

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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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.

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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 workers."

Stigma and discrimination, violations of human rights, gender inequality and poor access to HIV services are major socio-structural contributors to epidemics in the region. There is also a significant relationship between enabling legal environments and reduction of HIV. Laws that criminalize and violate human rights of key populations at risk are not only threats to human dignity, but also hurdles to appropriate public health responses.

Significant progress has been made in the region in responding to HIV. Four countries that account for a large number of people living with HIV in the region – India, Myanmar, Papua New Guinea and Thailand – reduced new HIV infections by more than 50%⁵ between 2001 and 2011. In China, the number of people receiving ART has increased

³ UNAIDS. 2012 *UNAIDS Report on the Global AIDS Epidemic*. 2012.

⁴ Ibid.

⁵ Ibid.

more than five-fold from 2005 to 2010⁶. There has also been progress in addressing stigma and discrimination, including lifting of travel restrictions in several countries in the region including China, Fiji and Mongolia.⁷ Some countries have moved away from punitive approaches to drug use and sex work, and many countries have enacted laws and regulations providing improved legal protections for people living with HIV (PLHIV), MSM and transgender people.

However, more change is needed to achieve the targets of Zero New Infections; Zero Discrimination and Zero AIDS-related Deaths in Asia and the Pacific. Rising epidemics are reported among MSM in major cities across Asia, especially in 6 countries: China, India, Indonesia, the Philippines, Thailand and Viet Nam. HIV is still increasing among people who inject drugs. High HIV prevalence among female sex workers is found in geographical hotspots in several countries⁸. Prevention and treatment coverage for those most in need are still unacceptably low.

In Asia and the Pacific, key legal and policy challenges in relation to HIV include:

- Restrictions on the entry, stay and residence of people living with HIV based on their HIV status;
- HIV-related stigma and discrimination in employment, healthcare and education settings;
- Criminalization of possession and/or use of drugs;
- Compulsory detention centres for people who use drugs and sex workers, and imposition of the death penalty for drug-related offences;
- Criminalization of sex work;
- Criminalization of same-sex sexual conduct between consenting adults;
- Lack of legal recognition of transgender people;
- Restrictions on access to confidential HIV testing and other services on a range of grounds including age, marital status, nationality/migration status and for those in closed settings;
- Public security and police harassment, violence and selective enforcement of obscenity, vagrancy and other public order offences targeting sex workers, people who inject drugs, MSM and transgender people;
- International agreements and intellectual property laws that hinder access to affordable antiretroviral drugs (ARVs).

⁶ HIV and AIDS Data Hub for Asia and the Pacific. Review in slides – China [presentation]. 2011.

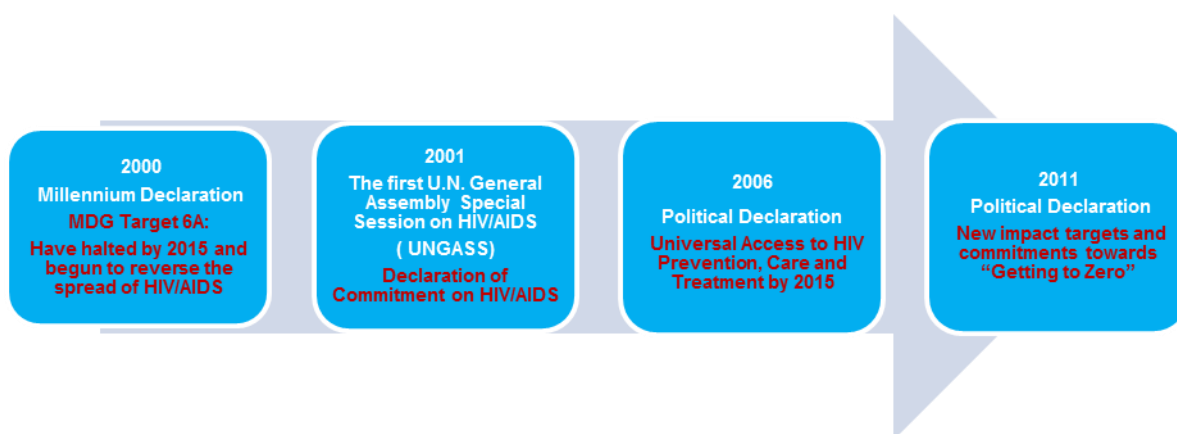
⁷ UNAIDS. Press statement. UNAIDS applauds Mongolia for removing restrictions on entry, stay and residence for people living with HIV. 31 January 2013. (<http://www.unaids.org/en/resources/presscentre/pressreviewsandconsultationsseandstatementarchive/2013/january/20130131psmongolia/>, accessed 13 February 2013). In July 2014 UNAIDS confirmed that Australia had no such restrictions. (<http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2014/july/20140710psaustralia/>, accessed 10 September 2014)

⁸ Steven J. Kraus. UNAIDS Regional Support Team Asia-Pacific. UNAIDS Regional Management Meeting. October 29, 2012. [presentation]. 2012.

Global Commitment to Accelerate the HIV Response

Governments of every country in Asia and the Pacific have invested significantly in their response to HIV. They have also made commitments to implement effective HIV responses, to benefit their own citizens and as part of the global response.

Political commitments and regional processes provide entry points to implement policies and programmes to create a more conducive legal and social environment for the scale-up HIV responses. Following the Millennium Declaration (2000), Declaration of Commitment on HIV/AIDS (2001) and Political Declaration (2006), Member States of the United Nations (UN) adopted the ***Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS*** in June 2011.⁹



In the **2011 Political Declaration**, Member States committed to revitalizing and intensifying the comprehensive global regional HIV and AIDS response and **reviewing national laws and practices that create barriers to effective HIV response**. The Declaration requested regional commissions, which includes the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), to “support periodic, inclusive reviews of national efforts and progress made in their respective regions to combat HIV.”

Box 1: 2011 Political Declaration on HIV and AIDS

The Sixty-fifth session of the United Nations General Assembly Special Session in June 2011 adopted a resolution on “**Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV and AIDS.**”

Paragraph 39 of the Resolution states “Reaffirm that the full realization of all human rights and fundamental freedoms for all is an essential element in the global response to the HIV epidemic, including in the areas of prevention, treatment, care and support, recognize that addressing stigma and discrimination against people living with, presumed to be living with or affected by HIV, including their families, is also a critical element in combating the global HIV epidemic, and recognize also the need, as appropriate, to strengthen national policies and legislation to address such stigma and discrimination;”

⁹ 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)

The section on “Advancing human rights to reduce stigma, discrimination and violence related to HIV” reads as follows:

“77. Commit to intensify national efforts to create enabling legal, social and policy frameworks in each national context in order to eliminate stigma, discrimination and violence related to HIV and promote access to HIV prevention, treatment, care and support and non-discriminatory access to education, health care, employment and social services, provide legal protections for people affected by HIV, including inheritance rights and respect for privacy and confidentiality, and promote and protect all human rights and fundamental freedoms with particular attention to all people vulnerable to and affected by HIV;

78. Commit to review, as appropriate, laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes to people living with and affected by HIV, and consider their review in accordance with relevant national review frameworks and time frames;

79. Encourage Member States to consider identifying and reviewing any remaining HIV-related restrictions on entry, stay and residence so as to eliminate them;

80. Commit to national HIV and AIDS strategies that promote and protect human rights, including programmes aimed at eliminating stigma and discrimination against people living with and affected by HIV, including their families, including through sensitizing the police and judges, training health-care workers in non-discrimination, confidentiality and informed consent, supporting national human rights learning campaigns, legal literacy and legal services, as well as monitoring the impact of the legal environment on HIV prevention, treatment, care and support;

81. Commit to ensuring that national responses to HIV and AIDS meet the specific needs of women and girls, including those living with and affected by HIV, across their lifespan, through strengthening legal, policy, administrative and other measures for the promotion and protection of women’s full enjoyment of all human rights and the reduction of their vulnerability to HIV through the elimination of all forms of discrimination, as well as all types of sexual exploitation of women, girls and boys, including for commercial reasons, and all forms of violence against women and girls, including harmful traditional and customary practices, abuse, rape and other forms of sexual violence, battering and trafficking in women and girls;

82. Commit to strengthen national social and child protection systems and care and support programmes for children, in particular for the girl child, and adolescents affected by and vulnerable to HIV, as well as their families and caregivers, including through the provision of equal opportunities to support the development to full potential of orphans and other children affected by and living with HIV, especially through equal access to education, the creation of safe and non-discriminatory learning environments, supportive legal systems and protections, including civil registration systems, and provision of comprehensive information and support to children and their families and caregivers, especially age-appropriate HIV information to assist children living with HIV as they transition through adolescence, consistent with their evolving capacities;

83. Commit to promoting laws and policies that ensure the full realization of all human rights and fundamental freedoms for young people, particularly those living with HIV and those at higher risk of HIV infection, so as to eliminate the stigma and discrimination they face;”

84. Commit to address, according to national legislation, the vulnerabilities to HIV experienced by migrant and mobile populations and support their access to HIV prevention, treatment, care and support;

85. Commit to mitigate the impact of the epidemic on workers, their families, their dependants, workplaces and economies, including by taking into account all relevant conventions of the International Labour Organization, as well as the guidance provided by the relevant International Labour Organization recommendations, including Recommendation No. 200, and call on employers, trade and labour unions, employees and volunteers to eliminate stigma and discrimination, protect human rights and facilitate access to HIV prevention, treatment, care and support;”¹⁰

Regional commitments

There are a number of regional commitments in Asia and the Pacific that are directly relevant to national efforts to create enabling legal environments for HIV responses¹¹.

In May 2010, all 62 Members and Associate Members of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) adopted **Resolution 66/10**, calling for the removal of legal and political barriers to universal access, in particular with regard to key affected populations (see Box 2, below). In March 2011, ESCAP member States adopted **Resolution 67/9**, which called upon countries to initiate a review of national laws, policies and practices with a view to eliminating all forms of discrimination against people at risk of infection or living with HIV, in particular key affected populations (see Box 3, below). In February 2012, the Asia-Pacific High Level Intergovernmental Meeting on the Assessment of Progress against Commitments in the Political Declaration on HIV/AIDS and Millennium Development Goals was convened, in order to assess regional progress against the Resolution 66/10 and commitments in the Political Declaration on HIV and AIDS and Millennium Development Goals (MDGs).

The Meeting endorsed a **Regional Framework (hereafter “Roadmap”)** to Support the Implementation of International and Region-specific Commitments, which includes the following elements:¹²

- A review by the Commission at its sixty-eighth session of the outcome of the Asia-Pacific High-level Intergovernmental Meeting on the Assessment of Progress against the Commitments in the Political Declaration on HIV/AIDS and the Millennium Development Goals;
- Organizing national multisectoral consultations, as appropriate, on policy and legal barriers to universal access, in accordance with ESCAP resolution 67/9;
- The undertaking of participatory and inclusive national reviews, as appropriate, of the implementation of the Political Declaration and ESCAP resolutions 66/10 and 67/9;
- The preparation of a regional overview of the progress in meeting the commitments in the Political Declaration and ESCAP resolutions 66/10 and 67/0;
- The convening of an inclusive regional intergovernmental review meeting on national efforts and progress in addressing the HIV epidemic;

¹⁰ 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).

¹¹ This includes ASEAN Declaration of Commitment: Getting to Zero New Infections, Zero Discrimination, Zero AIDS-Related deaths. Paragraph 19 (b).

¹² 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)

- Assessment by the Commission at its seventy-first session, in 2015, of the outcome of the inclusive regional intergovernmental review meeting, including the adoption of a regional input for the 2015 General Assembly review of the Millennium Development Goals.

Box 2: ESCAP Resolution 66/10 – May 2010

Key points:

- The resolution notes with concern the continuing high prevalence of HIV among sex workers, men who have sex with men and people who inject drugs, and an effective response requires working closely with these populations.
- The resolution calls for measures to address stigma and discrimination, as well as policy and legal barriers to effective HIV responses, in particular with regard to key affected populations.

Box 3: ESCAP Resolution 67/9 – March 2011

Key point:

- The resolution calls upon the Members and Associate Members to further intensify the full range of actions to reach the unmet goals and targets of the Declaration of Commitment of HIV/AIDS and the Political Declaration on HIV /AIDS by conducting six distinctive actions including:

Initiate a review of national laws, policies and practices to enable full achievement of universal access to with a view to eliminating all forms of discrimination against people at risk of infection or living with HIV, in particular key affected populations.

The Global Commission on HIV and the Law

The *Global Commission on HIV and the Law*¹³ (2010-2012), a high level initiative launched in 2010 by UNDP Administrator Helen Clark, examined the impact of laws on national HIV responses.¹⁴ Based on an analysis of where the law could transform the AIDS response and send HIV epidemics into decline, the Commission examined public health and legal scholarship, as well as evidence on the impact of legal environments on the lives of people living with and vulnerable to HIV. The Commission was comprised international leaders from different sectors and public health

¹³ The Global Commission on HIV and the Law: <http://hivlawcommission.org/>

¹⁴ In June 2010, the UNAIDS Programme Coordinating Board (PCB) called for an establishment of an independent Global Commission on HIV and the Law to examine existing evidence and generate new evidence on rights and the law in the context of HIV, and to develop recommendations. This Commission was led and supported by UNDP on behalf of the UNAIDS family.

experts. Five of the fourteen Commissioners are from Asia and the Pacific, and should be considered experts and advocates that can support national consultations on legal and policy barriers to HIV services. They are:

- Mr JVR Prasada Rao (also now the Special Envoy to the Secretary General on AIDS in Asia and the Pacific), India
- Mr Charles Chauvel, New Zealand
- The Hon. Dame Carol Kidu, Papua New Guinea
- The Hon. Michael Kirby, Australia
- Mr Jon Ungphakorn, Thailand

The Commission's [findings and recommendations](#) reveal that evidence-based laws and practices firmly grounded in human rights do exist and are powerful instruments for challenging discrimination, promoting public health, and protecting human rights. The benefits are felt beyond HIV responses to encompass health and development outcomes more broadly. The Commission made specific recommendations to strengthen legal environments for HIV and AIDS (see Box 4 below). Some of the key messages from the Commission were:

- Punitive laws are fueling the spread of HIV, resulting in human rights violations and costing lives;
- Punitive laws are wasting resources and limiting the effectiveness and efficiency of HIV and health investments;
- Good laws and practices that protect human rights and build on public health evidence already exist – they strengthen the global AIDS response and they must be replicated or brought to scale urgently; and
- Structural drivers such as law have a vital role to play in ending HIV epidemic.

The Commission's final report¹⁵ "*HIV and the Law: Risks, Rights & Health*" forms the basis of the next generation of HIV responses, where governments approach HIV through multiple lenses of health, equity, and justice. The Commission recommended that its final report be used as a **blueprint** for national processes to examine HIV-specific laws, and to undertake a legal environment assessment for HIV¹⁶ addressing laws, policies and practices that impede effective HIV responses. The Commission finally recommended countries to implement a set of combined interventions to remove barriers to health services and create enabling environments for effective HIV responses: interventions addressing bad practices and social attitudes (health providers and police officers' trainings, media and religious leaders' sensitizations); interventions building the capacity of communities to advocate for their rights (legal literacy and legal aid services, community mobilization for policy advocacy); and interventions improving the legal and policy environment (parliamentarian and judicial sensitizations, legal reviews, legislative reforms).¹⁷

¹⁵ Global Commission on HIV and the Law, UNDP. *HIV and the Law: Risks, Rights & Health*. 2012. (<http://hivlawcommission.org/index.php/report>, accessed on 28 July 2014).

¹⁶ UNDP. *Practical manual: Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV*. 2014. (<http://hivlawcommission.org/index.php/elibrary?task=document.viewdoc&id=176>, Accessed on 28 July 2014).

¹⁷ UNDP is currently implementing the Commission's recommendations in 84 countries. To have an overview of the follow-up activities, please visit the dedicated webpage on the Commission's website: <http://hivlawcommission.org/index.php/implementation-of-report>, accessed on 28 July 2014.

Box 4: Summary of key recommendations of the Global Commission on HIV and the Law (refer to Report for complete recommendations):

Enabling Legal & Policy Environment:

- Outlaw all forms of discrimination and violence directed against those who are vulnerable to or living with HIV or are perceived to be HIV-positive. Ensure that existing human rights commitments and constitutional guarantees are enforced.
- Repeal punitive laws and enact laws that facilitate and enable effective responses to HIV prevention, care and treatment services for all who need them. Enact no laws that explicitly criminalize HIV transmission or non-disclosure of HIV status, which are counterproductive.
- Decriminalize private and consensual adult sexual behaviour, including same-sex sexual acts and voluntary sex work.
- Stop punishing transgender people for being who they are. Instead, repeal laws that criminalize behaviors associated with transgender identity and amend anti-discrimination laws to explicitly include gender identity, non-conforming gender status, and sexual orientation
- Work with the guardians of customary and religious law to promote traditions and religious practice that promote rights and acceptance of diversity and that protect privacy.
- Prosecute the perpetrators of sexual violence, including marital rape and rape related to conflict, whether perpetrated against females, males, or transgender people.
- Abolish all mandatory HIV-related registration, testing, and forced treatment regimens. Facilitate access to sexual and reproductive health services and stop forced abortion and coerced sterilization of HIV-positive women and girls.
- Reform approaches towards drug use. Rather than punishing people who use drugs but do no harm to others, governments must offer them access to effective HIV and health services, including harm reduction programmes and voluntary, evidence-based treatment for drug dependence
- Enforce laws against all forms of child sexual abuse and sexual exploitation, clearly differentiating such crimes from consensual adult sex work
- Ensure that the enforcement of laws against human trafficking is carefully targeted to punish those who use force, dishonesty or coercion to procure people into commercial sex, or who abuse migrant sex workers through debt bondage, violence or deprivation of liberty. Laws against human trafficking must be used to prohibit sexual exploitation, but they must not be used against adults involved in consensual sex work
- In matters relating to HIV and the law, offer the same standard of protection to migrants, visitors and residents who are not citizens as is extended to citizens. Restrictions that prohibit people living with HIV from entering a country and/or regulations that mandate HIV tests for foreigners within a country should be repealed.
- Provide a legal environment that ensures social protection for children living with and affected by HIV and AIDS. Laws must protect guardianship, property and inheritance rights, and access to age-appropriate,

comprehensive sex education, health and reproductive services

- Develop an effective intellectual property (IP) regime for pharmaceutical products. Such a regime must be consistent with international human rights law and public health needs, while safeguarding the justifiable rights of inventors.

Addressing Harmful Practices & Social Attitudes

- End all forms of violence, harassment, brutality against key populations:
 - End police abuse and harassment of NGO workers and members of key populations;
 - Effective methods to lodge complaints, prosecute police personnel, and access justice;
 - Invest in training police, health providers, public safety officials, judges.
- Require education on HIV and the law – of people living with HIV, the judiciary, law makers, healthcare workers, school systems, lawyers, employers and trade unions.

Reporting back to ESCAP at the regional intergovernmental review meeting

ESCAP Roadmap to 2015

In February 2012, the *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* was convened and concluded with the endorsement of a Regional Framework for Action, the “ESCAP Roadmap to 2015”¹⁸, to support the implementation of international and region-specific commitments, calling for greater regional cooperation to accelerate progress towards meeting the global commitments and increased collaboration among government ministries, including health, justice, law enforcement, drug control and social protection, in partnership with civil society and key affected populations (including men who have sex with men, transgender populations, people who inject drugs, and sex workers and their clients). The framework also emphasized the need to share good practices and lessons learned in implementing the measures and commitments related to HIV.

As a result, an inclusive regional intergovernmental review meeting on national efforts and progress in addressing the HIV epidemic will be convened in January 2015. This is an opportunity for governments to share their progress, successes and challenges in implementing these commitments.

