



REPORT OF THE NATIONAL CONSULTATION

on law and policies affecting human rights,
discrimination and access to HIV and health services
by key populations in Pakistan



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LIST OF ACRONYMS

AIDS	Acquired Immunodeficiency Syndrome
APLHIV	Association of people living with HIV/AIDS
ART	Anti-retroviral therapy
CCM	Country Coordinating Mechanism
CNSA	Control of Narcotic Substance Abuse
CSO	Civil society organization
ESCAP	Economic and Social Commission for Asia and the Pacific
FSW	Female sex worker
GF	Global Fund
GoP	Government of Pakistan
HIV	Human Immunodeficiency Virus
HSW	Hijra sex worker
ICT	Islamabad Capital Territory
IDU	Injecting drug user
IGM	Inter-governmental meeting
JUNTA	Joint United Nations Team on HIV/AIDS
KPs	Key populations
LEA	Law enforcement agency
MNHSRC	Ministry of National Health Services, Regulations Coordination
MSMs	Men who have sex with men
MSW	Male sex worker
NADRA	National Database and Registration Authority
NACP	National AIDS Control Program
NGO	Non-governmental organization
NIC	National identity card
PESSI	Punjab Employees Social Security Institution
PPC	Pakistan Penal Code
SESSI	Sindh Employees Social Security Institution
TG	Transgender
UN	United Nations
UNAIDS	United Nations Programme on HIV/AIDS
UNODC	United Nations Office on Drugs and Crime
UNDP	United Nations Development Programme
WHO	World Health Organization



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Legal and policy review around HIV and key populations with regards to human rights, discrimination and access to HIV services was a key milestone achieved jointly by the Pakistan National AIDS Control Programme, UNDP and UNAIDS. A national consultation to review “Scan of Laws and Policies Affecting Human Rights, Discrimination and Access to HIV and Health Services by Key Populations in Pakistan (2014) was co-organized by the National AIDS Control Program, UNDP and UNAIDS in January 2015.

The objective of this report is to present a summary of existing policy and legal environment related to HIV services in Pakistan which safeguard the universal human rights of the key affected populations with regard to the HIV prevention, care and treatment. The report reflects mainly on the process, important discussions and recommendations which premised the need for the formulation of a national level action plan aimed at creation of an enabling environment. The report along with the action plan annexed provides the stakeholders a broader framework of understanding on some prioritized actions necessary to ensure the inclusion and participation of key populations in Pakistan to augment and sustain the enabling environment essentially needed for an improved national HIV response.

UNDP and UNAIDS appreciates the guidance by the Pakistan National AIDS Control Programme and the Pakistan Association of People Living with HIV in successfully organizing the national consultation. We would like to thank all parliamentarians and focal persons from Ministry of National Health Services, Regulations and Coordination (NHSRC); Ministry of Religious Affairs and Ministry of Law, Justice and Human Rights. UNDP highly appreciates the presence, encouragement and commitment made by Senator Kulsoom Parveen, member Senate Committee on NHSRC and Zehra Wadood Fatemi, the member of Standing Committees on Human Rights and NHSRC in National Assembly of Pakistan.

We are also thankful to Huma Chughtai from Ministry of Law, Justice and Human Rights; Dr Baseer Achakzai, the Program Manager from National AIDS Control Program; Asghar Ilyas Satti, the National Coordinator, APLHIV in Pakistan. We owe our gratitude for the participation of individuals from civil society organizations; human rights institutions; government departments and representatives of key populations.

We would also like to thank individuals who provided their support in organizing this event successfully. Sheeza Ahmed, the lead facilitator of this national consultation and author of the Scan of Laws report deserves special commendation. The efforts of Dr Aurang Zeib, the National HIV Programme Officer and Shakeel Ahmed, the Chief Development Policy Unit were pivotal in planning this workshop. We sincerely acknowledge the efforts of Marc-Andre Franche, UNDP Country Director and Marc Saba, UNAIDS Country Director for Pakistan & Afghanistan.

Special thanks to UNDP Bangkok Regional Hub, UNAIDS Regional Support Team and the United Nations Economic and Social Commission for Asia and the Pacific (UN ESCAP) for their contribution and review during development of this Report. We would like to thank Sheeza Ahmed, Dr Aurang Zeib, Fahmida Iqbal UNAIDS Pakistan and Andy Quan for their commitment in writing and editing this Report. Edmund Settle from UNDP Bangkok Regional Hub and Brianna Harrison from UNAIDS Regional Support Team provided oversight and inputs throughout development of the HIV and law work in Pakistan.

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INTRODUCTION

HIV is a major issue that has gained global attention. Huge investments have been made to accelerate the HIV responses at the global, regional and national levels. However, many of the people affected by HIV and who are being left behind in the HIV response are the ones who are hardest to reach. They include people who are affected by stigma and discrimination and whose personal conduct may be criminalized such as sex workers, men who have sex with men (MSM), transgender people and people who inject drugs. UNAIDS refers to those most likely to be exposed to HIV or to transmit it to others as “key populations”. In many of these key populations, both HIV prevalence and their vulnerability to HIV infection remain very high. It is time to work harder to make sure that the HIV response reaches everybody including key populations – with appropriate services and protection through legal support.

Credible research supported by the United Nations indicates that criminal law is rarely an effective tool for addressing HIV in key populations. Criminalizing the conduct of key populations drives them underground, reduces their access to services and increases risk-taking behaviors. These laws – such as those criminalizing the behavior and conduct of MSM, transgender people, sex workers and people who inject drugs – drive the people who are most vulnerable to HIV away from health and social services that could protect them. In marginalizing or criminalizing the conduct of key populations, nations not only neglect the health and human rights of individuals but also weaken the wider HIV response.

Legal changes can be important steps towards realizing international commitments on HIV by world leaders at the United Nations. Transforming government approaches to HIV from punitive ones to those based on sound public health rationales can have positive results.¹ Some laws create unnecessary barriers to ending the AIDS epidemic as a public health threat.

In accordance with the “ESCAP Roadmap to 2015”, a review of laws and policies affecting human rights, discrimination and access to HIV and health services by key populations in Pakistan was undertaken by Pakistan with support from UNDP and UNAIDS in 2012. It was finalized in 2013 in the form of the publication “Scan of Laws and Policies Affecting Human Rights, Discrimination and Access to HIV and Health Services by Key Populations in Pakistan” (“Scan of Laws”).²

A national consultation was held on 20 January 2015 at Ramada Hotel Islamabad with participation from all relevant stakeholders including parliamentarians and legislators, and representatives from national and provincial AIDS programmes; bar associations; the human rights commission; civil society, NGOs working in health and human rights; and the MSM and transgender communities. There were also institutional representatives and focal persons from the Ministries of National Health Services, Regulations & Coordination (MNHSRC), Law and Justice, and police services. A total of 67 participants attended the national consultation and contributed to the development of a national action plan, facilitated by a consultant. This report provides the feedback and response received from the stakeholders at the National Consultation on the Scan of Laws and its recommendations, and also reports on the various issues raised and discussed.

¹ Inter-Parliamentary Union/UNDP, *Effective Laws to End HIV and AIDS: Next Steps for Parliaments* (2013)

² Available at http://www.pk.undp.org/content/pakistan/en/home/library/hiv_aids/scan-of-law-and-policies-affecting-human-rights--discrimination.html



NATIONAL CONSULTATION

The National Consultation on the Scan of Laws (“National Consultation”) was jointly organized by the Government of Pakistan, United Nations Development Programme (UNDP), Joint United Nations Programme on HIV/AIDS (UNAIDS) and the National AIDS Control Programme (NACP). The overall objective was to contribute to the creation of an enabling environment by assessing existing laws and proposing recommendations for policy changes in relation to HIV. The consultation also aimed to develop a national action plan to be presented at the Asia-Pacific Intergovernmental Meeting on HIV and AIDS (IGM), 28–30 January 2015 in Bangkok, Thailand. The aim of the national action plan was to provide informed decisions and commitments by both provincial and national governments in addressing the challenges and barriers which affect the access of key populations to HIV services.

The specific objectives of the national consultation were to:

- Disseminate the findings of the Scan of Laws among national and international stakeholders engaged in the HIV response
- Formulate an action plan to mitigate legal and policy impediments that hinder the access of key populations to HIV services

Planning

Prior to the National Consultation, the concept note was developed by UNDP and shared with NACP and UNAIDS. After amendments, the concept note was sent along with letter of invitations to all stakeholders including institutional heads within public sector organizations, ministries, members of parliament including the chairpersons of standing committees on Health, Human Rights and Law, and representatives from the Association of People Living with HIV-Pakistan (APLHIV), the MSM community, the transgender community, the Global Fund Country Coordinating Mechanism (CCM), and UN partners engaged in HIV response. The National Consultation was structured as a combination of presentations by key speakers and a roundtable consultation among participants on recommendations for formulation of the action plan, followed by the submission of comments and observations on the recommendations, and additional recommendations by stakeholders for inclusion in the national action plan.

