relating to the rights of young people to access HIV testing and treatment, drug law reform, decriminalization of same-sex sexual conduct and the need for protections against discrimination and gender-based violence.



- Submissions from the UN Country Team for the UPR for Nepal also raised a number of the issues from the national consultation (e.g. women's limited access to PMTCT services, overly broad criminalization of HIV transmission and 'unnatural sex' in the draft Penal Code, mandatory HIV testing, discrimination in employment, housing and travel), and cited the regional study on violence against sex workers.<sup>46</sup> Nepal's National Human Rights Commission also prepared a report to the Working Group of the UPR drawing from dialogues with women and girls affected by HIV. The report of the National Human Rights Commission submitted in 2015 made recommendations on access to health services, a non-discrimination bill, removal of a 35 day statutory limitation on reporting rape, and reform of punitive laws and law enforcement practices to protect marginalized women and LGBT people, including from violence and torture.<sup>47</sup> The government accepted the rape and LGBT recommendations.<sup>48</sup>
- The National Human Rights Commission in Bangladesh raised issues relating to the rights of transgender people in its UPR submission, drawing from the national consultation.
- In Viet Nam, civil society organizations were actively involved in the UPR processes together with UN agencies. The Government of Viet Nam accepted the UPR recommendation to develop a law to prohibit discrimination on the basis of sexual orientation and gender identity. This is in line with Concluding Observations on the second to fourth periodic reports of Viet Nam to the Committee on Economic, Social and Cultural Rights.

Examples where civil society has been effective in influencing the recommendations from the the Committee on the Elimination of Discrimination Against Women (CEDAW) include:

- In Cambodia, the Khmer HIV/AIDS NGO Alliance and the Cambodian Community of Women Living with HIV provided inputs to the Cambodian NGO Committee on CEDAW's 2013 shadow report.<sup>49</sup> As a result, the CEDAW Committee Concluding Observations<sup>50</sup> included recommendations on access to free ART for women engaged in sex work and pregnant women, and actions to combat discrimination against pregnant women living with HIV.
- In China, civil society organizations submitted a shadow report on issues affecting women living with and affected by HIV and sexual minorities in 2014, informed by surveys of women living with HIV and interviews with NGOs and sex workers. As a result, the CEDAW Committee's Concluding Observations included a recommendation on measures to eliminate discrimination against women living with HIV and support for women's organizations that provide HIV care. A government official also stated that China recognizes the rights of all citizens regardless of sexual orientation or gender identity.
- In Indonesia, a shadow CEDAW report was prepared by women's NGOs, which highlighted several HIV issues. As a result, the CEDAW Concluding Observations in 2012 included recommendations on discrimination affecting women living with HIV, the sexual and reproductive health rights of unmarried women and actions to ensure women can access contraception without the consent of their husbands.<sup>51</sup>
- In Viet Nam, NGO networks prepared a shadow report to the CEDAW Committee in 2015. The Viet Nam Network of Women Living with HIV/AIDS provided inputs. Civil society and the UN raised the issue of gender-based violence, including violence against sex workers. As a result the CEDAW Committee's 2015 Concluding Observations for Viet Nam included recommendations to decriminalize female sex workers and to strengthen enforcement of the Law on HIV and AIDS Prevention and Control to address stigma and

46 Bhattacharjya, M., Fulu, E. and Murthy, L. with Seshu, M.S., Cabassi, J. and Vallejo Mestres, M. (2015). *The Right(s) Evidence – Sex Work, Violence and HIV in Asia: A Multi-Country Qualitative Study*. Bangkok: UNFPA, UNDP and APNSW (CASAM).

47 National Human Rights Commission of Nepal (2015), NHRI Nepal Joint Submission for the Second Universal Periodic Review of Nepal.

48 Working Group on the Universal Periodic Review, Nepal (2015), Report of the Working Group on the Universal Periodic Review, Nepal, A/HRC/31/9.

49 Shadow Report 2013: Assessing the Government of Cambodia's Progress in Implementing the UN Convention on Elimination of Discrimination Against Women

50 Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined seventh and eighth periodic reports of China, 7 November 2014, CEDAW/C/CHN/CO/7-8, paragraphs 40 and 41, p 9.