Global and regional commitments and processes are intended to support the national response by strengthening country level actions towards agreed goals and targets. The country-level implementation should always be tailored to ensure maximum impact on the national response (rather than processes simply for the sake of reporting). Ongoing country-level activities can also feed into regional processes, and result in these regional processes having outcomes that are more supportive of national responses. Similarly, existing regional initiatives contribute to progress in countries and to the implementation of commitments made by ESCAP member States.

¹⁸ ESCAP Roadmap to 2015 (2012). Available at: <http://www.unescapsdd.org/hiv/escap-roadmap-2015>

For example, UN entities and partners have produced a number of key resources that support activities in the Roadmap. *Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific: An agenda for action*¹⁹ documents how both punitive and protective laws, policies and practices impact comprehensive HIV responses in every country in the region. *Sex Work and the Law in Asia and the Pacific*²⁰ reviews the legal environments impacting on HIV responses in the context of sex work in every country in the region, assessing the impact of laws, legal policies and law enforcement practices on HIV responses in the context of sex work and provides recommendations for actions required to create enabling legal and policy environments for HIV responses. Other UN agencies have also conducted studies or reviews that will support national reviews and consultations. For example, UNESCO has worked with the UNAIDS family and other partners to review legal environments for young people²¹ and UNICEF is developing a resource on legal environments impacting on access to HIV services by young MSM (see Annex 10 for key resources).

Example of synergies between regional and country-level actions to address legal and policy barriers to HIV services

Two multi-country Global Fund programmes²² provide opportunities to support activities in the ESCAP Roadmap to 2015. UNDP Asia Pacific Regional Centre serves the role of interim Principal Recipient of the Multi-Country South Asia Global Fund HIV Programme (Phase 2), operating in 8 countries, with the goal to reduce the impact of, and vulnerability to, HIV of men who have sex with men, *hijras* and transgender people through *Community Systems Strengthening* (CSS). UNDP APRC also serves as the Technical Assistance provider on Human Rights and Advocacy under the ISEAN-HIVOS Round 10 Programme.

Through this two Multi-Country Global Fund programmes, UNDP supports countries to identify legal and social barriers to their national HIV responses by coordinating inclusive and meaningful national and regional multisectoral consultations and dialogues with key stakeholders (from government experts, law and policy makers, members of judiciary, to civil society and community members). These consultations or dialogues, focused on the HIV-related legal environment, not only identify barriers to accessing HIV services but also provide a safe space to discuss solutions to remove barriers: by helping create partnerships with governments, National Human Rights Institutions (NHRIs), law enforcement and communities for protection and promotion of human rights of key populations, by reviewing existing laws and regulations, and by developing national advocacy strategies.

For instance, the regional National Human Rights Institutions project on the inclusion of sexual orientation and gender identity issues led by UNDP and International Development Law Organization (IDLO) was a direct follow up to the South Asia Roundtable Dialogue on Legal and Policy Barriers to the HIV Response²³ and was designed to assess the capacity of NHRIs, to strengthen their capacity and to address human rights and socio-legal environments relating to HIV and SOGI in the region. The project documented regional and national progressive initiatives and good practices of national human rights institutions (NHRIs) and other human rights advocacy bodies in Bangladesh, India, Indonesia, Nepal, the Philippines, Sri Lanka and Timor-Leste to protect and promote the rights of highly marginalized individuals.²⁴

The two Multi-Country Global Fund grants further generated strategic information to strengthen the evidence based on HIV and human rights by developing regional and national Legal Reference Resources which document key protective laws focused on HIV, men who have sex with men (MSM) and transgender people in five countries in South

¹⁹ UNDP. *Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific: An agenda for action*. 2010.

²⁰ UNDP. *Sex work and the law in Asia and the Pacific*. 2012.

²¹ UNESCO, UNFPA, UNDP and UNAIDS. *Laws and Policies affecting Young people in Asia and the Pacific (draft)*. February 2013.

²² UNDP APRC serves the role of interim Principal Recipient of the Multi-Country South Asia Global Fund HIV Programme (Phase 2) which is operating in 8 countries: Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka and also serves as the Technical Assistance provider on Human Rights and Advocacy under the ISEAN-HIVOS Round 10 Programme.

²³ UNDP, IDLO, SAARCLAW. *South Asia Roundtable Dialogue on Legal and Policy Barriers to the HIV Response*. 2011. (<http://www.idlo.org/Publications/SAARCLAWRoundtableJan262012.pdf>, accessed on 28 July 2014).

²⁴ UNDP, IDLO, APF. *Regional Report: Capacity of National Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation, Gender Identity and HIV*. 2013. (http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/regional-report--the-capacity-of-national-human-rights-instituti/, accessed on 28 July 2014). Accompanying the regional report are national reports for Bangladesh, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Timor-Leste.

Asia.²⁵ 15 MSM Country Snapshots²⁶ were also produced and are useful resources for evidence-informed reviews and consultations. Moreover, UNDP supported programmes on media, HIV and human rights in Sri Lanka²⁷ to contribute to rights-based advocacy with media, which can and should be a key partner in efforts to improve the legal environment, and designed a regional framework for media engagement on human rights and SOGI in South Asia.²⁸ UNDP also works towards removing legal barriers by training health providers, who are key change agents, on HIV-related human rights issues to reduce stigma and discrimination against men who have sex with men and transgender people in health care settings in Asia-Pacific.²⁹

Using this Guidance Document

The Guidance Document may be used in all countries, regardless of the type of review and consultation that is being conducted or the stage of development and implementation of HIV-related laws, regulations and policies. The Guidance Document focuses primarily on the possible processes and structures to be put in place in order to conduct reviews and consultations to create enabling environments for HIV responses. These processes and structures can be used to support a range of reviews and consultations in various contexts, whether they are broad, comprehensive reviews and consultations of a country's legal environment or reviews or consultations focused on a particular issue or law. The Guidance Document also contains examples, case studies and detailed annexures that provide more detail on specific areas such as the composition of a national Steering Committee to oversee the reviews and consultations or the different branches of law, regulation and policy that may be relevant in the country context of HIV and AIDS.

It is recommended that partners use the Guidance Document as a reference guide when developing their own review and consultation. The suggestions regarding possible processes and structures may guide decision-making regarding a country's review and consultation – the process they will follow, who will be involved and how it will take place – based on its particular needs, resources and time constraints. Furthermore, while country-specific issues and concerns will inform the purpose, scope and nature of each country's individual review and consultation, the illustrative examples contained within the case studies and annexures in the Guidance Document may help to guide a country's planning of their review and consultation. The processes and structures suggested by this Guidance Document should be discussed with partners and tailored to the relevant local context.

The Guidance Document is divided into four main sections dealing with a recommended three-stage process to support a national review and consultation.

²⁵ UNDP, IDLO, SAARCLAW. *Regional Legal Reference Resource: Protective Laws Related to HIV, Men who have Sex with Men and Transgender People in South Asia*. 2013. (http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/regional-legal-reference-resource.html, accessed on 21 February 2013). The Country Legal Reference Briefs are available for Bangladesh, India, Nepal, Pakistan, and Sri Lanka.

²⁶ UNDP. *MSM Country Snapshots*. 2013. (http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/msm-country-snapshots.html, accessed on 21 February 2013). The Country snapshots are available for: Bangladesh, Bhutan, Cambodia, China, India, Indonesia, Malaysia, Mongolia, Myanmar, Nepal, Pakistan, Philippines, Sri Lanka, Thailand and Vietnam.

²⁷ UNDP. *Stigma, Discrimination and Key Affected Populations: Strengthening the Role of Media Advocacy in Sri Lanka through a Critical Analysis of News Media Coverage*. 2013. (http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/stigma--discrimination-and-key-affected-populations--strengtheni.html, accessed on 28 July 2014).

²⁸ UNDP. *A Framework for Media Engagement on Human Rights, Sexual Orientation and Gender Identity in South Asia*. 2013. (<http://asia-pacific.undp.org/content/rbap/en/home/presscenter/pressreleases/2014/04/30/the-media-as-a-positive-force-for-human-rights-and-healthcare/>, accessed on 28 July 2014).

²⁹ UNDP, WHO. *The Time Has Come: Enhancing HIV, STI and other sexual health services for MSM and transgender people in Asia-Pacific. A training package for health providers to reduce stigma in health care settings*. 2013. (<http://www.thetimehascome.info/>, accessed on 28 July 2014).

Planning stage

The planning stage is crucial to determining the nature and extent of the review and consultation in each country.

It is important to involve all key stakeholders including representatives of people living with HIV and other key populations at higher risk in the planning stage. A preliminary dialogue involving a range of key stakeholders may help to raise key HIV, law and human rights issues in the country, discuss and finalise the purpose, scope and nature of the review and consultation, identify key issues for priority focus during the review and consultation, identify suggested laws, regulations and policies to be included in the process, agree on suggested stakeholders to be consulted and discuss the roles, responsibilities and composition of various partners in the process, including a participatory body set up to guide, support and oversee the process.

National Review stage

A national review involves the analysis of the legal environment in the context of HIV and AIDS. The national review may be conducted in various ways and may include:

- A consolidation of previous reviews and recommendations, with further research to fill any gaps.
- A desk review of relevant international and regional commitments, national laws, regulations and policies as well as research reports, submissions and case studies relevant to the HIV, law and human rights.
- Interviews, surveys, questionnaires, site visits and/or focus group discussions with key stakeholders from executive, legislative and judicial branches of government, civil society, key population groups, traditional authorities, religious organisations, the private sector and international organisations, amongst others.

National Consultation Stage

The primary purpose of the national consultation is to provide the opportunity for a broad range of stakeholders to discuss and (where appropriate, validate or refine) recommendations for law reform or other programme initiatives intended to increase access to rights-based HIV services particularly for people living with HIV and key populations at higher risk.

It is also expected that a key output of the consultation will be a measurable and monitorable action plan for undertaking key legal and policy reforms and improving access to justice at country level to bring national legislation and policies in line with international good practice relating to human rights and rights-based HIV responses.

National consultations should include:

- An opportunity for stakeholders from government and civil society to discuss and develop consensus on the findings and recommendations of national reviews of legal and policy barriers to access to HIV services.
- Dialogue to develop a measurable and monitorable action plan for undertaking key legal and policy reforms at country level to bring national legislation and policies in line with international good practice relating to human rights and rights-based HIV responses.
- Consensus around a mechanism (existing or new) to support and monitor the implementation of the action plans.

Limitations of the Guidance Document and National Review and Consultation Processes

Undertaking a national review and consultation is a complex task. It is therefore very difficult to identify all the complexities encountered during the process, and ways to address each, within a single Guidance document or a single process. This section therefore briefly sets out some of the limitations of the Guidance document and some of the complexities that countries may encounter when undertaking a national review and consultation.

The following are some of the main limitations of the Guidance Document and the national review and consultation process.

- *Identifying key legal and human rights issues at a national level:* The Guidance Document focuses on the issues identified by the Global Commission on HIV and the Law's investigation into HIV, law and human rights at the Asia Pacific Regional Dialogue on HIV and the Law in February 2011. Therefore, it includes a specific focus on reviewing the legal environment with respect to criminal laws for people living with HIV and vulnerable to HIV; violence and discrimination against women living with HIV; the laws to access to HIV treatment and HIV and children³⁰. It guides the reader to possible sources of law, regulation and policy that may deal with these key issues, possible queries and issues to examine in terms of these areas of law and stigma, discrimination and human rights issues impacting on specific key populations at higher risk amongst other things. However, the Guidance Document cannot account for all the possible issues and concerns raised at a country/national level, nor can it account for every possible type of law, regulation, policy or guideline, or the implementation and enforcement practices, found in each country. Issues may differ within each national legal environment. Country teams should use the Guidance Document as a starting point to conducting the national reviews and consultations, but will also need to ensure focus on the specific concerns identified during the consultative planning and review stage and the particular legal environment within each country.
- *Determining relevant norms and standards:* The Guidance Document suggests a process to follow, key issues to consider as well as possible sources of law, regulation and policy in conducting a national review of the HIV-related legal environment (laws, law enforcement and access to justice). In some countries, there may be limited examples of current or comprehensive medical and health laws, and the various laws, regulations and policies that have an impact on HIV, AIDS and key populations at higher risk will be found in a range of sources of law, from health law to criminal law. In other cases, the lack of health and HIV-specific laws may require applying general laws such as constitutional laws to health issues. Some countries have dual legal systems, with conflicts between civil laws and other (e.g. customary and/or religious) laws and practices creating further complexity.
- *Looking beyond the law:* Some of the issues identified as priority concerns for HIV, law and human rights (e.g. the need for appropriate sensitisation of lawmakers, law enforcement personnel and service providers) are not issues generally set out in law. In many cases, protective laws and policies are ineffective due to weak access to justice and punitive law enforcement practices. Accordingly, the review of the legal environment should look beyond the law and to include a review of access to justice and law enforcement issues to gain a comprehensive understanding of the strengths and gaps within the current legal environment.
- *Dealing with gaps and weaknesses in the legal environment:* The review findings will highlight strengths, and also potential gaps and weaknesses in a country's legal environment. The national review and consultation cannot create a protective legal environment; however these processes can guide and catalyse advocacy and action for reform. Where the national review and consultation identifies gaps, challenges, human rights

³⁰ UNDP. *Report of the Asia Pacific Regional Dialogue of the Global Commission on HIV and the Law*. 2011.

abuses and barriers to effective HIV responses within a country's legal environment, country teams and stakeholders will need to support the outcomes of the process, particularly the follow up on action plans developed at the consultation. Some issues are not easily remedied through law review and reform and may require long-term policy and programmatic strategies to address cultural practices, attitudes and stigma and discrimination involving specific populations (e.g. in the case of gender inequality or stigmatisation of key populations such as sex workers and MSM). This may require additional technical assistance, resource mobilisation and other support from country teams including the UN.

- *Dealing with urgency and resource constraints:* The Guidance Document suggests a comprehensive four-stage process for conducting a national review and consultation. In some countries, there may be limited time and budgets to conduct a national review and consultation; and countries may need to consider short-cuts to the process. An extensive and participatory national review and consultation could take over 6 months whereas an abbreviated process may well be finalised within 3 months. While it is possible to conduct reviews and consultations without undertaking all of the proposed steps, it is important to ensure that the process allows for consultation and participation of all key stakeholders, including key populations at higher risk, at the conceptualisation and throughout, including in any mechanisms developed to support follow up.

Section 1: Planning Stage

Overview of National Review and Consultation

National reviews and consultations are an opportunity to:

- Raise awareness of and generate national dialogue on the priority HIV, law and human rights issues and of key populations at higher risk within the country;
- Identify and examine key HIV, law and human rights issues affecting people – including key populations at higher risk – and in particular HIV and human rights issues affecting MSM, people who use drugs, sex workers, women, children and young people, prisoners and migrants; and/or access to treatment;
- Determine the extent to which the current legal environment protects rights or acts as a barrier to access to HIV related services, in compliance with international, regional and national human rights commitments;
- Identify the extent to which these protections are known (e.g. by communities, service providers, law enforcers), implemented and enforced and for which people are able to access justice;
- Make recommendations for steps to strengthen the legal environment including through law review and reform, programmes to increase awareness of rights and access to legal services and improve law enforcement;
- Develop national consensus on priority actions for strengthening legal environments for effective responses to HIV;
- Identify or establish a participatory mechanism to oversee and monitor the implementation of agreed actions.

Purpose of Planning Stage

The Planning Stage should ensure that the national legal review and consultation is a transparent and participatory exercise, involving a range of stakeholders key to the HIV response within the country and focusing on priority HIV, law and human rights issues of national concern to all. Thorough planning and preparation helps to increase awareness and understanding of the review and consultation process, to foster buy-in and support from leadership and key stakeholders and to ensure that the review and consultation relevant to the needs of the country.

Box 5: Commitment and leadership from all partners

Government commitment to and leadership of the national review and consultation process is crucial to the success of the review and consultation as well as to ensure that uptake of recommendations coming out of the process. Lessons from reviews and consultations in the region reinforce the importance of government commitment to the review and consultation process, ensuring the participation of key ministries and institutions and facilitating the integration and uptake of recommendations into the strategies and action plans of government ministries. Similarly, the involvement of other forms of leadership at all levels of society, including traditional and religious leaders is also vital to the review and consultation to the final outcome of the process.

The participation of key affected populations as individuals and through civil society organisations representing their interests is equally crucial to the success of the project. This helps to ensure that the review and consultation focusses on priority human rights issues experienced by key affected populations in their daily lives, includes the voices and perspectives of key populations and that recommendations from reviews and consultations are relevant and are supported by key populations.

Any potential challenges to commitment and participation of the relevant stakeholders should be identified, discussed and addressed at the outset. Challenges may include lack of government commitment to leadership of the review and consultation process; ‘territorial’ disputes between government institutions as well as between government and other stakeholders regarding the leadership of a review and consultation; potential conflicts between the traditional and/or religious norms and beliefs of leaders and communities and the human rights principles which underpin the process; the ‘invisibility’ of key populations within a country (particularly in countries where criminalised populations such as sex workers and MSM are unable to live and organise freely without fear of harassment) and the lack of capacity within government and civil society to participate effectively within the process.

The UN and other development partners may help to identify and overcome challenges to stakeholder’s participation in the review and consultation process through various means. For instance, they may elicit the support of senior leaders at high level meetings, support and facilitate processes to bring stakeholders together to plan and implement a review and consultation; sensitise stakeholders to the role of law in national responses to HIV and to HIV, law and human rights issues of national concern, provide technical and other forms of support to the process, and mobilise resources and donors. In this way, the participation and inclusion of all partners promotes an effective and useful review and consultation process.

Box 6: Case Study: ESCAP supporting government leadership

The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) is the regional development arm of the United Nations and serves as the main economic and social development centre in Asia and the Pacific. ESCAP supports countries in Asia and the Pacific in the implementation of the 2011 *Political Declaration on HIV and AIDS* and in reaching the Millennium Development Goal target of ensuring universal access to comprehensive prevention programmes, treatment, care and support. This is done by promoting regional cooperation among countries of Asia and the Pacific and through partnerships with people living with HIV and AIDS, civil society and faith-based and private-sector groups. ESCAP also provides technical support to Governments and other stakeholders by advocating for more supportive policies and programmes, including legislation that address stigma and discrimination³¹.

The ESCAP Roadmap supports regional cooperation on the national reviews and consultations, and provides a timeline to guide countries and facilitate intergovernmental experience sharing, serving as a useful accountability mechanism for follow-up purposes.

The planning stage of a review and consultation may involve various steps including some or all of the following:

- Holding a consultative planning meeting or series of dialogues to discuss national HIV, law and human rights issues and to agree upon the purpose, nature and scope of the review and consultation and priority issues of national concern;
- Establishing a representative Steering Committee (SC) to lead the process;
- Briefing the Steering Committee on the relevant background information around HIV, law and human rights;
- Agreeing upon a terms of reference for the SC; and
- Planning for the national review and consultation.

Holding a consultative planning meeting

A consultative planning meeting or dialogue may be a useful way to ‘kick off’ a national review and consultation and to encourage the participation and inclusion of all partners. It may help to:

- Raise awareness and understanding of HIV, law and human rights issues in the country and the importance of a review and consultation in strengthening effective responses to HIV (including dissemination of the findings and recommendations of the Global Commission on HIV and the Law),
- Ensure a transparent, participatory and rights-based approach to conducting the review and consultation,

³¹ UNESCAP. HIV and AIDS. http://www.unescap.org/sdd/issues/hiv_aids/hiv_aids.asp, accessed 4 March 2013.

