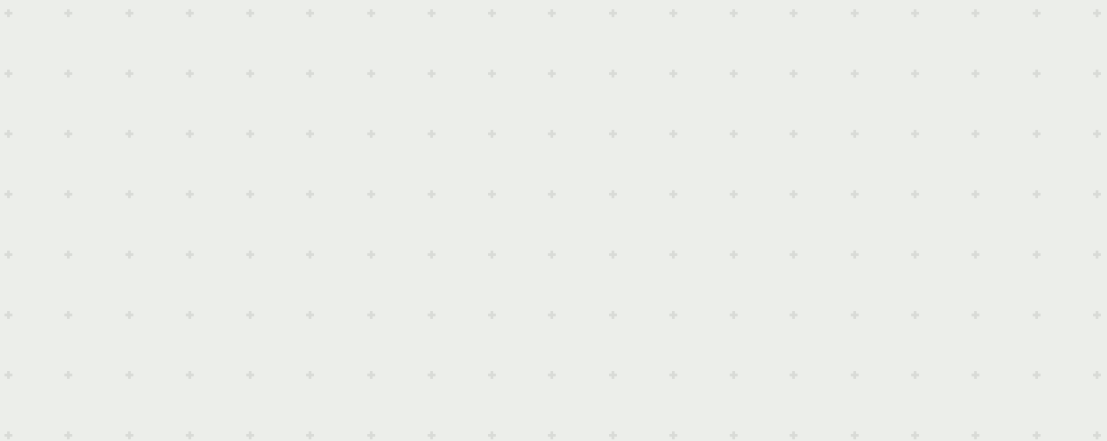




BRIEF FOR PARLIAMENTARIANS ON HIV AND AIDS

Making the law work for the response to HIV





Member of the Japanese Upper House of Parliament Ryuhei Kawada, an HIV-positive haemophiliac who was infected through tainted blood, awaits the opening of an extraordinary session of parliament in Tokyo.

MAKING THE LAW WORK FOR THE RESPONSE TO HIV

Many of the successes in tackling the AIDS epidemic have taken root where the legal environment, through its three components (law, law enforcement and access to justice), has protected persons vulnerable to HIV and empowered them to avoid HIV infection and persons living with HIV to access HIV-related prevention, treatment, care and support services and thus lead full and dignified lives.

For example, anti-discrimination laws in some countries have helped persons living with HIV keep their jobs and their homes and look after their families. Laws to protect confidentiality have helped build confidence in health systems, encouraging people to learn their HIV status and access HIV prevention and treatment. Laws that guarantee property and inheritance rights, coupled with legal services, have helped mitigate the social and economic burden of AIDS for women and girls. Laws, law enforcement and access to justice have protected women and girls from domestic and gender-based violence as well as helped address the HIV-related needs of the survivors of such violence. Stigma reduction and legal literacy programmes have increased the ability of persons vulnerable to HIV or living with HIV to mobilize and petition government actors on their HIV prevention and treatment needs. HIV sensitization programmes for police officers and judges have resulted in law enforcement supporting outreach programmes for key populations, as well as ensuring non-discrimination and protection from violence in the context of HIV.

Over time there has been a growing recognition of and commitment to enabling legal environments in the HIV context. In the *Declaration of Commitment on HIV/AIDS* (2001) and the *Political Declaration on HIV/AIDS* (2006), governments made major commitments on protecting the human rights of persons living with HIV, women and girls and key high-risk populations. In the *Political Declaration (2006)*, they committed to overcoming legal and regulatory barriers to commodities and services; intensifying efforts to enact, strengthen or enforce legislation to eliminate all forms of discrimination; eliminating gender inequalities, including harmful traditional and customary practices, abuse, rape and other forms of sexual violence, battering and trafficking; providing full protection of confidentiality and informed consent; promoting a social and legal environment that is supportive of safe and voluntary disclosure of HIV status; and ensuring evidence- and skills-based, youth-specific HIV education, mass media interventions and the provision of youth-friendly health services. In the 2011 *Political Declaration on HIV/AIDS*, UN Member States made further commitments regarding human rights and the legal environment in the HIV context (See Box below).

