

Creating Enabling Legal Environments:

Conducting National Reviews and Multi-Sectoral Consultations on Legal and Policy Barriers to HIV Services

Guidance Document for Asia and the Pacific Region

Revised 2014



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Resilient nations.*

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United Nations Development Programme
Bangkok Regional Hub (BRH)
United Nations Service Building, 3rd Floor
Rajdamnern Nok Avenue, Bangkok 10200, Thailand

Email: aprc.th@undp.org

Tel: +66 (0)2 304-9100

Fax: +66 (0)2 280-2700

Web: <http://asia-pacific.undp.org/>

Acknowledgements

The 2014 Edition of *Creating Enabling Legal Environments: Conducting National Reviews and Multi-Sector Consultations on Legal and Policy Barriers to HIV services (Guidance Document for Asia and the Pacific Region, 2014)* updates the Guidance Document developed in 2013, which was adapted and developed based on *Legal Environment Assessments for HIV & AIDS, Guidance Document for the Africa Region: A Guide to conducting national-level assessments of a country's legal and regulatory environment for HIV & AIDS (2012)* from the UNDP Eastern and Southern Africa Regional Service Centre in Johannesburg.

The Guidance Document is a direct follow up to the Global Commission on HIV and the Law's recommendations which call on countries to identify and remove legal and policy barriers to their national HIV responses. The Guidance Document also contributes to the implementation of the regional framework for action (ESCAP Roadmap to 2015) and the regional commitments made under ESCAP Resolutions 66/10 and 67/9, which call upon members and associated members to to organize national multisectoral consultations on policy and legal barriers to universal access in and to review national laws, policies and practices with a view to eliminate all forms of discrimination against people living with HIV or at risk of infection, in particular key populations.

National reviews and/or consultations have been completed in at least 18 countries in the ESCAP region, and a number of other countries in the region are expected to undertake national reviews/consultations in 2014. In March 2014, an *Expert Group Meeting on the Implementation of National Reviews and Consultations on Legal and Policy barriers to Universal Access to HIV Services* was held in Pattaya, Thailand, to share experiences and lessons learned from national reviews and consultations on legal and policy barriers to universal access to HIV services which have been held and to discuss the different models for implementing the recommendations arising from this process. The meeting also provided an opportunity to learn for countries planning to organize national consultations and participatory reviews in 2014.

The Asia Pacific Guidance Document was developed under the Ad-Hoc UN Regional Interagency Team on AIDS on Enabling Legal Environments (Ad-Hoc RITA) by Edmund Settle, HIV, Human Rights and Governance Policy Advisor, UNDP Asia Pacific Regional Centre (APRC); Brianna Harrison, Human Rights and Law Advisor, UNAIDS Regional Support Team for Asia and the Pacific; Emilie Pradichit, Human Rights and Advocacy Officer, UNDP APRC; Kaori Nakatani, HIV, Human Rights and Governance Technical Officer, UNDP APRC; Srinivas Tata, Chief, Social Policy and Population Section, ESCAP; and Maren Jiménez, Social Affairs Officer, ESCAP. The UN Ad-Hoc RITA on Enabling Legal Environments is Co- chaired by Nanda Krairiksh, Director, Social Development Division, ESCAP and Nadia Rasheed, Regional Practice Leader, HIV, Health and Development, UNDP APRC.

Special thanks to Tilly Sellers, Regional HIV, Health and Development Practice Leader and Amitrajit Saha, Senior Advisor HIV and Human Rights for UNDP Regional Centre for Eastern and Southern Africa (ESA) for developing the Africa Regional Guidance Document and providing guidance into Asia Pacific version. Additional thanks to Mandeep Dhaliwal, Director of UNDP HIV, Health and Development; Clifton Cortez, Cluster Leader for Governance and Human Rights; and Tenu Avafia, Policy Advisor, UNDP Bureau for Development Policy (BDP).

This Guidance document also profited greatly from experiences to date in planning, conducting or supporting reviews and consultations in countries in Asia and the Pacific. Special thanks to colleagues who have worked on national reviews and consultations in Bangladesh, Bhutan, Cambodia, China, Fiji, Kiribati, India, Indonesia, Malaysia, Myanmar, Pakistan, Papua New Guinea, the Philippines, Samoa, the Solomon Islands, Sri Lanka, Tuvalu, Vanuatu and Viet Nam.

John Godwin, Consultant, updated the 2014 Edition of the Guidance Document *Creating Enabling Legal Environments: Conducting National Reviews and Multi-Sector Consultations on Legal and Policy Barriers to HIV services*.

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Acronyms

AIDS	Acquired immunodeficiency syndrome
APCOM	Asia Pacific Coalition on Male Sexual Health
APN+	Asia Pacific Network of People Living with HIV/AIDS
APNSW	Asia Pacific Network of Sex Workers
APTN	Asia Pacific Transgender Network
CCM	Country Coordinating Mechanism
CEDAW	Committee on the Elimination of Discrimination against Women
CBO	Community Based Organization
CSO	Civil Society Organization
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
GCHL	Global Commission on HIV and the Law
GNP+	Global Network of People Living with HIV
HIV	Human immunodeficiency virus
HLM	High Level Meeting
IDLO	International Development Law Organization
ILO	International Labour Organization
IP	Intellectual Property
MSM	Men who have sex with men
OHCHR	United Nations Office of the High Commissioner for Human Rights
PLHIV	People living with HIV
SC	Steering Committee
SOGI	Sexual orientation and gender identities
UN	United Nations
UNAIDS	United Nations Joint Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
WHO	World Health Organization

About the Guidance Document

This Guidance Document aims to support country stakeholders including governments, Joint UN Teams on AIDS, civil society partners and others to undertake a review of national laws, policies and practices to enable full achievement of universal access to HIV prevention, treatment, care and support services, and to conduct a national, multisectoral consultation on legal and policy barriers to HIV services for PLHIV and key populations.