Proceedings

After registration of the participants, the country directors from both UNAIDS and UNDP welcomed the participants and emphasized active participation for ensuring inclusiveness by all stakeholders. UNDP Country Director for Pakistan, Mr. Marc-André Franche, reiterated that in most of the countries where people living with HIV face hindrances, the most disturbing underlying cause is not the shortage of resources but the lack of a supportive legal and policy environment for most key populations.



Mr. Marc Saba, the UNAIDS country coordinator, on behalf of the Joint UN Team on AIDS (JUNTA) welcomed the guests and expressed his gratitude for their presence in developing an action plan which would address the legal and policy barriers hindering the access to voluntary testing and counselling, and HIV prevention and treatment for key populations in Pakistan.



After this welcome speech was the launching ceremony of the report. The report was jointly launched by UNDP and NACP with a ribbon untying ceremony by Ms. Zahra Wadood Fatemi, a member of the National Assembly and of the standing committee on national health services, regulations and coordination, Mr. Marc-André Franche, Mr. Marc Saba, Dr. Ghulam Nabi Kazi, the focal person on HIV from WHO Pakistan, Ms. Huma Chughtai from the Ministry of Law, Justice and Human Rights, and Dr. Baseer Khan Achakzai, the National Programme Manager of the National AIDS Control Programme, Pakistan.



Ms. Huma Chughtai, the Joint Secretary from the Ministry of Law, Justice and Human Rights, in her opening remarks appreciated the efforts of UNDP and UNAIDS in providing this opportunity to the government of Pakistan and the Ministries of NHSRC and Law, Justice and Human Rights just preceding the IGM. She asserted her strong support on behalf of the Ministry in both legislation and policy formulation and requested that the audience note the importance of the National Consultation in creating an enabling environment for key populations in Pakistan through the development of an action plan.

She said, "While scientific inventions and procedures continue to improve treatment options and public health works to enhance health care systems, stakeholders and policymakers, especially politicians, are expected to think about their role in making sure the social and legal environment are conducive to encouraging people to access information and services to look after their health. With globalization and technological advancements, today's civilized nations expect us to educate the coming generation with a human rights perspective. This becomes more important when intolerance and terrorism are rampantly affecting both our social values, religious harmony and human productivity. It is high time that we call for immediate action and analyze how to bring important changes in both policies and laws. Thus human rights protection will be ensured with legal and policy frameworks that recognize the right of every citizen without any discrimination. These proposed legal changes represent important steps towards realizing our international commitments on HIV at the United Nations."

Fahmida Iqbal Khan from UNAIDS Pakistan, on behalf of Joint UN Team on AIDS (JUNTA), shared a presentation on the ESCAP Roadmap to 2015 and the commitments of the government of Pakistan. She referenced the Expert Group Meeting on Legal and Policy Barriers held in Thailand last year, and stressed the active and purposeful participation of stakeholders in development of an action plan that would address the issues and challenges identified in the Scan of Laws. She added: "Both the 2011 Political Declaration on HIV/AIDS and ESCAP resolution 67/9 call for reviews, as appropriate, of national laws, policies and practices to enable the full achievement of universal access targets with a view to eliminating all forms of discrimination against people at risk of infection or living with HIV, in particular key affected populations (ESCAP resolution 67/9). The Roadmap suggests that countries should consider reviewing the findings and recommendations of the scan of laws, engaging with key stakeholders including civil society and key affected populations, and addressing gender-related concerns." She reiterated that the platform provides an opportunity to concerned stakeholders to think over, strategize and plan actions for ensuring legal and policy support for key populations in Pakistan.



Children that are affected by HIV, either as a consequence of the death of parent(s) or the diminished earning capacity of parents due to HIV, should be included in consultative processes leading to the formulation of such policies.

A brief but concise presentation was given on “The Findings of the Scan of Law and Policies Affecting Human Rights, Discrimination and Access to HIV and Health Services by Key Populations in Pakistan” by Ms. Sheeza Ahmad, the author of the study, highlighting the existing situation with regards to the legal environment, and particularly focusing on key populations. She gave insightful information on existing legislative framework, the findings of the assessment regarding legal and social protection for key populations, and her recommendations. The presentation was followed by questions and answers with the audience mainly relating to the scan’s methodology and deliberating the findings. Many participants who asked questions represented key populations, including MSM, transgender people, female sex workers, and people living with HIV.

After the Q&A session, the consultant requested NACP and provincial AIDS authorities to build consensus on forming the working groups to develop the national action plan by developing individual provincial action plans encompassing priorities and challenges, and representing the different socio-political, geographical and financial capacities of the provinces.



A representative of the civil society and Dr. Nasir Sarfraz, UNICEF AIDS Specialist, asked technical questions.



A matrix of questions, based on the short-term recommendations given in the Scan of Laws, was distributed among each group and groups were given a fixed time to review and discuss the questions.

The goal of the matrix was for each participant to ascertain the importance, implication and practical viability of the recommendations and to also identify the stakeholders responsible for each relevant recommendation. Participants were encouraged to include additional information; changes (if any) that have occurred since the compilation of the study report; and any proposed actions additional to what was included in the matrix.

Dr. Baseer invited Senator Kalsoom Perveen who pledged her support for improving the legal and policy environment, particularly focusing on access to HIV services by key populations in Pakistan. Dr. Baseer from NACP thanked all the participants for their meaningful participation.

Dr. Aurang Zeib, the National Programme Officer of the HIV Programme at UNDP Pakistan gave a vote of thanks. He deliberated on the preceding work which led to the completion of the Scan of Laws report and admired the effort of the consultant and the facilitator of the national consultation. He urged both the NACP and all provincial programmes to work further on the proposed national action plan and assured support on behalf of UNDP for the protection of the health and human rights of key populations.

Outcomes



The Scan of Laws report included recommendations, divided into short-term, medium-term and long-term, based on the review of laws and policies, as well as interviews and surveys conducted with key populations for the report.

The National Consultation provided a unique platform for dialogue between members of key populations and parliamentarians. It provided representatives of key populations with the opportunity to access the most relevant stakeholders – the legislators and policymakers who formulate the laws – and to share their miseries, challenges and concerns.

It may also be noted that the law-makers present at the National Consultation appeared to be not only cognizant of the problems faced by the key populations but also paid heed to the issues raised during the National Consultation. Mrs. Fatemi is a Member of Parliament and Member of the Standing Committee on National Health Services, Regulation and Coordination; her husband Mr. Tariq Fatemi is an ex-ambassador currently working as an advisor to the Prime Minister. In her concluding remarks, she ensured the support from the Standing Committee of the National Assembly of Pakistan.

Representatives from both the Ministry of National Health Services, Regulation and Coordination and the Ministry of Law, Justice and Human Rights assured the National Consultation that they would work jointly to discuss and propose changes and amendments. Senator Kalsoom Perveen committed her best possible support for both advocacy work, as well as lobbying within the parliament for enhancement of legal and policy support for key populations. She stressed making evidence on discrimination and stigma available to elected members of the parliament for evidence-based planning for policy reforms.

The National Consultation presented an opportunity to determine how the laws and policies can advance health and human rights if they are formulated to cater to the needs of all, including key populations. Such national dialogues can provide an opening for open, constructive exchanges between multiple stakeholders on sensitive issues. They also facilitate dialogue between those who develop, interpret and enforce laws on the one hand, and those who experience their impact on the other. In addition, key stakeholders involved in national consultations can become vital agents who help to create legal environments that support effective HIV responses.

Based on the feedback provided, as outlined in the Scan of Laws, there is widespread discrimination against key populations by law enforcement agencies. Accordingly, the primary recommendations include sensitization programmes for law enforcement agencies.

A) DISCUSSION NOTES ON LAWS AND PEOPLE LIVING WITH HIV

LAWS ON HIV AND AIDS

- Subsequent to the 18th Amendment to the Constitution of the Islamic Republic of Pakistan (“18th Amendment”), health became the responsibility of provinces and was devolved to the provinces. Hence, all health laws, being a provincial matter are now dealt with at the provincial level.
- Prior to the 18th Amendment, no laws pertaining to HIV/AIDS had been passed at the Federal level, although two bills, the HIV & AIDS Prevention and Treatment Act, 2007; and the HIV (Safety and Control) Act, 2010 had been pending at the National Assembly.
- The Government of Sindh passed the Sindh HIV/AIDS Control, Treatment and Protection Ordinance, 2013 (“Sindh HIV Ordinance”) that contains protections and safeguards for PLHIV living within the province of Sindh. After a lapse of almost two years, the Sindh government has notified it and now it is a law. Currently, the health department and its sub-departments have no mechanisms in place for effective implementation of the Sindh HIV Law and its applicable provisions, notwithstanding their relevance to the department and its functionaries; especially with regard to the confidentiality requirements contained therein.
- A draft bill on HIV/AIDS for the proposed Islamabad Capital Territory (“ICT HIV Law”) has also been presented at the National Assembly Standing Committee on Health in January 2015.
- However, vast disparity exists between the Sindh HIV Law and the proposed ICT HIV Law. For example, the ICT HIV Law contains a section whereby a person may approach the court if such person suspects their spouse to be HIV positive and as a consequence of their marital relationship can prove that such person is at significant risk of acquiring the disease. This provision is a violation of a person’s rights; should the spouse feel at risk, the option of termination of marriage is always available. It is also not clear what is the purpose of this particular provision and what relief is being sought. The ICT HIV Law also contains a provision that states “other than as stated above test results cannot be shared with any third party against the wish of the individuals”.³ There should be no sharing of results, without the consent of the individual.⁴
- Upon being passed, the ICT HIV Law would be the second HIV law in the country. However, it requires a review and rationalization from the perspective of people living with HIV before it becomes law. This draft is now being reviewed by relevant stakeholders from various human rights perspectives in order to incorporate the provisions of safety, privacy, confidentiality and the inclusiveness.

