

# Legal and policy trends

Impacting people living with HIV and key populations in Asia and the Pacific 2014–2019



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# Foreword

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In 2015, 193 United Nations Member States agreed on the 2030 Agenda for Sustainable Development. This included a goal of ending the AIDS epidemic by 2030 and leaving no one behind through a multisectoral, rights-based, people-centred approach that addresses the determinants of health.

Despite these commitments, laws and policies that perpetuate stigma, discrimination, violence and other rights violations remain significant barriers. This report describes the legal and policy developments from 2014 to 2019 in the Asia and Pacific region. Legal and policy obstacles continue to undermine an effective HIV response among vulnerable populations, limiting access to prevention, testing, treatment and care services.

People living with HIV in Asia and the Pacific continue to face stigma and discrimination often embedded in laws and policies. The overly broad application of criminal law to HIV non-disclosure, exposure and transmission raises both serious human rights and public health concerns. Five countries in the region still impose HIV-related travel restrictions on people living with HIV. In at least 11 other countries, HIV tests are mandatory for some entry, residence and travel permits. At least 14 countries require compulsory HIV testing for some groups. This does not include testing for blood and human tissue donation.

In a positive development, the introduction of comprehensive HIV legislation in India and the Philippines are standout achievements. In both cases, success came out of meaningful engagement with stigmatized and marginalized populations that play a key role in an effective HIV response. Governments in the region have also shown interest in replicating these successes.

India's Supreme Court decision that decriminalized same-sex relations in 2018 was a landmark decision for the region and globally. The Court ruled that criminalization of any consensual sexual relationship between two adults violates constitutional rights to equality, freedom of expression, and privacy. In many other countries, however, the legal environment for gay men and other men who have sex with men remains hostile and, in some cases, has deteriorated over the past few years. Criminalization of consensual same-sex sexual conduct between men impedes HIV responses by deterring access to HIV testing and treatment services.

Legal recognition of transgender people is vital to combat stigma and ensure people can enjoy equal access to health services. In Pakistan, transgender people saw the Transgender Persons Act enacted in 2018. Transgender people may now express their gender according to their gender identity; that choice is reflected in their legal identity. Other countries have less supportive legal and policy frameworks. In some cases,

criminal laws are broadly applied, and penalties are imposed on transgender people for expressing their gender identity through dress or appearance.

Sex work in most countries in the region remains prohibited. In some countries, however, sex work is quasi-legal and subject to official oversight through licensing, registration with the police or local health authorities, or other types of regulation. In New Zealand and parts of Australia, sex work is decriminalized. In Australia, sex work was decriminalized in Australia's Northern Territory following the Sex Industry Act 2019. In 2019 China abolished highly punitive compulsory detention for sex workers. In some countries, such as Fiji, Myanmar and Papua New Guinea, there are mounting calls for reform. Other countries, on the other hand, have seen regression to punitive laws and law enforcement practices, forcing sex workers to go underground and increasing the risk of HIV transmission.

There has been a resurgence of harsh laws and policies for drug control in some Asian countries. Governments continue to apply criminal punishments rather than public health approaches. In many cases, corporal punishment is used as a penalty for drug use, and the death penalty is in place for drug offences in at least 14 countries in Asia. Approaches also include the use of punitive laws against people who use drugs, impeding the implementation of effective prevention measures such as needle and syringe programmes and opioid substitution therapy. All countries in the region impose criminal or administrative penalties for possession of drugs for personal use. Some countries are making exceptions, such as the decriminalization of cannabis and kratom for medical use in Thailand, and for cannabis use in some parts of Australia. Detention for people who use drugs ostensibly for "treatment and rehabilitation" remains a common intervention in Asian countries, despite the lack of evidence backing abstinence-based programmes.

The trend towards a harsher, more punitive environment in the region around key population groups at higher risk of HIV has in some countries culminated in wide-scale use of extrajudicial measures. This includes the resort to extrajudicial and summary execution of people alleged to be involved in drugs and the impunity for security forces involved. Unfortunately, this has all too often been accompanied by official endorsement of such extrajudicial measures.

We hope this report will give the reader a better understanding of laws and policies that hinder an effective HIV response in Asia and the Pacific, and that the evidence will lead to the reform of harmful laws and policies, the structural barriers essential to ending AIDS by 2030.



**Mr. Eamonn Murphy**  
UNAIDS Regional Director  
for Asia and the Pacific



**Ms. Valerie Cliff**  
UNDP Deputy Assistant Administrator  
Deputy Regional Director for Asia & the Pacific  
Director, Bangkok Regional Hub

# Introduction

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This report provides a summary of key developments in the legal environment for HIV responses in Asia and the Pacific. It is the product of a desk review conducted for UNAIDS and the United Nations Development Programme (UNDP) in 2019. The report highlights key trends and developments in laws affecting people living with HIV and key populations in Asia and the Pacific over the five-year period 2014–2019. It updates the legal and policy review conducted in 2016 for UNAIDS, UNDP and the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) (1).

A database of laws of the 38 Member States of ESCAP was created as part of this review. The database identifies laws that are either punitive or enabling for people living with HIV and key populations in Asia and the Pacific. A summary of the findings is presented in Annex 1.

## **An enabling legal environment for ending AIDS by 2030**

Current global targets agreed by the United Nations aim to end the HIV epidemic as a public health threat by 2030. The UNAIDS 2016–2021 Strategy: On the Fast-Track to End AIDS calls for availability of effective and appropriate HIV and health services and commodities in an enabling social, legal and policy environment, and the meaningful engagement of key populations in the response (2).

The 2016 United Nations General Assembly High-level Meeting on Ending AIDS focused the world's attention on the importance of this Fast-Track approach to the HIV response. The meeting issued a political declaration that includes specific recommendations on removing legal and policy barriers to the HIV response. These recommendations are reproduced in Annex 2.

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