


**Economic and Social Commission for Asia and the Pacific**  
 Asia-Pacific Intergovernmental Meeting on HIV and AIDS

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Item 5 of the provisional agenda\*

**Assessment of the outcomes of the national reviews  
 and multisectoral consultations on policy and legal  
 barriers to universal access to HIV services**
**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**
**Note by the secretariat**
*Summary*

Since the adoption of Commission resolutions 66/10 and 67/9 and the Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS and the endorsement of the ESCAP road map to 2015, several ESCAP members and associate members have conducted national reviews and multisectoral consultations, which have been particularly effective in galvanizing national interest and ownership on actions that have sensitive cultural and political implications and are critical to successful AIDS responses. The present document contains highlights of good practices for conducting national reviews and multisectoral consultations on policy and legal barriers to universal access to HIV prevention, treatment, care and support, as indicated in region-specific and international commitments cited above, as well as recommendations for further action to improve the enabling legal and policy environment for effective AIDS responses.

Delegations may wish to consider the findings and recommendations discussed in the document and extend guidance to the secretariat on steps to be taken to support countries in this regard.

**Contents**

	<i>Page</i>
I. Introduction .....	2
II. Overview of global and region-specific commitments made for conducting national reviews and consultations .....	5
III. Status of national reviews and multisectoral consultations in the Asia-Pacific region.....	5

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A.	Conducting national reviews and multisectoral consultations.....	6
B.	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 .....	11
C.	Contribution of national reviews and multisectoral consultations in improving the human rights situation of key populations and people living with HIV .....	12
IV.	Progress in removing legal and policy barriers to universal access.....	13
A.	Monitoring and reforming laws, regulations and policies relating to HIV .....	13
B.	Law enforcement practices .....	15
C.	Improved access to HIV-related legal services.....	16
D.	Effective intellectual property regimes .....	16
V.	Recommendations for moving forward with the national review and multisectoral consultation process .....	17

## Figure

Projected global trends in new HIV infections based on different legal and policy environment scenarios.....	3
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## I. Introduction

1. One of the main reasons behind the low rates of access to needed HIV services among key populations at higher risk of exposure to HIV<sup>1</sup> is the lack of an enabling policy and legal environment. In Asia and the Pacific, the ability of governments to develop effective HIV responses has often been hampered by a legal and policy environment that remains unwelcoming to efforts that target the key populations at higher risk of HIV exposure<sup>2</sup>. Over the past decade, governments have found it challenging to design and implement programmes for people engaged in behaviour that is often viewed as illegal or unacceptable not only by the general population, but also by their judicial and legislative systems.

2. AIDS responses are more effective in contexts in which the human rights of people living with HIV and other key populations, such as sex workers, men who have sex with men, transgender persons, migrants, people who inject drugs and prisoners, are protected by laws and policies. Key populations are more likely to engage in HIV prevention efforts and access testing, treatment and care if legal environments (laws, law enforcement and access to justice) provide protection from human rights violations. Protective legal environments also enable key populations to participate more openly in planning, managing and delivering HIV services without fear of reprisals. This helps to ensure that the services to their communities are effective, accessible and acceptable.