Building on these commitments, the *UNAIDS Strategy 2012-2015: Getting to Zero* stresses the importance of “protective social and legal environments to reach universal access to HIV prevention, treatment, care and support” and highlights specific goals and actions to ensure that the legal environment works for, not against,

WHAT DID GOVERNMENTS PLEDGE TO DO IN 2011?

Political Declaration on HIV/AIDS: Intensifying our Efforts to Eliminate HIV/AIDS

Key provisions

- Intensify efforts to enact, strengthen or enforce legislation, regulations and other measures to eliminate all forms of discrimination against persons living with HIV and members of vulnerable groups and to ensure full enjoyment of their human rights;
- Develop strategies to combat stigma and social exclusion connected with the HIV epidemic;
- Overcome legal, regulatory or other barriers that block access to commodities and services;
- Promote HIV education and information;
- Provide full protection of confidentiality and informed consent in the context of HIV-related health and social services;
- Give consideration to implementing and expanding evidence-based harm-reduction efforts related to drug use;
- Take the necessary measures to create an enabling environment for women's empowerment and bolster their economic independence; and
- Implement programmes aimed at eliminating stigma and discrimination against persons living with and affected by HIV, including sensitizing police officers and judges, legal literacy, and legal services, as well as monitoring the impact of the legal environment on HIV prevention, treatment, care and support.



Free HIV testing at the Republican AIDS Prevention and Treatment Centre in Grozny, Russia.

the HIV response. The Global Commission on HIV and the Law, led by UNDP on behalf of the UNAIDS family, will be issuing evidence-based findings and recommendations in early 2012. These are intended to assist countries in strengthening social and legal environments for HIV.

Parliamentary leadership is vital

Ensuring that the law works for – and not against – the response to HIV can be a difficult task. Stigma, irrational fear of infection, and persistent moral judgement on persons most vulnerable to and affected by HIV can mean that public sentiment is reflected in approaches that are not only discriminatory, but fundamentally undermine a sound public health approach to HIV. This in turn can have negative consequences for health and development. Parliamentarians have a vital role to play

in enhancing public understanding about HIV, demonstrating solidarity with persons affected, championing laws that advance the response to the epidemic and supporting amendments to laws that hinder effective HIV responses.

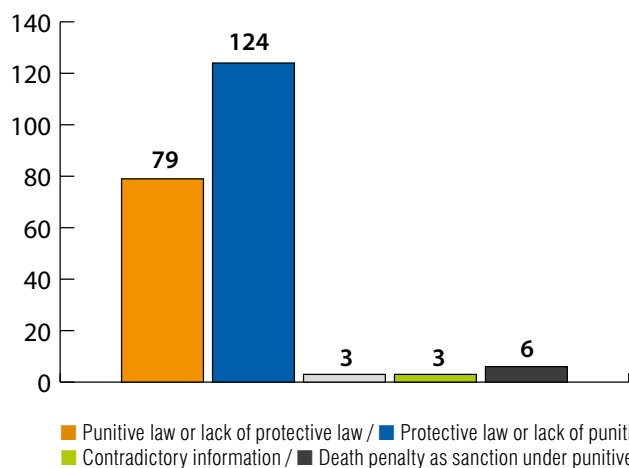
What can parliaments do to ensure that the law works for HIV?