51 Committee on the Elimination of Discrimination Against Women, Concluding observations of the Committee on the Elimination of Discrimination Against Women – Indonesia, 7 August 2012, CEDAW/C/IDN/CO/6-7, paragraphs 41 and 42, pp 12-13.

discrimination against women living with HIV.<sup>52</sup> The Government of Viet Nam is developing an action plan to implement the CEDAW Committee's recommendations.

### 4.3 Regional mechanisms for follow-up and accelerating progress

The ESCAP Regional Framework for Action Beyond 2015 is the overarching accountability mechanism for follow-up to national reviews and consultations and accelerating progress in implementing recommendations. Member States have committed to conduct a regional review in 2018 of the progress made in implementing measures under the Framework.

Other regional frameworks for collaboration and accountability can help to build understanding, commitment and momentum to accelerate progress on key issues. Regional frameworks have been developed on specific issues, such as transition plans for phasing out CCDUs, which include a pillar on conducting reviews on legal and policy barriers to moving towards community-based treatment and services.<sup>53</sup> Another example of a regional framework designed to accelerate progress at country level is the Programme of Action and Support for NHRIs in addressing sexual orientation, gender identity and intersex issues, agreed in 2015.<sup>54</sup>

UN regional bodies have played an important role in supporting country-level planning and implementation of recommendations. This support took a variety of forms.

The Ad-Hoc UN Regional Interagency Team on Enabling Legal Environments led by ESCAP, UNDP and UNAIDS played an active role in regional tracking and monitoring of progress, and in strengthening the evidence base on effective legal and policy approaches. Analysis of progress in addressing legal and policy priorities was disseminated through global and regional events such as the 2015 ESCAP Asia-Pacific Intergovernmental Meeting on HIV and AIDS and the 2015 International Harm Reduction Conference. Regional and country progress and outputs were regularly disseminated using the HIV and AIDS Data Hub for Asia and the Pacific<sup>55</sup> and the ESCAP website.<sup>56</sup>

Another source of support to country-level action was the UN Inter Agency Task Team on Women, Girls, Gender Equality and HIV, which coordinates efforts of UN agencies and civil society to address health and HIV challenges faced by marginalized women.

In many cases the regional offices of UN agencies and the UNAIDS Technical Support Facility brokered and coordinated technical support to countries to conduct and document reviews, consultations and follow-up work. For example, UNDP leveraged resources from two multi-country grants from the Global Fund.<sup>57</sup> Additional resources for reviews, consultations and follow-up activities were mobilized from a variety of sources including the Technical Support Facility for Asia and the Pacific, UNDP, UNAIDS, UNODC, UNFPA, ESCAP, the Global Fund and other international development partners (e.g. European Union Human Rights Commission provided a grant to assist implementation of recommendations in Mongolia and the United Kingdom provided support to community participation in the Myanmar consultations).

In the Pacific, the Regional Rights Resource Team of the Secretariat of the Pacific Community has played an important technical support role. Fiji has proposed targeting the Melanesian Spearhead Group (a regional political leaders' forum) to support implementation of recommendations.

Many countries participated in regional initiatives supported by UN agencies and development partners to develop the technical capacities of country stakeholders to respond to legal and policy issues (Box 3). Regional initiatives can add significant value to national responses in providing opportunities for sharing information on legislative and policy models as well as strategies for achieving change. Regional initiatives also provide an opportunity to conduct advocacy.

52 Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined seventh and eighth periodic reports of Viet Nam, 24 July 2015, CEDAW/C/VNM/CO/7-8, paragraphs 21, 32 and 33.

53 Report of the Third Regional Consultation on Compulsory Centres for Drug Users in Asia and the Pacific, 21-23 September 2015, Manila, Philippines.

54 UNDP, Asia Pacific Forum of NHRIs (2015), Programme of action and support: The role of National Human Rights Institutions in promoting and protecting human rights in relation to sexual orientation and gender identity including health rights in Asia and the Pacific.

