

ENABLING EFFECTIVE RESPONSES HIV IN PACIFIC ISLAND COUNTRIES

Options for Human Rights-Based Legislative Reform

Copyright © 2009
UNDP Pacific Centre and UNAIDS

USP Library Cataloguing-in-Publication Data

Enabling effective responses to HIV in the Pacific island countries : options for human rights-based legislative reform. - Suva, Fiji : UNDP Pacific Centre, 2009.

120 p. : col. ill. ; 29 cm.

ISBN 978-982-304-029-5

1. HIV infections—Oceania—Prevention
2. HIV infections—Treatment—Law and legislation—Oceania 3. HIV-positive persons—Legal status, laws, etc.—Oceania
4. AIDS (Disease)—Patients—Legal status, laws, etc.5. AIDS (Disease)—Treatment—Oceania I. UNDP Pacific Centre.

RA643.86.O3 E52 2009

614.59939200995

CONTENTS

Executive Summary	iv
Acronyms and Abbreviations	vii
CHAPTER 1: INTRODUCTION	1
1.1 About this document	1
1.2 What is HIV? What is AIDS	2
1.3 Why is addressing HIV important?	3
1.4 The HIV pandemic	3
1.5 HIV in the Pacific	4
1.6 The importance of human rights	5
1.7 Leading texts for a rights-based approach	8
International Guidelines on HIV/AIDS and Human Rights	8
Handbook for Legislators	9
Chapter 2: Developing National HIV/AIDS Strategies; Approaches to Law Reform	10
2.1 Introduction	10
2.2 National Framework	10
2.3 Supporting community partnerships	12
2.4 Legislative Reform Strategies	12
2.4.1 Factors influencing a National Legislative Reform Strategy	12
2.4.2 Various Pacific approaches	13
2.4.3 Examples from other countries	15
2.4.4 Legislative reform proposals	16
Chapter 3: Ensuring Public Health Laws Are Human Rights Compliant	17
3.1 Relevant human rights	17
3.2 Background	17
3.3 Checklist – Public Health law	17

CONTENTS

Chapter 4:	Criminal Laws And Correction Systems	39
4.1	Relevant human rights	39
4.2	Background	39
4.3	Checklist – criminal law	40
4.4	Checklist: Prisons/Correctional Laws	50
Chapter 5:	Antidiscrimination And Protective Laws	53
5.1	Discrimination and stigmatization	54
5.1.1	Relevant human rights	54
5.1.2	Background	54
5.1.3	Checklist – Anti-discrimination legislation	54
5.2	Discriminatory impact of laws affecting vulnerable populations	61
5.2.1	Checklist – equality of legal status of vulnerable populations	61
5.2.2	Women	62
5.2.3	Children	74
5.2.4	Men who have sex with men	75
5.3	Sexual and reproductive health rights	80
5.4	Privacy and confidentiality	82
5.4.1	Checklist - Privacy	82
5.5	Employment	86
5.5.1	Checklist - Employment	86
Chapter 6:	Access To Prevention, Treatment, Care And Support	89
6.1	Checklist	89
6.2	Access to information and protection	89
6.3	Access to treatment	93
6.3.1	Taxes and duties on drugs	95
6.3.2	Patents and compulsory licensing	96
6.3.3	Exceptions to exclusive patent rights	103
6.3.4	Data exclusivity	105
6.3.5	False cures	106
6.4	Quality of HIV tests and condom	107
6.5	Ethical research	109

CONTENTS

Chapter 7:	Enforcement	110
7.1	Criminalisation	112
7.2	Constitutional law	112
7.3	Other non-criminal remedies	113
7.4	Using enforcement mechanisms	115
7.4.1	Choice of forum	115
7.4.2	Right to commence proceedings	115
7.4.3	Timing of action	116
7.4.4	Outcomes	116
Chapter 8:	Towards An Enabling Environment	118
Bibliography		119

EXECUTIVE SUMMARY

UNDP Pacific Centre, the Pacific Regional Rights Resource Team and UNAIDS jointly commissioned a legislative review of HIV, Ethics and Human Rights in 15 Pacific Island Countries — Cook Islands, Fiji, Federated States of Micronesia, Kiribati, Marshall Islands, Niue, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu. The review was conducted from 2007-2009 and formed the basis for this report.

This report presents options for human rights-based legislation for the prevention and management of HIV, for protecting those already infected and those particularly affected by or vulnerable to HIV, and ensuring that people living with HIV can continue to live useful and productive lives. It has been designed specifically for the Pacific, taking into account the particular cultural contexts, constraints and opportunities presented in Pacific Island Countries.

This report includes —

- some facts and considerations about HIV, why it is different from other diseases, and its effect on society;
- an explanation of the features and importance of a human rights-based approach to the HIV epidemic;
- a discussion of the traditional public health approach to disease management found in the public health laws of many Pacific countries today;
- a discussion of why a human rights-based approach is preferable to the traditional public health approach for responding to HIV;
- a discussion of various legislative reform strategies, taking into account the variety of existing legislative environments which may be the subject of reforms in the Pacific; and
- examples of implementation and enforcement mechanisms for potential new laws.