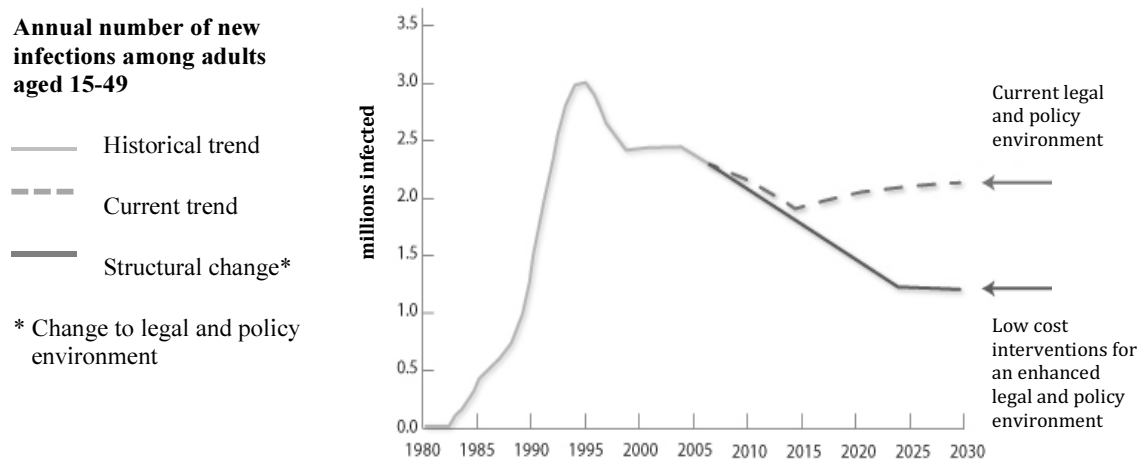
<sup>1</sup> As explained in the UNAIDS Terminology Guidelines, the term “key populations at higher risk refers to those most likely to be exposed to HIV or to transmit it”. The Guidelines are available from [www.unaids.org/sites/default/files/media\\_asset/JC2118\\_terminology-guidelines\\_en\\_0.pdf](http://www.unaids.org/sites/default/files/media_asset/JC2118_terminology-guidelines_en_0.pdf).

<sup>2</sup> Joint United Nations Programme on HIV/AIDS, “Terminology Guideline”, October 2011. Available from [www.unaids.org/sites/default/files/media\\_asset/JC2118\\_terminology-guidelines\\_en\\_0.pdf](http://www.unaids.org/sites/default/files/media_asset/JC2118_terminology-guidelines_en_0.pdf).

3. The Global Commission on HIV and the Law has reviewed public health and relevant health and legal research and literature, as well as evidence on the impact of legal environments on the lives of people living with and vulnerable to HIV from countries in the ESCAP region and beyond in order to identify changes in the legal and policy environment that could transform the AIDS response and reduce HIV epidemics (see figure).

Figure

**Projected global trends in new HIV infections based on different legal and policy environment scenarios**



Source: Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights and Health* (New York, UNDP, July 2012).

4. The final Report of the Global Commission reveals that existing evidence-based laws and practices firmly grounded in human rights serve as powerful instruments for challenging discrimination, promoting public health and protecting human rights. The Global Commission has recommended countries to design a human rights-based approach to health by implementing a set of combined interventions aimed at removing barriers to health services and creating enabling environments for effective AIDS responses. These interventions should do the following: address harmful practices and social attitudes through awareness-raising activities directed at health providers, police officers, media and religious leaders; build the capacity of communities to advocate for their rights (legal empowerment through legal literacy and legal aid services and community mobilization for policy advocacy); and improve the legal and policy environment (awareness-raising activities for parliamentarians and judicial officials, national human rights institutions trainings, legal reviews and legislative reforms).<sup>3</sup>

5. Significant progress has been made in removing legal and policy barriers to universal access to HIV services in the Asia-Pacific region, even before the adoption of such commitments as Commission resolutions 66/10 and 67/9 and the Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS,<sup>4</sup> which accelerated progress in creating enabling legal and policy environments in the region.

<sup>3</sup> Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights and Health* (New York, UNDP, July 2012).

<sup>4</sup> General Assembly resolution 65/277.

6. Many of the laws, policies and law enforcement practices in the Asia and Pacific region are punitive. Specifically, the legal environment for key populations, such as sex workers, people who inject drugs, men who have sex with men and transgender people (as specified in Commission resolution 67/9) are punitive in most countries.

