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UNDP's Submission to the Consultation on Promoting Human Rights in the HIV Response

The 2030 Agenda, the Sustainable Development Goals [SDGs] and the pledge to leave no one behind are global commitments of unparalleled ambition. A right-based approach is critical to achieving the SDG targets particularly SDG Target 3.3 on ending the epidemic of HIV. UNDP's new Strategic Plan for 2018 – 2021¹ and the UNDP HIV, Health and Development Group's Strategy 2016 – 2021² both affirm UNDP's commitment to the principles of universality, equality and leaving no one behind, while responding to a dynamic development landscape. Health - an outcome, contributor and indicator of development – continues to be an important aspect of UNDP's work, focusing on three interlinked action 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 is a founding co-sponsor of the United Nations Joint Programme on HIV/AIDS [UNAIDS]. Within the UNAIDS division of labour, UNDP convenes the work on human rights, stigma and discrimination, which includes legal and policy reform, access to justice, and the elimination of discrimination in healthcare settings. Together with UNFPA, UNDP co-convenes the work on HIV prevention among key populations, particularly men who have sex with men, sex workers, transgender people and migrants. UNDP, on behalf of the Joint Programme convened the Global Commission on HIV and the Law, an independent body of fourteen distinguished individuals with expertise on human rights, HIV, public health, law and development. Through the findings and recommendations of its flagship publication, *Risks, Rights and Health* in 2012 and its 2018 Supplement, the Global Commission on HIV and the Law remains unequivocal in its key message: *a legal environment that respects, protects and fulfils human rights, and promotes overall health and well-being, is an efficient and effective means of reducing the risks and the toll of HIV and other communicable diseases on people, communities and resources*. While laws alone are insufficient to achieve these objectives, punitive laws constitute serious impediments to health outcomes while laws grounded in human rights and based on the latest available scientific evidence contribute to good health and well-being.³

¹ Available at <http://strategicplan.undp.org/>.

² *Connecting the dots: Strategy Note, 2016 – 2018*. Available at <https://www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv--health-and-development-strategy-2016-2021.html>

³ Global Commission on HIV and the Law, *Rights, Risks and Health*, 2012, available at <http://www.hivlawcommission.org/index.php/report>.



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UNAIDS estimates that in 2017, 36.7 million people were living with HIV globally; 47 percent of the approximately 1.8 million new HIV infections were among key populations - gay men and other men who have sex with men, sex workers, transgender people, people who inject drugs, and prisoners - and their sexual partners. Yet the legal and human rights situation of people living with HIV and key populations remain dire in many countries. Out of 110 countries reporting to UNAIDS in 2017 -

- 51 countries have laws criminalizing nondisclosure, exposure and transmission of HIV and a further twenty-five countries reported that while they did not have such specific laws on their statute books, prosecutions do occur based on other criminal laws;
- 44 countries have laws that specifically criminalize consensual same-sex sexual activity;
- 84 countries report that they criminalize some aspect of sex work;
- 78 countries reported that drug use or possession of drugs for personal use is a criminal offence or grounds for compulsory detention;
- 17 countries reported that they criminalize or prosecute transgender people; and
- 4 countries reported that they continue to criminalize vertical transmission of HIV, where women can be prosecuted for transmitting HIV to their foetus.⁴

25 percent of people living with HIV experienced some form of discrimination in healthcare. 33 percent of women living with HIV report experiencing at least one form of discrimination related to their sexual and reproductive health in healthcare settings. People living with HIV who perceive high levels of HIV-related stigma are 2.4 times more likely to delay enrolment in healthcare services until they are very ill. Fear of HIV-related stigma owing to a potential HIV-positive status disclosure is a deterrent to HIV testing among gay men and other men who have sex with men and transgender women. HIV-related stigma and discrimination have major consequences for the achievement of the SDG targets of ending the epidemic of HIV by 2030.

Since the publication of the report of the Global Commission on HIV and the Law in 2012, UNDP and its partners, including civil society organizations, UNAIDS co-sponsors and the Secretariat have supported 89 countries to implement activities which address stigma and discrimination, remove barriers to access services and promote the rights of people living with HIV and key populations. Several of these have been implemented through regional and multi-county programmes, and the results include –

- National legal environment assessments and legal reviews with action planning in 44 countries which have led to rights-based national HIV strategic plans, programmes that promote gender

⁴ UNAIDS, *Miles to go: Closing gaps, breaking barriers, righting injustices*, 2018, available at http://www.unaids.org/sites/default/files/media_asset/miles-to-go_en.pdf.