Find out if there has been an audit of national legislation that is relevant to HIV and AIDS

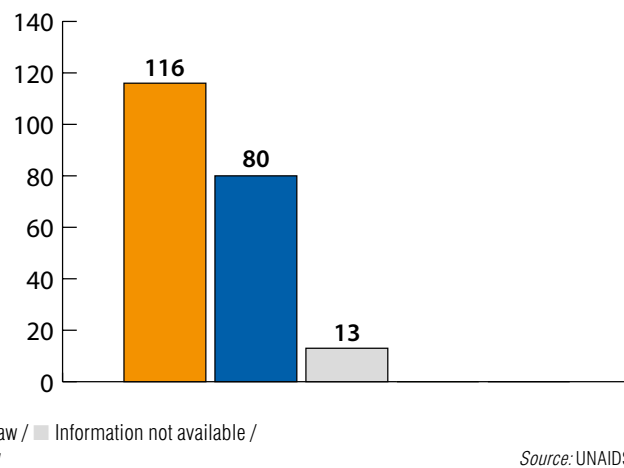
A number of countries – whether through their national AIDS programme, the Ministry of Justice, or a law reform commission – have undertaken an analysis of how the legal environment affects the response to HIV, and whether laws conform to international standards and commitments relating to HIV, including human rights obligations. The legal environment, and thus the legal audit, should include:

- Assessing the existing laws and subordinate legal regulations in critical areas that are relevant to HIV prevention, treatment, care and support – such as punitive laws that block access to prevention for persons most vulnerable to HIV, laws that protect the rights of women and girls, and laws that protect the rights of persons living with HIV;
- Assessing how law enforcement through the courts, police and prisons impacts HIV;
- Assessing the role of parliament in leadership, legislation and budget authorization for the response to HIV;
- Assessing whether the ministries of the interior, justice, immigration, education, and gender equality are engaged in a meaningful multisectoral response;
- Assessing the extent to which independent bodies, such as national human rights institutions or

Number of countries, territories and entities reported to have laws that criminalize same sex sexual activities between consenting adults (orange) vs those that are not reported to have such laws (blue).



Number of countries, territories and entities reported to have laws deeming sex work (prostitution) to be illegal (orange) vs those that are not reported to have such laws (blue).



Source: UNAIDS

ombudsmen, are monitoring human rights issues arising in the context of HIV and the government's implementation of human rights obligations.

Such analysis, and accompanying recommendations, can provide a solid foundation for considering law reform or the enactment of new legislation. If no such recent analysis exists, parliament can call for such a study to be undertaken.

➤ **Meet with organizations of people living with HIV and persons most vulnerable to HIV infection in the context of your country's epidemic, and find out about how stigma and discrimination affect them, and how law, law enforcement and access to justice can be strengthened to protect them and support the HIV response**

Civil society, including groups of people living with HIV, sex workers, men who have sex with men, transgender persons, and people who use drugs, is an essential source of information and guidance for assessing how well a country's legal framework is protecting people in the context of HIV. A number of countries have supported studies led by affected populations – such as the People Living with HIV Stigma Index – which document the forms of discrimination people living with HIV experience, where they experience it, and whether or not they were able to seek redress. Data from such studies can inform activities to create enabling legal environments. Request a meeting, and ensure that staff in your office subscribe to mailing lists from key HIV organizations so they can follow and brief you on key developments.



A woman demonstrates in front of the French Senate against a bill that may diminish the protection afforded to migrants suffering from certain illnesses against expulsion.

AREAS IN WHICH HIV-RELATED LAW REFORM MAY BE NEEDED

HIV-related law reform can result in new or strengthened laws:

- that prohibit discrimination against persons living with HIV and members of vulnerable groups, in particular marginalized and criminalized populations;
- that lift HIV-related restrictions on entry, stay and residence;
- that prohibit violence against women and protect the property and inheritance rights of women and children affected by HIV;
- that ensure HIV prevention and treatment access for all those in need;
- that guarantee access to comprehensive, evidence-based and age-appropriate HIV information and life-skills education for young people;
- that protect the confidentiality and privacy of HIV status and other health-related information;
- that enable the government to use trade flexibilities for access to cheaper essential medicines;
- that remove any barriers to HIV prevention methods and commodities, such as condoms, drug substitution therapies and sterile injecting equipment;
- that protect people from discrimination on grounds of sexual orientation, and remove criminal penalties for private, consensual sex between adults of the same sex;
- that approach drug dependency as a health issue – guaranteeing a right to medically-sound and human rights-based care – and reserve incarceration for trafficking and possession of large quantities of illicit drugs; and
- that remove criminal penalties for the exchange of sex for money between consenting adults, and ensure that sex workers are protected from violence and discrimination, including equal access to HIV prevention, treatment, care and support.