Undertaking a national review and consultation on legal and policy barriers to HIV services is an important step in strengthening a country's response to HIV and AIDS. The primary aims of conducting a national review and consultation are to identify and review laws, regulations, policies and practices that impact access to HIV services and to reach consensus on recommendations that will improve the legal environment for HIV responses. This involves assessing how laws are implemented and enforced in order to determine the extent to which the legal environment protects rights and promotes access to HIV-related services. Conducting a review and consultation enables a country to build a comprehensive picture of the legal and regulatory environment, its strengths as well as its gaps and challenges, and to make recommendations for creating an enabling and protective environment in line with national, regional and international human rights and health commitments. National consultations are also conducted with the aim of developing a time-bound action plan for addressing key barriers in the legal environment – including laws, law enforcement practices and access to justice – and identifying an oversight mechanism to monitor implementation of the action plan such as a multisectoral group of stakeholders tasked with ensuring the implementation and monitoring of recommendations/outputs.

National reviews and consultations conducted in a participatory and transparent manner will increase awareness and understanding of a range of stakeholders on HIV, law and human rights issues, build consensus on necessary actions to strengthen the legal environment, and foster strategic alliances between different sectors of governments including parliamentarians, justice, law enforcement and health, affected communities and others.

Considerable work has been done in recent years in Asia and the Pacific through both regional and country-level initiatives towards the creation of enabling legal and social environments for effective HIV responses. Governments made commitments in 2011¹ and 2012² to conduct national reviews and consultations in order to accelerate progress towards targets including the elimination of HIV-related stigma and discrimination, gender inequality and gender-based violence and ensuring affected to HIV services for those who need them. The implementation of these commitments at the national level should (i) build on prior efforts to create an enabling legal and social environment for the HIV response and (ii) allow for prioritisation of efforts so as to focus attention on those aspects of the legal environments that are key barriers to effective HIV responses.

The Guidance Document provides practical advice for countries wishing to conduct a national review and consultation on legal and policy barriers to access to HIV services by PLHIV and key populations. It includes:

- Brief background information on key HIV, law and human rights issues and key populations at higher risk in the region, as well as links to additional resources on ways of creating enabling legal environments for effective HIV responses;

¹ United Nations General Assembly. Implementation of the Declaration of Commitment on HIV/AIDS and the Political Declaration on HIV/AIDS: Intensifying our Efforts to Eliminate HIV/AIDS. 8 June 2011. (<http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N11/367/84/PDF/N1136784.pdf?OpenElement>, accessed October 2012) Economic and Social Commission for Asia and the Pacific (ESCAP). *Resolution 67/9 Asia-Pacific regional review of the progress achieved in realizing the Declaration of Commitment on HIV/AIDS and the Political Declaration on HIV/AIDS*. 3 November 2011. (http://www.unescap.org/sdd/meetings/hiv/hlm/English/HIV_IGM1_INF5.pdf, accessed on 6 March 2013)

² ESCAP. *Report of the Asia-Pacific High-level Intergovernmental meeting on the assessment of progress against commitments on the Political Declaration on HIV/AIDS and the Millennium Development Goals*. 2012. (<http://www.unescap.org/publications/detail.asp?id=1499>, accessed on 21 February, 2013)

- Information on planning for reviews and consultations, including how to ensure that the process is **consultative, participatory and inclusive of a range of key stakeholders and populations** and that it is relevant to and focussed on priority HIV, law and human rights issues within the country;
- Guidance on undertaking reviews and consultations including recommended **methodologies for identifying and analysing national laws, regulations and policies** and information on stigma, discrimination, human rights violations, key populations at higher risk and access to justice and law enforcement issues; and
- Recommendations for developing targeted, action-oriented recommendations for follow-up accompanied by implementation and monitoring mechanisms.

In most cases, the written review will include the analysis of laws, policies and practices hindering access to HIV services by PLHIV and key populations as well as recommendations for reform based on the key findings in the review. A national consultation will provide a forum for convening relevant stakeholders to discuss the recommendations and develop a prioritized action plan for taking forward some or all of the recommendations.

Background

According to UNAIDS' *Report on the Global AIDS Epidemic 2012*, 4.9 million people were living with HIV and 370 000 new infections occurred in 2011 in Asia and the Pacific. The Asia-Pacific epidemic is heterogeneous and there are significant variations in HIV epidemics between and within countries. The HIV epidemics of Asia and the Pacific disproportionately affect key populations of sex workers, people who use drugs, men who have sex with men (MSM) and transgender people; ongoing transmission to the female partners of drug users and the clients of sex workers is becoming apparent³. HIV epidemics in the Pacific region are low, but the number of people living with HIV in this region nearly doubled between 2001 and 2009—from 28 000 to 57 000. However, the number of people newly infected with HIV has begun to decline from 4700 in 2001 to 4500 in 2009. The HIV epidemics in the region are mainly driven by sexual transmission⁴.

As recognised by Helen Clark, UNDP Administrator at the 2011 Asia Pacific Regional Dialogue of the Global Commission on HIV and the Law:

"HIV epidemic patterns vary between and within countries in the Asia Pacific region. There has been mixed progress in halting and reversing its spread. In some countries in the region, the rate of new infections fell by more than 25 percent between 2001-2009. In other countries however, new infections increased by more than 25 percent in that same timeframe. What does remain a painful constant across the region is that HIV thrives among those who are excluded, who are misunderstood, who are stigmatised. An estimated 16 percent of people who inject drugs in Asia are living with HIV, and that figure is markedly higher in some countries. There is higher prevalence of HIV among men who have sex with men (MSM), transgender people, and sex

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