The Pakistan Penal Code

The Pakistan Penal Code, 1860 (“PPC”) contains two specific provisions which are relevant in cases of transmission of HIV/ AIDS and key populations.

Section 269 of the PPC provides a punishment of imprisonment that may extend to six months, with or without fine, in cases where the following conditions are met:

- person has “unlawfully” or “negligently” committed an act;
- with the knowledge or where he has reason to believe;
- that such act is likely to spread the infection of disease dangerous to life.

Sections 270 of the PPC provides a punishment of imprisonment that may extend to two years, with or without fine, in cases where the following conditions are met:

- a person maliciously commits an act; that is, or

³ Based on a review of the draft submitted at the National Assembly – Section 3⁽³⁾. A full review of the ICT HIV Law has not been conducted and is not included in this report. However, the provisions that have an adverse impact on the rights of the PLHIV have been mentioned.

⁴ Based on a review of the draft submitted at the National Assembly – Section 7⁽ⁱ⁾.

- such person knows or has reason to believe;
- that such act is likely to spread the infection of disease dangerous to life.

The mere existence of laws specifically criminalizing HIV transmission can undermine effective HIV responses by compounding stigma and discrimination in the community and deterring people from seeking HIV testing and services. Moreover, concepts such as “knowledge or reason to believe” and “likely to spread infection” can be difficult for courts to accurately apply in the cases of HIV.

Discrimination Against People Living with HIV

People living with HIV report widespread discrimination at various levels. It is necessary to identify the discriminatory practices and behavior faced by people living with HIV in order to ascertain the steps required to create an enabling environment through the removal of policy and legal barriers to attain universal access to HIV prevention, treatment, care and support and addressing of critical barriers hampering response to AIDS, in accordance with ESCAP 67/9.

The People Living with HIV Stigma Index is a tool used by, as well as for, people living with HIV, including in Pakistan, and helps to quantify HIV-related discrimination.⁵

STIGMA AND DISCRIMINATION FROM PEOPLE LIVING WITH HIV

- The Pakistan Stigma Index reported that
 - 34 percent reported verbal harassment and threats out of which 36.8 percent were solely due to HIV status.
 - 20.1 percent reported being physically assaulted out of which 28.7 percent were assaulted solely due to HIV status.
 - 53.9 percent were physically assaulted by family members
 - 33.6 percent of the respondents reported psychological pressure or manipulation from their spouse or partner, on the basis of HIV status and
 - 39.7 percent of the respondents reported discrimination by family members due to their HIV status.

EMPLOYMENT, EDUCATION AND HEALTH

- Out of a total 422 employed respondents, 57.6 percent lost their jobs with varying frequency, 52 percent were refused promotion due to their HIV status and of these 48.8 percent were solely due to discrimination by the employer or co-workers.
- Out of the 243 that lost their jobs, 46.1 percent attributed it to their HIV status.
- Out of the 196 that lost their jobs due to their HIV status, 50 percent felt obliged to stop work due to poor health, 24.9 percent due to combination of discrimination and poor health and 11 percent due to discrimination by the employer and poor health; and
- 35 percent respondents were refused employment due to their HIV status.
- Only 4 percent of the eligible respondents were dismissed, suspended or prevented from attending an educational institution due to their HIV status.
- Only 2 percent of the respondents had children that were ever denied admission in educational institutions due to the respondent’s HIV status.
- Out of all the respondents, 33.2 percent were denied health services due to their HIV status with 3.3 percent being denied family planning services due to their HIV services and 15.6 percent being denied SRH services.

⁵ An Index to measure the Stigma and Discrimination experienced by People Living with HIV in Pakistan, 2009–2010 (Pakistan Stigma Index)

LACK OF ACCESS TO INFORMATION AMONG KEY POPULATIONSON LAW AND POLICIES

- 99.3 percent of the respondents had not heard of the Declaration of Commitment on HIV/AIDS (2001), and only 6 respondents had heard of it, out of which only 3 had read the contents.
- 79.3 percent of the respondents did not face any abuse of rights as persons living with HIV while only 11 percent reported that their rights were abused. Out of the relevant group, 72 percent did not seek legal redress for abuse. The majority of the respondents, 63.6 percent, reported no response or result upon seeking legal redress.
- Reasons for failure to seek legal redress upon discrimination were varied, with the most, 35.1 percent, reporting financial restraints as the reason; followed by the bureaucratic process, reported by 22.8 percent.
- A large majority of respondents, 88.1 percent, reported not having been involved in any efforts for the development of legislation, policies or guidelines.

A review of the data provided by the Pakistan Stigma Index has identified the following important issues in relation to discrimination against PLHIV:

PRIMARY VIEW – DISCLOSURE AND CONFIDENTIALITY

On the whole, respondents reported a comparatively low incidence of disclosure without consent, with the highest rate of disclosure without consent occurring from friends and neighbors at 19 percent, followed by disclosure by adult family members at 17 percent, disclosure by health workers at 11 percent and by social workers/counsellors at 9 percent.

- It is apparent that stigma and discrimination stems from the disclosure (whether authorized or unauthorized) of the HIV positive status of an individual.
- In the following situations questions arise with regard to its valid authorization: (i) employer; (ii) co-workers; (iii) neighbors; (iv) religious/community leaders; (v) members of educational institutions.

This in turn suggests that unauthorized disclosure is indeed occurring, either at (i) the level of primary data collection/storage; or (ii) at the time of disclosure to the individual or (iii) subsequent thereto, i.e. indirect unauthorized disclosure at the level of the individual by various means that may include through the individual's associates/family members who they have disclosed their status to. The breach of confidentiality requirements neither justify nor explain the discrimination; however, they do clearly identify the need for a Data Protection Law.

EMPLOYMENT – LEGAL FRAMEWORK

- The termination and/or suspension of employment on the basis of a positive HIV status of an individual and similarly the denial of promotion on such basis is not only a gross violation of the rights of an individual, but in certain given situations may also be in contravention of the applicable laws, if procedure has not been followed.

The equality of all citizens in law and the entitlement to equal protection under law, has been granted as a fundamental right under the Constitution of the Islamic Republic of Pakistan ("Constitution").⁶

The law pertaining to employment is the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("Standing Orders") that applies to all industrial and commercial establishments within Pakistan which employ 20 or more workers. The Standing Orders provide that the employment of a permanent employee cannot be terminated for any reason other than misconduct, without one months' notice or payment of wages in lieu thereof. An aggrieved worker may seek relief under the relevant provisions of the Industrial Relations Ordinance, 2002 ("IRO"), and all such matters are taken up at the Labor Courts. In case of all other workers that do not fall within the category of "workmen" as defined in the Standing Orders, they may seek relief from the Courts on the basis of general principles of law.

A Social Security Scheme has also been in existence in Pakistan since 1967, under the West Pakistan Employees Social Security Ordinance, 1967 ("Employees Social Security Ordinance"). The provincial Social Security Institutions – (a) Sindh Employees Social Security Institution (SESSI); (b) Punjab Employees Social Security Institution (PESSI); (c) Balochistan Employees Social Security Institution; and (d) Khyber Pakhtunkhwa Employees Social Security Institution – were formed in 1970 under provincial enactments of the Employees Social Security Ordinance. Employers are required to contribute to the provincial Social Security Institutions in respect of their employees and all "secured persons" are thereafter entitled to various benefits in terms of the Employees Social Security Ordinance. The Employees Social Security Ordinance, is applicable to persons engaged in skilled, unskilled, supervisory, manual or other work and includes domestic servants; provided they fall within the category of a "secured person", i.e. persons in respect of whom contributions are or were payable under the Employees Social Security Ordinance. Medical and healthcare needs are included in the Employees Social Security Ordinance.

While a legal framework already exists, there is a need for creating awareness of employment-related rights, both among people living with HIV and among the relevant functionaries of the government.

Issues Raised During the Legal Review and National Consultation

The following issues were highlighted during the course of the legal review in the form of the Scan of Laws report at the National Consultation:

Legal Framework: Despite having been passed by the Sindh Assembly, the Sindh HIV Law is still not implemented in true spirit and into force for action. The Islamabad Capital Territory Law in its current form contains provisions that require reconsideration and review. In particular, sections 269 and Section 270 of the Pakistan Penal Code require review pertaining to the strict penalties decreed in the laws in relation to HIV transmission, and keeping in view the negative impact of the penalties on the protection of the rights of people living with HIV and all key populations.

