



Empowered lives.
Resilient nations.



UNDP DISCUSSION PAPER

MAKING THE LAW WORK FOR WOMEN AND GIRLS IN THE CONTEXT OF HIV

APRIL 2020





Empowered lives.
Resilient nations.

TABLE OF CONTENTS

Design, layout and production by Phoenix Design Aid A/S.

■ Acknowledgements	2
■ Acronyms and abbreviations	3
■ Executive summary	4
■ 1. Background	7
■ 2. Legal challenges facing women in the context of HIV	10
a. Gender-based violence	10
b. Plural legal systems	11
c. Criminalization	12
i. HIV criminalization	12
ii. Sex work	12
iii. Consensual sex with same sex partners	13
iv. Transgender identity and expression	13
v. Drug possession and use	13
d. Access to sexual and reproductive health information and services	14
e. Sex and age-disaggregated data for human rights programming	15
■ 3. Progress in implementing the Global Commission on HIV and the Law's recommendations for women and girls	17
a. Legal environment assessments and legal reviews	17
b. National dialogues and action planning on HIV and the law	17
c. Judicial dialogues	18
d. Parliamentary dialogues and sensitization of ministry officials	18
e. Strengthening capacities to address violence and promote human rights	19
f. Strengthening civil society participation and expanding the civic space	19
g. Supporting the ratification and domestication of regional instruments on the rights of women and girls	20
■ 4. Way forward	22
a. Eliminate all forms of sexual and gender-based violence against women and girls	22
b. Create enabling legal and policy environments for women and girls living with and vulnerable to HIV	22
i. Scale-up support for women's and girls' rights in the context of plural legal systems	22
ii. Reform punitive laws impacting women and girls	23
iii. Protect and expand civic space	23
c. Prioritize women's and girls' sexual and reproductive health and rights	23
i. Promote and protect women's and girls' sexual and reproductive health and rights	23
ii. Address the incoherence of age of consent laws	24
d. Strengthen the capacity of national institutions and other stakeholders	24
e. Support the leadership and meaningful participation of women and girls in decision-making processes	24
f. Generate and utilize actionable data on the impact of human rights programmes on women and girls	25
■ 5. Conclusion	27

ACKNOWLEDGEMENTS



This discussion paper was written by Kene Esom and Brian Citro.

Special appreciation for reviewing this paper go to Pascale Allotey (UNU International Institute for Global Health), Sudha Balakrishnan (UNICEF), Luisa Cabal, Emily Christie (UNAIDS), Nazneen Damji (UN Women) and Diego Antoni, Raquel Lagunas and Erin Stern (UNDP Gender Team).

Thanks to Tenu Avafia, Suki Beavers, Mandeep Dhaliwal, Mark DiBiase, Maisoon Elbukhari, Boyan Konstantinov, Natalia Linou, Rebecca Schleifer, Roy Small and Mami Yoshimura for their rich contributions.

The views expressed in this publication are those of the author(s) and do not necessarily represent those of the United Nations, including UNDP, or the UN Member States.

For more information, contact: Kene Esom at kenechukwu.esom@undp.org.

Copyright © UNDP 2020. All rights reserved.
One United Nations Plaza, NEW YORK, NY10017, USA

ACRONYMS AND ABBREVIATIONS

AIDS	acquired immunodeficiency syndrome
HIV	human immunodeficiency virus
SDG	Sustainable Development Goal
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women

EXECUTIVE SUMMARY

In September 2015, 193 United Nations Member States unanimously adopted the 2030 Agenda for Sustainable Development with its 17 Sustainable Development Goals (SDGs). The third sustainable development goal (SDG 3) commits the global community to ensure healthy lives and promote well-being for all at all ages with a target to end the epidemics of AIDS and tuberculosis and to combat hepatitis and other communicable diseases by 2030. SDG 5 commits United Nations Member States to gender equality and the empowerment of women and girls, with specific targets to: end harmful practices, such as child marriage and female genital mutilation; ensure access to sexual and reproductive health; and attain equal rights to economic resources, including property. The 2030 Agenda's commitment to reach those *furthest behind first* must acknowledge the intersecting vulnerabilities women and girls face, including women and girls living with HIV and those who belong to HIV key populations – transgender women, female and transgender sex workers, women who use drugs and women in prison.

The Global Commission on HIV and the Law, convened in 2010 with a mandate to generate evidence-informed recommendations to promote effective responses to the HIV epidemic, highlighted the links between enabling legal and policy environments and HIV vulnerability. The final 2012 report of the Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, found that persistent challenges in law presented considerable barriers to women's and girls' ability to access HIV and health services. Barriers included gender-biased inheritance and property laws that severely restricted women's access to and ownership of land thus increasing their economic dependence on men and their vulnerability to violence and HIV. Gender norms - the shared social expectations or informal rules as to how women and men should behave - disadvantage women in the HIV response by discouraging discussion about sexuality and HIV prevention by women; limiting independent decision-making of women and girls related to their sexual and reproductive health; restraining women's and girls' access to HIV testing and treatment; or by putting them at risk of discrimination and gender-based violence. Evidence shows that economic dependence on men increases women's and girls' vulnerability to HIV by constraining their ability to negotiate the conditions that shape the risk of infection, including sexual abstinence, condom use and multiple partners. The 2018 Supplement to the report of the Global Commission on HIV and the Law noted the continued vulnerability of women and girls to HIV. It highlighted barriers to sexual and reproductive health services for adolescent girls and young women and noted a disproportionate impact of HIV on this group.



Every day, an estimated 460 adolescent girls become infected with HIV and 50 die from AIDS-related illnesses. In sub-Saharan Africa, four of every five new infections among adolescents aged 15–19 are in girls. Laws that sanction violence against women, such as involuntary sterilization of women living with HIV and marital rape, perpetuate gender inequality and negatively affect the HIV response for women and girls. As do criminal laws on HIV non-disclosure, exposure and transmission, sexual orientation, gender identity and expression, choice of work, recreational activities and access to sexual and reproductive health services. Gender-biased and inconsistent laws in plural legal systems often legitimize and perpetuate discrimination, harmful traditional practices and violence which drive the HIV epidemic in women and girls. Similarly, disparity and incoherence of age of consent laws result in reduced access to sexual and reproductive health information, commodities and other services for adolescent girls.

As the countdown to achieving the 2030 Agenda's target to end the AIDS epidemic continues, governments and other stakeholders need to redouble efforts towards women's and girls' empowerment and gender equality. These efforts should include: guaranteeing women's equal rights to land, property and inheritance in law; reforming penal laws that increase women's vulnerability to HIV, such as laws on sex work, pre-marital sex, consensual same sex conduct and cross-dressing; and removing laws and policies that restrict access to sexual and reproductive health services. Governments must work to protect women's and girls' sexual and reproductive health and rights and provide comprehensive sexuality education for young women and adolescent girls. It is imperative that national laws and policies provide comprehensive protection from violence for all women and girls. Equally important, law and policy should effectively address the structural drivers of gender-based violence, including patriarchal social norms, gender inequalities and intergenerational violence.

UNDP has worked with governments, the Joint United Nations Programme on HIV/AIDS (UNAIDS) Secretariat, UNAIDS co-sponsors and civil society in 89 countries to advance the recommendations of the Global Commission on HIV and the Law and to promote enabling legal, policy and regulatory environments for rights-based HIV responses, including for women and girls. Ending the HIV epidemic is possible, but not without redoubling efforts and investments in creating enabling legal and policy environments, addressing the impact of laws and policies on women and girls and providing legal empowerment to women and girls living with and vulnerable to HIV.



1.

BACKGROUND

The 2030 Agenda for Sustainable Development and the 17 SDGs are founded on the principles of equality, non-discrimination and the dignity of the individual.¹ They represent a crucial commitment by 193 United Nations Member States, with the support of civil society, international institutions and the private sector, to leave no one behind and to reach those who are furthest behind first. SDG 3 commits the global community to ensuring healthy lives and promoting well-being for all at all ages. Target 3.3 establishes a commitment to end the epidemics of AIDS and tuberculosis and to combat hepatitis and other communicable diseases. The 2030 Agenda recognizes that gender equality and the empowerment of all women and girls is a necessary condition and a cross-cutting objective to achieving the SDGs – that is, if gender equality and women’s and girls’ rights and empowerment are not attained, neither can the other SDGs.² SDG 5 thus commits United Nations Member States to gender equality and empowerment for women and girls, with specific targets to end harmful practices, such as child marriage and female genital mutilation, ensure access to sexual and reproductive health and attain equal rights to economic resources, including property.

Gender inequality contributes significantly to the spread of HIV, leaving women and girls more vulnerable to its impact. Gender discriminatory laws, harmful traditional practices and gender-based violence reinforce unequal power dynamics between men and women, with adolescent girls and young women being particularly disadvantaged.³ Gender inequality, discrimination and gender-based violence, which may be enabled or condoned by customary law and practices and formal laws, also increase the vulnerability of women and girls to HIV.⁴ AIDS-related illnesses are the leading cause of death among women aged 15-49.⁵ Every day, an estimated 460 adolescent girls become infected with HIV and 50 die from AIDS-related illnesses.⁶ Young women in this age group are twice as likely to be living with HIV than men.⁷ In sub-Saharan Africa, four of every five new infections among adolescents aged 15–19 are in girls.

In 2018, key populations and their sexual partners accounted for 54 percent of all new HIV infections, representing a 15 percent increase from 2017.⁸ UNAIDS considers gay men and other men who have sex with men, sex workers, transgender people, people who inject drugs and prisoners and other incarcerated people as the five key population groups that are particularly vulnerable to HIV and who frequently lack adequate legal protections and access to services.⁹

The 2020 Report of the United Nations Secretary-General, *Women, the Girl Child and HIV and AIDS*¹⁰ notes the multiple and intersecting forms of discrimination that women and girls are subject to such as adolescent girls and young women, women and girls in key populations, women with disabilities, older women or as migrant women predispose them to an even greater risk of HIV infection and barriers in accessing treatment and care. While women and girls also belong to key populations, however the dearth of data makes it difficult to better understand the unique, intersecting vulnerabilities faced by women and girls within specific key population groups. Epidemiological and other data collected on key populations should be disaggregated by gender and sex to better understand the HIV-related risks and vulnerability of females in these groups. Nonetheless, the data that is available, as seen below, clearly demonstrates that women who belong to key populations are at greater risk and are more vulnerable to HIV than their male counterparts.