7. Legal and policy barriers hindering AIDS responses in Asia and the Pacific include:

(a) Laws and practices that effectively criminalize people living with HIV and the most vulnerable to HIV (key populations):

(i) Restrictions on the entry, stay and residence of people based on their HIV status;

(ii) Provision of the death penalty for drug-related offenses;

(iii) Criminalization of the possession of needles and syringes;

(iv) Laws maintaining compulsory detention centres for people who use drugs;

(v) Criminalization of consensual relations between adults of the same sex;

(vi) Criminalization of some (or all) aspects of sex work;

(vii) Criminalization of HIV transmission, exposure and non-disclosure;

(viii) Non-recognition of third gender identity;

(b) Laws and practices that mitigate or sustain violence and discrimination as lived by women;

(c) Laws and policies pertaining to children and young people, including age of consent to access HIV services;

(d) Laws and practices that impede access to affordable medicines.

8. In addition to these punitive laws, law enforcement practices that compound stigma, such as police extortion, harassment and assault, often act as barriers for key populations to access HIV services.

9. Notably, several countries of Asia and the Pacific have national HIV and AIDS laws in place, including, among them, Cambodia, China, Fiji, the Lao People's Democratic Republic, Papua New Guinea, the Philippines and Viet Nam, while others have yet to provide comprehensive anti-discrimination protection for people living with HIV.<sup>5</sup> Additionally, reports of stigma and discrimination affecting people living with HIV and key populations continue to persist across the region, even in those countries that have in place comprehensive protective laws. For example, data from the People Living with HIV Stigma Index<sup>6</sup> in several countries of the region indicate that HIV-related stigma and discrimination are prevalent in all areas of society, including in the key areas of employment and health care.

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<sup>5</sup> Godwin, John, *Legal Protections against HIV-related Human Rights Violations: Experience and Lessons Learned from National HIV Laws in Asia and the Pacific* (Bangkok, UNDP, 2013).

<sup>6</sup> See People Living with HIV Stigma Index reports. Available from [www.stigmaindex.org](http://www.stigmaindex.org).

## **II. Overview of global and region-specific commitments made for conducting national reviews and consultations**

10. In 2010, the Commission in its resolution 66/10 called upon all members and associate members to ground universal access in human rights and undertake measures to address stigma and discrimination, as well as policy and legal barriers to effective AIDS responses, in particular with regard to key populations.

11. In the following year, the Commission in its resolution 67/9 called upon members and associate members to initiate, as appropriate, in line with national priorities, a review of national laws, policies and practices to enable the full achievement of universal access targets with a view to eliminating all forms of discrimination against people at risk of infection or living with HIV, in particular key affected populations. This commitment was echoed in the Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS, which was adopted by the General Assembly later that year.

12. 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, which was held in Bangkok from 6 to 8 February, was the first regional intergovernmental meeting held after the adoption of the Declaration. The meeting endorsed a regional framework for action, referred to as the ESCAP road map to 2015, to support countries in implementing the Declaration and Commission resolutions 66/10 and 67/9.

13. Since the adoption of the resolutions and the Declaration, and the endorsement of the ESCAP road map, national reviews and multisectoral consultations have been particularly effective in galvanizing national interest and ownership of actions with sensitive cultural and political implications that are critical to carrying out successful AIDS responses. National reviews and multisectoral consultations have resulted in significantly improved strategic information on and understanding of the particular legal and policy barriers hindering the AIDS response in countries and led to stronger leadership from key stakeholders in Government and civil society; facilitated important conversations centred on social and cultural issues; and resulted in the launching of actions that have improved the ability of the most marginalized groups in society, namely people living with HIV and key populations, to access HIV services and claim their rights.

## **III. Status of national reviews and multisectoral consultations in the Asia-Pacific region**

14. Twenty-three<sup>7</sup> countries and areas in the Asia-Pacific region have responded to an intergovernmental survey on progress in achieving universal access to HIV prevention, treatment, care and support in Asia and the Pacific being administered by the ESCAP secretariat. An analysis of the information provided in the survey along with additional information obtained from other United Nations resources indicates that, to date, at least 27 ESCAP members