- Clearly define and agree upon the purpose, nature, scope, methodology and implementation of the review and consultation,
- Discuss and agree upon oversight and reporting mechanisms for the various stages of the review and consultation including the possible nature, purpose and composition of a participatory Steering Committee to guide and oversee the process,
- Identify key stakeholders to participate in consultations, focus group discussions and/or surveys for purposes of the review and consultation,
- Agree upon preliminary priority areas for the review and consultation, based on key HIV, law and human rights issues raised by participants, and
- Identify prior research, analyses and recommendations, as well as processes and partnerships, that can be built on through the national review and consultation process (where existing reviews have recently been conducted, these should be integrated into the process)
- Brainstorm the laws, regulations, policies, and strategic information regarding law enforcement practices and access to justice that need to be considered during the review and consultation.

A consultative planning workshop or dialogue may be an important aspect of the planning stage where leaders are otherwise unwilling to engage on particular issues or where key populations do not otherwise have opportunities to be heard or are unable to participate due to lack of organisation, fear of harassment or because their criminalised status leads to a real fear of arrest or prosecution. A National Dialogue encourages the participation of key populations and allows government and civil society to come together in a safe space to enter into a moderated dialogue with each other on HIV, law and human rights issues. In this way it encourages awareness-raising and sensitisation of stakeholders as well as facilitating the identification of key issues for a review and consultation.

Setting up a Steering Committee

It is strongly recommended to identify a Steering Committee to guide, support and oversee the work of the review and consultation. The role, composition and functioning of the Steering Committee can be discussed and deliberated during the consultative planning stage and the terms of reference agreed upon by the group itself at their first meeting. Ideally, a Steering Committee is convened by governments, with members from a range of sectors including key affected communities and UN. Where a multisectoral and participatory coordination body on issues relating to HIV and human rights already exists, partners may consider vesting this body with the responsibility of planning the review and consultation. If necessary, additional members could be added or brought into the process so as to ensure the participation of relevant stakeholders.

The roles and responsibilities of a Steering Committee are not fixed and will differ from country to country depending on the needs and capacity of stakeholders. A number of suggested roles are set out below for consideration in developing locally relevant terms of reference for a country group (see Box 8 and Annex 1 for terms of reference of the Steering Committee). A well-functioning Steering Committee will provide a robust mechanism for making important decisions such as the scope of the review, the process for identifying participants at the consultation and any decisions around prioritisation/focus issues. A well-constituted Steering Committee can also serve as the foundations for any agreed mechanism to oversee and monitor the implementation of the recommendations or action plans developed at the consultation.

Box 7: Roles and responsibilities of Steering Committee

The Steering Committee (SC) has a number of possible roles that it may fulfil in guiding and supporting the national review and consultation:

- *Oversight Role:* The Steering Committee guides and monitors the review and consultation process in order to ensure it is conducted according to agreed-upon processes and in a way that ensures consultation, inclusivity and a commitment to a rights-based response.
- *Advisory Role:* As a multisectoral and representative body the Steering Committee itself can provide various perspectives and technical input on key HIV, law and human rights issues and on the various stages in the legal review and consultation process.
- *Implementation Role:* In some situations, particularly where resources are limited, the Steering Committee members may take on an implementation role where they may be required to implement some aspects of the review and consultation process themselves.

The various **responsibilities** of the Steering Committee may include the following:

- To guide the national review and consultation in accordance with national priorities and recommended guidance, as a multi-disciplinary reference group;
- To facilitate fund raising/resource mobilisation for conducting the national review and consultation;
- To provide on-going technical support to the planning, implementation and finalisation of the national review and consultation;
- To oversee and monitor the national review and consultation throughout each stage of the process;
- To raise awareness of the HIV, law and human rights issues of priority national concern;
- To strengthen and to ensure political commitment to the national legal review and consultation and its outcome;
- To review and endorse the review and consultation recommendations and to support action planning for strengthening the legal and regulatory environment for HIV and AIDS;
- To report back on the outcomes of the process to key stakeholders, and
- To develop a process or forum for on-going monitoring of the outcome of the consultation (i.e. the action plan for creating an enabling legal environment), with the involvement of key stakeholders.

The Steering Committee should be composed of up to 15 representatives from a range of sectors, institutions and organisations key to the HIV response and influence over the legal environment - see Box 9 for suggestions. It should also include members with the skills and expertise to support and oversee the legal review and consultation as well as those with direct experience and understanding of stakeholder perspective and key human rights issues. The Steering Committee should include key government ministries with technical expertise in and responsibilities for the uptake of

recommendations on health, HIV, law and human rights developed through the review and consultation. All Steering Committees should include community representatives, including PLHIV and some or all key populations. These representatives should be nominated in a democratic way so as to ensure that they represent and are accountable to communities.

The roles and responsibilities of the various members to the SC, including which institutions will provide leadership and which will provide administrative, financial and other support to the process, should be clearly identified up front. Ideally, the Government should take the primary responsibility for convening a Steering Committee and, where possible, serve as Chair or Co-Chair of the group. UN entities such as UNAIDS, UNDP and other members of the Joint Team on AIDS or UN Country Team can provide additional support as required, for example through secretarial support to the Steering Committee and ensuring the identification and participation of relevant communities.

Box 8: Case Study: Steering Committees for national review and consultations in Indonesia and Pakistan

In early 2013, at an informal consultative planning meeting, the Steering Committee was convened in Indonesia to guide the planning of the national review and consultation. Members of the Steering Committee include: Ministry of Health (National AIDS Commission), Ministry of Law and Human Rights, National Human Rights Commission, representatives of the communities, UNAIDS and UNDP.

In Pakistan, the Steering Committee convened consists of representatives from UNAIDS, UNDP, UNICEF, UNFPA, IDLO, the National AIDS Control Programme, Human Rights Commission of Pakistan, CCM, and key affected populations. The Steering Committee oversees the overall process of the national study of the status of legislative and policy environment with regards to human rights of key affected populations by HIV and AIDS in Pakistan and approve the methodology, workplan and deliverables. The Steering Committee will also meet at the critical stages of the study for monitoring purpose.

Box 9: Key Stakeholders in the national review and consultation process

The Steering Committee charged with overseeing the legal review and consultation may include representatives from the following organisations and institutions:

- Relevant government ministries (e.g. Ministry of Health, Justice, Social Welfare, Gender, Trade, National AIDS Commission, Prisons, Labour etc.)
- Statutory bodies (e.g. Human Rights Commission, Law Commission)
- Professional bodies (e.g. Medical Council, Law Society)
- Networks of people living with HIV and of key populations at higher risk (e.g. MSM networks, sex worker networks, youth networks, etc.)
- Civil society organisations (e.g. HIV service organisations, law and human rights organisations, organisations working with key populations, etc.) including ‘mainstream’ human rights organisations not specifically

involved in HIV and AIDS issues

- Religious organisations (e.g. organisations of religious leaders affected/infected with HIV)
- Legal and academic institutions
- The National Parliament
- UN agencies (e.g. UNAIDS, UNDP, UNFPA, UNODC, OHCHR, ILO, etc.)

Its members should include those with a range of skills, experience and competencies in, for example:

- Public health
- Law and human rights
- Gender equality
- Trade and Intellectual property
- Working with key populations such as people living with HIV, women, children and young people, sex workers, men who have sex with men, people who inject drugs, prisoners and migrants

It is important to ensure the involvement of all key populations at higher risk within the particular country context. This may require special efforts to include the participation of less visible key populations.

Developing a Concept Note

Developing a Concept Note for the national review and consultation may be important to set out a clear plan of action for conducting the national review and consultation, integrating all previous discussions and deliberations (such as the outcome of the consultative planning meeting or dialogue/s, and/or meetings of the SC) into a final roadmap for the process. The Concept Note may include a description of:

- The purpose, scope and nature of the review and consultation.
- The key HIV, law and human rights issues of priority national concern that have to be addressed during the process.
- The Roadmap, specific activities and deliverables required to achieve the aims and objectives.
- The deliverables, such as the review document and the report of the consultation.
- The responsibilities of various parties to the process in achieving the aims and objectives.
- Reporting mechanisms during the process.
- A detailed workplan for the review and consultation, including an objective-activity-output-timeline framework.

- Resources required to conduct the review and consultation.
- Questionnaires, survey plans, discussion guides and analysis tools for use during interviews, focus group discussions and desk reviews.
- A list of laws, regulations and policies to be reviewed.
- A list of key stakeholders to be consulted throughout.

Desirable *outcomes* of national reviews and consultations could include:

- Protective laws concerning non-discrimination and non-violence with regard to people living with HIV and key populations enacted, disseminated, resourced and enforced;
- Programmes to improve the legal environment expanded;
- Promotion of programmes, laws and policies that will increase access to prevention and treatment
- Provision of legal protection against discrimination for people living with HIV, women, children and key populations in various sectors, including housing, labour, education and social services; and
- Expanded means by which to obtain redress for discrimination and violence in the context of HIV.

Immediate outputs of the review and consultation process could include:

- Prioritized recommendations for removing legal and policy barriers to universal access for national partners to take forward;
- A timeframe for action;
- A multisectoral working group with responsibility for monitoring progress on the agreed actions and recommendations;
- A report for public to support transparency and accountability, and which could be used to support government reporting to regional and global bodies such as ESCAP and Global AIDS Response Progress Reports on progress in implementing ESCAP and High-level Meeting commitments.

Box 10: Purpose and scope of a legal review and consultation: broad versus narrow focus?

In some countries a legal review and consultation may have a very specific and narrow focus. For instance it may focus on a specific issue (such as reviewing the impact of laws, policies and practices that promote harmful gender norms and gender-based violence, including stigma and discrimination against MSM and transgender people, hindering HIV responses, or eliminating punitive laws, policies and practices impacting on people who used drugs and sex workers) or it may focus on a specific law (e.g. the review of an existing HIV law in a country).

In other countries, a legal review and consultation may be a broad-based assessment of a country's legal environment as a whole, including a review of all relevant laws, regulations and policies that impact on HIV as well as on key populations at higher risk (e.g. health laws, criminal laws, anti-discrimination laws, laws impacting on young people, employment laws etc) as well as a review of the extent to which laws are known, implemented and enforced, and

access to justice for PLHIV and key populations. One approach to consider is a broad review - analysing all key legal and policy issues hindering the HIV response, from which several priority issues can be selected for detailed discussion and action-planning at the national consultation.

Examples:

- a) In China a review of laws was conducted by the government in partnership with UNDP with the objectives of:
 - *“identification of problems in the legal environment of HIV/AIDS in China with the international human rights standards and best practices as a benchmark*
 - *identification of obstacles in the implementation and enforcement of the legal environment of HIV/AIDS, in light of differences between ‘law in action’ and ‘law on books’*
 - *identification of actual impact on key target populations resulting from the implementation and enforcement of the legal environment of HIV/AIDS, emphasising the impacts on the human rights and other legally protected interests of vulnerable groups, and*
 - *identification of evidence-based and human rights-oriented recommendations to the Chinese legal environment of HIV/AIDS and solutions to overcome the obstacles in the implementation / enforcement.*
- b) *In Viet Nam, the Government and a wide range of development partners worked together on a comprehensive review of the impact of the Law on Administrative Sanctions on the rights of sex workers and people who use drugs including their access to HIV services. A high level national consultation resulted in amendment of that law to eliminate mandatory detention of sex workers and improve justice process protections for people accused of drug dependence. National Assembly members, government, judiciary, UN and other development partners and communities are now working to develop alternative policies and processes to create a more enabling legal environment for sex workers and people who use drugs to access health services.*
- c) **Malaysia’s** review was commissioned by the UN HIV/AIDS Theme Group in Malaysia and overseen by a Technical Steering Committee comprising representatives of the Human Rights Commission of Malaysia, the medical profession (Hospital Sungai Buloh), legal profession (Malaysian Bar Council), Centre of Excellence for Research in AIDS, Malaysian AIDS Council, Pertubuhan Advokasi Masyarakat Terpinggir (Malaysia’s community-led sex worker organization), PT Foundation, Kuala Lumpur AIDS Services Society, WHO, UNDP and UNAIDS. The terms of reference for the Technical Steering Committee were to:
 - *Provide oversight and technical guidance on the structure and substantive content of the study and multi-stakeholder consultations;*
 - *Review the findings of the study and feedback/ recommendations from the multi-stakeholder consultations;*
 - *Provide feedback on identifying appropriate platforms to share, disseminate and support further strengthening of the legal and policy environment for HIV services.*

The review gathered data using the following methods:

- *Semi-structured interviews were conducted with representatives the Ministry of Health, Federal Territory Islamic Affairs Department, Human Rights Commission, Kuala Lumpur Legal Aid Centre, Malaysian AIDS Council and PT Foundation.*
- *The proceedings of the national consultation including recommendations that were produced by participants.*
- *A literature review was undertaken on laws, policies and practices that affect key populations and their access to HIV services. Sources of literature were peer-reviewed articles (e.g. social sciences and health*

sciences) and primary sources such as strategic plans, articles of law (constitutional, civil and Sharia law), and local, regional and international reports on law, health and HIV.

The focus of national review and consultation will depend on each country's context and the key issues at stake. When making decisions about the scope and focus of a review and consultation, it is important to bear the following considerations in mind:

- Reviews and consultation should seek to build on previous efforts to identify and address legal and policy barriers to access to HIV services for PLHIV and any key populations.
- A narrow and focussed review and consultation allows for an in-depth analysis of a particular issue or law and provides an opportunity for detailed and very specific recommendations in response to its findings. A broad national review and consultation, on the other hand, is able to look at a range of issues covering a country's entire legal environment. This means that a broad national review and consultation is able to provide comprehensive recommendations for effective HIV responses that work across all sectors for all affected populations; however it is not always able to provide an in-depth analysis of all issues. It can highlight specific issues for further investigation, where required.
- Where there are in-country sensitivities around specific issues (e.g. criminal law issues to do with key populations), a broad review and consultations may be preferable to focussing a review and consultation on one controversial issue that may receive limited commitment from stakeholders. Selection of priority issues should be based on an assessment of the political landscape including issues where real change is feasible based on national and international trends and interests, as well as the issues that will have the biggest impact on the HIV response.
- Whether reviews and consultations have a narrow or broader focus, they should always look beyond simply reviewing 'law on the books' to include a review of the ways in which laws are implemented and enforced and the extent to which populations know their rights and are able to access justice.

See Annex 2 for a Sample Concept Note, and Annexes 3 -5 for generic and sample Terms of Reference for a national review and consultation.

Box 11: Elements to include in a concept note

a) Purpose, scope and nature of the review and consultation

The concept note should clearly set out the purpose, scope and nature of the review and/or consultation including:

- A brief overview of the contextual background to HIV, law and human rights in the country, key gaps, challenges and HIV law and human rights priorities in the current response and the role of the review and consultations in strengthening an enabling legal environment for HIV and AIDS.
- The scope of the review and consultation, in terms of how broad it will go in its review of the legal environment for HIV and AIDS. Some may wish to review a specific law (such as an HIV law) within the country, to determine its impact on the response to HIV and AIDS. Other countries may wish to review all

relevant laws, regulations and policies within a country, including customary and religious laws and practices, as well as the extent to which laws are implemented and enforced and communities are able to access justice for violations of their rights. This would also mean looking at issues such as the nature and extent of HIV-related stigma and discrimination by institutions, service providers, communities and leaders; the extent to which people know their rights, the existence of organisations and programmes to reduce stigma and discrimination, provide legal literacy and provide legal support services and the extent to which service providers, law-makers and law enforcers are sensitised to the HIV, law and human rights.

- National reviews and consultations commonly also review international and regional human rights commitments relevant to a particular country to use as a benchmark for an effective, rights-based response; others also review legal and regulatory responses to HIV in other countries (e.g. countries within the region which experience similar HIV, law and human rights issues) for guidance in making recommendations.
- A brief overview of the nature of the national review and consultation, how it shall be carried out and what it shall seek to report on.

b) Methodology and implementation modalities

The concept note should clarify the various methodologies, activities and deliverables which will form part of the review and consultation process and how these will be carried out, including for instance:

- A desk review of international, regional and national human rights obligations and commitments, particularly those relevant in the context of HIV and AIDS; national laws, regulations, policies and codes of conduct that apply to HIV and/or to key populations at higher risk; HIV-related strategies and planning documents as well as research, reports and case studies on aspects of the law relating to HIV, AIDS and key populations and HIV-related laws in foreign jurisdictions, where relevant.
- Stakeholder consultations (interviews, consultations, surveys, questionnaires and/or focus group discussions) with key stakeholders from a range of sectors including executive, legislative and judicial branches of government, networks of people living with HIV and key populations at higher risk, civil society organisations working on HIV, law and human rights issues, religious organisations, the private sector and international organisations, amongst others.
- National consultative forum/s or dialogue/s for presenting draft findings, obtaining feedback, building consensus, disseminating final findings and recommendations, prioritising recommendations and identifying key actions for moving forward to strengthen the legal environment.
- A broad overview of the roles and responsibilities, including reporting mechanisms, of various partners in the process including the lead organisation/s, the researchers and the national reference group set up to oversee the process.

c) Detailed roadmap

It is useful for the Concept Note to also include a detailed workplan, including :

- Specific activities to be carried out in the various stages of the national review and consultation
- The deliverables to be achieved during the various stages of the national review and consultation
- The timelines attached to the specific activities and stages of the national review and consultation

- The specific roles and responsibilities of various partners for each activity
- How the reporting and feedback mechanisms are to be incorporated during the process, and
- The support and resources required for each stage of the process.

d) Appendices

Other useful information to be attached to the concept note include:

- A list of international and regional human rights instruments, national laws, regulations, policies, strategies and plans and other documents to be reviewed
- A list of stakeholders to be consulted or surveyed in interviews, consultations, focus group discussions or questionnaires
- Tools to be used in the review process including tools for analysis of the legal environment, questionnaires, surveys, interview guides
- Minutes of meetings of the Steering Committee and notes/a report of any consultative planning meeting.

Section 2: National Review Stage

In this section, we look at several key steps in conducting national reviews of legal and policy barriers to universal access to HIV services to create and enabling legal environment for HIV responses: identifying key stakeholders, undertaking reviews with stakeholders and conducting desk review.

Key steps to conduct national reviews

These are several key steps to conduct the national review:

- a) Identifying key stakeholders (e.g. UN agencies, NGOs, networks of key populations) who can provide insight on the legal environment and provide inputs to the review;
- b) Identifying and consolidating relevant literature on/reviews of the legal environment in the context of HIV;
- c) Reviewing national laws, policies and practices which impede universal access to HIV prevention, care, support and treatment;
- d) Identifying significant efforts and progress made on creating enabling legal environments; and
- e) Developing (or synthesising) and prioritising recommendations for legal environment (laws/policies, law enforcement, access to justice) in the specific focus areas to be addressed.

Identifying stakeholders

Consulting with key stakeholders is a useful way to obtain information on the legal and regulatory environment from the different perspectives of those who experience it in the course of their work at different levels and those who experience it as populations accessing services. It helps to gain insight into issues and experiences that may not otherwise be documented, particularly in relation to the impact of laws, regulations and policies on people's lives, whether they are able to access justice and how laws are implemented and enforced. In addition, it is also a mechanism for raising awareness and promoting dialogue about HIV, law and human rights issues and the purpose of the legal environment assessment as well as for promoting an inclusive and participatory legal review in which the voices of all key stakeholders can be heard.

At the planning stage of the national review, it is important to determine:

- Which stakeholders will be consulted during the review process,
- How stakeholders will be consulted,
- Who will undertake stakeholder review, and
- What they will be consulted on.

Box 12: Identifying key stakeholders

The consultative planning stage provides a good opportunity to gain broad input and agreement on the key stakeholders who should be consulted during the review. Key stakeholders should include a broad range of individuals or organisations working in different sectors or at different levels in the country as well as those representing populations at higher risk and vulnerable in the context of HIV and AIDS. **It is important to look beyond HIV-specific organisations and institutions to draw in and include a broader range of ‘mainstream’ organisations such as organisations and institutions working on human rights issues, health issues, women’s issues, employment rights issues, for example.** It is also important to recognise that **key populations may be diverse and are not a “homogenous group”**. For instance, transgender sex workers may have specific issues and concerns that are different to those of migrant sex workers; women living in rural areas may have specific needs and concerns not shared by women with disabilities.