Discrimination: The widespread discrimination faced by PLHIV, as detailed above, needs immediate attention in the form or placement of remedial actions and redressal mechanisms.

Deportation of Workers: An important issue raised during the National Consultation was the deportation of Pakistani citizens working in foreign countries, mainly in the Gulf States and Saudi Arabia, due to their health status. In certain cases, migrant workers undergo testing for HIV that is not disclosed and often without consent, and upon positive results, are deported back to Pakistan. While the deportation remains a matter of internal policy for the deporting country, such actions have an adverse impact on the lives of the deported individuals.

Children affected by HIV: Children diagnosed with HIV require special care and consideration. Currently, there are no special laws or policies in place that take these children into account.

Children that are affected by HIV, either as a consequence of the death of parent(s) or the diminished earning capacity of parents due to HIV, should be included in consultative processes leading to the formulation of such policies.

Recommendations for Ensuring the Safety and Protection of Rights of People Living with HIV

The outcome of the Scan of Laws and the National Consultation are the recommendations contained in this section aimed at creating an enabling legal and policy environment for PLHIV.

A. Strengthening the legal framework: The primary recommendation is the strengthening of relevant legal frameworks, specifically from the perspective of safeguarding the rights of not only people living with HIV, but also their families. The Government of the Islamic Republic of Pakistan may consider including a reference to health in the Constitution as a fundamental right, or at least inclusion in the Principles of Policies.

- It is recommended that protective laws and policies that have a direct impact on the lives of PLHIV, such as for employment, health and education, may be further reviewed and amendments may be incorporated therein to include specific references to HIV, that redress be granted in cases of discrimination, and that non-discriminatory clauses are added.
- The punishments and penalties in various laws which directly or indirectly impact the lives of people living with HIV need to be reviewed and measures taken to ensure that those laws and penalties are in line with human rights and current evidence and medical knowledge regarding HIV. Laws explicitly criminalizing HIV transmission should be reviewed taking into account evidence regarding their efficacy and impact on public health and HIV.
- Provinces should consider the passing and subsequent implementation of a data protection law.
- In order to successfully strengthen the legal framework, Law Review Committees may be set up at the Provincial and Federal level.

B. Mitigating discrimination against people living with HIV: Immediate action is required to counter the discrimination faced by people living with HIV. It is recommended that the following steps may be considered:

- Review and make amendments in law and policy to include penalties for discrimination in all walks of life, including but not restricted to discrimination on the basis of health status in employment, health services and education.
- Hold educational workshops and training for people living with HIV under the aegis of CBOs and NGOs working with PLHIVs, on their rights and entitlements under the current legal framework.
- Hold educational workshops for employers, and governmental sector and health sector employees on the rights and entitlements of people living with HIV and the steps necessary for creating an enabling environment.

C. Deportation of people living with HIV: While deportation of Pakistani citizens by the countries in which they are employed remains a policy issue for their countries of their employment, countermeasures may be taken domestically in this regard. It is recommended that a three-pronged approach may be employed:

- Educational workshops should be held prior to departure: It is recommended that the Government of Pakistan consider conducting educational workshops on HIV and modes of transmission for migrant workers prior to their departure from Pakistan. These workshops may also include information about the consequences of an HIV-positive result in the countries where many Pakistani citizens are travelling for employment. Attendance in these workshops should be a mandatory requirement for travel for employment and the workshops may be conducted in collaboration with UNAIDS and NGOs working in the health and HIV sector.

Helplines and assistance cells may be created at Pakistan embassies and consulates in order to provide:

- Guidance with regard to health issues.
- Support for legal issues for Pakistani citizens abroad. This can be a first port of call for Pakistani citizens facing deportation and they can seek assistance from health and legal professionals. Additionally, educational workshops can also be conducted at the embassies and consulates.
- Assistance stands to be set up at international airports to provide information to deported Pakistanis on the health services available to them in Pakistan, how they can access them and NGOs and CBOs that can assist them.

B) DISCUSSION NOTES ON LAWS AND INJECTING DRUG USERS

Pakistan has a high incidence of drug users, with an estimated 1.06 million opiate users and 430,000 people who inject drugs.⁷

Drug Use

Cannabis is the most commonly used drug in Pakistan according to the “Drug Use in Pakistan 2013 Survey Report”, with a prevalence of 3.6 percent among the population. The report estimates regular heroin users at 860,000 and opium users at 320,000, while the number of people who inject drugs is estimated at 430,000 nationwide.

⁷ UNODC, Drug Use in Pakistan 2013 Survey Report (2013)

The Ministry for Narcotics Control and the Anti-Narcotics Force has prepared the Drug Abuse Control Master Plan, 2010–2014 (“Drug Abuse Master Plan”), with a view to mitigating the risks and costs associated with drug abuse and trafficking in Pakistan. The Drug Abuse Master Plan is based on a three-pronged strategy comprising (a) supply reduction; (b) demand reduction; and (c) international cooperation.

The Anti Narcotic Policy, 2010 has objectives similar to the Drug Abuse Master Plan, i.e. (a) Drug Supply Reduction; (b) Drug Demand Reduction; and (c) International Cooperation. The Drug Demand Reduction objective has been divided into four categories: (i) enhance demand prevention efforts through education and community mobilization campaigns and projects, which includes, inter alia, as sub-categories, drug-free jails and developing curriculum against drugs; (ii) develop effective and accessible drug treatment and rehabilitation systems; (iii) conduct a drug abuse survey to determine the prevalence of drug addiction; and (iv) establish a national coordination mechanism for drug demand reduction efforts.

Control of Narcotic Substances Act

The Control of Narcotic Substances Act, 1997 (“CNSA”) is the primary legislation pertaining to (a) cultivation of narcotic plants; (b) possession of; (c) import or export of; (d) trafficking or financing of; (e) owning or operating premises or machinery for manufacture of narcotic drugs; and matters related thereto as set out in the CNSA. The CNSA also contains a prohibition in aiding and abetting or association in Narcotic Offences.

The term “narcotic drug” has been defined in the CNSA to mean coca leaf, cannabis, heroin, opium, poppy straw and all manufactured drugs. The term “manufactured drug” has also been expansively defined in the CNSA.

The CNSA contains a prohibition on the “production, manufacture, extraction, preparation, possession, offering for sale, selling, purchasing, distributing, delivering on any terms whatsoever, transporting, dispatching” any narcotic drug or psychotropic substance or controlled substance. The exception to this prohibition as contained in the CNSA are if the above acts are for “medical, scientific or industrial purposes in the manner and subject to such conditions as may be specified under the Act or any other law for the time being in force.”

The CNSA also prohibits, in addition to import into and export from Pakistan, of narcotic substances, psychotropic substances or controlled substances, the transport within Pakistan and transshipment of such substances.

The severity of the punishment for contravention of the prohibitions referred above has been categorized according to the quantity of the narcotic drug, psychotropic or controlled substance. It ranges from (a) Imprisonment that may extend up to two years, with or without fine, for ten grams or less; (b) Imprisonment that may extend up to seven years with fine, for possession in excess of one hundred grams but not in excess of one kilogram; and (c) Death, imprisonment for life, or imprisonment that may extend up to 14 years and a fine up to PKR 1 Million, if the possession is in excess of the limits specified in clause (d) Additionally, if the possession is in excess of 10 kilograms the punishment shall not be less than imprisonment for life.

Section 14 of the CNSA contains a prohibition, in terms whereof, no one shall, “within or outside Pakistan, participate in, associate or conspire to commit, attempt to commit, aid, abet, facilitate, incite, induce or counsel the commission of an offence punishable” under the CNSA. This section contains an Explanation, which further clarifies, that, the commission of an act under this Section, “outside of Pakistan” would mean “the doing of anything in a place beyond Pakistan” that would constitute an offence if committed within Pakistan or under the laws of such other place would be an offence relating to narcotic drugs, psychotropic substances and controlled substances, having all or analogous conditions required to constitute it as an offence punishable under the CNSA.

Impact of Drug Laws

The CNSA prohibits the “aiding”, “abetting”, “facilitating”, “inciting”, “inducing” or “counseling” the commission of an offence punishable under the CNSA. Harm reduction programmes, in the form of needle-syringe exchange programmes, currently in practice in Pakistan fall within the ambit of this prohibition, unless a specific exclusion or waiver is incorporated into the CNSA in respect of such programmes.

Furthermore, the prohibition on possession of narcotics and controlled substances, as set out in the CNSA is based on the amount of the narcotics and substance in possession; and no differentiation has been made with regard to possession for personal use or possession for sale. As a consequence, people who inject drugs are faced not only with widespread discrimination but are often incarcerated in jails, which increases their risk of being infected by HIV.

Issues Raised During the Legal Review and National Consultation

The following issues have been highlighted during the course of the legal review in the form of the Scan of Law and the National Consultation:

- **Legal Framework:** The CNSA requires a review and subsequent amendment to reflect waivers and exclusions for the ongoing harm reduction programmes and future programmes that may be introduced in the country. Additionally, the CNSA may also be amended to differentiate or separate the sentence and/or penalty for possession for personal use from penalty for possession for commercial sale.
- **Advocacy:** Widespread advocacy with law enforcement agencies is required in order to create an enabling environment and capacity-building for drug demand reduction.
- Harm reduction and legal protection.

