

Evaluation of the Global Commission on HIV and the Law



ACRONYMS

- ACHPR - African Commission on Human and Peoples' Rights
- AIDS - acquired immunodeficiency syndrome
- AMSHeR- African Men for Sexual Health and Rights
- ARASA - AIDS and Rights Alliance for Southern Africa
- ART- antiretroviral therapy
- AU - African Union
- AUC- African Union Commission
- AWARE - Action for West Africa Region
- BRICS - Brazil, Russia, India, China and South Africa
- CARICOM - The Caribbean Community
- CCM - country coordinating mechanism
- CEDEP – Centre for the Development of People
- CSDH – The Commission on Social Determinants of Health
- CSO- Civil society organization
- DANIDA - Danish International Development Agency
- DRC - Democratic Republic of the Congo
- EAC- East African Community
- EALA - East African Legislative Assembly
- EATHAN - East Africa Trans Health and Advocacy Network
- ECOWAS - Economic Community of West African States
- EECA - Eastern Europe and Central Asia
- ESCAP – United Nations Economic and Social Commission for Asia and the Pacific
- GHHR - Global Health and Human Rights
- HEARD - Health Economics and HIV/AIDS Research Division, University of KwaZulu Natal, South Africa
- HIV - human immunodeficiency virus
- HRDP - International Centre on Human Rights and Drug Policy, University of Essex, United Kingdom
- ICASA - Independent Communications Authority of South Africa
- ICJ - International Commission of Jurists
- IP - Intellectual Property
- ISAGS - South American Institute of Government in Health
- KELIN - Kenya Legal & Ethical Issues Network on HIV and AIDS
- KII - Key informant interview

- LEA - Legal Environment Assessment
- LGBT - lesbian, gay, bisexual, transgender
- LGBTI - lesbian, gay, bisexual, transgender, intersex
- LMIC- low and middle-income country
- MENAHRA - Middle East and North Africa Harm Reduction Association
- MENARosa – Middle East and North Africa Rosa
- MERCOSUR - The Southern Common Market
- MSM - men who have sex with men
- NAC – National AIDS Commission
- NGO - non-governmental organization
- NHRI - national human rights institutions
- NSP - national strategic plan
- OHCHR- Office of the High Commissioner for Human Rights
- PANCAP - Pan-Caribbean Partnership against HIV and AIDS
- PEPFAR – United States President’s Emergency Plan for Aids Relief
- PrEP - Pre- exposure prophylaxis
- PWUD - people who use drugs
- RANAA - Regional Arab Network Against AIDS
- REC - Regional Economic Community
- RESURJ - Realizing Sexual and Reproductive Justice
- SAARC - South Asian Association for Regional Cooperation
- SADC- Southern African Development Community
- SADC-PF - The SADC Parliamentary Forum
- SALC - Southern Africa Litigation Centre
- SDG - Sustainable Developmental Goal
- SRH- Sexual and Reproductive Health
- TAG - Technical Advisory Group
- TB- tuberculosis
- ToR - The Terms of Reference
- TRIPS – The Agreement on Trade-Related Aspects of Intellectual Property Rights
- TWG - Technical Working Group
- UHC - universal health coverage
- UN - United Nations
- UNAIDS - Joint United Nations Programme on HIV/AIDS
- UNASUR - Union of South American Nations
- UNDP - United Nations Development Programme
- UNFPA - United Nations Population Fund

- UNGA- United Nations General Assembly
- USA - United States of America
- USAID - United States Agency for International Development
- WHO - World Health Organization
- WIPO - World Intellectual Property Organization
- WTO - World Trade Organization

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I. EXECUTIVE SUMMARY

Introduction

In 2010, UNDP, on behalf of the Joint UN Programme on HIV/AIDS (UNAIDS), convened the Global Commission on HIV and the Law (the Global Commission) to examine legal and human rights issues through an HIV lens, increase awareness among key constituencies on issues of rights and law, and engage with and strengthen civil society. The Global Commission spent 18 months on extensive research, consultation, analysis and deliberation so as to inform action-oriented recommendations to strengthen work around HIV and the law. The Commission's findings and recommendations remain relevant and important to the HIV response, not only historically but moving forward.

This independent Global Commission was comprised of fourteen distinguished individuals from diverse disciplines and nationalities, each with extensive experience and expertise on matters of public health, human rights, law or development, and a Technical Advisory Group (TAG). The Global Commission was created at the behest of the UNAIDS Programme Coordinating Board and UNDP served as the Secretariat.