<sup>7</sup> As of 21 November 2014, survey responses had been received from the following ESCAP members and associate members: Afghanistan; Armenia; Australia; Azerbaijan; Bangladesh; Bhutan; Brunei Darussalam; Cambodia; Fiji; France; Georgia; Iran (Islamic Republic of); Japan; Malaysia; Maldives; Mongolia; New Zealand; Pakistan; Russian Federation; Tajikistan; Thailand; Timor-Leste; and Hong Kong, China.

and associate members have conducted reviews and/or consultations on legal and policy barriers since the 2012 endorsement of the ESCAP road map. At the national level, Afghanistan, Azerbaijan, Bangladesh, Bhutan, Cambodia, China, Indonesia, the Islamic Republic of Iran, Japan, Malaysia, Mongolia, Myanmar, Pakistan, the Philippines, the Russian Federation, Sri Lanka, Tajikistan, Thailand, Viet Nam and Hong Kong, China have conducted at least one review and/or multisectoral consultation. Additionally, at the subregional level, a consultation for Pacific island countries involving Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tuvalu and Vanuatu was organized in April 2013.

15. In addition, a subregional multisectoral consultation for South and South-West Asian countries was held in November 2011 which included as participants Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.<sup>8</sup>

#### **A. Conducting national reviews and multisectoral consultations**

16. The publication *Creating Enabling Legal Environments: Conducting National Reviews and Multi-sectoral Consultations on Legal and Policy Barriers to HIV Services*<sup>9</sup> serves as a guidance document for the Asian and Pacific region for conducting national reviews and multisectoral consultations. It is intended to support national stakeholders, including Governments, civil society partners and United Nations country teams, in undertaking reviews of national laws, policies and practices to enable full achievement of universal access to HIV prevention, treatment, care and support, and in conducting national, multisectoral consultations on legal and policy barriers to HIV services for people living with HIV and key populations at higher risk of HIV exposure. A review of existing evidence on national reviews and consultations indicate that many countries and areas have adopted recommended practices identified in the publication.

17. Indeed, countries and areas across the region have taken a variety of approaches to conceptualizing and initiating the review and consultation processes. Diversity among their approaches is necessary given that each one of them faces unique political and resource constraints, and the legislative and policy context varies widely from country to country.

18. On the one hand, some countries have made a clear distinction between a national review and a consultation based on the view that they are two distinct stages in a process. For example, the Pacific region and Indonesia commissioned detailed review reports from independent consultants that were finalized prior to the consultation in order to make the findings of the review available as a report for discussion and to put forward action-oriented recommendations to be agreed to at the consultation.

19. On the other hand, some countries, such as Cambodia and Myanmar, treated the multisectoral consultation as an integral part of the national review process. In those cases, the initial findings of the national review were presented to the multisectoral consultation for validation, discussion and

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<sup>8</sup> International Development Law Organization, *South Asia Roundtable Dialogue: Legal and Policy Barriers to the HIV Response* (Rome, IDLO, 2011).

<sup>9</sup> Godwin John, *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* (Bangkok, UNDP, 2014). Available from [http://asia-pacific.undp.org/content/rbap/en/home/library/hiv\\_aids/creating-enabling-legal-environments--conducting-national-review/](http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/creating-enabling-legal-environments--conducting-national-review/).

subsequent revision. The final review report had taken into account the outputs of the national consultation, as well as other inputs, such as a literature review and interviews with key informants. In this second approach, the national consultation contributed to the finalization of the national review report by serving as consultative validation workshop during which stakeholders with skills, expertise and experience were brought together to discuss key issues identified by the review and recommendations for moving forward. The national review report of Thailand was also validated at a multisectoral consultation prior to finalization. By following this approach, multisectoral consultations offered an opportunity to discuss the results of the review, prioritize recommendations for future action, and develop action plans with a time-bound framework for implementation of the recommendations emanating from both the review and the consultation.