UNDP: HIV and Health

The UNDP Strategic Plan for 2018-2021 and the UNDP HIV, Health and Development Strategy 2016-2021: Connecting the Dots both affirm UNDP's commitment to the principles of universality, gender equality and leaving no one behind, while responding to a dynamic development landscape. Gender equality is central to UNDP support for countries so they might implement and achieve the 2030 Agenda for Sustainable Development and the Sustainable Development Goals, as well as other commitments agreed by Member States.

Health – an outcome, contributor and indicator of development – continues to be an important aspect of UNDP work, focusing on three interlinked areas: reducing inequalities and social exclusion that drive HIV and poor health; promoting effective and inclusive governance for health; and building resilient systems for health. UNDP, the World Health Organization and other United Nations partners support countries to achieve the health-related targets across the 2030 Agenda for Sustainable Development, including the commitment to leave no one behind.

Institutions and governance structures in many countries are under-resourced and require additional capacity to deliver HIV, tuberculosis and other health and related services. UNDP supports countries to strengthen their governance capacity to respond more effectively to health and related development challenges by supporting legal and policy reform, building human and institutional capacity and formulating rights-based investment approaches and programmes.

Under the UNAIDS Division of Labour, UNDP convenes work on human rights, stigma and discrimination which encompasses law and policy reforms, access to justice and rights and eliminating HIV-related discrimination in healthcare settings. UNDP co-convenes work on HIV prevention among key populations (with UNFPA). Through these mandates, UNDP leads the work to support countries in implementing the Global Commission on HIV and the Law's recommendations on removing punitive and discriminatory laws, policies and practices that impact women and to advance women's rights and empowerment in the context of the HIV response and the 2030 Agenda.

- The risk of acquiring HIV was 13 times higher for transgender women than other women between the ages of 15-49.¹¹
- The risk of acquiring HIV was 13.5 times higher for female sex workers in 2017 than for other women between the ages of 15-49.¹²
- HIV prevalence among women who inject drugs was 13 percent compared to 9 percent among men who use drugs from the same 30 countries.¹³



The 2016 United Nations General Assembly Political Declaration on HIV and AIDS affirms the commitment of United Nations Member States to “create enabling legal, social and policy frameworks in each national context in order to eliminate stigma, discrimination and violence related to HIV ... [and provide] legal protections for people living with, at risk of and affected by HIV, including in relation to inheritance rights and respect for privacy and confidentiality, and promoting and protecting all human rights and fundamental freedoms.”¹⁴

The 2030 Agenda's commitment to reach those furthest behind first must acknowledge the intersecting vulnerabilities women and girls face, including those who belong to key populations most vulnerable to HIV – transgender women, female and transgender sex workers and women who use drugs. People are left behind when they experience exclusion, bias or mistreatment in laws, policies, access to public services and social practices due to their identity primarily relating to their gender, but also relating to their age, income, ethnicity, caste, religion, disability, sexual orientation and nationality, as well as their indigenous, refugee, displaced or migration status.¹⁵



2.

LEGAL CHALLENGES FACING WOMEN IN THE CONTEXT OF HIV

Laws can either strengthen or hinder efforts to fight HIV and its coinfections. To better understand the role of the law in strengthening or undermining AIDS responses, UNDP, on behalf of UNAIDS, convened an independent Global Commission on HIV and the Law (the Commission) in 2010. The mandate of the Commission was to produce evidence-informed recommendations to promote effective responses to the HIV epidemic.¹⁶ The Commission's final report, *HIV and the Law: Risks, Rights & Health*, published in July 2012, made important findings and recommendations covering the breadth of the AIDS response, with chapters focusing on women and girls and key populations.¹⁷ In 2018, the Commission published a Supplement to the 2012 report that highlighted changes in the global landscape since 2012, including HIV-related scientific developments, the rise in migration, the shrinking of civic space, the growing epidemics of HIV coinfections (tuberculosis and viral hepatitis) and the new challenges these coinfections present for the HIV response. The 2018 Supplement highlighted the situation of adolescent girls and young women in the AIDS response, making additional recommendations for countries.¹⁸ The Commission noted that despite some success in removing laws that increase women's and girls' vulnerability to HIV and ensuring women and girls living with HIV have access to testing, treatment, care and support services, persistent challenges in laws remained that present considerable barriers to women's and girls' ability to access HIV and health services.¹⁹ Gender norms - the shared social expectations or informal rules as to how women and men should behave - disadvantage women in the HIV response by discouraging discussion about sexuality and HIV prevention by women; limiting independent decision-making of women and girls related to their sexual and reproductive health; restraining women's and girls' access to HIV testing and treatment; or by putting them at risk of discrimination and gender-based violence.²⁰

This section highlights some of these persistent challenges and the ways they affect women's and girls' access to HIV and health services and their ability to protect themselves from acquiring HIV.

A. GENDER-BASED VIOLENCE

In some settings, up to 45 percent of adolescent girls report that their first sexual experience was forced, which contributes to the risk of HIV in both direct and indirect ways.²¹ Experiencing sexual violence can influence women's and girls' susceptibility to adopting sexually risky behaviours, including having multiple partners, engaging in unprotected sex and participating in transactional sex, thus exacerbating their risk of acquiring sexually-transmitted infections, including HIV.²² Women and girls living with HIV are more likely to experience violence, including violations of their sexual and reproductive rights.²³ Relationship inequity and intimate partner violence also increase women's risk of acquiring HIV, whereby women who are subjected to intimate partner violence are 1.5 times more likely to acquire HIV.²⁴

Violence against women is also associated with poor clinical outcomes for women on antiretroviral therapy and with weakened adherence to pre-exposure prophylaxis, post-exposure prophylaxis and HIV treatment, including for pregnant women.²⁵ Involuntary and coerced sterilization and forced abortion among women living with HIV has been reported in at least 14 countries.²⁶ In a participatory study of women living with HIV in 94 countries,

89 percent of the 480 respondents reported having experienced or feared violence, either before, since and/or because of their HIV diagnosis; gender-based violence reporting was higher after HIV diagnosis.²⁷ In high HIV prevalence settings, women experiencing intimate partner violence are 50 percent more likely to have acquired HIV than women who have not experienced such violence.²⁸

The law is often inadequate to protect women and girls from sexual violence, including those living with and vulnerable to HIV.²⁹ Poor investigation and prosecution of sexual offences, lack of psychosocial support for survivors, especially during rape trials, and criminalization of populations most at risk of sexual violence – sex workers, women who use drugs, lesbian and bisexual women and transgender women exacerbate the risk of violence for women and girls. Globally, intimate partner violence is one of the most common forms of violence women face.³⁰ In 49 countries no specific laws exist against domestic violence, no legislation to address sexual harassment exists in 45 countries and 112 countries do not criminalize marital rape.³¹ The combination of social norms that condone and justify violence against women and girls and the absence of protective laws against gender-based violence place women and girls in precarious situations that exacerbate their risk of acquiring HIV.

B. PLURAL LEGAL SYSTEMS

Plural legal systems are jurisdictions in which both formal legal systems and alternative informal justice systems, such as customary, tribal, religious, personal and traditional law, operate in parallel. Although exact figures are difficult to obtain, evidence indicates that a significant number of women in the developing world access informal justice systems with up to 80 percent of disputes in some countries resolved through informal justice mechanisms.³² A UNDP report notes that in some countries in Africa and Asia, well over half of all disputes are processed and resolved in customary or religious forums.³³ Social and economic issues significant to women's daily lives are frequently administrated and adjudicated at the informal justice level.³⁴ A challenge with plural legal systems is that incoherence in approaches to rights and obligations determined by both formal and informal laws often results in rights being denied rather than enhanced.³⁵ Plural legal systems present a challenge to the HIV response for women and girls as legal plurality often legitimizes and perpetuates discriminatory laws, harmful traditional practices, violence against women and unequal property and inheritance systems that drive the HIV epidemic in women and girls.³⁶

Evidence shows that women's economic insecurity and dependence on men increases their vulnerability to HIV by constraining their ability to negotiate the conditions which shape their risk of infection, including sexual abstinence, condom use and multiple partnerships.³⁷ Gender inequalities in women's access to economic opportunities, inheritance law and land



rights are pervasive. In 90 countries, customary laws and practices inhibit women's access to land.³⁸ In 34 countries, daughters do not have the same inheritance rights as sons. And in 36 countries, widows do not have inheritance rights.³⁹ Women's access to land and other productive resources is integrally linked to the fight against the HIV epidemic and prevention of and responses to gender-based violence.⁴⁰ Limited access to productive resources and fear of violence leave many women trapped in relationships in which they are vulnerable to HIV infection and hampered in their ability to protect themselves. Additionally, economic insecurity makes it more difficult for women living with HIV to manage the disease.⁴¹ Women have less access to land than men and when they do have access to land, their rights are often restricted to so-called secondary land rights, meaning that women hold these rights through male family members.⁴² Women thus risk losing entitlements in the case of divorce, widowhood or their husband's migration.⁴³ Women's rights to inheritance of property are crucial for reducing women's vulnerability to violence and HIV, as well as empowering women to cope with the social and economic impacts of the HIV epidemic at the household level.⁴⁴

Harmful practices and traditional customs tolerated by informal systems put women and girls at greater risk of HIV infection. These include practices such as child, early and forced marriage, female genital cutting, widow inheritance and widow cleansing.⁴⁵ In some cases, customary or religious laws restrict the use of contraceptives and other sexual and reproductive health services. Customary and religious systems may also tolerate violence against women, including domestic violence, marital rape or rape as punishment, further increasing women's risk of HIV infection.