AN EXAMPLE OF SUPPORTIVE LEGISLATION: CAMBODIA'S LAW ON THE PREVENTION AND CONTROL OF HIV/AIDS (2002)

The Cambodian law covers a range of issues that are important for a comprehensive and sound response to the epidemic: access to education and information; testing and counselling with informed consent and confidentiality; access to health and support services; universal precautions to prevent occupational exposure; prohibition on HIV-related discrimination; and other issues such as budget appropriations for HIV-related programmes and services. Consultations on the draft law included diverse stakeholders – the national AIDS authority, relevant government ministries, people living with HIV, civil society organizations and the private sector. The law mandates all institutions and enterprises to collaborate with the national AIDS authority to develop workplace education programmes and HIV prevention plans. Health care services are free of charge for people living with HIV, and there is a special emphasis on gender equality across HIV programmes. The law specifies that the State should include HIV and AIDS as a priority in the National Development Plan and Programme and ensure the timely disbursement of the annual budget.

Adapted from: Legal initiatives to address HIV/AIDS in the world of work (<http://www.ilo.org/public/english/protection/trav/aids/publ/rpa1.pdf>)

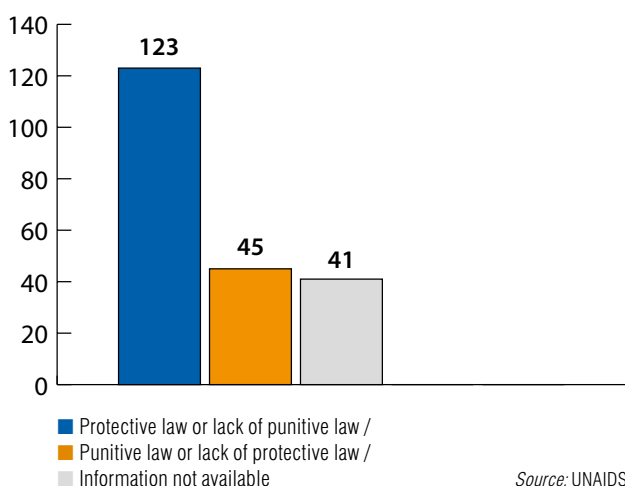
➤ Assess whether law reform is necessary, and in what areas

- Meet with experts on law and human rights, officials from the national AIDS authority, national institutions with a mandate to review legislation (e.g. national human rights institution, ombudsman and law reform commission), networks of people living with HIV and other civil society organizations, and discuss what reform would strengthen conformity with HIV-related international human rights standards and norms, constitutional rights, and better support effective and evidence-informed responses to HIV; and
- Engage with members of relevant parliamentary committees to share concerns about shortcomings in national legislation, the negative impacts on people living with HIV and women and children and other groups vulnerable to HIV infection, as well as the negative implications for the effectiveness of the national response to the epidemic.

➤ Create a parliamentary interest group on HIV and/or health and build knowledge and leadership on issues related to HIV

- Build support across party lines for addressing HIV-related challenges;
- Bring together parliamentary colleagues who want to learn more about HIV-related issues, and are committed to taking action, including law reform;
- Consider convening multi-stakeholder public hearings on specific HIV-related themes (e.g. prevention of mother-to-child transmission, stigma and discrimination; access to HIV-related services for vulnerable groups), involving experts and people living with HIV and members of vulnerable groups; and
- Build partnerships with institutions and civil society organizations working on HIV. Often this can be an effective way to access relevant national and international research, enabling limited parliamentary resources for administrative and research support to go further.