Key stakeholders may include:

- National leaders and technical experts from the executive branches of key government ministries including HIV and AIDS, Health, Foreign Affairs, Justice, Police/Law Enforcement, Gender/Women, Social Development, Social Welfare, Education, Youth, Child Protection, Trade & Industry, Employment / Labour, Correctional Services, Safety and Security, amongst others
- Parliamentarians
- Members of the judiciary, legal fraternity and legal aid services
- Representatives of statutory bodies such as an Ombudsperson, Public Protector, Human Rights Commission and/or Law Commission
- Representatives of professional bodies such as medical councils, nursing councils, councils of psychologists
- Service providers such as health care workers, educators, social welfare workers
- Networks of people living with HIV
- Networks of other key populations at higher risk and vulnerable to HIV such as women’s groups, youth groups, sex worker organisations, organisations of MSM, organisations of people who use drugs etc.
- Civil society organisations working on health, HIV, law and human rights issues and with key populations
- Faith-based organisations
- Traditional authorities and religious leaders
- Any other group of specific relevance to the country’s HIV epidemic, e.g. chambers of commerce, workers’ unions, migrant workers’ groups, etc.

There are various ways to obtain the views of different stakeholders. The approach taken will depend on the needs, information required as well as resources available for the review. Where possible, it may be effective to include key affected populations, such as people living with HIV, in the data collection process.

In addition to new investigations, key stakeholders may also be able to identify resources that contain qualitative or quantitative information on the experiences or viewpoints of wider groups of stakeholders. The *People Living with HIV Stigma Index* reports are an example of a resource that contains relevant information on the legal environment from the perspective of PLHIV. See www.stigmaindex.org for information on the involvement of people living with HIV in the Stigma Index carried out in various countries, with the support of the Global Network of People Living with HIV (GNP+) and other partner organisations. Other community-led efforts to investigate and document rights violations of PLHIV and key populations, such as *Positive and Pregnant – How Dare You* (APN+. 2012), are also resources that can supplement and strengthen the reviews and consultations.

Methodologies to undertake reviews with stakeholders

Various methodologies may be used for undertaking reviews with stakeholders and key populations, including:

- Undertaking one-on-one interviews with individual representatives of organizations,
- Holding focus group discussions with groups of individuals with common characteristics and with possible shared experiences and concerns, such as:
 - A group of service providers providing similar services (e.g. health care workers, HIV counsellors, legal aid lawyers),
 - A group of people who share characteristics such as age, gender, disability, social origin (e.g. women, young people aged 15 to 24),
 - A group of people who share a similar positions in society (e.g. traditional leaders), or
 - A group of people who self-identify with a specific population (e.g. a group of MSM).
- Conducting site visits to view and speak to people at different sites across the country (e.g. clinics, courts, police stations, prisons, drug rehabilitation centres, etc.)
- Distributing questionnaires to selected individuals and organizations from different sectors, or
- Posting on-line surveys on the web-sites of different organizations.

There may be a need to develop tools for a standardized approach to stakeholder consultations, whether they are one-on-one interviews or focused group discussions. It is important to design stakeholder consultation tools to allow for:

- The provision of background information on HIV, law and human rights in the context of HIV and the purpose, scope and nature of the review process,
- Questions for discussion and feedback on common issues relevant to all stakeholders, and
- Questions and discussion points on key issues relevant to each particular organisation or institution.

The feedback from legal reviews should inform the final review report. The information should also be collated and analysed to draw out the key issues identified by the stakeholders.

If possible, the following should be described in a consolidated report on the stakeholder consultations:

- The level of awareness of HIV, law and human rights issues and their role in effective responses to HIV
- The key HIV, law and human rights concerns of various stakeholder groups, including:
 - Concerns regarding the current laws, regulations and policies
 - Concerns regarding the ways in which rights are implemented and enforced
 - Concerns regarding levels of awareness of rights and ability to access justice
 - The impact of protective or punitive laws on people's ability to promote or achieve universal access to HIV prevention, treatment, care and support
 - Recommendations that have been made for strengthening the legal environment.

Desk Review

The desk review aims to determine the nature, extent, efficacy and impact of the legal environment for protecting rights and promoting universal access to HIV prevention, treatment, care and support. This requires also determining key HIV, law and human rights issues of concern within a country, common concern for countries in the region and how these are addressed by laws, regulations and policies.

Law and human rights issues of global concern, common to countries across the world include:

- HIV-related stigma, discrimination and criminalization
- Women, HIV and the Law
- Children, Young people, HIV and the Law
- Criminal Laws and HIV, and
- Access to Treatment.

Countries will also need to include additional country-specific issues, identified during the consultative planning stage, stakeholder consultations and in research and related documentation.

Box 13: Global Commission on HIV and the Law, *Risks, Rights and Health*, 2012

Key Issues Identified by the Global Commission's 18 month investigation into HIV, law and human rights across the world:

Stigma and Discrimination: 123 countries have legislation to outlaw discrimination based on HIV; 112 legally protect at least some populations based on their vulnerability to HIV. But these laws are often ignored, laxly enforced or aggressively flouted.

Key Populations: In many countries, the law (either on the books or on the streets) dehumanizes many of those at highest risk for HIV: sex workers, transgender people, MSM, people who use drugs, prisoners and migrants. Rather than providing protection, the law renders these “key populations” all the more vulnerable to HIV. Contradictory to international human rights standards, 78 countries—particularly governments influenced by conservative interpretations of religion—make same-sex activity a criminal offence, with penalties ranging from whipping to execution. Similarly, laws prohibiting—or interpreted by police or courts as prohibiting—gender nonconformity, defined vaguely and broadly, are often cruelly enforced. The criminalization of sex work, drug use and harm reduction measures create climates in which civilian and police violence is rife and legal redress for victims impossible. Fear of arrest drives key populations underground, away from HIV and harm reduction programmes. Incarceration and compulsory detention exposes detainees to sexual assault and unsafe injection practices, while condoms are contraband and harm reduction measures (including antiretroviral medicines) are denied.

Women, HIV and the Law: Women and girls make up half of the global population of people living with HIV. Laws and legally condoned customs—from genital mutilation to denial of property rights—produce profound gender inequality; domestic violence also robs women and girls of personal power. These factors undermine women’s and girls’ ability to protect themselves from HIV infection and cope with its consequences.

Children, Young People, HIV and the Law: Where sex education, harm reduction and comprehensive reproductive and HIV services are accessible to youth, young people’s rates of HIV and other sexually transmitted infections (STIs) drop. These interventions are rare, however, and in both developed and developing nations, the denial of the realities of young people’s lives is reflected in the high physical, emotional and social toll of HIV among the young.

Criminalisation of HIV Transmission: In over 60 countries it is a crime to expose another person to HIV or to transmit it, especially through sex. At least 600 individuals living with HIV in 24 countries have been convicted under HIV-specific or general criminal laws. Such laws do not increase safer sex practices. Instead, they discourage people from getting tested or treated, in fear of being prosecuted for passing HIV to lovers or children.

Access to Treatment: A growing body of international trade law and the over-reach of intellectual property (IP) protections are impeding the production and distribution of low-cost generic drugs. IP protection is supposed to provide an incentive for innovation but experience has shown that the current laws are failing to promote innovation that serves the medical needs of the poor. The fallout from these regulations—in particular the TRIPS framework—has exposed the central role of excessive IP protections in exacerbating the lack of access to HIV treatment and other essential medicines. The situation is most dire in low- and middle-income countries but reverberates through high-income countries as well. Provisions allowing some low- and middle-income countries exceptions to and relaxations of these rules could help alleviate the crisis, but pressure against their use is substantial. A small number of countries have been able to take advantage of the few international legal flexibilities that exist. Several countries in Asia and the Pacific are now negotiating free trade agreements that may contain provisions that constrain their right to implement TRIPS flexibilities.

Legal systems differ from country to country. However, most countries have various sources of the law as well as different branches of the law. They also have a range of organisations, services, mechanisms and institutions to implement laws, regulations and policies and to enable people to access justice and enforce laws when these are violated.

Reviewing laws, regulations and policies relevant to HIV and AIDS requires looking at many sources of law in a country. Laws regulating public health and HIV are seldom codified in one form. In most cases, health norms are found in various sources and branches of the law and are complemented by a range of health regulations, policies, plans, guidelines and strategies. Some countries have HIV-specific laws. However in other countries general laws related to health and medical practice (e.g. laws setting out patients’ rights; or laws regarding the safety, quality and availability of health services) will apply equally to HIV and AIDS. Additionally, general principles of law, such as those set out in

the constitution, as well as principles of civil law or common law relating to privacy and autonomy, will also apply to patients' rights.

A range of laws outside of the health sector are equally important to understanding the impact of law on access to HIV prevention, treatment, care and support. For this reason, the legal environment assessment needs to also consider laws affecting key populations such as the following, amongst others:

- Criminal laws, punitive laws and practices in relation to key affected populations.
- Laws that set out additional protections or restrict the agency of children and adolescents.
- Family, marriage and inheritance laws providing information on the rights of women to own and inherit property.
- Criminal laws that impact on people living with HIV (e.g. laws that criminalise HIV transmission), that protect people from sexual violence, and that criminalise behaviour including sex work, sexual behaviour like same-sex relationships, or injection drug use.
- Intellectual property laws that restrict or promote access to medicines.
- Correctional service laws that determine access to services for prisoners.
- Migration laws that determine access to services for non-citizens.
- Employment laws that set out the rights of employees with HIV or AIDS and the obligations of employers.
- Disability laws that set out the rights of people with disabilities.

Finally, a country may have a 'dual' legal system, where statutory law operates alongside customary law and/or religious laws (e.g. Afghanistan). In this case, customary or religious laws may have a greater impact on the daily lives of many populations than the statutory laws of the land. It is important to ensure that they form part of the legal environment assessment for inclusion in the desk review.

Box 14: Documents to be reviewed

The desk review may include an assessment of:

- International and regional human rights instruments and declarations, including those specific to HIV
- Laws, regulations and policies
- Plans, strategies and guidelines
- Reports of cases that have been decided in the courts
- Annual reports and research reports of networks of people living with HIV and other CSOs (eg, *PLHIV Stigma Index* report), statutory bodies (such as a Human Rights Commission), international and regional organisations (e.g. Human Rights Watch) and academic publications
- Country reports on human rights commitments to regional bodies and international bodies. (e.g. Reports to

the Committee on the Elimination of Discrimination Against Women, Report to Universal Periodic Review)

- The Global AIDS Response Progress Report including National Commitments and Policies Index (completed every 2 years and submitted to UNAIDS)
- Regional reports that contain analyses of national legal environments, such as *Sex Work and the Law* (UNDP, UNFPA, UNAIDS, 2012)

Each of the key issues may be regulated by a range of laws, regulations, policies and/or guidelines. The review process will require all relevant laws to be identified and analysed in order to describe how they protect rights in the context of HIV or act as a barrier to universal access to services. It will also require reviewing how laws are implemented and enforced, the nature and extent of stigma and discrimination amongst communities and how people access justice. This may involve mapping the work of various organisations and services in the country and examining documentation such as case law, annual reports of civil society organizations, research reports, submissions and case studies.

The checklist below provides an indication of potentially useful laws, regulations, policies and guidelines that may apply to HIV and AIDS.

Box 15: Checklist: Laws impacting on access to HIV services by PLHIV and key populations

Where to look: The following types of international and regional instruments as well as national laws, regulations, policies or guidelines may contain provisions that protect rights (or block access to services) in the context of HIV:

- ✓ International and regional human rights covenants, charters and declarations as well as those specifically relating to HIV
- ✓ Constitutional laws (particularly the Bill of Rights within a constitution)
- ✓ Anti-discrimination laws (e.g. equality legislation)
- ✓ Medical and health (including HIV) laws and regulations
- ✓ Intellectual property laws, regulations and trade laws/agreements regulating medicines and medical supplies
- ✓ Labour laws and regulations (including occupational health and safety laws)
- ✓ Civil laws with provisions affecting personal rights of adults, minors and people with limited capacity (e.g. people with disabilities), including issues such as status, capacity, age of majority and guardianship.
- ✓ Children's laws
- ✓ Laws affecting women's rights (e.g. family, marriage and inheritance laws, domestic violence laws)
- ✓ Criminal laws (e.g. laws criminalising sexual offences, laws criminalising HIV transmission, laws criminalising

sex work and same-sex relationships, laws criminalising drug use)

- ✓ Drug laws
- ✓ Correctional Service / Prisons laws
- ✓ Laws regulating the armed forces (police, security, defence forces)
- ✓ Disability laws, regulations and policies
- ✓ Education laws
- ✓ Social Welfare and Development laws
- ✓ Customary and religious laws
- ✓ Policies and ethical guidelines (e.g. health policies, codes of ethics and ethical guidelines for health practitioners).

What to look for: Provisions that may be relevant include the following:

- ✓ The criminalisation of certain behaviours, such as HIV transmission, sex between men, sex work and injecting drug use: these provisions will help to determine the climate within which key populations live and whether criminal laws exist that may pose barriers to access to HIV prevention, treatment, care and support.
- ✓ The protection of basic human rights (e.g. rights to equality, non-discrimination, dignity, autonomy, liberty, security of the person, privacy, the right to be protected from cruel, inhuman or degrading treatment or punishment, the right to reproductive health etc.). These rights provide all people with broad human rights that will also apply to them as patients in HIV-related health care services and as populations within the country entitled to protection.
- ✓ Country commitments to rights-based responses to HIV and AIDS.
- ✓ The specific regulation of health (including HIV) rights, responsibilities and services: provisions within health laws will provide clear guidance on how health programmes and services are provided as well as standards for ensuring the availability, accessibility, safety and quality of treatment as well as related health goods and services. They may also contain provisions relating to the responsibilities of health care providers and the rights of patients with respect to health (including HIV) issues, such as their rights regarding informed consent to medical treatment, their rights with regard to medical confidentiality, their rights of access to health care services, including women's rights to sexual and reproductive health care and their rights to be protected from harm.
- ✓ The regulation of patents and other related laws including anti-counterfeiting legislation and competition laws, will provide guidance on the extent to which a country's laws restrict or facilitate access to treatment.
- ✓ The regulation of the employment relationship and occupational health and safety: these laws and regulations provide for the rights and responsibilities of employers and employees as well as norms and standards for ensuring safe working conditions.
- ✓ The regulation of a child's legal status and his or her evolving capacity to conduct certain acts: these provisions may answer questions regarding the capacity of children to consent to (and to refuse) HIV testing and access

to HIV prevention, treatment, care and support independently, and the capacity of parents / guardians to provide proxy consent in the absence of health-specific provisions within a country's legal system.

- ✓ Protection against gender inequality, harmful gender norms and gender-based violence: provisions in family, marriage and inheritance law may provide information on women's equality rights within their relationships and their rights to own and inherit property, including marital property. These laws may also provide information on the nature and extent of protection against gender-based violence (e.g. domestic violence, sexual assault and rape, including marital rape) and harmful gender norms (e.g. early marriage, widow inheritance and sexual cleansing practices) that contribute to HIV vulnerability.
- ✓ Reviews of law enforcement practices, police instructions on issues such as use of condoms or syringes as evidence and reports describing how the laws are implemented by police and other law enforcement authorities against key populations
- ✓ The legal protection for other populations vulnerable in the context of HIV such as prisoners, refugees, migrants, members of the armed forces, people with disabilities: these provisions may help to determine whether these populations will have equal access to HIV prevention, treatment and care services they need.
- ✓ Guidance and reports in relation to access to legal aid services and legal redress mechanisms for resolving HIV-related discrimination complaints, complaints relating to police abuses experienced by key populations, and other human rights violations.

The National Review Report

The analysis of the information from the stakeholder consultations and the desk review may be structured in different ways. Key aspects of the analysis to be documented include:

- The situation with relation to HIV, law and human rights in the country including the nature of the country's HIV epidemic, key populations at higher risk, and the existing evidence of stigma, discrimination and related human rights issues of concern. This may include:
 - Stigma and discrimination against people living with HIV and key affected populations
 - Women, HIV and the Law
 - Children, Young People, HIV and the law
 - Criminal Law and HIV
 - Access to treatment
 - The broader framework / standard set by international, regional and national human rights obligations as well as guidance and best practices on legal and regulatory responses to HIV.
- The current legal, regulatory and policy environment impacting on access to HIV services by PLHIV and key populations including a review of:

- Protective laws, regulations, policies and programmes which support human rights and access to health in the context of HIV and AIDS (e.g. anti-discrimination laws, privacy and confidentiality laws)
- Punitive laws, regulations and policies which pose barriers to human rights and access to health in the context of HIV and AIDS
- The extent to which people are able to access justice and enforce their legal rights, including the extent to which people know their rights, the organisations, institutions and services providing accessible legal support services and legal literacy programmes to educate people about their rights
- Law enforcement practices
- Gaps and weaknesses in the current legal environment
- Relevant recommendations provided in the last several years.

Box 16: Example: Key questions for consideration in developing national review report

- What is the framework set by international, regional and national human rights commitments for rights-based responses to HIV?
- What are the key HIV, law and human rights issues of concern? What is the nature of HIV-related stigma, discrimination?
- What laws, regulations and policies regulate HIV and AIDS, or key populations at higher risk and other affected populations, in the country?
- How do the laws, regulations, policies and practices address the various key HIV, law and human rights issues identified as priority concerns?
- How do the laws, regulations and policies protect the rights of key affected populations?
- How do the laws, regulations and policies promote access to services without discrimination, including for affected populations?
- How do the laws, regulations and policies block access to services, including for key populations at higher risk?
- How are laws implemented and enforced?
- What organisations, institutions and mechanisms are available to support access to justice and to enforce laws, regulations and policies?
- Are populations able to access justice for violations of rights?
- What problems with the legal environment, including with access to justice and law enforcement, have been identified by stakeholders?

- What are the gaps and inconsistencies in the legal environment?
- What law and policy reform is needed to address the problems, gaps and inconsistencies?
- What training and sensitisation is required to ensure that laws, regulations and policies are implemented and enforced?
- What legal support services are required to ensure that populations are able to access justice?
- What mechanisms are required to ensure that populations are able to claim justice and enforce rights?

Box 17: Case study: legal reviews in the Pacific

In 2007-2009 the UNDP Pacific Centre, the Pacific Regional Rights Resource Team of Secretariat of Pacific Community 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 Vanuatu³².

The legislative review employed a series of 10 “checklists” from *Handbook for Legislators on HIV/AIDS, Law and Human Rights*, with which to assess whether different areas of law are compliant with the *International Guidelines on HIV/AIDS and Human Rights* published in 1998. The checklist includes 1) Public health law, 2) Criminal law, 3) Prisons/correctional laws, 4) Anti-discrimination legislation, 5) Equality of legal status of vulnerable populations, 6) Privacy/confidentiality laws, 7) Employment law, 8) Therapeutic goods, consumer protection laws, 9) Ethical human research, 10) Association, information, codes of practice. Each review examined national laws and regulations following the check list.

These reviews were updated and consolidated, along with recommendations from subsequent dialogues and workshops on the legal environment, in the review document to support the consultation of 7 countries on legal and policy barriers to access to HIV services, 17-19 April 2013 in Fiji.

³² UNDP Pacific Centre and UNAIDS. *Enabling Effective Responses HIV Pacific Islands Countries. Options for Human-Rights Based Legislative Reform*. 2009. (http://www.undppc.org.fj/resources/article/files/LowRes_3011.pdf, accessed on 7 March 2013).