55 <http://www.aidsdatahub.org/stigma>

56 <http://www.unescap.org>

57 Multi-Country South Asia Global Fund HIV Programme (MSA-910-G02-H) and the ISEAN/HIV Multi-Country Global Fund HIV Programme (ME1-011-G01-H).

It may be strategic to advocate in regional forums to complement advocacy at national level, particularly for issues that are considered controversial and that are difficult to discuss openly at country level. Regional forums can be particularly helpful to ensure governments and other actors such as NHRIs are exposed to examples of progress from other countries. Government officials may be more willing to consider new approaches in discussions convened at the regional level than at country-level. Civil society representatives may also feel less constrained by domestic considerations in regional forums, and can build networks with other civil society groups working on similar issues in the region.

### Box 3: Regional legal and policy initiatives

#### Judicial dialogue

- Thirty judges from the highest national courts of 16 countries participated in the Judicial Dialogue on HIV, Human Rights and the Law in Asia and the Pacific. Convened by UNAIDS, UNDP and the International Commission of Jurists in 2013, the meeting was part of efforts to support judges to become leaders in the HIV response.

#### Compulsory centres for drug users (CCDUs)

- East and Southeast Asian countries participated in the Second and Third Regional Consultations on CCDUs in Asia and the Pacific (2012 and 2015), convened by ESCAP, UNODC and UNAIDS. Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand and Viet Nam participated in the 2015 Consultation.<sup>58</sup> As a result, countries agreed to a planned transition to voluntary, community-based drug treatment and services and to share data relating to CCDUs, including the number of people detained. This data was published by UNAIDS in 2016 in the lead up to the UN General Assembly Special Session on the World Drug Problem.<sup>59</sup>

#### Sexual orientation and gender identity rights and inclusion

- Eight countries convened national dialogues on LGBT issues in 2014-2015 as part of the Being LGBT in Asia initiative (Cambodia, China, Indonesia, Mongolia, Nepal, the Philippines, Thailand and Viet Nam), and more than 30 countries participated in the Regional Dialogue on Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Rights and Health in 2015.
- UNDP, the International Development Law Organization and the Asia Pacific Forum of National Human Rights Institutions published a Regional Report on the Capacity of NHRIs to Address Human Rights in Relation to Sexual Orientation, Gender Identity and HIV in 2013.
- The Asia Pacific Transgender Network, the Health Policy Project and UNDP developed a human rights-based Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific (2015).<sup>60</sup>
- The South Asian Association for Regional Co-operation in Law, UNDP and the International Development Law Organization published a legal resource for South Asian countries on HIV and human rights issues of MSM and transgender people (2014).
- NHRIs participated in a regional workshop on LGBTI rights convened by UNDP, the Asia Pacific Forum of National Human Rights Institutions and the Asia Pacific Coalition on Male Sexual Health in 2015, which resulted in agreement to a Programme of Action and Support.
- Civil society groups, government departments, NHRIs, and development partners participated in the South Asia Transgender and Hijra Consultation: Advancing Trans and Hijra Rights and Health (2015).

58 Report of the Third Regional Consultation on Compulsory Centres for Drug Users in Asia and the Pacific, 21-23 September 2015, Manila, Philippines.

59 UNAIDS (2016). Do no harm: Health, human rights and people who use drugs. Geneva: UNAIDS.

60 Health Policy Project, Asia Pacific Transgender Network, UNDP (2015). Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific. Washington DC, Futures Group, Health Policy Project.

- UN Women and Outright Action International convened a regional consultation on protecting and promoting the rights of lesbians, bisexual women, transgender and intersex persons in 2016. This resulted in recommendations to country and regional actors on addressing legal and policy barriers to access to health and other services for LGBTI persons.