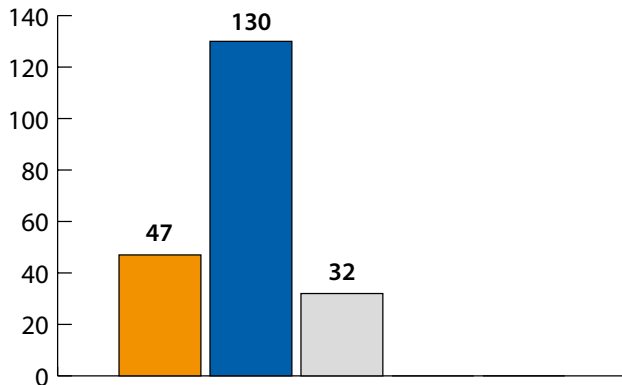
Number of countries, territories and entities reporting to have laws and regulations that protect people living with HIV (blue) vs those that do not report such laws (orange).



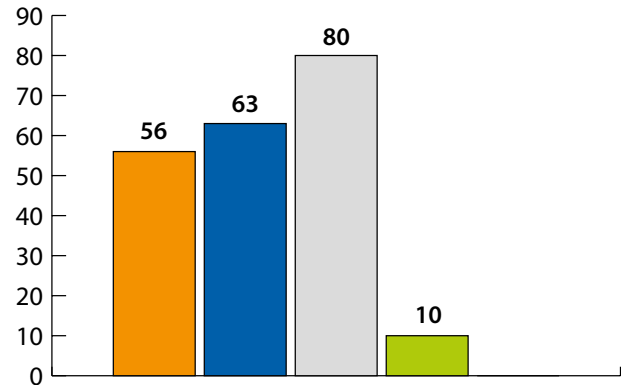
➤ Enhance public understanding about HIV and influence debate, particularly through the media

- Speak out against HIV-related stigma and discrimination, including discrimination against certain groups that increases their vulnerability to HIV;
- Involve the media in parliamentary activities on HIV;
- Use public meetings and newsletters to inform constituents and community leaders about the commitments your government or party has made to achieve universal access to HIV prevention, treatment, care and support;
- Include affected populations, including people living with HIV and their organizations, as well as organizations of sex workers, men who have sex with men, transgender persons, and people who use drugs, in various parliamentary and constituency activities; and

Number of countries, territories and entities reported to have HIV-specific restrictions on entry, stay or residence (orange) vs those that are reported not to have such restrictions (blue).



Number of countries, territories and entities reported to have laws that specifically criminalize HIV transmission or exposure (orange) vs those that are not reported to have such laws (blue).



■ Punitive law or lack of protective law / ■ Protective law or lack of punitive law / ■ Information not available / ■ Contradictory information / Source: UNAIDS

- Help people living with and vulnerable to HIV know their rights, and encourage them to make specific demands and access justice.
- **Monitor the enforcement and implementation of laws in the context of HIV**
 - Follow HIV-related law reform, verify that relevant government ministries have developed necessary regulations/subordinate legislation and issued guidelines to their staff to support implementation;
 - Meet with civil society organizations and encourage them to monitor and report on whether protective legislation is being respected and enforced;
- Request information on the number of cases of HIV-related discrimination being reported to and addressed by the national human rights institution; and
- Conduct community hearings on HIV-related human rights violations, and present findings to relevant parliamentary committees and government ministries.
- **Advocate for appropriate budgetary allocations to support the implementation of HIV legislation**

Analyse budget allocations related to HIV and advocate for adjustments so that: (a) programmes and services

AN EXAMPLE OF LEADERSHIP AND ACTION: PARLIAMENTARIANS HOLD INQUIRY ABOUT GOVERNMENT'S COMPLIANCE WITH THE INTERNATIONAL GUIDELINES ON HIV/AIDS AND HUMAN RIGHTS