Recommendations

The outcome of the Scan of Laws and the National Consultation are these recommendations:

- A review and rationalization of drug-related laws and policies to enable harm reduction programmes to be implemented and to decriminalize drug use.
- Training of staff in division of narcotics and other law enforcement agencies/departments on implementation of amended laws.
- Advocacy for establishing an acceptable mechanism and framework for the use of drugs for therapeutic and harm reduction programmes.
- Better implementation of drug laws and rules, particularly the rules applicable to pharmacists and pharmacies requiring the maintenance of records and registers in respect of controlled substances as listed in the Control of Narcotic Substances (Regulation of Drugs of Abuse Controlled Chemicals, Equipment and Materials) Rules, 2001 ("CNS Rules").

C) DISCUSSION NOTES ON LAWS ON MEN WHO HAVE SEX WITH MEN AND MALE SEX WORKERS

Background

The laws of Pakistan criminalize same-sex relationships and prescribe punishments ranging from life sentence to imprisonment ranging from 2 to 10 years with a fine. However, there is no published case law available wherein such a relationship has either been challenged, alleged and/or found to have legal and documentary evidence of a verdict with punishment. The only reference to the relevant provision of law, Section 377 of the Pakistan Penal Code, that is available in published case law has been with regard to the alleged and proven rape of minor-aged boys.

Notwithstanding the above, members of the MSM community and the male sex worker (MSW) community have reported widespread abuse and discrimination, as reflected in the Scan of Laws which underpins the need and importance of research and reform in this area. HIV prevalence among MSW is third highest among the key populations⁸ with a rising trend in sex work among young students.⁹

Discrimination

As mentioned in the Scan of Laws, male sex workers and men who have sex with men face discriminatory treatment and abuse from law enforcement authorities (LEA), which is a violation of their human rights. LEA have the right to take legal action against an individual within the confines of applicable laws; however, harassment and discrimination on the basis of social origin and/ or suspected or alleged social origin is not permissible under the laws of Pakistan. In the case of MSW and MSM, no specific legal action has been taken by the LEA under any particular provision of laws.

14 ⁸ 1.6 percent among MSW, as reported in the Global AIDS Response Progress Report 2014, Country Progress Report Pakistan prepared by the National AIDS Control Programme, Ministry of National Health Services Regulation and Coordination, Government of Pakistan.

⁹ As noted by Naz Male Health Alliance, in the Global AIDS Response Progress Report 2014.

While it appears that the misplaced rationalization for the abuse and discrimination against MSM and MSW is based on their violation of the law of the land, this argument does not hold ground. Firstly, even if MSM or MSW were in violation of Section 377, such violation neither justifies nor gives the right to any person to abuse or discriminate against them; the only recourse would be to prosecute the violation of Section 377 and punish for such violation, if convicted. However, the mere existence of section 377 feeds and legitimizes (even if not legalizing, per se) discrimination and harassment against MSM. It also creates a de facto environment of impunity for those who violate the rights of MSM. This law creates numerous barriers to access to HIV services for MSM.

The MSM community has not yet sought legal redress for the discrimination and abuse faced by them on the basis of the existing provisions of law.

Recommendations

During the consultative process at the National Consultation, two police officers from provincial police academies were present. They agreed to enforce legal protection for all sexual minorities by using a human rights perspective in policy and constitutional matters. The outcome of the Scan of Laws and the National Consultation are these recommendations.

- Training programmes should be conducted for LEAs in all major cities in Pakistan to highlight the rights of the citizens of Pakistan, irrespective of social origin, gender identity and sexual orientation, in order to create an enabling environment to safeguard the rights of the key populations.
- One of the instruments which may help gather momentum for legal protection of MSM and all other key populations is to incorporate human rights principles and perspectives in legal and policy matters related to citizenship.
- Advocacy should be used to argue for the formulation of alternate but better law provisions and to table them on the floor of legislative forums.

The hardships faced by the MSM community are not only directly linked to the existing legal framework, but to the misuse of the provisions of law. There are reports of LEAs using laws to harass MSMs, for example by saying they are disturbing peace and creating nuisance. Even if male sex workers are not caught in sexual activities, police and other law enforcement agencies may harass and question MSWs in parks, street and public places under the pretense of the law. So LEAs should be trained on this issue so they do not misuse the laws to discriminate against MSM and MSW and MSM and MSW should be trained to know their rights.

D) DISCUSSION NOTES ON LAWS AND TRANSGENDER PEOPLE

Background

Although it has been several years since the 2011 landmark case that officially recognised transgender people in Pakistan as “third gender”, substantial changes in laws, policies and society are needed to protect the human rights and welfare of transgender people.

Legal Framework

The Supreme Court of Pakistan in a landmark judgement (“Supreme Court Case”)¹⁰ directed the National Database and Registration Authority (NADRA) to undertake relevant actions for recording the parentage and sex of eunuchs and issuing them National Identity Cards. The Supreme Court also recorded that eunuchs “in their own rights are citizens of this country and subject to the Constitution of the Islamic Republic of Pakistan, 1973, their rights, obligations, including right to life and dignity are equally protected.”

The Supreme Court further directed that a process for locating the “ascendants (parents)” of transgender people should be initiated, with a view that should have an equal right of inheritance in property. The Secretaries of the Social Welfare Department of all provinces, and the Commissioner of Islamabad were directed to look into this matter, so as to ensure that their rights to inherited property may be protected.

¹⁰ Dr. Mohammad Aslam Khaki & another vs. Senior Superintendent of Police (Operation) Rawalpindi & Others – C.P. No. 43 of 2009.

While certain protections and safeguards have been granted to the transgender community, as a result of this court case discussed above, there is no specific legislation, whether at the Provincial or Federal level that affords any protections to the transgender community.

Issues Raised During the Legal Review and National Consultation

The following issues were highlighted during the course of the review of the Scan of Laws and the National Consultation:

National Identity Card: As a consequence of the directions by the Supreme Court to NADRA, National Identity Cards are now being issued to members of the transgender community ("TG NIC"). The TG NIC sub-divides the transgender community into three categories: (a) Male Khawaja Sara (b) Female Khawaja Sara; and (c) Khusra. This further sub-categorization results in the members of the transgender community facing further discrimination and defeats the entire purpose issuing TG NICs.

Employment: The transgender community lacks employment opportunities and as with the TG NIC, employment opportunities that have been provided to them (as collection officers) highlight and promote the societal discrimination faced by the transgender community. Alternative means of employment should be created for the transgender community.

Recommendations

The outcome of the Scan of Laws and the National Consultation are these recommendations:

- With regard to the TG NIC, it is recommended that NADRA may be approached to raise issues and make amendments to the identity card. However, since the transgender community is not represented by any governmental or semi-governmental body, it may be appropriate to approach the Secretaries of the Provincial Social Welfare Department since the Supreme Court had referred certain matters to them in the Supreme Court case.
- With regard to the TG NIC, it is recommended that NADRA may be approached to raise issues and make amendments to the identity card. However, since the transgender community is not represented by any governmental or semi-governmental body, it may be appropriate to approach the Secretaries of the Provincial Social Welfare Department since the Supreme Court had referred certain matters to them in the Supreme Court case.
- The Provincial Ministry of Special Education should be approached to set up a certain quota in vocational training schools for members of the transgender community and to employ members of the transgender community as instructors in certain courses. It may also be requested that employment opportunities may be created and provided for members of the transgender community that successfully complete such vocational training courses.
- Development agencies should, along with relevant non-governmental agencies, work for the welfare of the transgender community, and monitor the progress of the government departments; both federal and provincial, in fulfilling the directions of the Supreme Court, as set out in the Supreme Court Case.

E) DISCUSSION NOTES ON LAWS AND FEMALE SEX WORKERS

Background

In Pakistan in 2009, the estimated population of Female Sex Workers ("FSW") was 136,300. FSW reported the lowest incidence of HIV prevalence, at 0.6¹¹, of key populations in the HIV Second Generation Surveillance, Round IV. However, this is no reason for complacency. Interactions between the different key populations are a risk factor for HIV transmission as are other factors such as a lack of an enabling environment, as represented by the existing legal framework.

Legal Framework

The laws of Pakistan prescribe punishments for non-marital sex; and the punishments are prescribed under the Pakistan Penal Code and the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (“Hudood Ordinance”). The punishments under the Hudood Ordinance range from whipping to death. However, a punishment under the Hudood Ordinance can only be passed, if there is (a) a confession from the accused; and (b) four adult male witnesses, whom the court is satisfied they are truthful persons, abstain from major sins (given the requirements of Tazkiyah-ul-Shahood), and give an eyewitness account of the actual act necessary for Zina.