This executive summary presents abridged findings from an external evaluation of the impacts and legacy of the Global Commission on HIV and the Law. It explores the fulfilment of the Commission's objectives, taking into account the perspectives and experiences of representatives from government, including law and policy makers, civil society including those most marginalised and affected by HIV, as well as United Nations agencies and other development partners. The full evaluation report goes into much more detail of the evaluation findings, allowing for more in depth and nuanced exploration of the themes covered in this executive summary.

In the run up to the publication of the Global Commission's landmark report *HIV and the Law: Risks, Rights and Health* in July 2012, there was an 18-month preparatory process. This work was shaped by mutually reinforcing axes: written submissions and multi-stakeholder regional dialogues, the analysis of relevant materials by the TAG, and the synthesis, findings and

recommendations of the Commissioners.¹ The report is a thorough examination of the relationship between HIV and the law, and includes recommendations covering the breadth of the HIV response. Following the release of the 2012 report, UNDP supported follow-up activities to implement recommendations of the Global Commission globally, regionally, and nationally. This included engaging global level initiatives in addition to leveraging financial and technical support for regional and national level activities. In July 2018, the Commission released a supplementary report titled the *Supplement on HIV and the Law*. This Supplement highlights developments since 2012 in science, technology, law, geopolitics, and funding that affect people living with or at risk of HIV and its coinfections. The recommendations encapsulate new developments and add to and amplify those of the Commission's 2012 report *Risks, Rights & Health*, and taken together they offer an optimal blueprint for what is needed to shape appropriate HIV-related legal environments.^{2 3}

The Global Commission's concern with having a tangible impact on the world, beyond simply publication of the report, has shaped all of its activities to date. In that it stands alone from every other global commission. In seeking to further understand these impacts, in 2019, UNDP contracted the Program on Global Health and Human Rights (GHHR), Institute on Inequalities in Global Health (IIGH), University of Southern California to carry out an external evaluation of the impact, success factors, challenges and good practices of the Global Commission, with a particular focus on what has been accomplished at the global and regional level

The intended impacts of the Global Commission work were defined as the creation of an enabling legal environment as it relates to HIV with improved health outcomes and lived experiences, especially for vulnerable and key populations. Where impact is discussed in this evaluation, this refers to the tangible effects of the Global Commission in addition to the way these were achieved.

Conceptual Framework

Human rights are core components of the conceptual framework for this evaluation, and serve to shape understanding of both the Global Commission's impact and the processes through which it

¹ Global Commission on HIV and the Law. (2017, July 12). *Commission Overview*. Retrieved from <https://hivlawcommission.org/overview/>

² Inception Report

³ ToR

functioned. Key human rights principles such as inclusion, participation, equality and non-discrimination, and accountability were given considerable attention in the processes of the Global Commission and resulting reports. Beyond simply documenting the outcomes and impacts of the Commission, this evaluation therefore sought to understand the processes through which it worked, and to identify the enabling factors and challenges inherent to its work. Such an understanding can in turn aid in the sustainability of the work of the Global Commission moving forward, in addition to the planning of other commissions in the future. Beyond the human rights lens, the conceptual framework has also been informed by UNDP's standard evaluation criteria—relevance, effectiveness, impact, and sustainability as outlined in the UNDP Evaluation Guidelines.⁴

Methodology

A range of methodologies were adopted in order to meet the evaluation objectives while also striving to ensure an optimal balance of efficiency, stakeholder participation and ability to answer the key questions of interest through document review, interviews, and fieldwork. Published and unpublished data were made available by UNDP and colleagues, which acted as a complement to the qualitative and other data collected by the evaluation team. All data were analyzed using a mixed-methods approach designed to maximize learning.

Having first designed the scope of the evaluation in consultation with UNDP, the evaluation process continued with a desk review consisting of available relevant project documents such as papers, tools, conference presentations, proposals, communication materials and reports, as well as materials produced by others where the Global Commission or its work is explicitly mentioned or referenced. Additionally, the evaluation team mapped the Global Commission website, then reviewed and summarized its contents to identify key events, outputs, programs and follow-up activities with a goal of looking for impact. Key informants were selected to provide a range of perspective: they were diverse with respect to geography, type of organization, and the role that they played in relation to the Global Commission's work. Interviews were carried out on the phone, on Skype or, where possible, in person. Initial findings from the desk review informed interview guides, which were then tailored to each individual key informant. Data were collected and thematically analyzed in an iterative process which drew from different sources.