C. CRIMINALIZATION

Criminal law significantly affects women and girls living with HIV, often increasing their risk of intimate partner violence, sexual violence and physical abuse.⁴⁶ Women and girls are directly and indirectly impacted by criminal law provisions on sexuality, sexual orientation, gender identity and expression, choice of work, recreational activities, access to sexual and reproductive health services and confidentiality of HIV status.

i. HIV criminalization

As of 2019, 75 countries criminalized HIV non-disclosure, exposure or transmission, including unintentional transmission.⁴⁷ Statutes allow the use of HIV status to enhance or aggravate criminal charges in some countries. These laws and the prosecutions stemming from them do not always rely on or defer to the best available scientific evidence on HIV-related risks and harms, resulting in unjust prosecutions and convictions.⁴⁸

In contexts with HIV criminalization, women and girls living with HIV are at significant risk of prosecution. This is because women are often the first to know their HIV positive status (a prerequisite for most HIV criminalization prosecutions), due to increased interaction with the healthcare system, including because of provider-initiated testing and counselling programmes during antenatal visits.⁴⁹ Women are more likely than men to take an HIV test and to initiate and adhere to HIV treatment.⁵⁰ Women living with HIV risk prosecution for HIV exposure and transmission due to childbirth and breastfeeding.⁵¹ Women living with HIV who disclose their status risk domestic violence, abandonment, loss of property and loss of child custody; meanwhile, they risk criminal prosecution and imprisonment for failing to disclose.⁵² At the same time, women and girls are least likely to have access to legal services and, thus, a fair trial.⁵³

ii. Sex work

Female sex workers are on average 13.5 times more likely to be living with HIV than other women aged 15-

49.⁵⁴ Seventy-seven countries outlaw sex work explicitly or criminalize some aspect of sex work, including penalizing the clients of sex workers or brothel operators while not criminalizing sex work *per se*.⁵⁵ Sex work and sex trafficking are not the same. Trafficking in persons for the purpose of commercial sexual exploitation is a denial of agency and violation of fundamental freedoms.⁵⁶ Some governments have broad anti-human trafficking laws that conflate voluntary and adult consensual exchange of sex for money with the exploitative, coerced, often violent trafficking of people, especially women and girls for sex.⁵⁷

For sex workers, especially women, the threat of violence from clients and police is a perpetual reality. Criminalization and social stigma make sex workers' lives more unstable, less safe and far riskier in terms of acquiring HIV as no legal protection from discrimination and abuse exists when sex work is criminalized.⁵⁸ For example, police may refuse to register a report of sexual violence made by a sex worker. Sex workers are often reluctant to report violent incidents to the police for fear of police retribution or for fear of being prosecuted for engaging in sex work.⁵⁹ In some settings, carrying condoms is criminalized and used as evidence by police to harass or to prove involvement in sex work.⁶⁰ Enforcement of penal laws have, in some instances, resulted in violation of sex workers' rights to housing, security of person, equal protection of the law, privacy and health.⁶¹

In recent years, seven countries have adopted 'end demand' models of criminalization of sex work. This model makes it illegal to buy sex but not to use one's own body for such services, thus criminalizing the clients rather than the sex workers.⁶² The model also makes it illegal to procure or operate a brothel. Whether the model deters or reduces sex work and HIV transmission is not clearly established, and this model may even do the opposite. A 2016 survey of about 600 sex workers in France, one year after France adopted the 'end demand' model, found that the new law had detrimental effects on the safety, health and overall living conditions of the sex workers. Of the sex workers surveyed, 38 percent said that the model negatively affected their ability to negotiate safer sex, 42 percent said they were more exposed to violence since the introduction of the law and 88 percent opposed the criminalization of sex workers' clients.⁶³ Findings from a 2020 socio-behavioural study of 7259 female sex workers across 10 sub-Saharan African countries between 2011–2018 suggest that only through full removal of laws targeting sex industry; access to safer work environments; and prevention of violence and harassment by police could law reform as a structural determinant avert violence and HIV infections.⁶⁴

iii. Consensual sex with same sex partners

Consensual same-sex conduct between women is criminalized in 45 countries.⁶⁵ Gender-based violence, including the so-called 'corrective rape' perpetuated against women perceived to be lesbians in some countries, makes lesbians and bisexual women uniquely vulnerable to HIV. The criminalization of consensual same-sex conduct presents practical challenges for reporting incidents of sexual violence against women with same sex partners to the police for risk of being arrested and charged under anti-homosexuality penal laws.⁶⁶ In the context of criminalization and homophobia, lesbians sometimes have no choice but to enter heterosexual marriages with little or no control over their sexual and reproductive choices, often becoming victims of marital rape.⁶⁷

iv. Transgender identity and expression

Across the world, transgender people experience high levels of stigma, discrimination, gender-based violence, marginalization and social exclusion. This makes them less likely or able to access services, negatively influences their health and wellbeing and puts them at higher risk of HIV.⁶⁸ Furthermore, a range of penal provisions are used to target transgender persons and limit their basic expression of self. Cross-

dressings is an offence in some countries while in others penal provisions are more vaguely worded giving law enforcement agencies huge discretion on how to define these laws against transgender dressing and expression. Vaguely worded penal laws on impersonation, vagrancy, indecent exposure, public nuisance and 'loitering for the purpose of prostitution' have also been used in many jurisdictions to unduly target transgender women.⁶⁹

In contexts where sex work is criminalized, transgender women often bear the brunt of police brutality.⁷⁰ Beyond harassment, arrest and detentions, transgender sex workers report extortion of sexual favours and sexual assault by the police.⁷¹ These factors contribute to the increased vulnerability of transgender women to HIV.

v. Drug possession and use

Decades of experience have shown that repressive drug control laws and policies have failed to achieve the desired goals of fighting crime and reducing drug use or drug-related harm. Repressive drug law enforcement practices force drug users away from public health services and into hidden environments where HIV risks become markedly elevated. Mass incarceration of nonviolent drug offenders also plays a major role in spreading the pandemic.⁷² International and domestic anti-drug policies are the leading cause of rising rates of incarceration of women.⁷³ The likelihood of contracting HIV while in prison increases significantly.⁷⁴

The consequence of the criminalization of personal drug use is particularly severe for women who use drugs, as authorities may designate them as unfit mothers. For women in prisons, a history of drug use could lead to a loss of parental rights.⁷⁵ In some jurisdictions, criminal laws on drug use by pregnant women is disproportionately applied against poor women and women from racial minorities.⁷⁶ Furthermore, many of the proven, evidence-informed prevention approaches which can have the most cost-effective effect on the HIV epidemic among people who inject drugs, including needle and syringe programmes and opioid substitution therapy, are illegal or unavailable in some countries.⁷⁷ According to WHO, opioid substitution maintenance therapy also has an important role in attracting and retaining pregnant women in treatment and ensuring good contact with obstetric and community-based services, including primary care.⁷⁸ The criminalization or failure to provide opioid substitution therapy increases vulnerability to HIV for pregnant women who use drugs.

D. ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH INFORMATION AND SERVICES

In the 37 countries with data available for 2011-2016, only 30 percent of adolescent girls and young women had comprehensive and correct knowledge on how to prevent HIV.⁷⁹ HIV is among the top ten leading causes of death among adolescents aged 10-19.⁸⁰ Sexually active young people are particularly vulnerable to HIV for physiological, psychological and social reasons. However, adolescents face legal and policy barriers to HIV testing and counselling, in particular those related to requirements for parent or guardian consent to access HIV testing and counselling services.⁸¹ Legal barriers to young people's access to sexual reproductive health services impede progress in addressing HIV prevention, treatment and care.⁸² In sub-Saharan Africa, women between the ages 15-24 accounted for almost half of new infections in 2018 despite being only ten percent of the population.⁸³ Restrictive and incoherent laws and policies, including laws on age of consent for sexual intercourse, medical treatment, HIV testing and sexual and reproductive health services, impact negatively on service uptake.⁸⁴ Progress on ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) – lauded as one of the most progressive instruments on the rights of women and girls' reproductive health rights – has been slow. Only 40 of the 54 Member States of the African Union have ratified the treaty 16 years after its adoption.

Age-appropriate comprehensive sexuality education is vital to the health and well-being of young people. The transition from childhood to adulthood for girls is often marked with conflicting messages about sexuality, virginity, fertility and womanhood. Menstruation, seen as the start of puberty, is a generally neglected issue and substantial numbers of girls in many countries have knowledge gaps and misconceptions about menstruation that cause fear and anxiety.⁸⁵

Each year 12 million girls are married before reaching 18 years of age.⁸⁶ Pregnancy and childbirth complications are the second cause of death among young women aged 15-19. The lack of information on HIV prevention and the power to use this information in sexual relationships, including in the context of marriage, undermines women's and girls' ability to negotiate condom use and engage in safe sex practices.