Section 3: National Consultation stage

Purpose of National Consultation

- Assess progress against 2011 Political Declaration, ESCAP Resolutions 66/10 and 67/9 and the Regional Framework (“ESCAP Roadmap”) with a specific focus on progress towards commitments relating to the elimination of stigma and discrimination experienced by PLHIV and key populations hindering the HIV response;
- Provide the opportunity for dialogue on key issues in the legal environment (laws, law enforcement and access to justice) and feedback on the findings and recommendations from the national review report;
- Discuss review findings and recommendations of the national review in light of relevant recommendations of the Global Commission on HIV and the Law;
- Build consensus on final findings and recommendations in the review report;
- Prioritise recommendations and develop time-bound action plans for moving forward to create an enabling legal environment; and
- Identify an existing mechanism or forum, or establish a new one (such as multisectoral Working Group) which can be used as an accountability mechanism to ensure action plans are implemented and for on-going monitoring and evaluation of the process.

Structure of the national consultation

Ideally, a national consultation will be based on a 2-day agenda. Some countries have used the first day for multisectoral presentations, discussions and group work to scope the issues, while focusing the second day on action planning.

Another option is to use the first day for a preparatory workshop/meeting as outlined below, with the second day dedicated to multi-sectoral and participatory dialogue and action planning. Alternatively, the preparatory meeting can be held in the weeks leading up to the broader multisectoral dialogue.

See Annex 7 for a Draft Agenda for the 2 day consultation, and Annex 8 for a Sample Agenda from a multi-country national consultation held in the Pacific.

(i) Preparatory meeting for civil society and governments

Experience from participatory models employed at the national (Papua New Guinea, Philippines) and regional dialogues of the Global Commission on HIV and the Law (2011-2012), and the Asia Pacific Consultation on HIV and Sex Work (2010), shows us that a preparatory meeting - where civil society participants and government representatives meet separately to discuss their expectations of the consultation - enables them to prepare to effectively interact with their counterparts in a constructive and meaningful way. Accordingly, this is seen as an important aspect of an effective consultation.



Photo by Aroon Thaewchatturat

Topics at the preparatory meeting may include setting agenda items ahead of the national consultation, selecting delegates or deputations for the national consultation, discussion of review recommendations, establishing a community consensus and advocacy messages on key issues that may be discussed at the consultation, the role that communities can/should play in supporting reform of the legal environment going forward (See Annexure 6 for an example of an agenda for a preparatory community consultation meeting conducted several weeks prior to the national multisectoral meeting). A simultaneous preparatory meeting for government representatives is also recommended, but can be considered optional.

(ii) The multisectoral and participatory national consultation:

It is good practice for the national consultation meeting to be convened or co-convened by a government agency. This ensures government ownership of the event and increases prospects of the recommendations of the meeting being acted on by government partners. Government agencies that convened national consultations in the period 2011-2014 included:

- Bangladesh: The National AIDS/STD Programme convened the national consultation, with the assistance of UNAIDS and support of the Global Fund on HIV/AIDS, TB and Malaria.
- Cambodia: The National AIDS Authority co-convened the national consultation and managed the overall review process, with technical support from UNAIDS.
- Myanmar: The Ministry of Health's National AIDS Program convened the national legal consultation with technical support from UNAIDS, UNDP and the UK Government.
- Indonesia: The National AIDS Commission and the Department of Justice and Human Rights convened the national legal consultation.
- Papua New Guinea: Papua New Guinea National AIDS Council Secretariat and UNDP convened the National Dialogue on HIV and the Law.

- The Philippines: The Commission on Human Rights of the Philippines and UNDP convened the National Dialogue on HIV and the Law.

It is important that participants of national consultations share a common understanding of the objectives of the meeting. The objectives should clarify the relationship of the consultation meeting to the review process, and address the contribution of the meeting to forward planning (e.g. to develop a time-bound action plan).

Examples of good practice in ensuring that there are clear objectives of the national consultation include:

- **Bangladesh**
The meeting objectives were to:
 - Identify laws that are hindering the AIDS response;
 - Build consensus on reforms needed to create an enabling legal environment for access to HIV services; and
 - Develop a time-bound action plan of identified priorities to address the punitive and discriminatory legal environment that is impeding the AIDS response in Bangladesh.
- **Cambodia**
The meeting objectives were to:
 - Validate findings from the desk review and group consultations held with community representatives, NGOs, government agencies, UN and development partners;
 - Identify priorities for recommendations; and
 - Discuss and agree next steps for taking the agenda forward.
- **Myanmar**
The meeting objectives were to:
 - Validate findings from consultations held with NGOs and community networks;
 - Identify priorities and recommendations;
 - Explore options for legal redress for people whose rights are violated; and
 - Identify stakeholders for taking agenda forward
- **Pacific regional consultation**
The meeting objectives were to:
 - Review laws and policies in seven Pacific nations which impact on human rights-based health programming initiatives and enjoyment of human rights by persons living with HIV;
 - Consult on legal and policy barriers to effective HIV responses in line with international human rights standards in the seven countries through a multisectoral and participatory dialogue on laws, regulations, and policies including the Auckland and Suva Declarations; and
 - Develop prioritized action plans that will include provisions for monitoring and success for the seven countries, which can be supported by country partners (including the United Nations).

Key elements of the national consultation include:

1. Country goals, commitments and progress relating to addressing stigma and discrimination (and linkages to regional and global processes)
2. Process of the national review including:
 - What laws, policies and documents were reviewed and which stakeholders were consulted
 - How stakeholder's perspectives and other findings were incorporated into the analysis and Review Report

- Any limitations and challenges during the process and how these were dealt with
 - Key issues, draft findings to be validated at the national consultation and recommendations made by the review;
3. Provide an opportunity for dialogue on key issues and feedback on the process, findings and recommendations;
 4. Reach consensus on findings and recommendations, including priority recommendations and develop a time-bound action plans for strengthening the legal environment in selected areas, including actions targeted at:
 - Law and policy reform
 - Improving law enforcement practices
 - Strengthening access to Justice
 - Building the capacity of key sectors e.g. training on HIV and human rights for police, judiciary, parliamentarians, lawyers and health care workers

Identification of the roles and responsibilities of various partners for implementation of recommendations and a mechanism to monitor progress and report back.

The role of people living with HIV and other key populations in national consultations

It is good practice to maximize participation of people living with HIV and other key populations throughout the consultation processes. An opportunity should be provided for community representatives to present in the opening session of the consultation meeting. For example, representatives from national networks of people living with HIV were provided an opportunity to speak at the opening sessions of the national consultations in Cambodia and Myanmar. Participation of people living with HIV and key populations enables participants to be exposed to first-hand accounts of the negative and positive impacts of the legal environment on HIV responses. Providing an opportunity for a person living with HIV to speak is also important to set the tone of the meeting as it signals that community inputs are welcomed. It reassures community participants that their voices are regarded as being of central importance and that the opinions and perspectives of people living with HIV will be valued and respected by other participants including government representatives throughout the meeting.

It is essential to ensure key populations at the national consultation can participate in a supportive environment in which confidentiality concerns are addressed e.g. by excluding media from sensitive sessions. It should be recognized that participants who belong to key populations whose behaviours are criminalized may feel reluctant to identify themselves or to speak in the presence of police, government officials or the media.

Examples of participatory processes include:

- The **Cambodia** consultation included organizations representing MSM, transgender people, sex workers and people living with HIV. A women living with HIV presented in the opening session.

- The **Philippines** consultation included representatives of community-based groups of people living with HIV, MSM and transgender people.
- The **Myanmar** consultation included national networks representing MSM, sex workers, people who inject drugs and men and women living with HIV.
- The **Papua New Guinea** consultation included presentations from a sex worker, MSM, transgender persons and a young gay person. It was noted that: “This was one of the first times in Papua New Guinea that such persons had stood up, spoken out and expressed their demands as citizens for engagement with, and protection by, their government.”³³

It can be helpful to allocate time for preparation of community participants so that they can clarify their priorities and meaningfully participate in the national meeting. In Cambodia and Myanmar this occurred in the week before the national meeting. Malaysia’s consultation was conducted over two days, with the first day dedicated to civil society organizations (particularly those working with key populations) so that civil society could agree a consensus statement to present to government representatives at the multisectoral meeting convened on the second day.

Participation of other key stakeholders

Government representatives

Participation of senior representatives of the government (the responsible minister or senior government officials from key ministries) can help to ensure that the plans and recommendations of the consultation will be acted on by the lead government sectors. Examples of good practice in multisectoral participation include:

- The **Indonesia** consultation included participants from nine ministries: the Coordinating Minister for People Welfare, Ministries of Health, Law and Human Rights, Social Affairs, Manpower and Transmigration, Trade, Women’s Empowerment, Religious Affairs, National Education. Other government agencies represented included the Human Rights Commission, National Women’s Commission, the National AIDS Commission and four Provincial AIDS Commissions.
- The **Bangladesh** consultation included presentations from the State Minister of the Ministry of Law, Justice and Parliamentary Affairs, the Chairman of the National Human Rights Commission, the Acting Chairman of the Law Commission, the Deputy Secretary, Ministry of Law, Justice and Parliamentary Affairs, Executive Director of the Bangladesh Legal Aid and Services Trust, and the Director of the National AIDS/STD Programme.
- The **Philippines** consultation included presentations from the Department of Justice, Department of Interior and Local Government, Department of Health and the Commission on Human Rights.

Police and law enforcement agencies

Police and law enforcement agencies can play a key role in protecting the rights of key populations and implementation of action plans. It is also useful to involve police to address the implications of police abuses of key populations on HIV responses. Examples of good practice include:

- The Bangladesh consultation included a speech by the Police Commissioner from the Dhaka Metropolitan Police. This speech acknowledged the need to prevent police abuses of key populations that impede HIV responses.
- The Myanmar consultation included participation from the Myanmar Police Force who responded to community concerns about police practices affecting key populations.

³³ Kirby M., *PNG National Dialogue on HIV, Human Rights and the Law*, 13-14 June 2011.

National human rights institutions

The mandate of national human rights institutions generally includes responsibilities relating to HIV, including receiving complaints of violations of fundamental rights, inquiring into HIV-related issues or educating the community on human rights obligations. It is therefore useful to include these institutions in national consultations so their role can be considered. For example, representatives of the Human Rights Commissions of **Bangladesh, Indonesia, Malaysia, Sri Lanka** and the **Philippines** participated in the national consultation meetings of their countries.

Academics

Several consultations included participation of university-based academic experts on the legal and social aspects of HIV (e.g. China, Indonesia, Malaysia). For example, for the China consultation UNDP worked with Renmin University Law School to conduct the national review and consultation (*National Law Review on HIV and Key Populations, 2013*). China's national consultation meeting was hosted at Renmin University's Law School jointly organised by UNDP, Renmin University and the China Red Ribbon Forum on HIV and Rights and supported by UNAIDS. Renmin University was considered to be a strategic partner because it provided the review and consultation process with added authority and was able to draw in links with government institutions to increase government ownership in the review and consultation process.

Parliamentarians

It is strategic to involve parliamentarians who can advocate at the political level for legislative and policy reform. Parliamentarians participated in national consultations in **Bangladesh, Myanmar, the Philippines** and **Papua New Guinea**. In the case of Papua New Guinea, the Chair of the Parliamentary Committee on HIV/AIDS provided an opening presentation at the National Dialogue.

The judiciary

It is good practice to ensure representation from the judiciary at the national consultation and to provide an opportunity for a senior member of the judiciary to speak. This may help to ensure that the judiciary of the country is made aware of the issues raised and that the action plan arising from the meeting includes actions that address the role of the judiciary in creating an enabling legal environment for HIV responses.

The Bhutan consultation included a keynote speech delivered by a judge of the Supreme Court of Bhutan focusing on the role of the judiciary in addressing human rights issues, including applying the protections provided by fundamental rights guaranteed under the constitution, and the role of the judiciary in reconciling interests and rights between all relevant parties. The Sri Lanka roundtable included a speech by a female Supreme Court judge.

Legal profession and justice sector

Participation of the legal profession is important to ensure aspects relating to access to legal services and legal redress mechanisms for resolving disputes are addressed in consultations. For China's consultation, the Director of the Legal Aid and Public Interest Legal Affairs Committee of the All China Lawyers Association was a key participant. Representation by a senior member of the legal profession was important for China's consultation to draw attention to the legal service needs of people living with HIV and key populations. In Papua New Guinea, the National Dialogue process included a separate meeting with the Solicitor-General, the Public Solicitor, the Public Prosecutor, and the State Solicitor, Deputy Chief Ombudsman and the Director of Village Courts Secretariat. In Thailand, the national consultation included participation of the Ministry of Justice's Department of Rights and Liberty Protection and Office of Supreme Attorney and key law mechanisms such as National Law Reform Commission and Lawyers Council under Royal Patronage.

Faith-based organizations

Faith-based organizations are often influential and can help shape attitudes and generate a broader base of community support for changes to laws and policies. Examples of good practice in engaging faith-based organizations include:

- The Bangladesh national consultation meeting included a presentation from the Islamic Foundation;
- In Malaysia, interviews were conducted with representatives of the Federal Territory Islamic Affairs Department as part of the review process;
- The Myanmar review and national consultation meeting included participation of the Myanmar Interfaith Network on AIDS; and
- In Papua New Guinea, the National Dialogue on HIV, Human Rights and the Law included participation of the Churches Alliance.

Media

Media organizations are an important stakeholder in the national HIV response but have often been excluded from formal consultation processes because of concerns about maintaining confidentiality and avoiding sensationalized reporting of sensitive issues. In the Philippines and Papua New Guinea, press conferences were scheduled as part of the agenda of the National Dialogue on HIV and the Law. In addition, the Papua New Guinea National Dialogue process included a dedicated meeting to discuss the role of the media with journalists and members of the Media Council. The Papua New Guinea meeting with media noted that journalists lacked specialist knowledge of HIV and that more technical support should be provided to strengthen the capacity of journalists to deliver accurate and appropriate, non-stigmatizing reporting of HIV-related issues.

Youth

Young people are key to the future of HIV responses so youth representatives should be supported in participating in national consultations. For the Myanmar national consultation, representatives of a network of young people from key populations or affected by HIV, the Myanmar Youth Stars Network, presented on key legal issues for young people. Support was provided to these young people to develop their presentation skills in advance of the meeting.

Women

It is important to pay attention to gender balance when arranging speakers, facilitators and participants. Some consultations included specific presentations on women's issues by women living with HIV or other relevant experts. For example, the Myanmar consultation included a presentation from the Myanmar Positive Women's Network, and the Sri Lanka roundtable included a presentation from the Sri Lanka Positive Women's Network. In Cambodia, a woman living with HIV presented alongside government and UN speakers during the opening session of the national consultation.

UN agencies and donors

It is good practice to engage development partners such as UN agencies and donors in consultations as they have access to resources to support implementation. In several countries UNAIDS and/or UNDP has played a key role in co-convening or providing technical assistance to national consultations (e.g. Cambodia, China, Myanmar, Papua New Guinea, Pacific region). In Malaysia, the UN HIV/AIDS Theme Group convened the national consultation. In several countries, bilateral donors have been represented at and/or supported the consultation meetings (e.g. Japan's aid programme was represented at the Myanmar meeting; Australia's aid programme supported and was represented at the Papua New Guinea National Dialogue; a UK-funded civil society programme Pyoe Pin co-convened the Myanmar consultation with UNAIDS, UNDP and the Ministry of Health).

Participatory methodologies

It is important for national consultations to be structured in a way that maximizes participation and encourages cross-sectoral dialogue. The consultation should encourage sharing of perspectives and peer learning. It is effective to structure the consultation to include a mix of presentations, panel discussions, interactive dialogue involving members of the audience, and small group work.

Consultations should be interactive and therefore go beyond didactic lecture-style presentations from experts. A facilitated dialogue and ‘town hall’ style meetings can provide a forum for an open and respectful exchange of views about sensitive and sometimes divisive issues, such as the legal status of sex work, male-to-male sex and gender-based violence. Consultation meetings can provide a space for a diverse range of stakeholders to share their experiences and views and provide a basis for mutual understanding to be established to inform an ongoing policy discussion.

Small group work can be an effective participatory approach that enables focused discussions on key issues to occur. Group sessions (preferable comprising less than 10 people per group) facilitate in-depth discussion and analysis of the issues, after which each group can present ideas, strategies and issues to the plenary or further discussion.

In consultations conducted in the past, some countries preferred to structure these groups to focus on different key populations. Other countries structured the group work to focus on broader cross-cutting issues.

Examples of approaches taken to group work include:

- At the **Bangladesh** consultation, each group discussed issues relating to one of six key populations: female sex workers, transgender *hijras*, men who have sex with men, people living with HIV, people who inject drugs, and migrant workers. The groups brain-stormed and identified major legal barriers, policies and practices hindering access to HIV prevention, treatment, care and support by these populations and recommended specific actions.
- Participants of the **Cambodia** national consultation were divided into groups that included a mix of government and community representatives. All groups then addressed the same overarching question:
To support the national HIV response, what changes are required to:
 - *Laws, regulations and policies?*
 - *Law enforcement practices?*
 - *Access to legal aid services?*

On the basis of the issues that were identified by the groups in answering this overarching question, four issues were identified for further group work on the second day. The issues identified for further group work were (i) the health care rights of people living with HIV; (ii) employment, social protection and poverty; (iii) police practices and key populations; and (iv) gender and violence.

- At the **Indonesia** national consultation, group work was focused on the following six issues grouped according to subpopulations: people living with HIV and access to treatment, women, people who inject drugs, sex workers, MSM and transgender people, and young people. Each group was tasked to consider priority issues identified by the Steering Committee through the national review, referencing recommendations of the Global Commission on HIV and the Law. Group discussions sought to define time-bound actions relating to: (i) specific laws and policies; (ii) law enforcement practices; (iii) access to justice.
- At the **Malaysia** consultation, three groups were formed. Each group focused on one of the following priority issues: (i) harm reduction; (ii) key affected populations including injecting drug users, sex workers, MSM, transgender people, migrants, indigenous people and most-at-risk young populations; and (iii) treatment, care and support.
- At the **Myanmar** consultation, participants were divided into six groups. The groups discussed *punitive* laws, policies and practices on the first day and *protective* laws, policies and practices on the second day. On the first day, groups considered key issues and priorities relating to criminal justice such as laws criminalizing key populations and police practices. On the second day, the groups considered the need for protective laws and

policies and the key issues and priorities relating to stigma and discrimination and quality of treatment and care. Participants reported back on their group's priorities and the key government and civil society actors responsible for addressing each priority.

- At the **Papua New Guinea** consultation, the participants worked in five groups, with each group discussing one issue. The groups were asked to identify challenges and opportunities for improving policies for that issue. The five issues addressed were: existing laws affecting vulnerable groups; enforcement of the national AIDS law; discrimination; gender equality and gender-based violence; and access to services. The Papua New Guinea consultation also involved a panel discussion involving representatives from affected communities, the Churches, the Ombudsman's Commission, the legal profession and parliament.
- At the **Philippine** dialogue, participants were divided into four groups: government sector, civil society organizations, support groups, and MSM and transgender groups. All groups discussed the same overarching question and proposed recommendations: *How can we use the law to effectively protect and promote the rights of people living with HIV and key affected populations?*
- The **Pacific** regional consultation was structured so as to provide participants with opportunities to learn from regional experts and to share, support and learn from other Pacific nations and peers from health and justice sectors facing similar challenges. Emphasis was placed on the need to engage in questions and answers at each session and to recognize that many of the answers were within the skills, experiences and expertise of peers and professional colleagues within the country delegations. There were formal structures in the programme and informal meeting rules to encourage country pairing and mutual review and support in preparing draft action plans for each of the seven participating countries.

Evaluation of national consultations

It is good practice to integrate a participatory evaluation process into the national consultation process.