⁴ Final Technical Proposal

Findings

Process

The Global Commission positioned itself well from the outset to accomplish its goals, ensuring very widespread participation in the process of creating its recommendations that also served to foster broad-based and long-term buy-in and ownership. Consultations, research, and analysis were central processes through which the Global Commission gathered data to make its recommendations. Nearly 700 individuals across 140 different countries submitted testimonials about their experience with their surrounding legal environment. Experts on HIV, health, and the law also contributed. The Global Commission's decision to include testimony and civil society voices in conjunction with more traditional forms of evidence is acknowledged to have expanded the idea of what constitutes evidence in this space.

Several key meetings and activities that occurred prior to the commencement of the Global Commission, such as the Commission on Social Determinants of Health and the Global Commission on Drug Policy, helped to influence its approach and processes. Tangible manifestations of these lessons included the independence of the Global Commission, the approach to shaping relevant information for synthesis by the Commissioners, and strategic structuring of dialogues between communities and Commissioners. By situating the Global Commission as an independent body with UNDP as the Secretariat, the Commission could leverage the comparative advantage of UNDP – namely its knowledge of the political landscape, credibility and convening power - while operating completely autonomously.⁵

The proficiency and regional representation of the fourteen distinguished individuals that comprised the Global Commission across an array of HIV, public health, law, and development issues identified them as highly respected candidates to serve as Commissioners. The Commissioners were advised by a Technical Advisory Group of 23 experts with backgrounds in law, human rights, and public health representing a range of organizations and communities such as people living with HIV, key populations, civil society, academia, and the UNAIDS secretariat.

The Global Commission also convened a series of tailored regional dialogues with the intent of stimulating rigorous policy debate. Central to these dialogues were the operationalization of such human rights principles as inclusion and participation, particularly of key populations and

⁵ Key Informant Interview 2, 3, 8

vulnerable communities, in addition to the inclusion of many duty bearers such as policy and law makers, judges, and law enforcement officers, as well as the engagement of many Commissioners. Rather than having simply in-country dialogues, the decision to host meetings at the regional level allowed for safe interactions between duty-bearers and individuals who might normally experience oppressive legal environments to safely voice their lived experiences.

Global Impact

The impacts of the Global Commission's work at the global level are multi-faceted and complex. There are three areas where its impacts have been particularly visible: other global level processes, the advancement of substantive discussions related to HIV and the law, and the promotion of collaborative learning and action. In the following section, examples are provided that showcase global processes and relevant stakeholders, global HIV, health and development agendas, and the use of the Global Commission website as a resource for valuable information.

Impact on global processes and stakeholders

The Global Commission acted as a critical platform to open up the global response around HIV and the law, influencing global discussions and actions and facilitating other partners' exploration and financing of these issues.⁶ The Global Commission's influence on other global initiatives has had subsequent spill-over effects on legal environments in the areas of criminalization of HIV, intellectual property, drug policy, sex work and sexual minorities, and access to medicines.^{7 8} This occurred very rapidly after the release of the 2012 report, which was credited with having broken down topical silos in how legal environments are considered, allowing for individuals from across different thematic areas to draw from a much broader evidence base than previously available.

The influence of the Global Commission on UNDP's work is also evident: leveraging the Commission's work, UNDP expanded its HIV and health portfolio and used findings to inform institutional strategies such as the UNDP HIV, Health and Development Strategy 2016-21 and the UNDP Strategic Plan 2018-21. There is also clear subsequent alignment between the priorities and strategies of some other global institutions such as UNAIDS and the Global Fund

⁶ Key Informant Interview 2

⁷ Key Informant Interview 8

⁸ Key Informant Interview 2

with the Global Commission’s work and recommendations, including with respect to legal environment assessments at country level.

International Guidelines on Human Rights and Drug Policy

As just one example, presented in depth in the Evaluation Report, UNDP and a group of UN Member States, World Health Organization (WHO), International Centre on Human Rights and Drug Policy (HRDP), the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the Joint United Nations Programme on HIV/AIDS (UNAIDS), jointly released the International Guidelines on Human Rights and Drug Policy in 2019. There was explicit acknowledgment in the Guidelines that they drew extensively from the recommendations and follow-up activities of the Global Commission, in that they were designed to act as international standards that serve to advance human rights protections in the context of drug control policy. These Guidelines in turn were explicitly cited in a 2019 court ruling on drug use in Colombia by a Constitutional Court judge.