In countries that criminalize sex outside of marriage, unmarried women are less likely to access HIV and sexual and reproductive health and rights services. Spousal consent – the legal obligation for a woman or girl to ask permission from her husband to access a service – also hampers access to sexual and reproductive health services for adolescent girls and young women. Spousal consent for women to access any sexual and reproductive health service is required in 27 countries.⁸⁷

In 70 countries and territories globally, laws and policies allow healthcare workers to deny access to sexual and reproductive health services on grounds of 'conscience'.⁸⁸ Although conscientious objection has been traditionally invoked in cases of termination of pregnancy, reports suggest that healthcare workers are increasingly using 'conscience' claims to deny access to contraceptives, including condoms, to refuse treatment to lesbian, gay, bisexual and transgender persons and their families and to deny women other sexual and reproductive health services.⁸⁹

E. SEX AND AGE-DISAGGREGATED DATA FOR HUMAN RIGHTS PROGRAMMES

An effective HIV response requires knowledge of the main drivers of the HIV epidemic, focusing on the relationship between the epidemiology of HIV infection and behaviours and social conditions that impede access to and use of HIV information and services.⁹⁰ The UNAIDS-led '*know your epidemic, know your response*' approach promotes HIV prevention strategies tailored to local contexts of epidemics based on evidence gained from analysis of epidemiological and behavioural data. HIV/AIDS epidemiological and behavioural data, as well as data related to access to services, treatment outcomes and burden of care, must be disaggregated in order to identify patterns of the epidemic.⁹¹

Sex-disaggregated data can reveal if women or girls are experiencing negative health outcomes and whether this is disproportionate to their male counterparts. Analyses examining why these disparities exist often reveal gender and human rights issues that either increase risks or constitute barriers to accessing services.⁹² Data and research specific to the experiences of women and adolescent girls belonging to marginalized groups who face elevated risks of violence, discrimination and stigma are lacking, and data are not systematically disaggregated by sex, age and other variables.⁹³ A 2014 review of the 20 first iteration concept notes submitted to the Global Fund by 18 countries in windows 1 to 3 of the new funding model to assess how well concept notes had integrated gender analyses and gender-responsive programming showed that sex-disaggregated data for key populations was rare, of poor quality and did not drive programming decisions.⁹⁴ At the end of 2018, only 43 percent or 22 of 51 high impact and core cohort Global Fund countries were able to report all required and relevant sex- and age-disaggregated data.⁹⁵ The dearth of disaggregated data makes it difficult to formulate and implement effective human rights programmes that address the needs of women and girls or to monitor the performance of interventions.



3.

PROGRESS IN IMPLEMENTING THE GLOBAL COMMISSION ON HIV AND THE LAW'S RECOMMENDATIONS FOR WOMEN AND GIRLS

In partnership with the UNAIDS secretariat, co-sponsors and civil society, UNDP works with governments to advance the recommendations of the Global Commission on HIV and the Law to create enabling legal, policy and regulatory environments for women and girls.⁹⁶ Examples of this work are highlighted below.

A. LEGAL ENVIRONMENT ASSESSMENTS AND LEGAL REVIEWS

The Global Commission's report noted that structural changes to legal and policy environments based on evidence and human rights norms can contribute to reductions in HIV transmission.⁹⁷ To foster enabling legal environments that facilitate effective and efficient HIV responses, UNDP, together with governments, the UNAIDS secretariat, co-sponsors and civil society, conducted participatory legal environment assessments for HIV and tuberculosis and legal reviews in 48 countries; in a further 15 country assessments are ongoing.⁹⁸ Follow-up actions from the legal environment assessments and legal reviews resulted in law and policy reforms that have contributed to improvements in the lives of women, reducing vulnerability to HIV infection and promoting utilization of life-saving HIV and health services.

- In Mozambique, a legal review and engagement with parliamentarians led to the removal of a penal code provision that allowed rapists to avoid criminal proceedings if they married their victims. This change to the law increased women's protection against both sexual violence and HIV infection.
- In Malawi, findings from a legal environment assessment fed directly into a National Action Plan and led to the withdrawal of an HIV bill that contained provisions establishing mandatory testing and criminalization of transmission. Instead, a revised bill was drafted to integrate the legal environment assessment findings, including legal prohibitions of harmful cultural practices affecting women. The bill passed into law in 2017.⁹⁹

B. NATIONAL DIALOGUES AND ACTION PLANNING ON HIV AND THE LAW

UNDP and its partners have supported the convening of national dialogues and action planning on HIV and the Law in 37 countries spanning Asia and the Pacific, Eastern Europe, Latin America and sub-Saharan Africa. A national dialogue is a meeting for a range of stakeholders – primarily from government, people living with HIV and civil society – to share insights and experiences on HIV, law and human rights. This creates a policy space in which those who influence, enact and enforce laws, and those whose lives are affected by them, can engage in constructive, frank and pragmatic dialogue. National dialogues have resulted in law, policy and institutional reforms that directly impact the lives of women and girls affected by HIV.

- In the Dominican Republic, a national dialogue resulted in the inclusion of the Equality and Non-Discrimination Act, which protects against discrimination on the basis of sexual orientation and gender identity, as a goal in the National Human Rights Plan (2015-2020) and the Government HIV Plan (2016-2020).
- In Cameroon, a national dialogue and action planning led to the establishment of a National Committee on Gender, HIV and Gender-Based Violence to support implementation of the National Action Plan on HIV and the Law.
- On a regional level, UNDP and partners initiated the Asia Pacific Transgender Network which has created action plans and promoted transgender rights across the region.

C. JUDICIAL DIALOGUES

Since 2012, UNDP and partners have supported judicial dialogues on HIV, human rights and the law in Africa, Asia and the Caribbean. UNDP and partners also facilitated a south-south study tour for the South African Chapter of the International Association of Women Judges to visit Nairobi, Kenya to engage their peers on case law related to women's rights, gender equality and gender-based violence.¹⁰⁰ A judicial dialogue held in Nairobi, Kenya, in 2013 spurred the establishment of the African Regional Judges' Forum on HIV, Human Rights and the Law. The Judges' Forum includes as members senior judicial officers who have been sensitized on the nexus between human rights and HIV/tuberculosis, including the science and lived experiences of key populations, to facilitate human rights-sensitive judgements.¹⁰¹ Members of the Judges' Forum have been advocating a human rights-focused approach in African jurisdictions and sharing the information received from its annual meetings.¹⁰² Following participation by judges from other regions, similarly-modelled Judges' Forums have been established in the Caribbean and Eastern Europe with the support of UNDP.¹⁰³

Judicial dialogues have promoted case law on gender and women's rights that has improved the lives of the women and girls affected by HIV in the countries involved.

D. PARLIAMENTARIAN DIALOGUES AND SENSITIZATION OF MINISTRY OFFICIALS

UNDP and partners have worked with members of parliament in several countries to support legislative processes related to HIV. These engagements have contributed directly to the promotion of gender equality and women's rights through capacity strengthening and sensitization around HIV, human rights and the law.

- In the Democratic Republic of the Congo, an amendment to the Child Protection Act ensures that the age of consent for access to sexual and reproductive health and HIV services is equal or less than the age of consent for sexual relations. Also, the requirement that women obtain spousal permission to work was removed from the Family Code.
- In Malawi, the High Court overturned the convictions of 19 women who had been found guilty for the offence of living on the earnings of sex work, paving the way for more dignified treatment of female sex workers in the country.¹⁰⁴ The High Court of Malawi also set aside the nine-month sentence of an HIV-positive woman for breastfeeding a baby, opening the door for a constitutional challenge to the criminalization of HIV exposure.¹⁰⁵
- In Pakistan, the Supreme Court ruled that the State must ensure rights-based, social inclusion policies are in place for transgender persons in the country.¹⁰⁶

- In Angola, UNDP and partners strengthened the capacity of the Ministry of Women's Affairs to support HIV policy reform, leading to gender mainstreaming in HIV policies in the country.
- UNDP and partners supported the Ministry of Women's Affairs of Cambodia to prepare a National Action Plan on Prevention of Violence Against Women.¹⁰⁷

E. STRENGTHENING CAPACITIES TO ADDRESS VIOLENCE AND PROMOTE HUMAN RIGHTS

UNDP and partners have strengthened the capacities of principal stakeholders in governments and civil society, including law enforcement officials, health workers and national and regional networks of women living with HIV, to promote the rights of people living with HIV, women and girls, and key populations.

- In Afghanistan, UNDP supports six civil society organizations to conduct training and sensitization on gender-based violence and HIV for women working in health care settings.
- In Kenya, UNDP and partners conducted sensitization training for the Kenya Police Service on gender-based violence and supported a comprehensive audit of the legal framework to address violence against women in the context of HIV. The results of the audit were used to create new guidelines to address violence against women in HIV programming.
- In South Sudan, a UNDP-Global Fund partnership supported the training of 379 health workers to strengthen their capacity to respond to violence against women more effectively, including referral of survivors to appropriate services.



F. STRENGTHENING CIVIL SOCIETY PARTICIPATION AND EXPANDING THE CIVIC SPACE

Civil society continues to play a critical role in the global AIDS response. Equipping civil society organizations, including those representing people living with HIV, women and girls, and key populations to provide and access legal services, to advocate for enabling legal environments and to tackle HIV-related stigma and discrimination is vital for effective HIV responses. This work is especially important in the context of the current trend in some countries towards shrinking space for civil society, which can adversely affect HIV prevention and advocacy efforts. UNDP supports a wide range of activities to increase access to justice including for women living with and affected by HIV.

- UNDP and partners have supported the establishment and capacity strengthening of regional women's networks in Central Asia, Eastern Europe and South Asia. These networks have increased women's meaningful participation in the formulation and implementation of national HIV responses across the regions. Such networks include the Sex Workers Advocacy and Rights Network and the Eurasian Women's Network on AIDS.
- In Myanmar, UNDP established an innovative partnership with the Myanmar Positive Women's Network to strengthen the capacity and empowerment of women living with HIV.¹⁰⁸ UNDP is also working to support official registration of this network and other networks of people living with HIV in the country.



G. SUPPORTING THE RATIFICATION AND DOMESTICATION OF REGIONAL INSTRUMENTS ON THE RIGHTS OF WOMEN AND GIRLS

Regional instruments and mechanisms, play an important role in the promotion and protection of human rights. Regional human rights instruments (e.g. treaties, conventions, declarations) help to localize international human rights norms and standards, reflecting the particular human rights concerns of the region.¹⁰⁹ The African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is an example of this. The Maputo Protocol is the first binding human rights treaty in the world to have provisions on the right to a medical abortion, women's rights in the context of HIV and the prohibition of harmful practices, such as child marriage and female genital mutilation.¹¹⁰ Of the 55 African Member States, 42 have ratified the Maputo Protocol.

- UNDP, in a joint project with the African Union, is supporting seven African countries to accelerate ratification and domestication of African Union treaties. These treaties include the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), the African Youth Charter and the African Charter on the Rights and Welfare of the Child – all of which advance the rights of women and girls.¹¹¹
- UNDP and partners, including UNFPA, supported the Southern Africa Development Community Parliamentary Forum to formulate and adopt in 2016 the Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage.