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equality and the rights of women and girls and address gender-based violence, inclusion of critical HIV prevention commodities for key populations in national essential medicines lists, among others;

- Successful strategic litigation in domestic courts, including – a Supreme Court directive for rights-based, social inclusion policies for transgender persons in Pakistan; a labour Court decision in Nigeria against the practice of uninformed HIV testing of employees and termination of employment on grounds of HIV status; a ruling by the High Court of Malawi confirming that sex work is not a crime in the country and affirming the rights of sex workers to freedom from exploitation; a judgement against the practice of detaining people with TB in prison for failure to adhere to medication and order of court for a rights-based policy for managing TB in Kenya; legal gender recognition in Botswana and an order to issue identity documents to a transgender man, among others;
- Strengthened capacity of organizations and networks of people living with HIV and key populations to improve rights awareness within their communities and strengthen advocacy with government stakeholders. This includes – a regional legal aid network providing quality legal assistance to people living with and most affected by HIV which serves as an umbrella organization to 36 NGOs active in 10 EECA countries [Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, the Russian Federation and Ukraine], and regional network with membership in 18 African countries which advances issues of sexual orientation, gender identity and rights using the State reporting mechanism of the Africa Commission on Human and Peoples' Rights;
- Strengthened capacities through dialogues with judicial officers resulting in the establishment of a regional Judges Forum on HIV, TB, Rights and the Law, some of whose members have delivered key decisions that have advanced the rights of people living with HIV and key populations. For example, in Malawi, the conviction of a woman living with HIV who was on anti-retroviral treatment [ART] for breastfeeding a baby and thus exposing the child to the risk of acquiring HIV was overturned on appeal. The judge relied on the best available evidence including key resources on rights-based HIV responses to determine that because the woman was on ART there was an infinitesimal chance of her transmitting HIV to the child.⁵

⁵ *El [female] v Republic*, 2016, available at www.aidslaw.ca/site/wp-content/uploads/2017/02/EL-judgment.pdf



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Much of the progress in promoting human rights in the HIV response has happened and continues to happen at the country level. However, regional and multi-country work has the potential to contribute to rights-based HIV responses in many ways such as:

- Improving country level policy and increasing space for effective programming, through the development of progressive policy and evidence-based technical guidelines in regional institutions like the African Union [AU], Southern Africa Development Communities [SADC], Caribbean Community [CARICOM] and Association of South East Asian Nations [ASEAN];
- Leveraging and increasing the impact of country-specific investments by building and providing regional technical support platforms;
- Strengthening in-country delivery by identifying and sharing lessons among government, private sector and civil society actors involved with key populations;
- Promoting and increasing accountability of country actors by monitoring, analysing and reporting on relevant policies and programmes;
- Influencing social and political norms through multi-country social media and traditional media interventions; and
- Increasing the evidence base about the impact of HIV on key populations and the most effective prevention, treatment care and support approaches in response.

UNDP therefore welcomes the consultation on promoting human rights in the HIV multisectoral response: regional and sub-regional strategies and best practices and looks forward to opportunities to continue supporting Member States, key stakeholders and the work of the Human Rights Council to promote human rights and address stigma and discrimination in the HIV response.



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Annexure A – Case studies from UNDP regional and multi-country programmes

Case study I – *Being LGBTI in Asia Programme*

Through the *Being LGBTI in Asia Programme*, UNDP is strengthening the capacity of stakeholders to understand issues relating to sexual orientation, gender identity and expression [SOGIE], advance LGBTI inclusion in national development efforts and ensure right-based HIV responses for key populations, particularly men who have sex with men and transgender persons. 47% of new HIV infections in 2017 were among key populations and their sexual partners. UNDP is contributing to promoting LGBTI persons' access to HIV and health services.

By 2018, the *Being LGBTI in Asia Programme* had engaged with 226 government departments, 617 civil society groups, 20 National Human Rights Institutions (NHRIs), 5 UN entities and 167 private sector organizations across 60 countries, territories and jurisdictions globally. The programme has also completed six multi-country research projects across 19 countries in Asia Pacific. These have contributed to national dialogue and south-south learning and exchange and informed the development and implementation of national and sub-national laws and policies in 6 countries - China, India, Pakistan, Philippines, Thailand and Vietnam.

Case study II – *Regional Judges Forum on HIV/TB and Human Rights in Africa*

Over 68 countries have laws criminalizing nondisclosure, exposure and transmission of HIV, 69 countries have laws that specifically criminalize consensual same-sex sexual activities and 98 countries report that they criminalize some aspect of sex work. One hundred countries report that drug use or possession of drugs for personal use is a criminal offence or grounds for compulsory detention. UNDP recognises the need to for judicial officers to be cognizant of the implications of overly broad criminal law on the human rights of people living with HIV and key populations, and rights-based responses generally.