The Pacific regional consultation included a written evaluation process that enabled participants to provide a rating of the objectives of the consultation, facilitation, reading materials, logistics, increased knowledge and suggestions for improvement. Participants, speakers and resource personnel were invited to complete evaluation forms and an Evaluation Report was provided to the meeting organizers. An evaluation report provides an important resource to inform future consultation processes.

As an alternative approach to written surveys, in Papua New Guinea face to face de-briefing meetings were convened following the National Dialogue with representatives of the sex worker, MSM and transgender communities. This provided an opportunity for oral feedback to be provided on whether key populations felt meaningfully included in the dialogue. Given the marginalization of these populations, such opportunities are rare so it is good practice to provide an opportunity for participants to provide direct oral feedback on the experience to inform future consultations.

Section 4: Implementation and monitoring progress

It is important to ensure that the legal environment review does not end with the production of the review report or the national consultation. The recommended outputs of the consultative process include:

- a time-bound action plan for key actions for strengthening the legal environment; and
- the identification of an oversight and monitoring mechanism as a way of increasing ownership in achieving the reforms identified as necessary for an effective HIV response

Action plans

National consultations provide an opportunity to develop action plans that define a time-bound framework for implementation of the priority recommendations flowing from the review and national consultation. Action plans should be clear and implementable, with responsibilities for actions assigned to specific institutions and organisations and time frames for completion identified. See Annex 9 for examples of country action plans.

It is good practice for action plans to address all aspects of the legal environment, i.e. laws, regulations and policies at national and sub-national level; law enforcement issues including police practices and enforcement of protective laws; access to justice and legal literacy; and capacity building of key sectors in a human rights-based approach to HIV including health care workers, people working in the law and justice sector, parliamentarians and the media. Consideration should be given to including activities that empower key populations and civil society organizations to claim their rights and that build the capacity of state institutions to implement HIV and human rights activities

Action plans should identify the specific laws or regulations that create obstacles to HIV responses and require repeal. Action plans should also identify the new protective laws that should be introduced to strengthen the legal environment. For example, the review and consultation processes in some countries have led to proposals for comprehensive new national laws on HIV that address the human rights of people living with HIV to non-discrimination, confidentiality and informed consent.

National reviews and consultations also provide an opportunity to focus attention to access to justice issues, such as the availability of legal aid to address HIV-related human rights violations. For example, the reviews and consultations in Cambodia, China and Myanmar identified the need to build on the existing small-scale legal aid services to provide expanded access to justice to people living with HIV and key populations.

Consideration should be given to allocating substantial time in the agenda of the national consultation meeting to allow government and civil society stakeholders to jointly develop action plans. The **Pacific regional** consultation was held over a three-day period and two days were allocated to drafting country action plans. Draft action plans were presented to the full consultation meeting for comment and feedback. The action plans specified activities that each country would complete by the end of 2013, 2014 and 2015.

Meeting facilitators should help participants to agree the status of the action plans developed at consultation meetings. For example, the status of the action plans developed at the Pacific regional consultation meeting were described as follows:

The Action Plans are not intended to replace any existing national plans of action, nor are they intended to restrict countries to actions that the delegates at the meeting can/could implement. Hence the intention of

the plan is to map out key actions to be taken to address priority issues identified at the consultation, and to identify those stakeholders that need to be engaged at the national level to make this a reality.³⁴

Further action planning can also be conducted in the period *following* the national consultation by a body such as a national AIDS commission or departmental committee with responsibility for legal and policy aspects of the national HIV response. National reviews and consultations can lead to identification of a large number of recommendations that need to be further prioritized, taking into account such factors as upcoming law reform and policy opportunities and the significance of the recommendations to the epidemiology of the local HIV epidemic. It can be strategic to give priority to a limited number of high priority recommendations for which opportunities have been identified to achieve progress.

Integrating action plans into government processes

Effective implementation requires political will to drive forward the agenda. It is therefore helpful to ensure government ownership of recommendations and action plans. If the recommendations or action plan are developed by non-government actors, endorsement from the national AIDS authority or other government bodies may be essential to ensure recommendations are acted upon by government. It is desirable that recommendations from the national consultations feed into other existing planning and implementation processes, such as the implementation plan for the national HIV and AIDS strategy or the national human rights plan. National review recommendations and follow-up activities can also be integrated into Global Fund proposals and funding proposals to other donors, and UN development assistance frameworks.

It is important that there is clarity regarding the relationship between action plans agreed at national consultations and the planning mechanisms of the various organizations that are expected to implement activities (government agencies, community-based groups including national key population networks, UN and donor agencies). To ensure accountability, clarity is required as to who will lead implementation and how progress is to be monitored.

The consultation outputs should include the identification of a structure to co-ordinate and communicate with the various sectors, oversee follow-up work and report back to stakeholders at regular periods. The mechanism for overseeing and monitoring implementation of the recommendations and/or action plan should be multisectoral and include influential members of government, PLHIV and key populations. One option may be to continue to convene the Steering Committee that oversaw the review and consultation as the body that oversees and monitors progress in implementing action plans. If necessary, resources should be mobilised to support the oversight mechanism's functions. Where this mechanism can be integrated into or linked with an existing coordination forum it may have improved sustainability and influence.

Experiences of countries indicate that it is good practice to convene legal or human rights subcommittees as task-oriented working groups to drive the legal and human rights agenda forward, to engage government partners and to keep national partners accountable. While government bodies generally convene these committees, they may include representatives from communities, NGOs and UN agencies. Implementation may require coordination of efforts between different branches of government as well as between government, NGOs, community networks and UN agencies.

Examples of implementation mechanisms

Note: In some cases these were pre-existing committees (e.g. Cambodia, Thailand). In some cases, new committees were established in response to the legal review and consultation processes (e.g. China, Myanmar).

³⁴ UNAIDS, SPC, ILO, UNDP (2013). *The Pacific Consultation on Legal and Policy Barriers to Accessing HIV Services for PLHIV and Key Affected Populations*, Suva: UNAIDS, p.6.

Bangladesh	The Ministry of Law and Justice convened a multisectoral committee
Cambodia	Legal and Policy Working Group of the National AIDS Authority
China	Technical Working Group with representation from the National Center for AIDS/STD Prevention and Control, Ministry of Health, Ministry of Civil Affairs, Ministry of Justice, Renmin University and civil society organizations. In addition, a small advisory group enables civil society to discuss sensitive issues.
Indonesia	National AIDS Commission's Working Group on Human Rights and Gender
Myanmar	Human Rights and Gender Committee of HIV Technical Strategy Group of the Myanmar Health Sector Country Coordinating Mechanism
Thailand	National Sub-committee on AIDS Rights Promotion of the National AIDS Commission

Documenting the process

A brief report of the consultation process that articulates the participants, outputs and next steps is important to ensuring transparency and accountability. It may be helpful to integrate this summary of the consultation meeting into the national review report so that the link between the review and consultation process is documented. It is very important that there is a record of any action plan agreed at the consultation meeting, including timeframes and identification of the organizations responsible for leading implementation of the activities and monitoring of progress.

Finally, a national review and consultation in one country may provide valuable experiences and information for other countries considering a review and consultation. Countries are encouraged to take advantage of opportunities for sharing lessons and progress at the regional level, for example at the inclusive regional intergovernmental review meeting (Bangkok, January 2015) and its follow-up meetings.

The review and consultation process in each country will be unique. Documenting and sharing strategies, successes and lessons learned between countries can only further enrich national legal review and consultation processes.

Annexes

Annex 1: Draft Terms of Reference: Steering Committee for national review and consultation

Draft Terms of Reference for Steering Committee

Background

In the 2011 *Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV and AIDS*, governments are committed to review laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes to people living with and affected by HIV. Governments in the Asia-Pacific region had previously made similar commitments in ESCAP Resolutions 66/10 and 67/9. ESCAP Governments further reinforced this commitment with the Regional Framework (“ESCAP Roadmap”) to Support the Implementation of International and Region-specific Commitments, endorsed by the 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, the report of which was endorsed by the 68th session of ESCAP. UNAIDS has also focused on supporting governments to meet their commitments and targets relating to eliminating HIV-related stigma and discrimination. An example of such support is the *Global Commission on HIV and the Law*, an independent Commission of global leaders that developed actionable, evidence-informed and human rights based recommendations for effective HIV responses. The governments in Asia and the Pacific are committed to conduct 1) national reviews on policy and legal barriers, 2) national multisectoral consultations to assess progress in meeting the commitments in the Political Declaration and ESCAP Resolutions 66/10 and 67/9 by early 2014.

The ESCAP Roadmap includes the following key actions:

- a review of national laws, policies and practices to enable full achievement of universal access to with a view to eliminating all forms of discrimination against people at risk of infection or living with HIV, in particular key affected populations (ESCAP Resolution 67/9, 2011);
- organize national multisectoral consultations, as appropriate, on policy and legal barriers to universal access, in accordance with ESCAP resolution 67/9 (Regional Framework to Support the Implementation of International and Region-specific Commitments, E/ESCAP/HIV/IGM.1/3/ Rev.1, 2012);
- a regional overview of progress made in achieving universal access (ESCAP Resolution 67/9, 2011).

It is vital to set up a Steering Committee to guide, support and oversee the national review and consultation process and conduct a national overview of progress in in meeting the commitments in the Political Declaration and ESCAP Resolutions 66/10 and 67/9.

Steering Committee Objectives

- Provide oversight, technical guidance and monitoring for the review and consultation process in accordance with national priorities and recommended guidance, as a multi-disciplinary reference group;
- To develop a process or identify a forum such as Working Group for on-going monitoring of the outcome of the national review and consultation, with the involvement of key stakeholders;

- Discuss and agree the scope and objectives for the review and consultation process, participatory methodology, detailed action plan with timelines and responsible agency/body and budget and technical support needs;
- Plan and approve TORs of national review and consultation and conduct necessary preparations for the process;
- To review and endorse the review and consultation recommendations and to support action planning for strengthening the legal and regulatory environment for HIV and AIDS;
- To report back on the outcomes of the process to key stakeholders;
- Conduct follow-ups of the implementation of the action plan.

Members:

Roles and responsibilities of members:

Meetings:

Annex 2: Sample Concept Note: National review and consultation

Concept Note

Review and Consultation on Legal and Policy Barriers to Accessing HIV Services for PLHIV and Key Populations in Fiji, Kiribati, Papua New Guinea, Samoa, the Solomon Islands, Tuvalu and Vanuatu

Consultation Date: 17-19 April 2013

Overview

In the *Political Declaration on HIV/AIDS* (2001) and *Declaration of Commitment on HIV/AIDS* (2006), governments committed to protecting the human rights of people living with HIV, women and members of vulnerable populations.

In the 2011 *Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV and AIDS*, governments committed to review, as appropriate, laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes to people living with and affected by HIV.

These international commitments echo commitments made by the governments of Fiji, Kiribati, Papua New Guinea, Samoa, the Solomon Islands, Tuvalu and Vanuatu in the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) Resolutions 66/10 and 67/9. These seven Pacific countries also endorsed a Regional Framework to Support the Implementation of International and Region-specific Commitments endorsed by, the 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 in February 2012 and the 68th Session of ESCAP. These agreements are consistent with earlier Pacific regional Declarations on HIV and AIDS signed by these seven countries in Suva in October 2004, and again in Auckland in April 2007 (attached as reference documents).

Recognizing the importance of addressing HIV-related stigma and discrimination, and gender inequality, UNAIDS (the Joint United Nations Programme on HIV and AIDS) has also made zero discrimination one of the three pillars of its vision and strategy for 2011-2015. UNAIDS is focused on supporting governments to meet their regional and international commitments and targets relating to the elimination of HIV-related stigma and discrimination especially through review and revision of laws which impede Human rights-based health programming.

UNAIDS in the Pacific is supporting a process in mid April 2013 to:

- (i) review laws and policies in seven Pacific nations (Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tuvalu and Vanuatu) which impact on human rights-based health programming and initiatives;
- (ii) consult on legal and policy barriers to effective HIV responses in the seven countries through a multisectoral and participatory dialogue on laws, regulations, and policies including issues pertaining to access to justice and law enforcement in the context of HIV, and which reviews earlier commitments including the Auckland and Suva Declarations; and
- (iii) develop action plans for the seven countries which can be supported by country partners (including the United Nations), and monitored for progress and success.

The primary purpose of undertaking this work and holding a seven-country consultation meeting in April 2013 is to identify the national laws and policies which need review and/or reform, or other programme initiatives which will increase access to rights-respecting HIV services by eliminating real or perceived impediments to delivery of equitable health services to all individuals and communities. It is hoped that countries will complete a measurable and monitorable action plan for undertaking key legal and policy reforms at country level to bring national legislation and policies in line with international good practice relating to human rights and rights-based HIV responses which the United Nations and/or other partners can support over the coming two-year period.

Possible Outcomes of the Consultation

Longer term possible outputs / outcomes of the seven-country consultation may include:

- a) Protective laws concerning non-discrimination and non-violence with regard to people living with HIV and key populations (including MSM, transgender people, people who use drugs, sex workers, prisoners, migrants, young people), drafted, considered, enacted, disseminated, resourced and enforced;
- b) Expanded programmes to assist countries to improve legal environments;
- c) Design and implementation of programmes, or drafting of laws and policies that will increase access to prevention and treatment, including around the prevention of transmission from parent to child (PMTCT), and deal with intellectual property issues related to medication and other commodities;
- d) Provision of legal protection against discrimination for people living with HIV, women, children and key populations in various sectors, including housing, labour, education and social services; and
- e) Expanded means by which to obtain redress for discrimination and violence in the context of HIV.

Immediate **outputs** of the review and consultation process should include:

- Increased awareness and understanding of HIV, the law and human rights issues for a range of stakeholders;
- Documented consensus on prioritised recommendations for removing legal and policy barriers to universal access in each country, for national partners to take forward;
- A time frame for action; and
- A multisectoral working group with responsibility for monitoring progress on the agreed actions and recommendations

Annex 3: Draft Terms of Reference: National review report

Draft Terms of Reference for National Review Report on Legal and Policy Barriers to Access to HIV Services by PLHIV and Key Populations

Background

In the 2011 *Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV and AIDS*, governments committed to review laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes to people living with and affected by HIV. Governments in the Asia-Pacific region had previously made similar commitments in ESCAP Resolutions 66/10 and 67/9. ESCAP Governments further reinforced this commitment with the Regional Framework (“ESCAP Roadmap”) to Support the Implementation of International and Region-specific Commitments, endorsed by the 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, the report of which was endorsed by the 68th session of ESCAP. UNAIDS has also focused on supporting governments to meet their commitments and targets relating to eliminating HIV-related stigma and discrimination. An example of such support is the *Global Commission on HIV and the Law*, an independent Commission of global leaders that developed actionable, evidence-informed and human rights based recommendations for effective HIV responses.

Governments in Asia and the Pacific have committed to conduct 1) national reviews on policy and legal barriers, 2) national multisectoral consultations to assess progress in meeting the commitments in the Political Declaration and ESCAP Resolutions 66/10 and 67/9 by early 2014.

The ESCAP Roadmap includes the following key actions:

- **a review of national laws, policies and practices** to enable full achievement of universal access to with a view to eliminating all forms of discrimination against people at risk of infection or living with HIV, in particular key affected populations. (ESCAP Resolution 67/9, 2011);
- organize national multisectoral consultations, as appropriate, on policy and legal barriers to universal access, in accordance with ESCAP resolution 67/9 (Regional Framework to Support the Implementation of International and Region-specific Commitments, E/ESCAP/HIV/IGM.1/3/ Rev.1, 2012);
- a regional overview of progress in meeting the commitments in the Political Declaration and ESCAP Resolutions 66/10 and 67/9.

The national review is an opportunity to build understanding of the priority legal and policy barriers to access to HIV services.

Purpose of the review report

The primary purpose of the review report is to consolidate and update existing reviews and recommendations on the legal environment impacting on HIV, focussing on key issues that are critical for all or most participating countries, and to re-package this information on progress and remaining challenges in a way that can be used for advocacy purposes with key stakeholders, reporting back on progress at global and regional levels and to inform the development of time bound action plans.

The review should identify:

- The situation with relation to HIV, law and human rights in the country including the country's HIV epidemic; key populations at higher risk and stigma, discrimination and related HIV, law and **key human rights issues of concern** (emerging if any), for example, with regard to:
 - Stigma and discrimination against people living with HIV and key affected populations
 - Women, HIV and the law
 - Children, young people, HIV and the law
 - Criminal law and HIV, and/or
 - Access to treatment
- The broader framework / standard set by international, regional and national human rights obligations as well as guidance and best practices on legal and regulatory responses to HIV.
- The current legal, regulatory and policy environment for responding to HIV and AIDS, with particular respect to key populations and key human rights issues and including a review of:
 - Protective laws, regulations, policies and programmes which support human rights and access to health in the context of HIV and AIDS
 - Punitive laws, regulations and policies which pose barriers to human rights and access to health in the context of HIV and AIDS
 - The extent to which people are able to access justice and enforce laws, including the extent to which people know their rights, the organisations, institutions and services providing accessible legal literacy and legal support services and the law enforcement practices
 - Gaps and weaknesses in the current legal environment impacting on people's ability to access HIV prevention, treatment, care and support
- Relevant reviews and recommendations provided in the last several years.
- Significant efforts and progress in addressing key HIV, human rights and law issues in the last several years.
- Specific, country-level recommendations for reform of legal environment within the specific focus areas that pose significant barriers to access to HIV services.

If possible, the following issues should be included in the report:

- Information and analysis of the ways in which laws and rights are implemented and enforced
- Information and analysis of levels of awareness of human rights and ability of PLHIV and key populations to access justice

Annex 4: Sample Terms of Reference: National review report

Sample TOR for consultant to carry out a review

A consolidated review of legal environments for the HIV response in Fiji, Kiribati, Papua New Guinea, Vanuatu, Samoa, the Solomon Islands and Tuvalu.

Purpose of Consultancy

The objective of the consultancy is to obtain, examine and report on available national laws, policies and practices impacting HIV responses in the six countries in order that each country's progress (since the 2007 High Level Consultation and the Auckland Declaration on HIV Law and Human Rights) towards creating enabling legal environments for people living with HIV and key populations at higher risk will be ascertainable at the consultation meeting. Specific focus areas of the work will include:

- international obligations undertaken by the country;
- Constitutional protections;
- anti-discrimination relating to HIV;
- access to services, including privacy and confidentiality of services;
- criminalisation of HIV transmission and behaviours (MSM, transgender, sex work, injecting drug use);
- HIV-related restrictions on entry, stay and residence;
- inclusion of TRIPS flexibilities in national legislation (for WTO members).