4.

WAY FORWARD

To end the epidemic of AIDS as a public health threat by 2030, governments, civil society, United Nations partners and other stakeholders working on the global HIV response need to redouble efforts on women and girls' empowerment and gender equality. These will necessarily include increased investment in repealing and reforming discriminatory laws and penal provisions where they exist and strengthening and improving enforcement of enabling laws and policies for women and girls. Below are recommendations, including those of the Global Commission on HIV and the Law, for addressing issues impacting women and girls in the context of HIV and the law.¹¹²

A. ELIMINATE ALL FORMS OF SEXUAL AND GENDER-BASED VIOLENCE AGAINST WOMEN AND GIRLS

Governments should ensure that national laws and policies provide comprehensive protection from violence for all women and girls, as well as access to health and protective services.¹¹³ Equally important, laws and policies should effectively address the structural drivers of gender-based violence, including patriarchal social norms, gender inequalities and intergenerational violence.

Governments should accelerate efforts to establish robust legal frameworks and health systems that can prevent and respond to all forms of sexual and gender-based violence, including marital rape, intimate partner violence, domestic and family violence and harmful practices, such as forced and early marriages.

Governments must scale-up efforts to eliminate all forms of violence against women and girls,¹¹⁴ including through increased engagement with the European Union-United Nations Spotlight Initiative that places violence against women and girls at the centre of efforts to achieve gender equality and women's empowerment in line with the 2030 Agenda.¹¹⁵

B. CREATE ENABLING LEGAL AND POLICY ENVIRONMENTS FOR WOMEN AND GIRLS LIVING WITH AND VULNERABLE TO HIV

Governments should galvanize efforts to create enabling legal environments for women and girls living with and vulnerable to HIV, including those who belong to key populations. Enhancing and sustaining efforts in the below described areas are critical to reducing new infections, removing barriers to services for women and girls living with and vulnerable to HIV and accelerating achievement of the SDGs.

i. Scale-up support for women's and girls' rights in the context of plural legal systems

Governments must scale-up support for advancing women's rights in the context of plural legal systems and create strategies that respond to the effects of legal pluralism on women and girls, including transgender women, in the context of HIV.¹¹⁶ This includes: a continued and expanded commitment to

strengthening the capacities of women who live in plural legal contexts to claim their rights; working with strategic partners to conduct strategic litigation to challenge discriminatory laws and harmful practices; improving mediation services; engaging and training traditional leaders and faith-based organizations; and strengthening strategic engagement and cooperation with media.

Governments should ensure that women's equal rights to land, property and inheritance are recognized and protected at national and sub-national levels. Governments must ensure that laws and policies uphold the human rights principles related to the equality of men and women in family life, marriage and its dissolution, as guaranteed under international law.¹¹⁷

ii. Reform punitive laws impacting women and girls

Governments should take measures to reform punitive laws that affect women and girls living with and vulnerable to HIV, including penal laws on sex work, pre-marital sex, consensual same sex conduct, possession of drugs for personal use and 'cross-dressing,' as well as laws and policies that restrict access to sexual and reproductive health services.¹¹⁸ This requires enhanced efforts to sensitize stakeholders, including law enforcement officers, parliamentarians, ministry officials, judges, traditional and religious leaders, and will in some cases necessitate strategic litigation and sustained advocacy at regional, national and sub-national levels.

iii. Protect and expand civic space

Civil society is at the heart of the response to HIV.¹¹⁹ Between 2012 and 2015, 60 countries passed laws restricting the activities of non-governmental organizations, particularly in relation to their funding.¹²⁰ Some states are also imposing restrictions on organizations providing sexual and reproductive health services to women,¹²¹ those working on sexual orientation and gender identity¹²² and sex worker organizations.¹²³

Global stakeholders, and in particular development partners, donors and national governments, need to urgently act to protect and expand the civic space required for advocacy and law reform in the main areas of the Commission's recommendations. This includes providing financial and technical support for women's rights defenders, human rights organizations, civil society, networks of people living with HIV and community groups, particularly in countries where these groups face social, legal and political challenges as a result of shrinking civic space and hostile political environments.

C. PRIORITIZE WOMEN'S AND GIRLS' SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

Governments must prioritize women's and girls' sexual and reproductive health and rights to protect against new HIV infections and empower women living with HIV to take control of their sexual and reproductive health.¹²⁴ Below are two critical areas for which enhanced and sustained efforts are urgently needed.

i. Promote and protect women's and girls' sexual and reproductive health and rights

Sexual and reproductive health and HIV are closely linked. Adolescent girls and young women face barriers to sexual reproductive health services, including comprehensive sexuality education, and are disproportionately affected by HIV.

Donors need to increase funding and support for promotion of sexual and reproductive health, including for family planning commodities and services, comprehensive sexuality education and maternity care. Governments must also increase domestic financing of programmes that promote women's and girls' sexual and reproductive health and rights.

ii. Address the incoherence of age of consent laws

Governments should address the negative effects of legal and policy incoherence on age of consent for sexual intercourse, medical treatment, HIV testing, sexual and reproductive health services, especially for adolescent girls and young women.

It is important that countries set clear age of consent parameters that reflect the evolving capacity, age and maturity of young people and which do not penalize and discriminate based on sex or marital status. Government should reform laws to ensure the age of consent to autonomous HIV and other sexual and reproductive health services is equal to or lower than the age of consent for sexual intercourse.¹²⁵ Governments should enact and enforce laws ensuring the rights of every child to comprehensive sexual health education so that they can protect themselves from HIV or live positively with HIV.¹²⁶



D. STRENGTHEN THE CAPACITY OF NATIONAL INSTITUTIONS AND OTHER STAKEHOLDERS

Governments should strengthen the capacity of national institutions and stakeholders, including law enforcement agencies, parliamentarians, line ministries (justice, gender, health, etc.), the judiciary, national human rights institutions and civil society organizations, to respond effectively to the needs of women and girls impacted by

the HIV epidemic. This includes continued and expanded use of judicial and parliamentary dialogues, engaging law enforcement and ministry officials and the continued design and use of resource tools in partnership with women and girls living with and affected by HIV, community groups and other experts. At the same time, donors, development partners and national governments need to renew and increase their financial support for the global HIV response, with specific commitments to women and girls living with and affected by HIV, to reduce new infections and remove barriers to services, including through human rights programming.

E. SUPPORT THE LEADERSHIP AND MEANINGFUL PARTICIPATION OF WOMEN AND GIRLS IN DECISION-MAKING PROCESSES

The meaningful participation and leadership of women and girls, particularly those most affected by the epidemic, is an essential component of an effective and comprehensive response to HIV.¹²⁷ Sustained investment in women and girls as agents of change and in women's and girls' mobilization, such as support for HIV-positive women's networks, has proven successful in diverse regions and settings and should therefore be prioritized.¹²⁸

Governments should increase support and expand programmes for the legal empowerment of women and girls affected by HIV and to strengthen their capacity to participate in and lead decision-making processes.¹²⁹ This work should include legal education that empowers women and girls in the context of HIV and increases their knowledge and capacity to advocate for themselves at global, national and local levels.¹³⁰ Programmes should also empower women and girls to evaluate, document and communicate the results of their interventions. Activities to include are: legal and treatment literacy education; provision of legal aid services; support for non-discriminatory alternative dispute resolution fora to complement or supplement religious and customary systems; training of paralegals; rights awareness promotion for disadvantaged and marginalized groups; monitoring and evaluation; health communication; and leadership skills training.

F. GENERATE AND UTILIZE ACTIONABLE DATA ON THE IMPACT OF HUMAN RIGHTS PROGRAMMES ON WOMEN AND GIRLS

Applying human rights to women's and girls' health policies, programmes and other interventions not only helps governments comply with their human rights obligations, but also contributes to improving the health of women and girls.¹³¹ Governments and other stakeholders in the HIV response should increase support for the generation and utilization of actionable data demonstrating the effects of HIV-related human rights programming on women and girls, including those who belong to key populations. To this end, epidemiological and other data collected on key populations needs to be disaggregated by gender and sex to better understand the HIV-related risks and vulnerabilities of female key populations. Qualitative and quantitative research can explore the links between advancing gender equality and the rights and empowerment of women in the context of HIV and achieving the SDGs. This kind of actionable data would be useful to support the inclusion of human rights programming for women and girls living with HIV in national strategic plans, national investment cases and Global Fund and other funding requests.



5.

CONCLUSION

Gender equality and the empowerment of women and girls is central to achievement of the 2030 Agenda for Sustainable Development. Like good health, gender equality is an outcome, contributor and indicator of development. Recognizing and addressing the consequences of gender-discriminatory laws, policies and practices for women and girls is essential to achieve many of the targets in the 2030 Agenda and the pledge to leave no one behind. Negative consequences of gender-discriminatory laws, policies and practices are particularly stark in the case of HIV and sexual and reproductive health.

UNDP, working together with other United Nations entities, the Global Fund and other partners, will continue to support countries to address gender equality, the empowerment of women and girls and to implement the recommendations of the Global Commission on HIV and the Law. As a core agency implementing the European Union-United Nations Spotlight Initiative to end violence against women and girls, UNDP will continue to conduct critical research on the effects of gender-based violence, including increased vulnerability to HIV, and will support global policy and country action on gender-based violence.¹³² The Global Action Plan for Healthy Lives and Well-Being, coordinated by WHO and which unites the work of eleven health organizations, is another initiative through which UNDP advances gender equality and health.¹³³ UNDP and UN Women are leading work on the determinants of health accelerators and are committed to ensuring that the global health community places adequate emphasis on removing gender inequities as a way of advancing health and well-being.

The recently launched Global Partnership for Action to Eliminate All Forms of HIV-related Stigma and Discrimination, co-convened by UNDP, UN Women, the UNAIDS Secretariat and the Global Network of People Living with HIV, also provides an opportunity to mobilize global solidarity for concrete, country-level action to end stigma and discrimination, including for women and girls.¹³⁴

Ending the HIV epidemic is possible, but not without addressing the negative impact of laws, policies and practices on women and girls. The time is ripe to redouble efforts and investments to create enabling legal and policy environments and promote the legal empowerment of women and girls, as well as to repeal laws and policies that negatively affect women and girls living with and affected by HIV.