Commercial sex falls within the definition of “Prostitution” as defined in the Suppression of Prostitution Ordinance, 1961 (“Prostitution Ordinance”) and this law is applicable only to women. The Prostitution Ordinance provides punishments for (a) Keeping or allowing any place to be used as a brothel (Section 3) (b) Solicitation or molestation of any person or loitering for the purpose of prostitution (Section 4) (c) Permitting prostitution in a place of public amusement (Section 5) (d) Living on earnings of prostitution (Section 6) (e) Causing, encouraging or abetting prostitution of a girl under sixteen (16) years (Section 7) (f) Procurement, enticement, leading away, attempting to procure, entice or lead away a woman or girl for the purpose of prostitution, with or without her consent (Section 8); and (g) Bringing or attempt to bring into the province any woman or girl with a view to her becoming a prostitute (Section 9).

It may be noted that the Prostitution Ordinance contains an important provision regarding interstate trafficking. Notwithstanding the above, the application and implementation of this law has seldom been tested.

The Prostitution Ordinance has also been reviewed by the Federal Shariat Court (“FSC”) and the FSC has directed the Provincial Governments to “amend Sections 8, 9 and 10 and provide for enhanced sentences keeping in view the spirit of the [Hudood Ordinance], and the letter of the law for the sentences provided therein and the sentences shall also be made cognizable.”

Sections 371A and 371B of the Pakistan Penal Code also prescribe punishments for selling, letting on hire, or otherwise disposing of any person or buying or hiring or otherwise obtaining possession of any person for the purpose of or with the knowledge that such person will be used for prostitution or immoral purposes.

The Pakistan Penal Code also contains certain provisions that pertain to trafficking, and prescribes punishments for trafficking of a minor girl under the age of 18 years to go from any place to another; and for the import of a girl under the age of 21 years from any country outside of Pakistan.

Issues Raised During the Legal Review and National Consultation

The following issues were highlighted during the course of the legal review in the form of the Scan of Law and the National Consultation:

Criminalization: The law in Pakistan criminalizes sex work, and this criminalization is often quoted to be a hindrance in creating an enabling environment for HIV prevention. Even where the law is not be directly enforced, the existence of the laws create barriers for access to HIV services for sex workers. Criminalization and the actual and perceived threat of arrest and sanction prevent sex workers from accessing HIV services and negotiating safe sex, and makes them more vulnerable to violence and HIV infection. It is the threat of criminalization, and a lack of knowledge of their rights that results in the victimization of and discrimination against female sex workers and impunity for those who perpetrate crimes against them.

Trafficking Risk: Anecdotal evidence suggests that some of the women selling sex at kothi-khanas, small mobile brothels, from across Pakistan, may have been trafficked. There is also evidence that trafficked minors are selling sex in these settings. Immediate action is required to investigate further and protect the rights of those women and children.

National Identification Documentation: While members of the transgender community have been granted a transgender National Identity Card as a result of the Supreme Court case, some female sex workers are unable to obtain national registration documentation and/or register their children, due to a failure to provide paternal details.

Role of LEA: Law enforcement authorities play a dual role with female sex workers. Firstly, the female sex worker faces discrimination with her work criminalized due to the involvement of the LEA; and secondly kothi-khanas and brothels can only operate and exist with some form of knowledge and involvement of the LEA. Hence, LEA are the most important factor when identifying issues for creating an enabling environment for HIV prevention in relation to female sex work.

Recommendations

The outcome of the Scan of Laws and the National Consultation are the following recommendations:

- A review of the existing legal and policy framework should be undertaken with a view to incorporating amendments where necessary for the purpose of better safeguarding the rights of female sex workers.
- Particularly, the provinces, under the Women Development Department, may consider reviewing the Suppression of Prostitution Ordinance, 1961 and consider ancillary legislation that guarantees health facilities and education to FSW and provides an alternate means of employment. Given the fact that Pakistan criminalizes sex work, it would not be possible to provide such facilities to FSW and therefore the provinces may consider creating a caveat, whereby such facilities could be offered to the FSW that opt for an alternate means of employment. Notwithstanding the above, irrespective of choice of profession, female sex workers are citizens of Pakistan and entitled to the same rights as all other citizens of Pakistan.
- It is recommended to raise the matter of registration of documentation with NADRA.
- Sensitization programmes should be implemented with Law Enforcement Authorities.

F) ADDITIONAL DISCUSSION POINTS

The Scan of Laws and the National Consultation lead to further issues, matters, recommendations and discussion points that are described in this section.

Contradictions in Practice

Pakistan is facing a concentrated HIV epidemic among key populations that include sex workers. Sex workers in Pakistan are characterized distinctly as male, female and hijra.¹² The laws of Pakistan penalize non-marital sex, whether pre-or extra marital and also criminalize same-sex relationships in the form of “unnatural offences”, which apply to not only MSM, but also to transgender people and hijra sex workers.

There can be no denial with Pakistan’s current concentrated HIV epidemic that there are key populations in Pakistan that are key to the epidemic’s dynamic. Their behaviors may place them at risk of HIV infection, and they are associated with other vulnerable populations: their spouses, partners and clients. Men who have sex with men, transgender people, and sex workers exist in Pakistan. So, the important question is whether the existing legal framework creates a barrier to their access to HIV and health services and thus fuels the epidemic.

The contradiction that should be pointed out is that government policies are generally supportive of key populations, while laws are not. There is a tacit acknowledgement by the government of the existence of these key populations and there are active efforts to safeguard their rights vis-à-vis the provision of HIV and health services. But laws are not supportive. It would be appropriate then to address this contradiction and amend the existing legal framework in a manner that does not violate the guiding principles of constitutional policy, but supports an enabling environment.

Dichotomy of Law and Practice

There is a similar dichotomy that exists between law and actual practice that interferes with creating an enabling environment and working towards capacity-building in appropriately applying laws.

Any programme for drug harm reduction, that includes distribution of material that assists a drug user to continue using drugs, or that results in such a user buying or selling drugs, would fall within the description of “aiding” or “abetting”, both of which are prohibited under the drug laws of Pakistan. However, needle-syringe exchange programmes, that could be seen as aiding and abetting drug use, are being conducted under the auspices of the Government of Pakistan.

A further disconnect is between the policymakers prescribing such programmes and law enforcement agencies. When working with the drug users, what should those working on the ground for law enforcement agencies do? Follow laws or practice?

Another conflict is that while drug laws prescribe penalties for possession, buying and selling, they do not penalize a person for being under the influence of drugs. In fact, the Control of Narcotic Substances Act casts a burden on the State to address the welfare of the drug users. But it is a common occurrence that drug users are picked up by LEAs and penalized for being “drug users”, when they may only be under the influence of drugs and not officially contravening the law, or when they may be in need of care.

Accordingly, policies and the law must be harmonized, with appropriate amendments of the law. In this case, it would be appropriate to either amend the CNSA or incorporate a relevant amendment in the provincial HIV laws.

Lack of Current Policy

The Scan of Laws and the National Consultation lead to further issues, matters, recommendations and discussion points that are described in this section.

There is no current specific federal or provincial HIV policy that is available in the public domain in Pakistan. Without a plan, what is the future of HIV in Pakistan? How can progress be monitored?

Current policies, available to the public, that pertain to any matter directly or indirectly related to HIV, are outdated and have not been updated. Examples of outdated policies are:

- a) Counseling for HIV/AIDS – National Guidelines, 2001
- b) Guidelines on Ethical Issues for HIV/AIDS related research and service delivery in Pakistan (Draft version) 2004
- c) Guidelines for the use of ART in HIV Positive Adults and Adolescents in Pakistan, June 2005
- d) National Strategic Framework for HIV Treatment, Care and Support in Pakistan, 2007
- e) National HIV and AIDS Policy, Final Draft 2007
- f) National HIV and AIDS Strategic Framework 2007-2012.¹³

Lack of Implementation

Notwithstanding that the legal framework requires strengthening by amendment of certain laws in order to protect key populations, it is equally necessary to address the lack of implementation of existing laws that contribute to an enabling environment for the HIV response.

Examples of lack of implementation of relevant laws are the failure to properly implement the CNS Rules with regard to pharmacists which has an impact on people who inject drugs and a lack of implementation of social security laws and the extension of their benefits to people living with HIV.

The misuse of the CNSA, including the penalizing and harassment of people who use drugs by LEAs.

- The incarceration of people who use drugs because of the CNSA. Insufficient rehabilitation services and the availability of drugs in jails results in an increase in the transmission.
- It is interesting to note that according to a study, condoms are not permitted in prisons, on the grounds that they are not allowed under the Prison Rules.¹⁴ However the Prison Rules do not contain any such restriction. On the contrary, Rule 690, which lists the prohibited items, contains a prohibition on “intoxicating...chemical substance”. This in turn raises questions about the proper implementation of the Prison Rules.

¹³ All material is available on the website of National AIDS Control Programme, <http://www.nacp.gov.pk>

¹⁴ As reported in the “Third Party Evaluation of NACP Projects” in relation to service for jail inmates.