### Violence against sex workers

- In 2012, UNDP, UNFPA and UNAIDS published a regional reference on legal environments impacting sex workers.<sup>61</sup>
- National AIDS authorities and civil society stakeholders in Indonesia, Myanmar, Nepal and Sri Lanka participated in a regional study on violence against sex workers conducted between 2012 and 2015.<sup>62</sup>

### Rights of women and girls affected by HIV

- UNZIP the Lips! is a regional civil society platform working for the rights and meaningful participation of key affected women and girls in the context of HIV and intersections with other gender issues in the Asia-Pacific region. UNZIP the Lips! has enabled coordination of advocacy for the rights of women and girls at regional forums that successfully influenced the language of the outcome documents of the Regional Beijing +20 review and the 2014 Women Deliver Conference.
- A stock-take report of the gender dimensions of legal barriers affecting women and girls has been drafted as a joint regional undertaking led by UN Women and supported by the Ad Hoc RITA on Enabling Legal Environments.

### Discrimination in health care

- Bangladesh, India, Nepal and Pakistan were included in a legal scan published in 2013 on violations of the rights of HIV-affected women and girls in healthcare settings.<sup>63</sup>
- Cambodia, China, Myanmar and Viet Nam participated in a regional study on discrimination in health care in 2015, as part of a global campaign for Zero Discrimination in Health Care.<sup>64</sup>

### Rights of young people

- Young people from key populations participated in focus group discussions and regional meetings to identify barriers to services faced by youth and develop an agenda for legal and policy action. This led to publication of a regional resource on Young People and the Law in Asia Pacific (2013)<sup>65</sup> and further research into legal barriers to independent access to harm reduction services for young people.<sup>66</sup>

### TRIPS and access to medicines

- Participants from Cambodia, China, India, Indonesia, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam attended the Regional Consultation and Planning Workshop on Use of TRIPS Flexibilities and Access to Affordable ARVs in Asia (2012). The same nine countries attended the Regional Expert Consultation on Access to Affordable Medicines, Diagnostics and Vaccines in 2016 to inform planning for national stakeholder consultations on this issue, which is a separate pillar under the ESCAP Framework for Action on HIV and AIDS Beyond 2015.<sup>67</sup> Based on country action plans, these consultations will address barriers to access to medicines, diagnostics and vaccines for HIV and other diseases.

61 UNDP, UNFPA, UNAIDS in partnership with APNSW (2012), *Sex Work and the Law in Asia and the Pacific*. Bangkok: UNDP.

62 Bhattacharjya, M., Fulu, E. and Murthy, L. with Seshu, M.S., Cabassi, J. and Vallejo Mestres, M. (2015). *The Right(s) Evidence – Sex Work, Violence and HIV in Asia: A Multi-Country Qualitative Study*. Bangkok: UNFPA, UNDP and APNSW (CASAM).

63 UNDP, WAP+, APN+ and SAARCLAW (2013). *Protecting the rights of key HIV-affected women and girls in health care settings: A legal scan - Regional report*. Bangkok.

64 Asia Catalyst (2016) *FIRST DO NO HARM: Discrimination in Health Care Settings against People Living with HIV in Cambodia, China, Myanmar, and Viet Nam*.

65 UNESCO, UNFPA, UNAIDS, UNDP (2013). *Young People and the Law in Asia Pacific: A review of laws and policies affecting young peoples' access to sexual and reproductive health and HIV services*. Bangkok.

66 See: <http://www.aidsdatahub.org/sites/default/files/publication/poster/Creating-an-enabling-legal-and-policy-environment-for-young-people-to-access-harm-reduction-services-2015.pdf>

67 'Experts call for renewed urgency to ensure access to affordable medicines in Asia', UNDP Asia Pacific Bangkok Regional Hub, 18 March 2016,



Chapter 5

# Conclusion

This report has illustrated the many ways that national reviews and consultations, follow-up activities and related regional initiatives have helped countries in Asia and the Pacific to identify and address specific legal and policy barriers impacting HIV responses, thereby advancing the human rights of people living with HIV and key populations. The 2016 HLM on HIV and AIDS presents an opportunity for countries in Asia and the Pacific to embed the issues and recommendations identified through these national and regional processes in the global framework that will provide guidance and support for future HIV responses.