ENDNOTES

- 1 United Nations System Chief Executives Board for Coordination, Equality and non-discrimination at the heart of sustainable development: a Shared United Nations Framework for Action, Report of the High-level Committee on Programmes at its thirty-second session, 9 November 2016. www.unsystem.org/CEBPublicFiles/CEB_2016_6%20_Add.1%20%28inequalities%20framework%29.pdf.
- 2 United Nations, Transforming our world: The 2030 Agenda for Sustainable Development, A/RES/70/1, 2015. <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.
- 3 WHO, Consolidated guideline on sexual and reproductive health and rights of women living with HIV, 2017. www.who.int/reproductivehealth/publications/gender_rights/srhr-women-hiv/en/.
- 4 Global Commission on HIV and the Law, HIV and the Law: Risks, Rights & Health, 2012. www.hivlawcommission.org/index.php/report.
- 5 WHO, Global health estimates 2016: deaths by cause, age, sex, by country and by region, 2000–2016, 2018. www.who.int/healthinfo/global_burden_disease/estimates/en/index1.html.
- 6 UNAIDS, Women and HIV: A spotlight on adolescent girls and young women, 2019. www.unaids.org/en/resources/documents/2019/women-and-hiv
- 7 WHO, Global health estimates 2015, 2016. www.who.int/healthinfo/global_burden_disease/en/.
- 8 UNAIDS, Communities at the Centre, 2019. www.unaids.org/sites/default/files/media_asset/2019-global-AIDS-update_en.pdf.
- 9 UNAIDS Topics, “Key Populations.” www.unaids.org/en/topic/key-populations.
- 10 United Nations, Women, the Girl Child and HIV and AIDS: Report of the Secretary-General, E/CN.6/2020/6. <https://undocs.org/E/CN.6/2020/6>.
- 11 Ibid.
- 12 UNAIDS, *Miles to go: Closing gaps, breaking barriers, righting injustices*, 2018. www.unaids.org/sites/default/files/media_asset/miles-to-go_en.pdf.
- 13 UNAIDS, *The Gap Report*, 2014. www.unaids.org/sites/default/files/media_asset/UNAIDS_Gap_report_en.pdf.
- 14 UNGA, *Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030*, 2016. www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_en.pdf.
- 15 UNDP, *What does it mean to leave no one behind?*, A UNDP discussion paper and framework for implementation, July 2018. www.undp.org/content/undp/en/home/librarypage/poverty-reduction/what-does-it-mean-to-leave-no-one-behind.html.
- 16 Supported by scholarly research, the Commission engaged in a broad and rigorous process of research, analysis and deliberation. The Commission convened seven regional dialogues that featured the active participation of people living with HIV, key populations, women and representatives of civil society, international organizations, the private sector and governments, including members of the judiciary, legislature and representatives of the executive. More information on the methodology used by the Commission is available at: <https://hivlawcommission.org/dialogues/>.
- 17 Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, 2012. www.hivlawcommission.org/index.php/report.
- 18 Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health, Supplement*, 2018. www.hivlawcommission.org/supplement.
- 19 Ibid.
- 20 United Nations, *Women, the Girl Child and HIV and AIDS: Report of the Secretary-General, E/CN.6/2020/6*. <https://undocs.org/E/CN.6/2020/6>.
- 21 UNAIDS, *The Gap Report*, 2014. www.unaids.org/sites/default/files/media_asset/UNAIDS_Gap_report_en.pdf. See also Jewkes, R., et al., *The relationship between intimate partner violence, rape and HIV amongst South African men: a cross-sectional study*, 2011. www.ncbi.nlm.nih.gov/pmc/articles/PMC3173408/.
- 22 UNAIDS, *Transactional sex and HIV risk: From analysis to action*, 2018. www.unaids.org/sites/default/files/media_asset/transactional-sex-and-hiv-risk_en.pdf. See also Abramsky, T. et al., *What factors are associated with recent intimate partner violence? findings from the WHO multi-country study on women's health and domestic violence*, 2011. www.ncbi.nlm.nih.gov/pmc/articles/PMC3049145/.
- 23 Orza, L., *Violence. Enough already: findings from a global participatory survey among women living with HIV*, 2015. www.ncbi.nlm.nih.gov/pubmed/26643458.
- 24 WHO, et al., *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*, 2013. www.who.int/reproductivehealth/publications/violence/9789241564625/en/.
- 25 Roberts, S., et al., *Intimate partner violence and adherence to HIV preexposure prophylaxis (PrEP) in African women in HIV serodiscordant relationships: a prospective cohort study*, 2016. www.ncbi.nlm.nih.gov/pubmed/27243900; Chacko, L., et al., *Adherence to HIV post-exposure prophylaxis in victims of sexual assault: a systematic review and meta-analysis*, 2012. www.ncbi.nlm.nih.gov/pubmed/22332148.
- 26 UNAIDS, *The Gap Report*, 2014. www.unaids.org/sites/default/files/media_asset/UNAIDS_Gap_report_en.pdf.
- 27 Orza, L., *Violence. Enough already: findings from a global participatory survey among women living with HIV*, 2015. www.ncbi.nlm.nih.gov/pmc/articles/PMC4672459/.
- 28 UNAIDS, *Women and girls and HIV*, 2018. www.unaids.org/sites/default/files/media_asset/women_girls_hiv_en.pdf.
- 29 Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, 2012. www.hivlawcommission.org/index.php/report. The legal definition of sex crimes often condones certain acts of sexual violence that women face, for instance marriage may be an exemption or defence to the crimes of rape or sexual assault. Some countries still have laws regarding rape that exonerates a man or boy from prosecution for rape, sexual assault, statutory rape, abduction or similar acts if the offender marries his female victim. A “marry-your-rapist” law is a legal way for such a rapist to avoid punishment and prosecution.
- 30 UN Women, *Violence against women*, 2018. <https://interactive.unwomen.org/multimedia/infographic/violenceagainstwomen/en/index.html#intimate-2>.
- 31 The World Bank, Data Topics, SDG Atlas 2017, “Gender Equality.” <http://datatopics.worldbank.org/sdgatlas/archive/2017/SDG-05-gender-equality.html>.
- 32 UNDP, et al., *Informal justice systems: Charting a course for human rights-based engagements*, 2012. www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Informal-Justice-Systems-Charting-a-Course-for-Human-Rights-Based-Engagement.pdf.
- 33 Wojkowska, E., *Doing Justice: How informal justice systems can contribute*, 2006. www.eldis.org/vfile/upload/1/document/1201/UNDP%20DoingJusticeEwaWojkowska130307.pdf.
- 34 Ubink, J., and McInerney, T., [eds], *Customary Justice: Perspective on Legal Empowerment*, 2011. <https://openaccess.leidenuniv.nl/handle/1887/17854>.
- 35 Farran, S., *Is pluralism an obstacle to human rights? Considerations from the South Pacific*, 2006. <https://commission-on-legal-pluralism.com/volumes/52/farran-art.pdf>.
- 36 Ndulo, M., *African Customary Law, Customs, and Women's Rights*, 2011. <https://scholarship.law.cornell.edu/facpub/187/>; Asia Indigenous Peoples Pact, *Violence, Customary Law and Indigenous Women's Rights in Asia*, 2012. https://aippnet.org/pdf/IW+VAW%20briefing%20paper_final.pdf.
- 37 Kim, J., et al., *Exploring the role of economic empowerment in HIV prevention*, 2008. <https://pdfs.semanticscholar.org/584f/d312515d3c05770d39057b9430115af6a7cb.pdf>.
- 38 Organisation for Economic Co-operation and Development. *Gender, institutions and development database*, 2014. <https://stats.oecd.org/index.aspx?datasetcode=GIDDB2014>.
- 39 World Bank, *Women, business and the law*, 2018. <http://documents.worldbank.org/curated/en/926401524803880673/Women-Business-and-the-Law-2018>.
- 40 UN Women and Office of the High Commissioner for Human Rights, *Realizing women's right to land and other productive resources*, 2013. www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand.pdf.
- 41 Open Society Foundations, *Securing women's land and property rights: a critical step to address HIV, violence, and food security*, 2014. <http://globalinitiative-escr.org/wp-content/uploads/2014/03/Securing-Womens-Land-Property-Rights-20140307.pdf>.
- 42 Gomez, M., and Tran, D., *Women's land and property rights and the post-2015 development agenda*, 2012. <http://globalinitiative-escr.org/wp-content/uploads/2012/10/28102012-FINAL-Inequalities-Paper-on-Womens-Land-and-Property-Rights-GI.pdf>.
- 43 Ibid.
- 44 UNDP, *Voices and Visions: The Asia Pacific Court of Women on HIV, Inheritance and Property Rights*, 2008. www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/voices-and-visions---the-asia-pacific-court-of-women-on-hiv--inh.html.
- 45 Widow inheritance, also known as bride inheritance, is a type of customary marriage in which a widow marries a male relative of her late husband, often his brother. This practice is justified as serving in relative proportions as social protection for and control over, the widow, her children and the assets of the late relative.
- 46 Positive Women's Network, *Factsheet: Criminalization as violence against women living with HIV*, 2016. <https://pwnusa.files.wordpress.com/2016/10/doi-2016-factsheet-criminalization-v2.pdf>.
- 47 HIV Justice Network, *Advancing HIV Justice 3: Growing the Global Movement Against HIV Criminalisation*, 2019. <http://www.hivjustice.net/wp-content/uploads/2019/05/AHJ3-Full-Report-English-Final.pdf>.
- 48 McCall, B., “Scientific evidence against HIV criminalisation [World Report],” *The Lancet*, 18 August 2018. www.thelancet.com/action/showPdf?pii=S0140-6736%2818%2931732-X.
- 49 The World Health Organization recommends that provider-initiated testing and counselling should be considered a routine component of the package of care for pregnant women in high prevalence settings. WHO, *Consolidated guidelines on the use of antiretroviral drugs for treating and preventing HIV infection*, 2013. www.who.int/hiv/pub/guidelines/ arv2013/download/en/index.html.
- 50 UNAIDS, *Miles to go: Closing gaps, breaking barriers, righting injustices*, 2018. www.unaids.org/sites/default/files/media_asset/miles-to-go_en.pdf.
- 51 In Malawi, a woman living with HIV was convicted under a general penal provision for an “unlawful, negligent or reckless act that is likely to spread a disease dangerous to life.” Her offense was breastfeeding a baby while living with HIV. She was convicted even though she was on anti-retroviral therapy and the child did not contract HIV. Her conviction was later overturned on appeal in *EL v. Republic [2016] MWHC 656*. www.aidslaw.ca/site/wp-content/uploads/2017/02/EL-judgment.pdf.
- 52 Patterson, S., et al., “The impact of criminalization of HIV non-disclosure on the healthcare engagement of women living with HIV in Canada: a comprehensive review of the evidence,” *Journal of the International AIDS Society*, 2015. www.jiasociety.org/index.php/jias/article/view/20572.
- 53 Athena Network, *10 reasons why criminalisation of HIV exposure or transmission harms women, 2009*. www.athenanetwork.org/assets/files/10%20Reasons%20Why%20Criminalization%20Harms%20Women/10%20Reasons%20Why%20Criminalisation%20Harms%20Women.pdf.
- 54 UNAIDS, *Miles to go: Closing gaps, breaking barriers, righting injustices*, 2018. www.unaids.org/sites/default/files/media_asset/miles-to-go_en.pdf.
- 55 ProCon.Org, *100 countries and their prostitution pledge*, 2018. <https://prostitution.procon.org/view.resource.php?resourceID=000772>.
- 56 Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, 2012. www.hivlawcommission.org/index.php/report.
- 57 Global Network of Sex Work Projects, *Briefing Paper #3: Sex work is not trafficking*. www.nswp.org/sites/nswp.org/files/SW%20is%20Not%20Trafficking.pdf. The United Nations Convention on Transnational Organized Crime's Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, defines human trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