The Africa Regional Judges Forum was established in 2014 with the support of UNDP as an annual regional forum of Judges and Magistrates to exchange knowledge the latest evidence and best practices in rights-based responses to HIV. 129 judges from courts in over 30 African countries have participated in the Forum. Members of the Forum have handed down some significant judicial decisions promoting the rights-based responses to HIV/TB. The Forum is currently engaging judicial training institutions in Africa



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as part of a plan to develop a training module on HIV/TB and human rights as part of continuing legal education of judicial officers in Africa.

Case study III – Providing legal aid to key populations and people living with HIV in Eastern Europe and Central Asia [EECA]

Stigma, discrimination and rights violations towards key populations, and people living with HIV represent a key barrier to access HIV services. Stigma and discrimination, reinforced by criminal laws and other structural barriers fuel violence, human rights violations and exploitation towards key populations.

In response to this, UNDP through the regional project - *HIV, Rights and Universal Access* supported the establishment of a regional legal aid network in 2012 that defends and promotes the rights of key populations and people living with HIV in EECA. It was created to remedy the lack of quality legal services for people living with and affected by HIV. The network serves as an umbrella organization to 36 non-government organisations [NGOs] active in 10 countries - Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Moldova, the Russian Federation and Ukraine. The network's website is enabled for online submission of complaints of human rights violations against people living with HIV and key populations. The network has provided legal services to over 10,000 clients from communities of people living with HIV and key populations.

Case study IV – Strengthening transgender participation and inclusion in Latin America

Transgender women were 49 times more likely to acquire HIV than other adults of reproductive age.⁶ 17 countries reported that they criminalize or prosecute transgender people.⁷

As part of a regional project advancing the recommendations of the Global Commission on HIV and the Law, UNDP hosted a South-South consultation which brought together 12 Latin American countries to share experiences on advancing human rights, social and economic inclusion for transgender people. The consultation brought together national and local governments authorities and civil society organisations, from Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala,

⁶ UNAIDS, *The Gap Report*, 2014, available at http://www.unaids.org/sites/default/files/media_asset/UNAIDS_Gap_report_en.pdf.

⁷ UNAIDS, *Miles to go: Closing gaps, breaking barriers, righting injustices*, 2018, available at http://www.unaids.org/sites/default/files/media_asset/miles-to-go_en.pdf.



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Honduras, Panama, Peru, and Uruguay. The countries shared their experiences in implementing programmes on health and HIV, reparations for transgender women, greater access to education and employment, and comprehensive legal reform to recognise gender identity. After the consultation the countries developed action plans, that include developing national, multisectoral policies for greater inclusion of transgender person, strengthening municipal action on transgender inclusion, working with parastatals to develop transgender sensitive workplace policies and sensitising health workers on the needs of transgender persons. Through the regional project, UNDP will continue to support the countries in the implementation of the national action plans.

Case study V – Africa Regional Grant on HIV: Removing Legal Barriers⁸

The Africa Regional Grant on HIV: Removing Legal Barriers aims to address human rights barriers faced by vulnerable communities in Africa and facilitate access to lifesaving health care. The grant covers 10 countries - Botswana, Côte d'Ivoire, Kenya, Malawi, Nigeria, Senegal, the Seychelles, Tanzania, Uganda and Zambia. The programme also works at the continental and regional levels with the African Union Commission and key Regional Economic Communities [Southern African Development Community, Economic Community of West African States and East African Community] to promote alignment of national laws and policy with regional and international human rights commitments.

The programme is supported through a three-year grant by the Global Fund to Fight AIDS, Tuberculosis and Malaria. UNDP is the Principal Recipient of the grant and implements in collaboration with four African civil society organizations - the AIDS and Rights Alliance for Southern Africa [ARASA], ENDA Santé, KELIN, and the Southern Africa Litigation Centre [SALC]. The programme has provided trainings on HIV and rights to 164 lawyers and 195 law enforcement agencies, capacity strengthening dialogues with 155 Members of Parliament and 126 staff of national human rights institutions. The programme has also supported strategic litigations to advance the rights of people living with HIV and key populations, and provided small grants to support the work of key populations community based organisations especially those working in context where due to restrictive legislations are unable to attract significant funding for their advocacy work.

⁸ <http://www.africa.undp.org/content/rba/en/home/about-us/projects/africa-regional-grant-on-hiv.html>