Global HIV, Health and Development Agendas

It is worth recalling that the Millennium Development Goals (MDGs) were the global standard for development at the time the Global Commission began its work. While the Commission was still active, the 2030 Agenda for Sustainable Development was established, with the Sustainable Development Goals (SDGs) replacing the MDGs. Two key parts of that commitment were the goal to “leave no one behind,” and a push for Universal Health Coverage by 2030. The Global Commission’s work can be seen to have informed key components of both. For example, building on the Global Commission recommendation that countries remove legal barriers that impede women’s access to sexual and reproductive health services, a similar SDG target maintains that states must “ensure universal access to sexual and reproductive health and reproductive rights,” and a UHC Key ask suggests that states must “establish resilient, responsive and inclusive health systems that are accessible to all.”⁹

⁹ United Nations. United Nations. (n.d.) *Transforming Our World: The 2030 Agenda for Sustainable Development*. Retrieved From <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

High-Level Panel on Access to Medicines

The High-Level Panel on Access to Medicines (High-Level Panel) is a useful example of how the Commission influenced global agendas. The 2012 Global Commission report noted that despite achievements in legal strategy, global advocacy, and widespread generic competition, intellectual property regimes still limited access to medicines, and high income countries often pressure low- and middle-income countries to adopt TRIPS-Plus measures in trade agreements with the effect of impeding access to life saving treatments. As a remedy, the Commission suggested the creation of a high-level panel on access to medicines, which was ultimately convened by the Secretary General of the UN Ban-Ki Moon in 2015 after a joint request from UNDP and UNAIDS.¹⁰ The High-Level Panel was tasked to “review and assess proposals and recommend solutions for remedying the policy incoherence between the justifiable rights of inventors, international human rights law, trade rules and public health in the context of health technologies.” The High-Level Panel would go on to have a wide array of impacts globally, regionally and nationally, featuring prominently in the decisions of a range of multilateral organizations, global trade agreements and civil society organizations. For instance, the United Nations General Assembly, members of MERCOSUR, and the Chilean government have all been documented as citing the High-Level Panel in a variety of resolutions. In line with the Commission’s initial recommendations, its recommendations have also galvanized more cohesive action by intergovernmental and nongovernmental organizations concerning accessibility and affordability of medicines, as well as intellectual property issues around access to medicines.

Safeguarding civil society space

The contraction of civil society space around the world is a worrisome trend and UNDP’s Global Commission follow-up work has deliberately prioritized the creation of safe spaces for civil society to gather, strategize and mobilize. This has also contributed to broad-based civil society action on issues such as challenging HIV-related criminalization.

Global Efforts to Challenge HIV-related Criminalization

The Global Commission is widely considered a catalyst in efforts to address HIV-related criminalization around the world, which are explored in more depth in the Evaluation Report.

¹⁰ UNDP; UNAIDS, (2013, September 4-5), *UNDP-UNAIDS Strategy Meeting to Advance the Intellectual Property Recommendations of the Global Commission on HIV and the Law*

HIV-related criminalization takes many shapes and forms: and is reflected in problematic legal responses to sexuality, reproduction, gender and drug use. Efforts to tackle HIV-related criminalization were strengthened through the use of HIV as an entry point for addressing the rights and health of key populations and people living with HIV. Through the consultation processes, networks and synergies created through Global Commission processes, clear momentum was built around tackling these issues. Additionally, the 2012 report provided stakeholders with a critical advocacy tool. Organizations such as Amnesty International, in conjunction with CREA, Realizing Sexual and Reproductive Justice, and Accountability International, for example, have worked together using recommendations from the Commission to challenge criminalization around sexuality, reproduction, gender and drug use.

The Global Commission Website: An Information Resource

Today the Global Commission website remains an active resource. In addition to updates on activities that have been implemented as follow-up to the Commission's initial report, it also includes a host of information, including a suite of tools and resources that can facilitate replication and adaptation of follow-up and other activities by others.