20. Additionally, due to resource constraints or the need to avoid duplicating other processes, some economies, including Afghanistan, Bangladesh, Bhutan and Hong Kong, China, have conducted a multisectoral consultation, without carrying out a separate review process to systematically gather and analyse information on legal and policy barriers. Notwithstanding, important legal and policy barriers were discussed at those multisectoral consultations and key actions to remove those barriers were identified. In Sri Lanka, the AIDS Foundation convened a national round-table meeting, drawing upon information and data from a regional multisectoral consultation for South and South-West Asia, which was made available to participants. Similarly, in the Philippines, the consultation took the form of a national dialogue that occurred against the backdrop of several separate and ongoing national review processes, such as a series of reviews and consultations on development of the revised national legislation on HIV and AIDS, and as a national level follow-up to the Asia-Pacific Regional Dialogue of the Global Commission on HIV and the Law, which was held in Bangkok in 2011.

21. The experience of the Philippines entailed the application of different approaches for linking the reviews and consultations to other policy processes, such as the recommendations from the final report of the Global Commission on HIV and the Law, and reviews of national HIV and AIDS strategic plans. In Armenia, Cambodia, Indonesia, Malaysia and Myanmar, the national reviews and multisectoral consultations were directly linked to the midterm-review processes for each country's national HIV and AIDS strategic plan. Similarly, the review of the Fourth National Strategic Plan of the Islamic Republic of Iran is expected to take into consideration the recommendations for removing legal and policy barriers to universal access to HIV services that were developed during the review and multisectoral consultation process. As a follow-up to the Pacific subregional multisectoral consultation, Fiji conducted a desk review on the implementation of the 2011 Political Declaration on HIV and AIDS in which legal and policy barriers affecting people living with HIV and other key populations were reviewed.

22. Many reviews and consultations have engaged different sectors of Government and local leaders and empowered civil society organizations to play a role in the review and consultation process. One such example is in Cambodia, where a technical working group, inclusive of key civil society and government stakeholders, provided oversight of the review and consultation. Reviews and consultations have also benefited from the involvement of United Nations agencies, particularly the coordinating role of the Joint United Nations Programme on HIV/AIDS and the United Nations Development Programme (UNDP) at the national level.

23. Many national reviews have systematically collected and analysed available information on aspects of the legal environment relevant to the AIDS response in a country, while some have focused on a specific sector. The national review process has included a literature review, stakeholder interviews and group consultations or focus group discussions that gathered perspectives and first-hand accounts of the impact of laws, policies and police practices on communities. Additionally, the national midterm reviews on the implementation of the 2011 Political Declaration on HIV and AIDS often supported the work undertaken for the national reviews.

24. For example, a national review undertaken by Indonesia involved a literature review to describe the national legal environment supplemented by interviews with stakeholders in Northern Sumatra, Jakarta, East Java and Bali. The review was guided by a steering committee comprising representatives of the National AIDS Commission, the Ministry of Law and Human Rights, the National Human Rights Commission, key population networks, UNAIDS and UNDP.

25. Similarly, the national review process in Pakistan was guided by a steering committee comprising representatives of the Government, the Human Rights Commission of Pakistan, United Nations agencies and non-governmental organizations (NGOs). It also included members of the community, including those from key populations. The methodology included interviews with key stakeholders (NGOs and Provincial AIDS Control Programmes for Sindh and Punjab), an extensive desk review and focus group discussions with key populations, including people who inject drugs, male and female sex workers, men who have sex with men and transgender people in three cities (Karachi, Lahore and Rawalpindi).

26. A point of departure for the conduct of many multisectoral consultations has been a common understanding of the objectives of the consultation. The objectives clarify the relationship of the multisectoral consultation to the national review process, and in them, the outcomes are explicitly defined, such as in a time-bound action plan. Most multisectoral consultations have been convened or co-convened by a government agency, ensuring government ownership of the consultation and their results. This arrangement has increased the prospects of recommendations being acted on by governments. Participation of senior representatives of Government (the responsible minister or senior government officials) has helped to ensure that the plans and recommendations emanating from a multisectoral consultation are acted on by the responsible Government sectors. In several instances, members of law enforcement have also been involved in order to address the

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