58 WHO, et al., *Implementing comprehensive HIV/STI programmes for sex workers: Practical approaches from collaborative interventions*, 2013. www.who.int/hiv/pub/sti/sex_worker_implementation/en/.

59 Ibid.

60 UNAIDS, "UNFPA, WHO and UNAIDS: Position statement on condoms and the prevention of HIV, other sexually transmitted infections and unintended pregnancy," 7 July 2015. www.unaids.org/en/resources/presscentre/featurestories/2015/july/20150702_condoms_prevention.

61 Amnesty International. *The human cost of 'crushing' the market: Criminalization of sex work in Norway*, 2016. www.amnestyusa.org/files/norway_report_-_sex_workers_rights_-_embargoed_-_final.pdf.

62 Global Network of Sex Work Projects, *Challenging the Introduction of the Nordic Model: The smart sex workers' guide*, 2018. www.nswp.org/sites/nswp.org/files/sg_to_challenging_nordic_model_prf03.pdf.

63 Medecins du Monde, et al., *What Do Sex Workers Think About the French Prostitution Act, A Study on the Impact of the Law from 13 April 2016 Against the 'Prostitution System' in France*, April 2018 [French version]. www.nswp.org/sites/nswp.org/files/web_en_rapport-prostitution-finale.pdf.

64 Lyon, C. E., et al., *The Role of Sex Work Laws and Stigmas in Increasing HIV Risks Among Female Sex Workers*, 2020. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7028952/>.

65 International Lesbian, Gay, Bisexual, Trans and Intersex Association, *State sponsored homophobia report*, 2017. https://ilga.org/downloads/2017/ILGA_WorldMap_ENGLISH_Criminalisation_2017.pdf.

66 African Men for Sexual Health and Rights, Coalition of African Lesbians. *Violence based on real or perceived sexual orientation and gender identity in Africa*, 2013. www.amsher.org/publications/violence-based-perceived-real-sexual-orientation/violencereport/.

67 Human Dignity Trust, *Breaking the Silence: Criminalisation of Lesbians and Bisexual Women and its Impacts*, 2016. www.humandignitytrust.org/uploaded/Library/Other_Material/Breaking_the_Silence-Criminalisation_of_LB_Women_and_its_Impacts-FINAL.pdf.

68 WHO, et al., *Implementing comprehensive HIV and STI programmes with transgender people: Practical guide for collaborative interventions*, 2015. www.unaids.org/sites/default/files/media_asset/UNDP-et-al_2016_transgender_practical_guidance_collaborative_interventions_en.pdf. See also www.who.int/hiv/topics/transgender/about/en/ and www.avert.org/professionals/hiv-social-issues/key-affected-populations/transgender.

69 Cortés, R., "An arresting gaze: How one New York law turns women into suspects," *Vanity Fair*, 3 August 2017. www.vanityfair.com/culture/2017/08/nypd-prostitution-laws.

70 Positive Women's Network, *Factsheet: Criminalization as violence against women living with HIV*, 2016. <https://pwnusa.files.wordpress.com/2016/10/doi-2016-factsheet-criminalization-v2.pdf>.

71 Winter, S., *Lost in transition: transgender people, rights and HIV vulnerability in the Asia-Pacific Region*, 2012. www.undp.org/content/dam/undp/library/hiv/aids/UNDP_HIV_Transgender_report_Lost_in_Transition_May_2012.pdf.

72 Drug Policy Alliance, "The Drug War: Fuelling the HIV/AIDS Pandemic," fact sheet, February 2014. www.drugpolicy.org/sites/default/files/DPA_Fact_Sheet_Drug_War_and_AIDS_Feb2014.pdf.

73 United Nations General Assembly, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Rashida Manjoo: Pathways to, Conditions and Consequences of Incarceration for Women*, 2013. <http://undocs.org/A/68/340>.

74 Dolan, K., et al., "Global burden of HIV, viral hepatitis, and tuberculosis in prisoners and detainees," *The Lancet*, 14 July 2016. [www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)30466-4/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)30466-4/fulltext).

75 Coutts, S., and Greenberg, Z., "No Hope for Me': Women Stripped of Parental Rights After Minor Crimes," *Rewire.News*, 2 April 2015. <https://rewire.news/article/2015/04/02/hope-women-stripped-parental-rights-minor-crimes/>.

76 Amnesty International, *Criminalizing pregnancy: Policing pregnant women who use drugs in the USA*, 2017. www.amnesty.org/download/Documents/AMR5162032017ENGLISH.pdf.

77 United Nations High Commissioner for Human Rights, *Study on the impact of the world drug problem on the enjoyment of human rights*, 2015. www.ohchr.org/en/hrbodies/hrc/regularsessions/session30/documents/a_hrc_30_65_e.docx.

78 WHO, et al., *Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention*, 2004. www.who.int/substance_abuse/publications/en/PositionPaper_flyer_English.pdf.

79 UNESCO, et al., *International technical guidance on sexuality education: An evidence-informed approach*, 2018. www.unaids.org/sites/default/files/media_asset/ITGSE_en.pdf.

80 WHO, *Global health estimates 2015: deaths by cause, age, sex, by country and by region, 2000-2015*, 2016. www.who.int/healthinfo/global_burden_disease/estimates/en/.

81 Sam-Agudu N., et al., *Seeking wider access to HIV testing for adolescents in sub-Saharan Africa*, 2016. www.ncbi.nlm.nih.gov/pubmed/26882367. WHO, *HIV and adolescents: guidance for HIV testing and counselling and care for adolescents living with HIV: recommendations for a public health approach and considerations for policy-makers and managers*, 2013. www.who.int/hiv/pub/guidelines/adolescents/en/.

82 Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health, Supplement*, 2018. www.hivlawcommission.org/supplement.

83 UNAIDS, *Communities at the Centre*, 2019. www.unaids.org/sites/default/files/media_asset/2019-global-AIDS-update_en.pdf.

84 Some countries, such as Brazil, India, Swaziland and Tanzania, have lower age of consent laws and policies on access to contraceptives despite a higher age of consent to sexual intercourse, creating potential uncertainty in the healthcare sector about the lawfulness of providing contraceptives to young people below the age of consent to sexual intercourse. In Morocco, the age of consent to access sexual and reproductive health services exists alongside the prohibition on sex outside of wedlock, creating difficulties for young people who are lawfully old enough to access services but are unmarried. (SRHR Africa Trust, *Age of consent: Global legal review*, 2018, www.trust.org/contentAsset/raw-data/b4e4a24b-f66d-4170-aa46-6713e038e139/file).

85 UNESCO, *International technical guidance on sexuality education: An evidence-informed approach*, 2017. <http://unesdoc.unesco.org/images/0026/002608/260840E.pdf>.

86 Girls Not Brides. www.girlsnotbrides.org/about-child-marriage/.

87 UNAIDS, *Breaking down the barriers on International Youth Day – young people need better access to HIV services*, 2016. www.unaids.org/en/resources/presscentre/featurestories/2016/august/20160812_international-youth-day.

88 International Women's Health Coalition, *Unconscionable: When Providers Deny Abortion Care*, 2018. https://iwhc.org/wp-content/uploads/2018/06/IWHC_CO_Report-Web_single_pg.pdf.

89 Zampas, C., and Andión-Ibañez, X., *Conscientious Objection to Sexual and Reproductive Health Services: International Human Rights Standards and European Law and Practice*, 2012. www.ncbi.nlm.nih.gov/pubmed/22916532. See also the June 2018 U.S. Supreme Court ruling allowing a commercial baker to refuse service to a gay married couple on the grounds of his expression of religious beliefs; may set the precedent for more legally upheld 'conscientious objection'; *Masterpiece Cakeshop, Ltd. v Colorado Civil Rights Commission*, 584 U.S. www.supremecourt.gov/opinions/17pdf/16-111_j4el.pdf.