Global Impact: Conclusion

Global Commission recommendations align considerably with key health, HIV, gender, development and governance frameworks at the global level. Global institutions such as UNDP, UNAIDS, and The Global Fund have taken this framing of law's relevance to the HIV response and expanded it into other areas of health such as tuberculosis, malaria, and sexual and reproductive health. Civil society actors have also picked up this work, taking advantage of the safe spaces that have been created to promote collaborative action. Such progress points to the mutually reinforcing nature of alignments like these, where stakeholders can rely on their comparative advantages to pursue diverse entry-points and synergies across issues.

Regional

Regional level engagement has been a central tenet of the approach of the Global Commission, as can be seen starting with the consultative process leading up to its 2012 report and through to its many follow-up activities. This section comprises an overview of regional activities including initiatives, grants leveraged by UNDP that supported regional efforts to implement recommendations of the Global Commission, an analysis of some of the key African regional follow-up activities and their impact, and finally an examination of the lasting impact of the Global Commission and its recommendations on regional laws, policies, and resolutions.

Regional Initiatives

At the regional level, UNDP has been an integral facilitator of funding and technical support helping to support follow-up activities in support of the Global Commission's recommendations. The Global Commission leveraged UNDP's comparative advantage as a convening power, especially in regard to its credibility among government, civil society, and regional networks, to achieve buy-in across sectors. This approach, with a pointed focus on regional level entry points, proved to be highly effective, as evidenced in the follow-up work particularly in Sub-Saharan Africa and the Caribbean.

Many stakeholders are credited with sustained action in this space, and the active involvement of UNDP in these regional activities has been crucial to their success. There have been eight regional grants across Africa, Asia the Caribbean, Eastern Europe, and the Western Pacific since 2013 that act as direct follow-up to the Global Commission. There is substantial evidence that these projects have achieved tangible results, including completion of legal environment assessments in several countries; strengthened capacity related to human rights and HIV amongst the judiciary, national human rights institutions, law enforcement agencies as well as among affected communities; greater inclusion of LGBTI people, adolescent girls and young women, people living with HIV, sex workers and people who use drugs (PWUD) in national and regional processes; law review and reform; and greater involvement of Regional Economic Communities (RECs) and the African Union Commission (AUC) in addressing human rights and legal challenges pertaining to HIV and AIDS. Some of the regional level activities that have contributed to these impacts are further explored below.

Legacy of the Regional Dialogues

Introduction

In the regional dialogues that took place around the world preceding publication of the Global Commission's 2012 report, the need for sensitization and capacity building for both duty bearers and rights holders was repeatedly highlighted.

Regional sensitization and trainings of duty-bearers

The diverse roles of different duty bearers were acknowledged necessitating sensitization of Parliamentarians who create the law, law enforcement and health workers who implement it, lawyers who defend it and judges who interpret it.

The Africa Regional Judges' Forum, created in response to the Commission highlighting the need to engage the judiciary in the HIV response, provides an excellent example. With a focus on HIV, the participating judges determined the forum's goals and set the agenda for their annual meetings with a view to ensuring access to up-to-date medical and public health evidence as well as exposure to the stories of key populations about how HIV-related laws have affected their lives. These meetings created an environment of peers where judges could ask questions and learn outside the structures of their courtroom and country. At least 129 judges and magistrates from over 30 African countries have participated in the Forum, a number of whom have gone on to hand down precedent-setting judgments protecting the rights of people living with HIV, TB survivors and key populations. Through a process of south-south collaboration, regional judges' fora have recently been created in Eastern Europe and Central Asia and the Caribbean with technical support from some of the judges who have been central to the Africa Regional Judges' Forum.

In Africa, regional workshops for lawyers have also been held, bringing together purposefully selected groups of lawyers from across the continent to develop their capacity to successfully litigate cases relating to HIV and TB so as to improve the lives of key populations. Since this training began in 2016, lawyers across Africa have worked on HIV-related cases in countries such as Botswana, Malawi, and Zambia and on issues as diverse as prisoners' health, police abuse of key populations, and HIV criminalization. A key impact of these trainings was the formation of a network of regional peers in which lawyers from across the continent can consult one another on cases and increase the capacity of others.

Regional sensitization of health workers and law enforcement helped create cadres of duty bearers within countries known by key population members to be supportive whom they might call on as necessary. In countries where various types of duty bearers participated in regional sensitization efforts, a synergy was created that helped promote a supportive legal and policy environment and more positive experiences for people living with HIV and members of key populations.