Scope & Tasks

Below are the specific tasks and activities to be undertaken by the consultant:

Activities/ Tasks	Start	End	Consultancy Days
1. Literature review and preparatory tasks <ul style="list-style-type: none">a. Identifying available literature since 2007 containing reviews or analysis of relevant national laws, policies and practices related to HIV in Fiji, Samoa, Kiribati, Vanuatu, Solomon Island, Tuvalu and Papua New Guinea.b. Ascertaining existence and availability from PacLII (or other database) of relevant legislation.c. Downloading, printing and assessing relevance of legislation.	22 March	29 March	6 days

<ul style="list-style-type: none"> d. Identify key informants* to be approached to obtain materials not otherwise available. e. Correspond with key informants and seek to obtain outstanding material. <p><i>*Key informant should be a source who can provide insight on the legal environment and provide inputs to the review ,e.g UN agencies, governments, CSOs, KAP networks etc.</i></p>			
2. Analysis <ul style="list-style-type: none"> a. Identify new legal developments in the specific focus areas against existing reviews and legislation where possible and where relevant information is accessible. b. Identify significant efforts and progress since 2007 on creating enabling legal environments. c. Incorporate findings from the key informant interviews to the list of recommendations. 	30 March	7 April	8 days
2. Preparation for Regional Consultation <ul style="list-style-type: none"> a. Present a summary of key findings to be included in the regional consultation to the Steering Committee and focal points for their inputs. b. Participate in regional consultation preparation meeting. 	8 April	8 April	1 days
Consultant to arrive in Nadi, Fiji by the 15th April 2013			
3. Regional Consultation <ul style="list-style-type: none"> a. Preparation meeting with Steering Committee and consultation's facilitator. b. Present the findings at the sub-regional meeting. 	16 April	16 April	1 day
	17 April	19 April	3 days
Consultant to depart Nadi, Fiji by the 20th April 2013			
4. Final report <ul style="list-style-type: none"> a. Incorporate inputs from the consultation and submit draft report for comments. b. Submit final version of the report incorporating all comments. c. Submit TSF Contract Completion Report. 	24 April	30 April	2 days
Total			21 days

Deliverables/Outputs

1. Report (approx. 20 pages) summarising: (1) key aspects of the legal environment in the specific focus areas impeding progress towards universal access and international commitments to eliminate HIV-related stigma and discrimination in the relevant countries; (2) significant efforts and progress in addressing these since 2007; (3) priority issues common to all or most of the relevant countries;

2. Short Issue Brief (1-2 pages max) for each country with a set of priority recommendations for each country.
3. Bibliography of literature and other relevant documents identified and reviewed.
4. List of key informants interviewed.

Annex 5: Draft Terms of Reference: National consultation on legal and policy barriers to HIV services

Background

In the 2011 *Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV and AIDS*, governments have committed to review laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes to people living with and affected by HIV. Governments in the Asia-Pacific region had previously made similar commitments in ESCAP Resolutions 66/10 and 67/9. ESCAP Governments further reinforced this commitment with the Regional Framework (“ESCAP Roadmap”) to Support the Implementation of International and Region-specific Commitments, endorsed by the 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, the report of which was endorsed by the 68th session of ESCAP. UNAIDS has also focused on supporting governments to meet their commitments and targets relating to eliminating HIV-related stigma and discrimination. An example of such support is the *Global Commission on HIV and the Law*, an independent Commission of global leaders that developed actionable, evidence-informed and human rights based recommendations for effective HIV responses. The governments in Asia and the Pacific are committed to conduct 1) national reviews on policy and legal barriers, 2) national multisectoral consultations to assess progress in meeting the commitments in the Political Declaration and ESCAP Resolutions 66/10 and 67/9 by early 2014.

The ESCAP Roadmap includes the following key actions:

- a review of national laws, policies and practices to enable full achievement of universal access to with a view to eliminating all forms of discrimination against people at risk of infection or living with HIV, in particular key affected populations. (ESCAP Resolution 67/9, 2011);
- **organize national multisectoral consultations, as appropriate, on policy and legal barriers to universal access**, in accordance with ESCAP resolution 67/9 (Regional Framework to Support the Implementation of International and Region-specific Commitments, E/ESCAP/HIV/IGM.1/3/ Rev.1, 2012);
- a regional overview of progress in meeting the commitments in the Political Declaration and ESCAP Resolutions 66/10 and 67/9.

The national consultation is an opportunity to bring all the relevant stakeholders together to develop a time-bound action plan for addressing the priority legal and policy barriers to access to HIV services.

Desirable outcomes from national consultation:

- Protective laws concerning non-discrimination and non-violence with regard to people living with HIV and key populations enacted, disseminated, resourced and enforced;
- Programmes to improve the legal environment expanded;
- Promotion of programmes, laws and policies that will increase access to prevention and treatment
- Provision of legal protection against discrimination for people living with HIV, women, children and key populations in various sectors, including housing, labour, education and social services; and
- Expanded means by which to obtain redress for discrimination and violence in the context of HIV.

Immediate outputs of the consultation:

- Prioritised recommendations for removing legal and policy barriers to universal access for national partners to take forward
- A timeframe for action
- A multisectoral working group with responsibility for monitoring progress on the agreed actions and recommendations
- A report for public to support transparency and accountability, and which could be used to support governments in their regional and global reporting on progress in implementing the ESCAP and High-level Meeting commitments.

Participants:

1. **Government:** As global and regional commitments have been made by governments, governments should be leading the planning and implementation of national consultation. The United Nations and other partners can support and facilitate as appropriate. Government participants at relevant ESCAP meetings should be engaged. Other ministries may include HIV and AIDS, Health, Foreign Affairs, Justice, Police/Law Enforcement, Gender/Women, Social Development, Social Welfare, Education, Youth, Child Protection, Trade & Industry, Employment / Labour, Correctional Services, Safety and Security, Parliamentarians (including any parliamentary HIV working group/committee); Members of the judiciary, legal fraternity and legal aid services. Government representatives including Ministry of Foreign Affairs who have participated in ESCAP intergovernmental meetings at which Resolutions 66/10 and 67/9 and the Roadmap were adopted and endorsed, respectively, should also be involved.
2. **Representatives of statutory bodies** such as an Ombudsperson, Public Protector, Human Rights Commission and/or Law Commission; **Representatives of professional bodies** such as medical councils, nursing councils, councils of psychologists; Service providers such as health care workers, educators, social welfare workers.
3. **Civil society:** Civil society, including communities of key populations, faith based organisations, NGOs, have a key role to play in holding governments to account on commitments, data collection and inputs on legal/policy barriers, recommendations and advocacy for legal/policy/programmatic reform, as ongoing partners on creating an enabling legal environment, and providing inputs to ESCAP regional overview of progress.
4. **United Nations:** UN Country Teams, including UNAIDS, UNDP and other members of the Joint Team on AIDS. ESCAP also has an important role in supporting governments to meet regional commitments and in ensuring that progress is reported back through the system.
5. **Donors and national investors in the HIV response and human rights:** Ministries responsible for determining national investments in the HIV response (such as Ministries of Commerce) should also be invited to participate in the dialogue. Parliamentarians can also have influence over national funding of the HIV response. Donors such as AusAID, USAID, SIDA, and the Global Fund can also be valuable participants, particularly where it is foreseen that high level political or financial support may be required for follow up actions.

Timeline of the consultation:

A consultation should be convened by the end of 2013 (latest early 2014) in order to submit a country report on progress in implementing the ESCAP and High-level Meeting commitments. The report will serve as an input to the regional intergovernmental review meeting on national efforts and progress in early 2015.

Annex 6: Draft agenda for a preparatory community consultation

Facilitators' Schedule

Community Consultation to prepare for the National Consultation on HIV, Law and Policy

Yangon, 2-3 September 2013

Day 1 – Monday 2 September

Duration	Session	Methodology	Materials needed
09:00-10:00	Participants' Introduction	<ul style="list-style-type: none"> • Self-introduction Each person introduces her/himself to the rest of the group giving <ul style="list-style-type: none"> ✓ What is their name? ✓ Which population do you identify with? If you are here as a rep, what network/organization are you representing? ✓ Have they worked before on the legal aspect of HIV or of their community? 	
	Facilitators' Introduction	<ul style="list-style-type: none"> • Self-introduction <ul style="list-style-type: none"> ✓ International consultant (Background & Role) ✓ National consultant (Background & Role) ✓ Translator 	
	Ice breaker	<p>"What we have in common" –Line up exercise</p> <ul style="list-style-type: none"> ✓ Birthday seasons (Cold, Hot, Rainy) or Birthday months ✓ Have children – under 12 and above 12 ✓ Have heard of laws relating to their community ✓ Know a police/law enforcement/legal professional on some level ✓ Have someone close to them (friends or family or colleagues) who have been in jail/prison 	
10:00-10:15	Objectives, Process, Agenda	<p>To introduce objectives and process of the overall consultation & to inform the agenda for the 2 days</p> <ul style="list-style-type: none"> • Objectives • Process • Agenda (Invite 2-3 volunteers for recap on Day 2) 	
	Workshop's ground rules	<p>Confidentiality (of discussion) ; Respect for other people's views</p> <p>Voluntary ; Switch off/Silence mobile phones.</p>	
10:15-12:30 (includes tea)	Session 1: Identification of Priority	<p>Key Questions: What their community's priority concerns/problems/issues are particularly in relation to HIV vulnerability, access to services, quality of life? Do</p>	Colour papers, soft pens,

Duration	Session	Methodology	Materials needed
break during the group work)	Concerns/ Issues/Problems (Group Work)	<p><i>you think your community is treated fairly (without unreasonable disadvantage) and justly (with dignity, respect for human rights and ethically)?</i></p> <p><i>What are your priority needs that are not being addressed?</i></p> <p><i>Are there any particular types of discrimination that your community is facing?</i></p> <ul style="list-style-type: none"> • Explain the process of group work. <ul style="list-style-type: none"> ✓ Work in small groups for about 30 minutes. (6-7 groups in total) ✓ Write down their answers one at a time on colour-coded A4 papers. ✓ Elect 1-2 representatives to present in the plenary session. ✓ Put up the A4 papers on the wall. ✓ After presentation by first group, other groups follow with their own presentations and then pin their answers up on the wall, clustering similar issues/concerns with previous groups. • Each group should have a maximum of 6 persons preferably representing same community; <ul style="list-style-type: none"> ✓ MSM including TG ✓ SW ✓ PWUD ✓ PLHIV <p>10:00-10:45 Group work</p> <p>10:45-12:30 Reporting back in plenary (15 min per group but in same KP groups, no need to elaborate again on same points)</p> <p>12:30-12:35 Brief recap of cross-cutting themes for all and specific themes for KP</p>	tapes, flip chart with question written in Burmese, voice recorder
12:30-13:30	Lunch		
13:30-13:45	Energizer	Orchestra or Stand, Sit & Sing	
13:45-14:00		Continue with group presentation of morning session.	
14:00-16:15 (includes tea break either within the session or outside session depending on participants'	Session 2: Legal & Policy Dimensions of the priority concerns/problems/issues (Plenary)	<p><i>Key Question: Which laws, policies, regulations or police/law enforcement practices affect those problems/issues/concerns mentioned above - either positively or negatively?</i></p> <p><i>Do laws, policies, regulations or police/law enforcement practices contribute to the problems or cause the problems?</i></p> <ul style="list-style-type: none"> ✓ Examples where they have been unhelpful or detrimental to address their 	Group outputs from morning session, 2 different coloured A4 papers, soft pens, voice

Duration	Session	Methodology	Materials needed
level of concentration)		<p>problems/issues/concerns</p> <ul style="list-style-type: none"> ✓ Examples where they have been helpful to address their problems/issues/ concerns • Explain the process of group work & plenary discussion. (Group work: 30-45 minutes) <ul style="list-style-type: none"> ✓ Each group references their group work output from the first session. ✓ Talk and share experiences within their group on the above questions. ✓ Each group writes down briefly the title or description of laws/policies/ regulations/law enforcement practices they have identified using different coloured A4 papers to denote positive and negative impact. (e.g., red for negative and yellow for positive) ✓ Then in plenary, participants elaborate on their writing and share personal/felt experiences as well as experiences of their community where the legal environment has either hindered or facilitated in addressing their priority concerns. ✓ One group will start with one point and the other groups will be invited to share if they have similar experience/point. ✓ Facilitator will help to put up the 'legal cause' i.e., the laws, policies, regulations or police/law enforcement practices next to the priority concerns/problems/issues on the wall. 	recorder
16:15-16:30	Wrap Up of Day 1	Wrap up of Day 1 and Introduction to Day 2	

Day 2

Duration	Session	Methodology	Materials needed
09:00-09:15	Recap	<p>Ask volunteers to recap and present key issues from Day 1</p> <ul style="list-style-type: none"> ✓ Key priorities and Key laws, policies or practices identified in Day 1 	
09:15-10:00	Session 3: Visioning your community	<p>Key Question: What is your vision for your community in 15-20 years' time including the human rights of your community?</p> <ul style="list-style-type: none"> • Explain the process of group work. <ul style="list-style-type: none"> ✓ Groups go back into the small groups on Day 1. ✓ Each group discusses and agrees on their vision for their community in 15-20 years' time (Year 2030), including on human rights situation. ✓ Groups draft their own vision statement in 3-4 sentences max. 	Flipcharts, Soft pens

Duration	Session	Methodology	Materials needed
		<ul style="list-style-type: none"> ✓ Groups put up their statements on the wall (Gallery presentation). ✓ Each group representative reads out their vision statement. 	
10:00-12:30 (includes tea break in between)		<p>Key Question: What kind of legal and policy environment would help make this vision come true?</p> <p>Not only about existence of the laws, policies, regulations or law enforcement practices but also about access to justice – whether you are able to get legal aid, human rights defenders, redress mechanisms for your grievances etc.</p> <ul style="list-style-type: none"> • Continuing in the small groups, discuss the above question. <ul style="list-style-type: none"> ✓ See the prompt questions on the invitation if necessary. ✓ Write down on flip charts- a wish list; what kinds of laws, policies, police practices etc should be introduced or done away with? ✓ In plenary, ask groups to share their discussion with the others. 	Flipcharts, soft pens
12:30-13:30	Lunch Break		
13:30-13:45	Energizer		
13:45-16:15	Session 4: Road map of your community	<p>Key Question: You have described your ideal vision of your community and the ideal legal and policy environment to make that vision come true. You need to break it down to make strategic choices and bring realistic goals to the national level review meeting. What is practical to propose for your community? Define 3-5 key priorities for short to medium term (1-2 years).</p> <ul style="list-style-type: none"> • Explain group work process. <ul style="list-style-type: none"> ✓ Refer to your ideal vision and legal and policy environment. ✓ Think about contextual factors (constraints & opportunities) – your community, wider society, ruling government, political commitment, other stakeholders, resources etc which can determine the feasibility of your ideas for ideal legal and policy environment. ✓ List down the key priorities or messages you want to get across for your community. ✓ Each group (1-2 people) present their key priorities along with their logic/criteria for prioritisation in the front of the room. ✓ Invite other groups to question and provide comments. 	

Duration	Session	Methodology	Materials needed
16:15-16:45	Wrap up	<p>What's going to happen next?</p> <p>From participants' side:</p> <ul style="list-style-type: none"> ✓ To take back their defined key messages and key priorities to their community for discussion (affirmation or revision) <p>From organizers' side:</p> <ul style="list-style-type: none"> ✓ Continuing with consultation meetings over September-October ✓ We will be coming back to them ^t to check-in with various networks for selection of representatives to the National Meeting, finalizing the community priority messages and preparing for the presentations at the national consultation 	

Annex 7: Draft Agenda: National consultation on legal policy barriers to HIV services

Where country schedules and budgets permit, a 2 day agenda is recommended, to allow time for sufficient preparation of participants, dialogue on the issues and possible solutions, and planning of responses.

Preparation

A preparatory meeting (1/2 day – 1 day) is suggested to allow time for civil society participants to discuss issues and refine messages.

Where resources permit, a simultaneous preparatory meeting for government participants may also be held. In many countries, this will be a valuable opportunity to speak frankly on progress, challenges and opportunities for change and to foster communication between different governments sectors that do not necessarily work together regularly (e.g. parliamentarians, health and law/ justice).

Meeting objectives: To prepare participants for the National Consultation, clarify participants' roles in the consultation process, review (and if necessary, amend) agenda items ahead of the national consultation, select delegates or deputations for the national consultation, establish a community consensus on key issues that may be discussed at the consultation, and meet each other and the moderator/facilitator before the national consultation. This preparatory meeting will be an important opportunity for civil society participants to plan their interventions and become comfortable with the consultation process.

Meeting outcomes: By the end of the preparatory meeting participants will have a clear understanding of their role in the consultation and will feel ready to contribute to discussions.

Sample agenda for day 1 - preparatory meeting

TIME	AGENDA ITEM	RESOURCE PERSON(S)
8:30 – 9:00	Registration	
9:00	Welcome by the preparatory meeting facilitator	Facilitator
9:15	Introduction of participants	
09:30	Overview of Roadmap and the role of civil society	Member PLHIV, KP
10:30	Break	
11:00	Overview of national legal review - Key legal issues raised in the national review report: negative and positive health/legal impacts	Consultant – national legal review
12:00	Question and Answer session	
12:30	Lunch	
13:30	Group discussion 1: Community perspectives on key legal issues raised in the national review report	
15:00	Break	
15:30	Group discussion 2: Identifying key priority issues to be raised at National Consultation	
16:30	Group discussion 3: Community consensus statement draft; organizational issues (e.g. deputation for certain groups to represent others at the National Discussion)	

A similar agenda could be developed for the preliminary meeting with government participants.

Sample Agenda for day 2 – national, multisectoral consultation

TIME	AGENDA ITEM	RESOURCE PERSON(S)
7:30 – 9:00 am	Breakfast Key Judges/Parliamentarians/Community, UN <i>To review agenda/key points</i>	Hosted by UN RC no more than 10 people
9:30 am -	Greetings by UN Resident Coordinator	
	Welcome by a Chief Justice or Parliamentarian Speaker or Government representative with convening power (example: Speaker of the House)	Gov't, UN
	Community Voice <i>Person to be identified by community members of the National Dialogue Steering Committee</i>	Member PLHIV, KP
	Introduction of Participants	Facilitator
	The Science & Epidemiology of HIV <i>Description of basic global, and regional epidemiology, science of HIV transmission, biological and physiological</i>	UNAIDS or WHO

	<i>causes of vulnerability, current prevention and treatment options</i>	
10:30 am -	Break	
	<p>Description of national epidemiology and socio-cultural vulnerabilities</p> <p><i>Linking epi data and trends including age; and vulnerabilities based on evidence and documented lived experiences of key populations; issues to be prioritized by the National Dialogue Steering Committee; key points in this session to guide agenda items for detailed discussion in the following agenda items.</i></p>	Ministry/Department of Health
	<p>Critical Issues of Law Related to HIV</p> <p><i>Highlighting key issues of legal frameworks related to Informed Consent, Confidentiality and Discrimination related to people living with HIV, women, young persons and key populations including the impact of criminal laws on vulnerability of key populations through examples of laws and their use (Ref: Global Commission and ESCAP Resolution 67/9 and previous national epidemiology and socio-cultural vulnerabilities.)</i></p>	UNDP/Global Commission/National Resource Person/ NHRI/MOJ
	<p>Feature presentation from Keynote Speaker</p> <p><i>Highlighting the nexus between the law and HIV, the HIV paradox and <u>regional/global experience</u> or review of <u>National HIV and Law Report</u></i></p>	Commissioner; NHRI Chair/Commissioner/Justice
12:00 pm -	Lunch	
13:00 pm -	<p># 1 National Priority Issue</p> <p><i>Priority issue identified by Steering Committee or other national process on basis of evidence and national review report; referencing Global Commission Chapters/Recommendations</i></p> <p><i>Discussions should consider all aspects of the legal environment pertaining to this issue, including: laws/policies; law enforcement practices and access to justice.</i></p> <p><i>Develop time-bound actions to address laws/policies, law enforcement practices and access to justice.</i></p>	Resource Person(s)
	<p>#2 National Priority Issue</p> <p><i>Priority issue identified by Steering Committee or other national process on basis of evidence and national review report; referencing Global Commission Chapters/Recommendations</i></p> <p><i>Discussions should consider all aspects of the legal environment pertaining to this issue, including: laws/policies; law enforcement practices and access to justice.</i></p> <p><i>Develop time-bound actions to address laws/policies, law enforcement practices and access to justice.</i></p>	Resource Person(s)

	Break	
	<p>#3 National Priority Issue <i>Priority issue identified by Steering Committee or other national process on basis of evidence and national review report; referencing Global Commission Chapters/Recommendations</i></p> <p><i>Discussions should consider all aspects of the legal environment pertaining to this issue, including: laws/policies; law enforcement practices and access to justice.</i></p> <p><i>Develop time-bound actions to address laws/policies, law enforcement practices and access to justice.</i></p>	Resource Person(s)
15:30 pm -	<p>Review Panel with the Justices, Parliamentarians, Communities Review and highlight key points issues brought up during dialogue and emphasize potential action</p>	3-4 member panel facilitated by noted national journalist
16:00 -	<p>Follow up and monitoring mechanism <i>Participants to discuss follow up on the actions developed, identify a mechanism for monitoring progress (eg. multisectoral working group); and key opportunities for reporting back to stakeholders.</i></p>	
	Closing Statement(s)	Gov't, UN and Community