ANNEX 1: NATIONAL ACTION PLAN

PROPOSED RECOMMENDATION AND ACTIONS

Sl. No.	Recommendations Actions	Details	Stakeholders	Proposed Partners	Priority	Deadline
Review of laws and policies for enabling environment and protection of KPs						
1.	Development of terms of reference for law review committees	This will define the major purpose, functions and deliverables of the law review committees	Provincial and National AIDS Control Program Ministry of Law Justice and Human rights APLHIC KPs	UNAIDS NACP UNDP		15 February 2016
2.	Formulation of Laws Review Committee at Federal Level	The scope of the Law Review Committee would include (a) Review of existing laws and identification of gaps in laws for the protection of PLHIV and key populations; (b) Compliance of existing laws and new laws that are framed with international commitments of Pakistan and to ensure that the same are non violative of human rights; and (c) To ensure there is no replication of laws or antagonistic laws thus helping in creation of enabling environment for KPs.	The Government Civil society NGOs/CBOs UNDP/UNAIDS Key Populations from APLHIV and Judiciary Bar council of lawyers	UNDP NACP	High	15 March 2016
3.	Formulation of Laws Review Committees at provincial level	Same as above but at provincial level and the Law Review Committees will work to formulate the ToRs for provincial committees with their inclusion; as implementation of law has to be undertaken at provincial level and majority of cases of use of punitive laws is seen at provincial level.				

Sl. No.	Recommendations/Actions	Details	Stakeholders	Proposed Partners	Priority	Deadline
Stigma Free Society						
4.	Sensitization of health service providers on stigma and discrimination	<ul style="list-style-type: none"> • UNDP and WHO jointly developed THE TIME HAS COME – a modular training package piloted and approved encompassing determinants of stigma and discrimination and means and ways of reducing it at healthcare facilities. • One regional training of trainer with held in Bangkok and one national training in Lahore besides two local trainings in Lahore and Karachi ensuring the participation of health service providers from public sector . Programs at national and provincial levels are required to adopt/adapt the training package 	UNDP,WHO NACP PACPs	NACP PACPs		
5.	Advocacy/Follow-up with provincial and national AIDS control programs on integration of the TIME HAS COME with ongoing training initiatives	Advocacy/Follow-up with provincial and national AIDS control programs on integration of the TIME HAS COME with ongoing training initiatives	NACP PACPs UNDP WHO	UNDP WHO	High	15 March 2016
6.	Trickled down trainings of the health service providers at ARTs, VCCT entres and other health facilities	<ul style="list-style-type: none"> • After adoption of the TIME HAS COME package by the provincial and national AIDS program, more trainings are required to be held in order to improve the understanding of the health service providers 	NACP PACP	NACP PACP		15 June 2016

Sl. No.	Recommendations/Actions	Details	Stakeholders	Proposed Partners	Priority	Deadline
7.	Sensitization of Law Enforcement Agencies on Stigma	<p>Sensitization programmes with Law Enforcement Agencies.</p> <ul style="list-style-type: none"> • Technical support to be provided by UN agencies which include the trainers, training material and material for sensitization programmes as Baluchistan province direly needed the full trainings for LEA on stigma and discrimination. • Relevant government programs especially the provincial AIDS control programs need to show stewardship and ownership of these initiatives. • Follow up mechanisms to be developed by provincial programs to ensure the continuity of support by LEA and reduction in incidences of stigma and discrimination and extrajudicial punishments, arrest and exploitation. 	<p>The Government; NGOs/CBOs; UNDP/UNAIDS; Key Populations APLHIV Religious leaders in KPK</p>	<p>NACP PACPs</p>	High	June 2017
8.	Sensitization of Judiciary on Stigma	<p>Sensitization programmes with judiciary</p> <p>The technical support has to come from UN agencies but the ownership of the provincial and national programs is essential.</p>	<p>The Government; NGO/CBOs; UNDP/UNAIDS</p>		Medium	
9.	Sensitization of media on Stigma	<p>Sensitization campaigns for media</p> <ul style="list-style-type: none"> • Technical support to be provided by UN agencies which include the trainers, training material and material for sensitization campaigns with media on stigma and discrimination and human rights violations. • Relevant government programs especially the provincial AIDS control programs need to show stewardship and ownership of these initiatives. • Follow up mechanisms to be developed by provincial programs to ensure the continuity of support by media reduction in incidences of stigma and discrimination by the media and ensuring the ethical parameters are followed in reporting. 	<p>The Government; APLHIV-key populations UNDP/UNAIDS; PEMRA on special request by Baluchistan</p>	<p>UNDP UNAIDS PACP NACP</p>	High	30 April 2016

Sl. No.	Recommendations/Actions	Details	Stakeholders	Proposed Partners	Priority	Deadline
10.	Awareness raising through media campaigns	Culturally sensitive media campaigns in order to create awareness about HIV and AIDS mainly to remove myths and to inform the public at large about modes and methods through which HIV does not spread.	The Government; NGOs/CBOs; UNDP/UNAIDS; Key Populations; Media (print, electronic and social).	PACPs Punjab has already program in place	Medium	Continuous
11.	Awareness Programmes in Educational Institutions on Safety and Survival Skills	Awareness raising programs on HIV and AIDS and other health services at educational institutions will be implemented in collaboration and support of provincial AIDS programs and department of education. The trainings .awareness raising will also a curriculum on safety and survival encompassing the life skills and human rights in the HIV perspective.	The Government; NGOs/CBOs; UNDP/UNAIDS; APLHIV Key Populations; Law Enforcement Agencies. Departments of Education An additional suggestion is the involvement of Religious Leaders and Institutions.	NACP and PACPs with support from donors agencies	Medium	
12.	Health Awareness at workplace	Discrimination against PLHIV and vulnerable population is prevalent at all work places. This results from both lack of information and poor access to information besides gaps in institutional arrangements for enabling environment. Lack of information on disease as well as lack of information on protective laws are some of the areas which will be focused and strengthened.	The Government; NGOs/CBOs; UNDP/UNAIDS; Key Populations; Law Enforcement Agencies. An additional suggestion is the inclusion of Chambers of Commerce and Trade Institutions as stakeholders.	UNAIDS	Medium	

Sl. No.	Recommendations/Actions	Details	Stakeholders	Proposed Partners	Priority	Deadline
Safeguard Rights of Key Populations and Protect them from Discrimination						
13.	Awareness Workshops for KPs on Human Rights and Legal Framework	Training workshops using appropriate platforms like APLHIV for awareness raising on human rights and legal framework	The Government; NGOs/CBOs; UNDP/UNAIDS; Key Populations; Law Enforcement Agencies	UNDP	Medium	September 2016
14.	Free Medical Camps	In order to avoid hindrances the KP face at static health facilities, the communities where KP live may be reached out by organizing medical camps and health sessions on both prevention and early treatment	The Government; NGOs/CBOs		Low	
Grant of National Identification Documentation / Citizenship						
15.	Review of National Identification/ Registration Documentation	National Identification irrespective of social origin Review of Policy, pertaining to issuance of, National Identity Cards and documentation will be undertaken in order to ensure that children of Key Populations are not denied registration and / or identification documents due to social origin. To illustrate, currently children of FSWs are denied registration (issuance of "B-Form" and subsequently NICs) due to lack of paternal identity. Transgender community has been facing issues due to declaration at the CNIC that the person is a TG and this disallows them to perform some essential rituals like Haj	The Government; NGOs/CBOs; UNDP/UNAIDS; Key Populations; An additional stakeholder identified for this action are the Parliamentarians / legislators.	UNDP will provide support for review of the national identification and registration documentations	Medium	September 2016

Sl. No.	Recommendations/Actions	Details	Stakeholders	Proposed Partners	Priority	Deadline
Grant of National Identification Documentation / Citizenship						
16.	State to State Advocacy at Diplomatic Levels for review and change in the deportation policy	Advocacy at state level to reduce the discrimination using appropriate support of declarations and international commitments. The issue revolves around those Pakistani citizens that are living and working outside of Pakistan on work visas, primarily in the Middle East. Upon the discovery of their positive HIV status in their respective countries of employment, such Pakistani citizens are immediately deported back to Pakistan.	Government of Pakistan acting through: Ministry of Overseas Employment and Human Resources with special emphasis on Bureau of Emigration and Overseas Employment; Ministry of Foreign Affairs.		Medium	
17.	Provision of Legal Assistance for Pakistani Citizens with a positive HIV Status through the relevant Pakistan Embassy.	In order to prevent loss of earning/employment in foreign countries	Government of Pakistan; Expatriate Pakistani Community (particularly expatriate Pakistani legal community). Pakistani Embassies Regional networks of PLHIV and regional office of the global initiatives		Medium	
18.	Establishment of facilitation corners at airports to provision of information on HIV services to deported Pakistani citizens	Facilitation Desks / counters at Arrival Terminals of International Airports and Departure Terminals of Domestic Airports, catering to Pakistani Citizens deported to Pakistan, providing information with regard to access to HIV and health services and all other ancillary information	Government of Pakistan, acting through: Federal Investigation Agency; Airport Security Force; Civil Aviation Authority; Provincial Health Departments. NGOs/ CBOs		High	