The examples of progress provided by this report are intended to support stakeholders in Asia and the Pacific to further their efforts in advancing their country priorities and to respond to new legal and policy challenges as they arise. It is also hoped that the summaries of country progress and the description of the ways that country responses benefited from regional initiatives and overarching regional accountability frameworks will be useful for other regions around the world in designing and implementing legal and policy measures to end AIDS by 2030 and in addressing legal and policy barriers to achieving other related SDGs.

This analysis of approaches implemented in Asia and the Pacific suggests that ongoing efforts are particularly needed in the following areas:

### ■ **Cultivating champions**

Leadership will be key to addressing law reform bottlenecks, particularly in relation to laws on sensitive issues such as sexual orientation, gender identity, gender equality and drug use. Leaders can be mobilized from community groups including organizations and networks of people living with HIV and key populations, parliamentary groups, faith-based organizations, NHRIs, the judiciary, legal and medical professionals and the media. Private sector leadership will be important for some issues, such as workplace rights, where private sector employers can demonstrate the benefits of workforce diversity and inclusion policies and practices in challenging stigma and discrimination.

Leadership from within the justice sector is critical. Leadership from law enforcement bodies is important to challenge and change harmful practices by some police and public security agencies that tolerate or turn a blind eye towards abuses of key populations. Leadership from police and public security bodies can promote partnership approaches that enable harm reduction services and HIV prevention, testing and treatment services to reach key populations.

### ■ **Empowerment, participatory approaches and meaningful inclusion**

Engaging communities of people living with HIV, key populations and key affected women and girls will remain of fundamental importance to ensure community voices can continue to advocate for action to end discrimination, violence and other human rights violations and participate in reform processes. Legal and policy responses can be strengthened by involving communities in policy processes, including populations who may not have been engaged in prior discussions and decision making processes, such as people who use drugs, young people from key populations, women living with and at higher risk of HIV, people in closed settings and migrants. In planning future reviews and consultations, countries may need to consider special measures to ensure particular groups such as these are not left behind. Participation can be facilitated through focused, thematic consultations, focus group discussions and pre-consultations designed to ensure participation of neglected populations whose voices are seldom heard.

### ■ **Increased focus on location and population**

The UNAIDS Strategy 2016-2021 encourages countries to give greater attention to location and population in fast-tracking HIV responses. This approach requires focusing resources on high-impact programmes in the geographical areas and among the populations in greatest need. It also means addressing laws and policies specific to the localities and populations most affected, such as municipal laws and policies in the large cities where key populations are concentrated. The work in Asia and the Pacific has demonstrated that national and sub-national reviews can provide the necessary specificity in terms of identifying barriers and avenues for addressing these issues at the local level. It can also provide opportunities for stakeholders to consider and be guided by global-level recommendations such as those from the Global Commission on HIV and the Law and the policies of UN agencies.

■ **Integration of legal and human rights issues into planning, budgeting, programming, monitoring and evaluation**

To ensure momentum is not lost, legal and human rights responses to HIV can be integrated into national HIV strategy planning cycles, Global Fund proposals and SDG planning and reporting. Countries should ensure HIV budgets include an allocation to enabling environment programmes, adopt human rights and gender-sensitive design processes for HIV prevention, testing and treatment programmes, and use national monitoring and evaluation systems to track progress towards an enabling legal environment. As clearly demonstrated by the recommendations from the reviews and consultations, addressing legal and policy barriers is an area for programming – not only programmes directly aimed at achieving law and policy reform, but also programmes for improving law enforcement practices and access to justice, which can make a significant difference on the ground even if discriminatory laws and policies remain on the books. National investment cases and sustainability plans also need to take account of legal and policy barriers and factor in the broad development benefits of creating enabling legal environments. Middle-income countries will increasingly need to mobilize resources from domestic budgets to address legal and human rights priorities as international donors reduce financial support to HIV, health and justice programmes. Most of the targeted programmes for key populations are currently funded by external sources and must be protected during this funding transition.

Such national efforts can be further supported by continued attention to legal reviews and consultations under the Regional Framework for Action on HIV and AIDS and by countries developing regional targets for zero discrimination in the context of HIV responses, including targets for zero discriminatory laws and agreed indicators and data collection methods to track progress towards such targets.







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Resilient nations.*

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