Annex 8: Sample Agendas: Consultations on legal and policy barriers to HIV services by PLHIV and key populations

Consultation on Legal and Policy Barriers to Accessing HIV Services for PLHIV and Key Populations in Fiji, Kiribati, Papua New Guinea, Samoa, the Solomon Islands, Tuvalu and Vanuatu

17-19 April, 2013

Day 1 – 17 April 2013			
Opening and Welcome			
Time	Topic	Presenter(s)	Outcomes/methods
8.00-8.30	Registration		Self-registration
	Official Opening	<ul style="list-style-type: none"> UCC Pacific 	
8.30	<ul style="list-style-type: none"> Prayer Opening and Welcome Statements 	<ul style="list-style-type: none"> TBD UN Resident Coordinator Community Representative HE President of Fiji 	Session outcome: <i>Participants aware of meeting process</i> Session methods: <i>Key note speech</i>
9.30	<ul style="list-style-type: none"> Programme Overview Engagement approach 	<ul style="list-style-type: none"> Meeting Facilitator 	Session outcome <i>Agenda overview, timelines agreed, participants introduced</i> Session method <i>Presentation of Agenda</i> <i>Engagement approach</i> <i>Participants self-introduction</i>
10:00	Group Photo		Group Photo taken with Guests

	<i>Tea/Coffee Break</i> <i>Media Briefing</i>		<i>Media Briefing with Press</i>
Session One: “HIV related law reform, where are we in the Pacific/ selected countries” <i>Session objective: Overview of global and regional status update, overview of progress and challenges in the selected countries</i>			
10.30	<ul style="list-style-type: none">• Key highlights of the HIV epidemic in the Asia Pacific Region• “Risks, Rights & Health” outcomes of the Global Commission on HIV and the Law and implications for the Pacific	<ul style="list-style-type: none">▪ Steve Kraus, UNAIDS RST Director Asia Pacific▪ Brianna Harrison, Human Rights Officer, UNAIDS RST	Session outcome <i>Participants informed of Key highlights in Asia and Pacific; and Key Outcomes of the Global Commission on HIV and the Law Report</i> Session methods: <i>Presentation of key findings.</i> <i>Q & A</i>
Session One: continues			
11.30	<ul style="list-style-type: none">• An overview of the legal environments for the HIV response in participant countries (findings of the desk review by consultant)	Jo Cooper/Consultant	Session outcome <i>Participants are informed and have an increased awareness of existing legal environments in the context of their 7 countries, from the desk review</i> Session methods: <i>Presentation of key findings</i> <i>Q & A</i>
12.30 13.30	<i>Lunch</i>		
Session One continues			
13.30	Country presentations on progress and challenges. 15 + 5 min Q/A <ul style="list-style-type: none">- Solomon Islands- Tuvalu- Samoa- PNG- Fiji	<ul style="list-style-type: none">▪ Country groups with facilitation of Resource Persons.	Session outcome <i>Participants have advised of issues in their country, are informed of issues in neighbouring/other Pacific nations and have an increased awareness of HIV, the law and human rights issues</i> Session methods: <i>Presentation of Country Progress. (to be completed by countries prior to arrival).</i> <i>Q & A by each country of each presentation</i>
15.00	<i>Tea Break</i>		
15:15	Country presentations on progress and	Same as above	Same as above

	challenges. 15 + 5 min Q/A <ul style="list-style-type: none"> - Vanuatu - Kiribati 		
16.00	Video teaser: “an epidemic of bad laws” El Fekri TED Talk”	Video (15 mins)	
16.15	Panel discussion	<ul style="list-style-type: none"> ▪ Panel discussion with Q/A from plenary on key issues e.g.: <ul style="list-style-type: none"> - Protection against stigma & discrimination - Criminalisation of certain behaviours - Criminalisation of HIV transmission - Privacy & confidentiality - Challenges in moving legislation - Role of Civil society and community 	Session outcome: <i>Panel present and engage on Key issues with reference to the Global Commission Chapters /Recommendations</i> Session methods: <i>Panel present key issues</i> <i>Participants Q & A</i>
16.55	Wrap-up Day	<ul style="list-style-type: none"> ▪ Meeting Facilitator 	Session Methods <i>Country to make list of top 3 areas of concern in removing/reducing barriers in their country and provide list to facilitator</i>
17.00	Day End		

Day 2 – 18 April 2013

“Prioritized country action plans to implement ESCAP resolutions 66/10 and 67/9 by 2015”

Time	Topic	Presenter(s)	Outcomes/
8.30	Re-cap of Day 1 -10min	<ul style="list-style-type: none"> ▪ Meeting Facilitator 	<i>Summary of key issues/points of Day 1, noting emerging consensus on prioritised recommendations for removing legal and policy barriers</i>
8.45	Intro session: <ul style="list-style-type: none"> • Moving Forward the Global 	<ul style="list-style-type: none"> ▪ JVR Prasada Rao/UN SG Special 	Session outcome: <ul style="list-style-type: none"> - Set the stage and remind of linkages between HR and HIV in

	<p>Commission on HIV and the Law Recommendations in the Pacific/Post 2015 Agenda</p> <ul style="list-style-type: none"> • Presentation: Revisiting the outcomes of key regional commitments (Auckland and Suva Declarations, ESCAP Intergovernmental meeting Feb 2012) 	<p>Envoy on AIDS in Asia Pacific</p> <ul style="list-style-type: none"> ▪ SPC 	<p><i>terms of determinants and consequences</i></p> <ul style="list-style-type: none"> - Review regional commitments and mechanisms - Understanding of community issues/ challenges - Identification of progress in HIV related law reform, remaining barriers and challenges <p>Session Methods: Presentations by resource personnel Country Q & A engagement</p>
<p>Session Two: “ Way forward”</p> <p><i>Session objective: Prioritised Action Plans</i></p>			
9.45	<ul style="list-style-type: none"> • Introduction of methodology/ Action Plan template attached 	<ul style="list-style-type: none"> ▪ Meeting Facilitator 	<p>Session outcomes <i>Participants understand the use of the template and the expectations that they draft their Action Plan</i></p>
10:15	<ul style="list-style-type: none"> • Group work/ country groups 	<ul style="list-style-type: none"> ▪ Country groups with facilitation by Resource Persons ▪ Use check list of Key Priority issues 	<p>Session outcomes: <i>Prioritised action plan in draft form (Law reform/updated policies/ESCAP Roadmap.</i></p> <p>Session methods: <i>Country groups to focus on 3 priority issues that are achievable by 2015 and to complete template in draft form</i></p>
10:30	Tea Break (working)		
<i>Continued</i>	<ul style="list-style-type: none"> • Group work/ country groups 	<ul style="list-style-type: none"> ▪ Same as above ▪ Include 15 minutes for Groups to draft afternoon presentation 	Same as Above
12:30pm	Lunch		
13:30pm	<ul style="list-style-type: none"> • Country presentations (15 min + 5 min Q & A) - 4 countries 	<ul style="list-style-type: none"> ▪ Country groups 	<p>Session methods: <i>To present Action Plan of Top 3 Priority issues and strategies for action Q & A from Country groups</i></p> <p>Session Outcome: <i>Country groups to present evidence that they have focused on priority issues that are achievable by 2015 and have completed template in draft form</i></p>

15.00	Tea Break		
15:30	- 3 countries	<ul style="list-style-type: none"> Country groups Group engagement via Q & A 	Same as above
16:50	Wrap-up Day 2	Meeting Facilitator	Key conclusions of Day 2
17.00	Day End		

Day 3 – 19 April 2013			
Time	Topic	Presenter(s)	Outcomes/methods
8:30	Re-cap of Day 2	Meeting Facilitator	<i>Summary of Day Two: Focus sustained on the prioritised recommendations for removing legal and policy barriers in each country</i>
Session Three: “ Monitoring Progress”			
8.45	<ul style="list-style-type: none"> Draft Action Plan review (30 mins) 	<ul style="list-style-type: none"> Meeting Facilitator Country pairs with facilitation by resource personnel in support 	<p>Session Outcome <i>Each Country Action Plan review been reviewed by a peer country, (with particular focus on the monitoring process), have a date for peer progress review and been signed by both parties of the pair</i></p> <p>Session Methods <i>In country pairs, to review each other’s Action plan using SMART tool, to agree date in future to re-convene to monitor progress and to offer support</i></p>
9.15	<ul style="list-style-type: none"> Country’s Pair present proposed national monitoring mechanism (5 mins each = 35 mins) 	<ul style="list-style-type: none"> Country presentations 	<p>Session Outcome <i>Each Country Action Plan’s M & E component is adequately presented by the opposite Pair</i></p> <p>Session Methods <i>Country pair presents their partner country’s Monitoring process Q & A from one participant if needed</i></p>
9.50	<ul style="list-style-type: none"> Consensus 	<ul style="list-style-type: none"> Meeting facilitator 	<p>Session Outcome <i>The participants achieve a consensus on the prioritised recommendations for removing legal and policy barriers to combat stigma and discrimination and enhance universal access in each</i></p>

			<p>country for national partners to take forward</p> <p>Session Methods Presenter asks for the group to identify prioritised recommendations (as evidenced in the Action Plans outlined) that have emerged in the various sessions that have group consensus</p>
10:15	Coffee/Tea Break		
10.45	<ul style="list-style-type: none"> ▪ Identification of regional mechanism for implementation and follow-up on commitments 	<ul style="list-style-type: none"> ▪ Meeting Facilitator 	<p>Session Outcome A regional multi-sectorial mechanism has been agreed with key personnel named and an outline of a planned process</p> <p>Session Methods Presenter proposes options, the group debate and agree the regional mechanism</p>
11.45	<ul style="list-style-type: none"> ▪ Meeting summary and closure ▪ Summary of key decision points <ul style="list-style-type: none"> - Emerging issues 	<ul style="list-style-type: none"> ▪ Meeting Facilitator 	<p>Session Outcome Participants can confirm increased awareness, have tool to enable focused progress on reducing barriers, have an identified partner /colleague to support progress and are engaged with the new multi-sectoral monitoring mechanism for the region</p> <p>Session Methods Presenter presents the summary of key decisions and emerging issues confirming decision points and emerging issues with the participants</p>
12:30	<p>Closing Remarks : UN Special Envoy for HIV/AIDS in Asia-Pacific</p> <p> UNAIDS RST Director</p>		
1.00 pm	Lunch/ Departure of Participants		

National Legal Consultation on Punitive Laws Hindering the AIDS Response in Bangladesh

May 18-19, 2013

Objectives:

1. To identify the laws hindering the AIDS response and build consensus on reforms needed to create an enabling legal environment for access to HIV services.
2. To chalk out a time bound plan of action for identified priorities for the amendment of punitive and discriminatory legal environment that are impeding AIDS responses.

Saturday May 18, 2013

8.30 - 9.00	Registration
	Inaugural session by Dr. Munir Ahmed UNAIDS Social Mobilization and Partnership Advisor
9.00 - 9.10	Opening Remarks – by A M Badrudduja, Additional Secretary, MoHFW
9.10 - 9.15	Objectives of the Consultation –Leo Kenny, UNAIDS Country Coordinator, Bangladesh
9.15 - 9.25	Presentation on “Legal and Human Rights Issues as mentioned in National Policy documents” Dr. Abdul Waheed, Line Director NASP, Government of Bangladesh
9.25 - 9.45	Presentation on “HIV Scenario and Violence data” by Dr.Tasnim Azim, icddr Bangladesh
9.45 - 10.00	Presentation on “Global Commission on HIV and Law Risks, Rights & Health” by Brianna Harrison, Human Rights Program Officer, Regional Support Team, Bangkok
10.00 -10.50	<p>“Personal experience sharing” by Nasreen (Member Ashar Alo Society) , Hena (General Secretary, Durjoy), Jameel (General Secretary, Procheshta), Shale Ahmed (President BSWs) and Jaya Sikdar (President Sex Workers network Of Bangladesh)- 5 mins each</p> <p>Presentation by Barrister Sara Hossain, ED BLAST on “National Laws Hindering the response to HIV”.</p>
10:50 - 11:00	Speech by the Guest of Honor Prof. Shah Alam, Chairman Law Commission
11.00 - 11.10	Speech by the Chief Guest, Prof. Mizanur Rahman, Chairman, National Human Rights Commission
11.10 - 11.20	Speech by the Chair: Mr. Prasada Rao, UN Secretary General’s Special Envoy for AIDS in Asia and in the Pacific

11:20 - 11:40	Group Photo followed by Tea/Coffee
11:40 -11:50	Speech by Police DIG & Additional Police Commissioner Dhaka Metropolitan Police Mily Biswas
11.50-12.10	Presentation: Legal recognition of the transgender persons including Hijra population; Ms Tarana Halim MP, Bangladesh Parliament/ Dr. Sharful Islam Khan icddr
12.10 – 13.00	<p>Facilitator: Md Shahinur Islam, Deputy Secretary, Ministry of Law, Justice and Parliamentary Affairs</p> <p>How does the legal environment in Bangladesh hinder AIDS response in regard to:</p> <ul style="list-style-type: none"> • Laws and policies • Law enforcement • Access to justice <p>Parallel group work sessions: (6 groups)</p> <ul style="list-style-type: none"> • Group A on PLHIV • Group B on sex workers • Group C on people who use drugs • Group D on men who have sex with men • Group E on migrants • Group F Transgender persons including Hijra Population
13.00 -14.00	Lunch
14.00 - 15.30	<p>Group work continued</p> <ul style="list-style-type: none"> ▪ Identify priority issues/obstacles and recommend priority actions:
15.30 -16.30	<p>Group Presentations and Discussion:</p> <p>Chair Prof.Shah Alam, Chairman Law Commission Bangladesh</p>

Sunday May 19, 2013

9:00 - 9:15	Recap - Day 1 proceedings by Dr. Zeenat Sultana Deputy Director BCCP
9:15 - 9:30	A Documentary: Prathana's plight, and Songs by Momotaz Begum MP & Dr. Md Murad Hassan MP
9:30 – 10.00	<p>Chief Guest of session one day two:</p> <p>Governments commitment on priority recommendations by Advocate Md. Qamul Islam MP, Hon. State Minister, Ministry of Law, Justice and Parliamentary Affairs</p>
10.00 - 10.30	Tea/ Coffee break

10.30 - 12.30	<p>Facilitator: Md Zahid Hossain, Expert M&E, NHRC</p> <p>Group Work sessions (6 groups) continue from day 1 to finalize detail plan of action</p>
12.30 - 13.30	<p>Chair: Advocate Sultana Kamal, Ex Advisor, Care Taker Government & Executive Director Ain O Shalish Kendra</p> <p>Group Presentations & way forward (10 minute presentations followed by clarifications)</p>
13.30 – 14.00	Closing Session:
	Speech by Guest of Honor Ms Nilufar Chowdhury Moni, MP
	Speech by Special Guest Shaheen Anam, ED Manusher Jonno Foundation
	Speech by Chief Guest: Advocate Sultana Kamal, Ex Advisor, Care Taker Government & Executive Director Ain O Shalish Kendra
	Speech by Chair, Mr. M.M. Niaz Uddin, Secretary, Ministry of Health and Family Welfare
	Vote of Thanks by Mr. Leo Kenny, UNAIDS
14.00	Lunch

Annex 9: Sample Action Plans

Extract from Action Plan for Kiribati developed at Pacific Regional consultation, April 2013

Action	Justification	New? Stalled?	Obstacles?	Strategy to get process started
Drafting of new HIV Bill, first working draft for consultation: by the end of December 2013	To develop the working draft to be used to consult with stakeholders	New	Technical people for drafting and lack of resources	Drafting instructions needed

What do you need to make it happen	Who can help?	What can they offer?	How will it be monitored?
Budget, technical assistance	Regional Rights Resource Team Secretariat Pacific Community UNAIDS	Drafting, Technical assistance, May 2013 Funding, Sept 2013 Information materials and able to point to other sources of assistance	Attorney General's office and Country Coordinating Mechanism

Extract from Action Plan developed at Indonesia's national legal and policy consultation (2013)

Objective	Output	Activity	Actor	Duration
To enhance legal protection in order to support rehabilitation of people who use drugs	Law No. 35/2009 on Narcotics to be in favour of rehabilitation for people who use drugs	Conduct a preliminary study and documentation as the basis for the amendment of the article on criminalization in Law	Target: Universities in cooperation with National AIDS Commission	Short-term

		No. 35/2009	Driving Force: PKNI (Network of drug user organizations)	
		Propose amendment of the article on criminalization in Law No. 35/2009 on Narcotics	Target: Ministry of Law and Human Rights National Narcotics Board Driving Force: National AIDS Commission Ministry of Health PKNI	Medium-term
	Operational policies that support diversion at the investigation and prosecution stage, and during court proceedings	Advocate for operational policies (Government Regulation, Presidential Regulation, Supreme Court Regulation) that support diversion at the investigation and prosecution stage, and during court proceedings	Target: Ministry of Law and Human Rights Supreme Court Driving Force: Ministry of Health National AIDS Commission PKNI Community Legal Aid Institute	Short-term
	A judicial system that supports rehabilitation of people who use drugs	Strengthen institutions (investigation units, judiciary) to monitor the Supreme Court Circular Letter on rehabilitation	Target: Judicial bodies Driving Force: MoH National AIDS Commission PKNI Community Legal Aid Institute	Short-term

	Availability of legal aid institutes capable of dealing with cases involving people who use drugs	Develop a legal service delivery mechanism from the outset for cases involving people who use drugs	Target: Ministry of Law and Human Rights Lawyers Driving Force: National AIDS Commission PKNI (Network of drug user organizations) Stigma JANGKAR (Harm reduction network) Community Legal Aid Institute	Short-term
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Annex 10: Key resources

Reviews of legal environment at regional and country level

UNDP, APCOM. Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific: An agenda for action. 2010.

UNDP, UNFPA, UNAIDS. Sex Work and the Law in Asia and the Pacific. 2012. <http://www.snap-undp.org/elibrary/Publication.aspx?ID=699>

UNDP. Legal Protections against HIV-Related Human Rights Violations: Experiences and lessons learned from national HIV laws in Asia and the Pacific. 2013. <http://www.snap-undp.org/elibrary/Publication.aspx?id=748>

UNDP, APTN. Lost in Transition: Transgender People, Rights and HIV Vulnerability in the Asia-Pacific Region. 2012. <http://www.snap-undp.org/elibrary/Publication.aspx?id=651>

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UNDP Pacific Centre, Regional Rights Resource Team Regional Rights Resource Team Secretariat of the Pacific Community and UNAIDS. HIV, ETHICS AND HUMAN RIGHTS Review of legislation of Palau. March 2009. (http://www.undppc.org.fj/resources/article/files/Palau_HIV_Ethics_and_HR_review_of_legislation.pdf, accessed on 13 March 2013)

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Economic and Social Commission for Asia and the Pacific (ESCAP). Resolution 66/10 Regional call for action to achieve universal access to HIV prevention, treatment, care and support in Asia and the Pacific. Fifth plenary meeting, 19 May 2010. (http://www.ESCAP.org/sdd/issues/hiv_aids/Resolution-66-10-on-HIV.pdf, accessed on 6 March 2013)

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UNAIDS and OHCHR, *International Guidelines on Human Rights and HIV*. 2006. (http://www.data.unaids.org/Publications/IRC-pub07/jc252-internguidelines_en.pdf, accessed on 8 March 2013).

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