The main purpose of this report is to promote an enabling legal environment for the response to HIV. An enabling environment is one which supports effective HIV prevention, treatment, care, and support initiatives, through legislative and policy measures that —

- reduce and prevent HIV-related stigmatisation and discrimination;
- reduce the HIV vulnerability of marginalised groups, such as sex workers and men who have sex with men, by better respecting and protecting human rights;
- appropriately respond to the gendered dimensions of HIV
- decriminalise behaviours, such as sex work and homosexual sex, so as to enable more effective HIV prevention, care, treatment and support;
- establish an HIV testing regime which is voluntary and which ensures informed consent;
- protect individuals' confidentiality regarding their HIV status;
- facilitate access to HIV awareness and prevention information, materials, and services, as well as accessible, affordable and appropriate counselling, support services, care and treatment (including antiretroviral and other medicines);
- avoid using the criminal law or other coercive legal measures in ways that are counter-productive in dealing with conduct that transmits or risks transmitting HIV and uses general criminal law provisions that exist rather than introducing or using HIV specific sanctions.

EXECUTIVE SUMMARY

The options presented in this report are consistent with international commitments made by the UN General Assembly in the Declaration of Commitment on HIV/AIDS (2001) and the Political Declaration on HIV/AIDS (2006). The options also follow best practice set out in HIV/AIDS and Human Rights: International Guidelines (the International Guidelines) and Handbook for Legislators on HIV/AIDS, Law and Human Rights (the Handbook for Legislators).

The International Guidelines have been prepared by UNAIDS in conjunction with the Office of the UN High Commissioner for Human Rights, and the Handbook in collaboration with the Inter-Parliamentary Union. Both resources are aimed to assist legislators and policy-makers to understand how human rights standards apply in the area of HIV and AIDS. The resources help identify specific, concrete measures that should be undertaken by states, domestically and internationally, to reflect those standards in legislation, policy and practice.

The options presented draw on examples of laws that have content that reflect good practices from the Pacific and other regions. The focus of this paper is on the content of laws and policies, rather than the processes used to develop them, which are beyond the scope of this publication. However, it is recognised that the process used to develop and implement law reform is equally important, and equally requires the observation of all human rights (civil and political, economic, social, and cultural), and the fundamental freedoms of all people, in accordance with international human rights standards.

This report provides Pacific Island countries with a resource which will enable them to think ahead, to learn from the experiences of other countries, and to implement a human rights-based approach in responding to HIV that guarantees safety, security and dignity for all.

Notes on terminology and spelling:

1. *The terminology associated with HIV has undergone many changes since HIV was first detected over two decades ago, and in all likelihood will continue to do so. For some time, the term HIV/AIDS was used to indicate generally the human immunodeficiency virus, and the acquired immunodeficiency syndrome which it produces. Now that the onset of AIDS can be suppressed or significantly delayed with appropriate medication, and people are living long and productive lives with fewer manifestations of disease, the simple term HIV has gained favour. In this document, HIV is used unless it is not appropriate, or a quotation is used which employs other terminology.*
2. *Standard Anglo-Australian spelling has been used except where direct quotes are taken from documents using other variants.*

ACKNOWLEDGEMENTS

This project was a joint partnership between UNDP Pacific Centre, UNAIDS and the Pacific Regional Rights Resource Team (RRRT) whom, under their time with UNDP contributed to the initial draft of this publication. All partners would like to acknowledge the support and contributions of the following individuals who contributed to the preparation of this report: Christine Stewart who wrote the original draft; Richard Elliott who reviewed the draft and provided advice and input; and Chris Ward and John Godwin who restructured and finalized the document. We would also like to acknowledge the staff from the UNDP Pacific Centre, UNAIDS and RRRT who provided both technical as well as administrative support towards the completion of this document.

The Suva Declaration on HIV/AIDS by Pacific Parliamentarians (2004)

We the Pacific Parliamentarians will review, reform and enact appropriate legislation that:

- encourages and facilitates legislative actions within our governments and constituencies, including the establishment of appropriate Parliamentary Committees to spearhead the fight against HIV/AIDS;
- promotes economic independence, equal access to resources and opportunities and a life free of stigma, violence and discrimination of the most vulnerable groups in our communities, particularly women and girls, the young and the disadvantaged;
- reinforces universal human rights legislation to protect and ensure the dignity of people living with HIV/AIDS;
- promotes an integrated response to HIV/AIDS that takes into account the interrelation between Sexual Rights and Reproductive Health Rights and prevention of HIV/AIDS and strategies that specifically focus on women and girls;
- protects in the workplace the rights of people living with HIV/AIDS and those at greatest risk of HIV/AIDS, taking into account established international guidelines on HIV/AIDS in the workplace; and further protects the rights of people in the communities and other settings.

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_12990