Sl. No.	Recommendations/Actions	Details	Stakeholders	Proposed Partners	Priority	Deadline
19.	Awareness workshops for migrant workers/laborers prior to departure for employment	Awareness workshops for migrant workers prior to departure for employment including provision of printed material enabling them to prevent themselves and their families from HIV AIDS and STIs as well as adopt healthy living	NGOs/CBOs Provincial Health Departments Overseas Pakistanis Foundation Overseas employment corporation		Medium to low	
20	Legislation on protection of health and employment rights of HIV people within and outside Pakistan		Government of Pakistan United Nations and UN Partners International Organizations		Medium	
Grant of National Identification Documentation / Citizenship						
21	Special provision of nutrition and ART for Children with HIV	Special provisions should be made for children diagnosed with HIV/ AIDS, either by way of policy and / or by way of law; including provisions pertaining to nutrition packages and ARV treatment.	Government UNICEF WFP		High	
22	Safeguarding the health and education rights of orphaned children	Provisions to be made for children, whose children have died from HIV/ AIDS, with regard to education and job quota and / or financial support through zakat / bait-ul-mal.	Government both national and provincial Pakistan Bait-ul-mal Zakat and Usher		High	
23	Conduct a legal gender recognition study in Pakistan	It will provide a descriptive analysis of legal and gender related identity issues, challenges and hence provide a baseline for strategic direction for supporting actions and mechanisms for mitigation of such issues. The study is already underway	APLHIV NACP PACPs KPs	UNDP	High	October 2016

Sl. No.	Recommendations/Actions	Details	Stakeholders	Proposed Partners	Priority	Deadline
Grant of National Identification Documentation / Citizenship						
24	Conduct a GBV study focusing sexual minorities	Will provide information on magnitude and severity of incidences of violence among sexual minorities in Pakistan UNDP is already undertaking the implementation of the study	APLHIV NACP PACPs KPs	UNDP	High	September 2016
25	Ensure protection of rights of transgenders to education, health, social protection, employment /economic productivity and freedom of religious and gender identity and expression	<p>The National Identity Card (NIC) issued to the Transgender Community should be reviewed and revised to ensure that the issuance of such NIC does not result in a form of discrimination against the Transgender Community and is used against them.</p> <p>Explanation: The members of the Transgender Community present at the National Consultation explained that the NIC were often used to their detriment, resulting in discrimination against them by not only the public at large but also by their own family members. As a consequence of transgender specific CNIC As a consequence of the NIC, the Transgender</p> <p>Community face the following problems linked thereto:</p> <ul style="list-style-type: none"> • Problems with Haj Visa; • Admissions in Educational Institutions; and • Grant of loans (as in certain cases they do not have proper references acceptable according to standard bank policies). 	APLHIV NACP PACPs KPs	UNDP	High	October 2016
26	Trained transgender counselors staffed at ART and VCCT centres	This is one of the most important recommendations in order to ensure the successful upscaling of VCCT and ART services. The TGs have their own nomenclature and transgender counsellors can understand it well in order to counsel another transgender.	Government both national and provincial Government NGOs/CBOs Key Populations	NACP PACPs	High	



ANNEX 2:

NATIONAL CONSULTATION ON “LAW AND POLICIES AFFECTING HUMAN RIGHTS, DISCRIMINATION AND ACCESS TO HIV AND HEALTH SERVICES BY KEY AFFECTED POPULATIONS IN PAKISTAN”

January 21, 2015
Ramada Hotel, Islamabad

AGENDA

09:00-09:30	Registration of the participants NACP
09:30-10:00	Welcome Note Marc-Andre’ Franche Country Director, UNDP Marc Saba Country Director UNAIDS
10:00-10:15	Opening remarks Ms. Huma Chughtai Joint Secretary Ministry of Human Rights, Law and Justice
10:15 – 10:30	Update on Expert Group Meeting on Legal and Policy Barriers and Intergovernmental Meeting under ESCAP Presentation (UNAIDS)
10:30 – 11:30	Sharing key findings on Scan Of Law And Policies Affecting Human Rights, Discrimination And Access to HIV and Health Services By Key Affected Populations in Pakistan
10:30 – 11:00	Presentation by Sheeza Ahmad
11:30 – 11:30	Q&A/ Discussion Recommendations
11:30 – 13:30	Development of Action Plan on mitigation of legal and policy barriers
13:30 – 14:15	LUNCH and Prayers Break
14:15 – 15:30	Presentation of Action Plan on mitigation of legal and policy barriers
15:30 – 16:00	Conclusion - Minister of State for National Health Services, Coordination and Regulation - Minister for Human Rights, Law and Justice
16:00-16:15	Vote of thanks - Dr. Abdul Baseer Khan Achakzai Program Manager – National AIDS Control Program



ANNEX 3: PARTICIPANTS LIST

Name of the participant	Designation	Organization/Institution
Zehra Wadood Fatemi	Member Standing Committee on Human Rights Member Standing Committee on NHSRC	National Assembly Government of Pakistan
Kulsoom Parveen	Member Committee of Senate on NHSRC	Senate of Pakistan
Qamar Sohail Lodhi	Additional Secretary (Legislation)	National Assembly Government of Pakistan
Human Chughtai	Deputy Secretary	Ministry of Law, Justice & Human Right
Mehmood Mandiviwala	Advocate and Ex- Minister	Provincial Assembly Sindh
Sher Bahadul Awan	Deputy Secretary	Ministry of Law, Justice & Human Right
Khalid Mehmood	Joint Secretary	National Assembly
Dr Kulsoom Akhtar	Vice Chairperson	CCM Pakistan
Muhammad Arshad	Secretary	Pakistan Bar Council
Asghar Satti	National Coordinator	APLHIV Pakistan
Abdul Lateef Sheikh	Board Member	APLHIV
Mukhtar Ali Memon	Provincial Coordinator	APLHIV Sind
Dr. Sajid	National Coordinator	CCM Pakistan
Naeem Malik	M&E Officer	CCM Pakistan
Dr. Baseer Achakzai	National Program Manager	NACP
Dr. Sabeen Afzal	Deputy Director Programs	MNHSRC Government of Pakistan
Asim Shah Jehan	Community Mobilizer	Paidaar
Nabeela Nisar	Program Officer	UNODC
Rukhsana Omer	Section Officer Coordination	Ministry of Law, Justice & Human Right
Muhammad Shafique	Project Officer	APLHIV
Pervaiz Shaukat	Program Officer	UNHCR
Marc Saba	WR	UNAIDS Pakistan and Afghanistan
Syed Anwer Shah	Deputy Superintendent Police	Law office Prisons Department
Raheela Farheen	Section Officer	Ministry of Religious Affairs and Interfaith Harmony
Dr Farhan Zahid	Section Officer	MNHSRC Government of Pakistan
Taj Wali Khan	Deputy Director	MNHSRC Government of Pakistan
Faisal Majeed	Deputy Program Manager	Punjab AIDS Control Program
Dr. Farid Sumalani	Provincial Program Manager	Baluchistan AIDS Control Program
Dr. Attaullah	Assistant Director	Director General Health Khyber Pakhtunkhwa
Dr. Sikandar Iqbal	NGO Coordinator	Sindh AIDS Control Program

Name of the participant	Designation	Organization/Institution
Dr. Abdul Ghauri	National Technical Advisor	National TB Control Program
Dr. Fazal Majeed	Deputy Director-Focal person HIVAIDS	Capital Development Authority Hospital, Islamabad
Anne BERGENSTROM	Regional Advisor	UNODC
Dr. Rajwal Khan	Strategic Information Advisor	UNAIDS
Fahmida Iqbal	Advisor Social Mobilization & Networking	UNAIDS
Dr. Nasir Sarfaraz	Program Specialist –HIVAIDS	UNICEF
Dr G.N. Kazi	Focal person HIVADS, TB and Malaria	World Health Organization
Dr. AFM Ristul Islam	Chief Medical Officer	ILO
Bettina Schunter	Consultant for concept note NFM	NACP
Dr. Sofia Furqan	Senior Project Officer	NACP
Dr Khwaja Abbas	Health System Strengthening Specialist	GIZ
Safadar Kamal Pasha	M&E Coordinator	NACP
Maheen Hasan	Communication Associate	UNDP Pakistan
Dawood Naseem	Section Officer	Ministry of Religious Affairs
Muhammad Osama	National Program Manager	Naz Male Health Alliance
Bubli Malik	TG Human Rights Activist	Wajood
Kamal Afzal	M&E Associate	NACP
Safdar Abbas	Project Assistant	NACP
Masood Fareed	Community Mobilization Officer	UNAIDS
Riffat Malik	Log and Admin Assistant	UNAIDS
Sajjad Akbar	Chief Executive	AMAL
Nazeer Masih	Chairman	New Light AIDS Society
Saleem Khan	Member	New Light AIDS Society
M. Ghayas	Admin Assistant	UNAIDS
Salman Qureshi	Senior Program Manager	Nai Zindagi
Ijaz Ahmed	Program Officer	AMAL-HDN
Fasahat-ul-Hassan	Chairperson	Youth Advocacy Network
Fayyaz Husain	Manager CHBC	Mehran Welfare Organization
Amanullah Kakar	Chief Executive Officer	Socio Pakistan
Asia Batool	Program Manager	True Worth Foundation
Marc-Andre Franche	Country Director	UNDP



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