90 UNAIDS, *Practical guidelines for intensifying HIV prevention: Towards universal access*, 2008. http://data.unaids.org/pub/Manual/2007/20070306_Prevention_Guidelines_Towards_Universal_Access_en.pdf.

91 U.S. Department of Health and Human Services, *HIV Prevention Toolkit: A Gender-Responsive Approach*, 2016. www.jsi.com/resource/hiv-prevention-toolkit-a-gender-responsive-approach/.

92 Global Fund, *Investing in the future: Women and girls in all their diversity*, 2019. www.theglobalfund.org/media/8484/crg_investinginthefuturewomensgirls_report_en.pdf.

93 UNAIDS, *Women and HIV: A spotlight on adolescent girls and young women*, 2019. www.unaids.org/files/media_asset/2019_women-and-hiv_en.

94 The Global Fund, *Community, rights and gender report*, 2015. www.theglobalfund.org/media/4165/bm33_09-updateoncommunityrightsandgendermatters_report_en.pdf?u=63691701644000000.

95 The Global Fund, *Community, rights and gender report*, 2018. www.theglobalfund.org/media/8528/bm41_10-crg_report_en.pdf.

96 UNDP work in this regard has included a range of stakeholders: national governments (legislatures, ministries of health and justice, national human rights bodies and other institutions); civil society organizations; networks of people living with HIV; community groups; regional bodies (African Union Commission, East African Community, Southern African Development Community and its Parliamentary Forum, League of Arab States, Arab Parliament and United Nations Economic and Social Commission for Asia and the Pacific); donors (Global Fund and national governments, such as Norway, Sweden and the United States); UNAIDS Secretariat and other United Nations entities.

97 Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health, Supplement*, 2018. www.hivlawcommission.org/supplement.

98 A legal environment assessment is a review or mapping of the legal, regulatory and policy framework in a country and an analysis of the extent to which this framework supports or hinders national and local responses to HIV. A legal environment assessment enables stakeholders in a country to build a comprehensive picture of the strengths and areas for improvement in its legal and regulatory environment, which includes analysis of laws, policies and legal practices. Different from legal environment assessments, legal reviews provide an analysis of a laws, policies and practices pertaining to a specific matter (for example, criminalization of HIV transmission, exposure or non-disclosure), behaviour (laws that criminalize same sex relations or sex work) or population (such as a law pertaining to prisoners or transgender people).

99 "Activists celebrate Malawi's adoption of amended law that removes criminalising transmission of HIV," *Nyasa Times*, 29 November 2017. www.nyasatimes.com/activists-celebrate-malawis-adoption-amended-law-removes-criminalising-transmission-hiv/.

100 International Association of Women Judges, South African Chapter, "Newsletter," August 2016. www.justice.gov.za/saiawj/docs/newsletter-2016-Aug.pdf.

101 UNDP, "Innovative judges forum." <https://undp-healthsystems.org/en/legal-and-policy/case-studies/innovative-judges-forum>.

102 UNDP Africa, "Working with African judges to protect rights of people living with HIV," 10 October 2016. www.africa.undp.org/content/rba/en/home/presscenter/articles/2016/10/10/working-with-african-judges-to-protect-rights-of-people-living-with-hiv.html.

103 UNDP, "Judges, national human rights institutions and communities meet to ensure human rights protection of those with HIV and TB," 3 October 2019 (www.eurasia.undp.org/content/rbec/en/home/presscenter/pressreleases/2019/judges-meet-to-ensure-protection-for-hiv-and-tb.html); Global Commission on HIV and the Law, "Caribbean Judges discuss latest international and regional guidance on HIV, human rights and the law" (<https://hivlawcommission.org/2019/11/06/caribbean-judges-discuss-latest-international-and-regional-guidance-on-hiv-human-rights-and-the-law/>).

104 *The Republic v Pempho Banda and 18 Others*, 2016. www.kelinkeny.org/wp-content/uploads/2016/09/Rep-v-Pempho-Banda-et-al.pdf.

105 *E.L (Female) Appellant v The Republic*, 2016. www.aidslaw.ca/site/wp-content/uploads/2017/02/EL-judgment.pdf.

106 www.supremecourt.gov.pk/web/user_files/File/Transgender_Persons_Welfare_Policy.pdf.

107 Royal Government of Cambodia, *National Action Plan to Prevent Violence Against Women, 2014-2018*. <https://cambodia.unfpa.org/sites/default/files/pub-pdf/NAPVAW2014-2018%28Eng%29.pdf>.

108 UNDP, *Independent assessment mission on Human Development Initiative in Myanmar*, 2013. <https://erc.undp.org/evaluation/documents/download/6156>.

109 Office of the High Commissioner for Human Rights, Regional Office for South-East Asia, "An Overview of Regional Human Rights Systems." <https://bangkok.ohchr.org/programme/regional-systems.aspx>.

110 African Union, "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa." <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>.

111 UNDP Africa, "AU and UNDP Support Sao Tome & Principe to ratify and deposit AU Treaties," 27 June 2019. www.africa.undp.org/content/rba/en/home/presscenter/pressreleases/2019/au-and-undp-support-sao-tome-principe-to-ratify-and-deposit-a.html.

112 Given the differing treaty obligations of UN Member States and the need to distinguish between hard and soft law sources, not all the recommendations have equal strength. The recommendations present Member States' obligations and suggest human rights-compliant measures based on authoritative sources within binding international law. The word 'should' is used throughout the paper to reflect the

authoritative sources underpinning the recommendations, but without making claims as to binding international law. In some cases, however, there is a clear legal standard that warrants the stronger formulation of ‘must’.

- 113 UN Committee on the Elimination of Discrimination against Women, *CEDAW General Comment No. 35 on gender-based violence against women, updating general recommendation No. 19*, 2017. www.tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf.
- 114 Ibid.
- 115 European Union and United Nations, *The Spotlight Initiative to Eliminate Violence against Women and Girls*. www.un.org/en/spotlight-initiative/index.shtml.
- 116 Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, 2012. hivlawcommission.org/report/.
- 117 United Nations General Assembly, *International Covenant on Civil and Political Rights*, 1966 (<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>); United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979 (www.un.org/womenwatch/daw/cedaw/cedaw.htm). Regional human rights instruments such as the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa specifically protects the right of married women to equal access to housing and acceptable living conditions and guarantees to widows, “an equitable share in the inheritance of the property of her husband” and the right to continue to live in the matrimonial home (African Commission on Human and People’s Rights, *Protocol to the African Charter on Human Rights and People’s Rights on the Rights of Women in Africa*, 2003, <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>).
- 118 Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, 2012. hivlawcommission.org/report/.
- 119 Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health, Supplement*, 2018. www.hivlawcommission.org/supplement.
- 120 Rutzen, D., *Authoritarianism Goes Global (II): Civil Society under Assault*, 2015. www.journalofdemocracy.org/sites/default/files/Applebaum-26-4.pdf.
- 121 An example is the reinstatement and expansion of the Mexico City Policy, Kaiser Family Foundation, *Mexico City Policy: An Explainer*, 2018. www.kff.org/global-health-policy/fact-sheet/mexico-city-policy-explainer/.
- 122 Discriminatory ‘morality’ and ‘promotion of homosexuality’ laws are being promulgated. (Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health, Supplement*, 2018.)
- 123 Global Network of Sex Work Projects, *Briefing Note: U.S.A. FOSTA Legislation*, 2018. www.nswp.org/sites/nswp.org/files/fosta_briefing_note_2018.pdf.
- 124 Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, 2012. hivlawcommission.org/report/.
- 125 UN Committee on the Rights of the Child, *General Comment No. 15 on the Right of the Child to the Highest Attainable Standard of Health (art.24)*, 2013. www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-15_en.doc. UN Committee on the Rights of the Child, *General Comment No. 20 on the Rights of the Child during Adolescence*, 2016. www.digitallibrary.un.org/record/855544?ln=en.
- 126 UN Committee on Economic Social and Cultural Rights, *General Comment No. 22 on the Rights to Sexual and Reproductive Health (art.12)*, 2016. www.digitallibrary.un.org/record/832961?ln=en.
- 127 UN Women and Athena Network, *Transforming the National AIDS Response: Advancing Women’s Leadership and Participation*, 2011. www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2010/1/transforming-national-aids-response-advancing-womens-leadership-participation-en.pdf?la=en&vs=3031.
- 128 Ibid.
- 129 UNAIDS and Stop AIDS Alliance, *Communities Deliver: The Critical Role of Communities in Reaching Global Targets to End the AIDS Epidemic*, 2015. www.unaids.org/sites/default/files/media_asset/UNAIDS_JC2725_CommunitiesDeliver_en.pdf.
- 130 Chu, S., et al., *Strengthening the Enabling Environment - Advancing Human Rights and Access to Justice for Women and Girls*, 2014. www.whatworksforwomen.org/chapters/21-Strengthening-the-Enabling-Environment/sections/61-Advancing-Human-Rights-and-Access-to-Justice-for-Women-and-Girls.
- 131 Bustreo, F., et al., *Women’s and Children’s Health: Evidence of Impact of Human Rights*, 2013. http://apps.who.int/iris/bitstream/handle/10665/84203/9789241505420_eng.pdf?sequence=1.
- 132 Spotlight Initiative. www.spotlightinitiative.org/European-Union-and-United-Nations-launch-Spotlight.html.
- 133 WHO, et al., *Towards a Global Action Plan for Healthy Lives and Well-Being For All, Uniting to Accelerate progress towards the health-related SDGs*. www.who.int/sdg/global-action-plan/Global_Action_Plan_Phase_I.pdf.
- 134 Global Partnership for Action to Eliminate All Forms of HIV-Related Stigma and Discrimination. www.unaids.org/sites/default/files/media_asset/global-partnership-hiv-stigma-discrimination_en.pdf.



*Empowered lives.
Resilient nations.*

United Nations Development Programme
One United Nations Plaza
New York, NY 10017 USA
For more information: www.undp.org