In 2001, the UK All-Party Parliamentary Group (APPG) on AIDS held a parliamentary inquiry to look at the UK Government's policies relating to the *International Guidelines on HIV/AIDS and Human Rights*. The report of that inquiry highlighted "the major failures of the UK Government to address the impact of its laws and policies on those infected with, affected by and vulnerable to HIV and AIDS". In 2006, the APPG proposed to conduct a human rights audit of the current policies of the UK Government in relation to HIV, to examine how far its recommendations from 2001 have been put into practice. It asked for evidence from non-governmental organizations and individuals on the following issues:

- HIV-related domestic practice and policies and how they comply with, or infringe upon, the UK's human rights obligations;
- the impact of the UK's stance (including derogations or reservations) on international human rights treaties;
- the impact of the Human Rights Act on HIV policy in the UK and the potential and limitations of the Act to challenge human rights violations in the context of HIV.

The UK APPG is an interest group that was established in 1986; it aims to raise awareness of HIV in Parliament and to encourage balanced policies based on accurate information. Additional information about the work of the UK APPG can be found at <http://www.appg-aids.org.uk/>

Source: *Taking action against HIV and AIDS, Handbook for parliamentarians* (IPU-UNAIDS-UNDP, 2007)

MODEL LAWS ON HIV

In order to assist national parliaments in their response to HIV, the Southern African Development Community Parliamentary Forum (SADC PF) has developed a model HIV law that outlines a clear, human rights-based legal framework for addressing various aspects of the epidemic in southern Africa. The intention is for national legislatures to adopt the model law on HIV in whole or in part and adapt specific provisions to better respond to local circumstances. The Canadian HIV/AIDS Legal Network (CHLN), working with partners internationally, has developed model laws on drug use and HIV, as well as women and HIV. Both modules refer to examples of law from jurisdictions around the world, as well as evidence on the effectiveness of various measures.

For more information on the SADC PF model law on HIV: <http://www.sadcpf.org/hivaids/index.php>

For more information on the model laws produced by the CHLN:

Drug use and HIV/AIDS: <http://www.aidslaw.ca/EN/modellaw/english.htm>

Women's rights and HIV/AIDS: <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=972>

for HIV prevention, treatment, care and support reach all those affected by the epidemic and entitled to such services; (b) civil society organizations, including networks of people living with HIV, receive support for both their advocacy and service-provision activities;

and (c) national programmes to increase access to justice and reduce stigma and discrimination receive adequate support, including sensitization of the judiciary and training programmes for health care workers, teachers and law enforcement personnel.



Indian film actress and Member of Parliament Hema Malini launches a short film, "Celebration of life," to mark World AIDS Day in 2005.

This brief for parliamentarians on HIV and AIDS introduces priority issues requiring action by parliamentarians, towards a world with zero new HIV infections, zero discrimination, and zero AIDS-related deaths. It accompanies the IPU-UNAIDS-UNDP Handbook for Parliamentarians, *Taking action against HIV and AIDS*. The Handbook is a call to action for bold parliamentary leadership, and serves as a comprehensive reference volume that legislators and their staff can consult for information and guidance on a wide range of issues relating to the epidemic.

Aleksandra Blagojevic, HIV/AIDS Project Officer at the IPU, researched material for this brief. Contributions and editorial comments were received from Marleen Temmerman, a member of the Belgian Senate; Tim Barnett, a former member of the New Zealand Parliament; Susan Timberlake, Senior Human Rights and Law Adviser, UNAIDS; Jason Sigurdson, Human Rights and Law Programme Officer, UNAIDS; Dr Mandeep Dhaliwal, Cluster Leader: HIV, Health, Human Rights and Governance, UNDP and Brianna Harrison, Human Rights Consultant, UNDP.