Regional Sensitization and trainings of Rights Holders: Strengthening Communities

Regional dialogues and written submissions leading up to the report combined to give communities a platform in entirely unexpected ways. The diverse representation of stakeholders present, from civil society and affected communities, to duty bearers such as parliamentarians,

judges, and law enforcement meant that for many from key populations this was the first time they were provided with an opportunity to meet and engage with such an audience.

Communities then harnessed the 2012 Commission report as an advocacy piece around which they could organize, learn, forge alliances and develop programs. In the context of shrinking civic space around the world, the impact the Commission has nonetheless had on supporting the strengthening of communities cannot be overstated.

Africa Key Populations Expert Group

The Africa Key Populations Expert Group (AKPEG) was formed in 2014 as direct follow up to the Global Commission with the purpose of developing interventions to advance engagement of key populations in the HIV response and help the Regional Economic Communities develop regional HIV strategies for key populations.¹¹ The AKPEG has grown to more than 105 members since its inception with members from 16 countries. Members include men who have sex with men, people who use drugs, transgender people, and sex workers. Annual meetings revolve around updates across national, regional, and global level developments in the HIV response and the best way to understand and utilize the latest in scientific evidence and data, advocacy, and strategy. The AKPEG is widely known to have aided the representation of key populations in regional and national responses to HIV and to have been central to the development of the Southern African Development Community (SADC) key population strategy. The success of AKPEG and the work it promotes showcases the continued importance of the Global Commission's original decision to focus on inclusion, participation, and engagement of key populations as well as the need to support their abilities to effectively navigate the complex legal, politics and social environments that impede an effective HIV response.

Impact on regional laws, policies, resolutions and governance

Since the release of the 2012 *Risks, Rights and Health* report, a series of regional-level HIV-specific initiatives and law and policy reform efforts have been carried out with different regional entities around the world including the African Union Commission, the African Regional Economic Communities, the South Asian Association for Regional Cooperation, the South American Regional Economic Organization and the Caribbean Community. While each

¹¹ Personal Communication, Member of AKPEG

effort differs, key initiatives have included the adoption of model laws, development of regional strategies, mobilization of civil society and key populations, and strategic litigation on issues raised during Global Commission consultation. These efforts, documented in the full Evaluation Report, have helped to facilitate deeper thinking around legal environments and HIV, with improved cross-sectoral engagement and increased civil society action.

Regional Impact: Conclusion

Regional level activities spurred by the Global Commission have been heralded for their emphasis on participation from a variety of stakeholders. Leaning on this human rights principle ensured maximum input and engagement from communities and duty bearers. The follow-on work spurred by Global Commission activities was built on and continues to stay grounded in local realities, thus ensuring a context-appropriate approach. That many of these initiatives have taken a life of their own outside of the umbrella of UNDP shows the lasting impact and sustainability of work initiated as a result of the Commission.

National

Introduction

In this section, the focus remains on broader activities which together can be seen to have fostered legal and policy impacts. These will be explored in respect to in-country implementation, the creation of a safe space for civil society, government receptivity to collaborative work on HIV and the law, and collaborations between government, civil society and other partners.

In-Country Implementation

National level implementation of follow-up activities built on the success at the regional level in the form of national and sub-national activities. By the end of 2019, UNDP had either provided funding or support to 89 countries striving to implement Global Commission recommendations. Atop this list with seven follow-up activities is Malawi, followed by Botswana, Kenya, Madagascar, Nigeria, Tanzania, and Zambia with six each. The range of activities includes empowering key populations to promote human rights based HIV approaches, Legal Environmental Assessments; dialogues with and capacity strengthening of law enforcement officials; national dialogues; dialogues with and capacity strengthening of parliamentarians; law review and legal scans; dialogues with members of the judiciary; sensitization and dialogues with other key stakeholders; and civil society engagement scans.

Creating safe spaces for civil society

Again building on regional successes, Global Commission activities have fostered an inclusive, participatory approach that brought together government and civil society actors with the effect of establishing useful connections regionally *and* within national-level contexts. The regional dialogue approach has also been replicated in the form of national dialogues in 34 countries.¹² In the Democratic Republic of the Congo, a national dialogue has been credited with bringing together a wide range of stakeholders and led to the formation of a multi-stakeholder technical working group that has since led a range of national activities around HIV and the law. Across many countries, this type of success has resulted in increased interactions and safe spaces for civil society to interact and collaborate with government at the national level.

Government receptivity to collaborative work on HIV and the Law

A key outcome of the regional consultation processes has been engagement with government and establishing buy-in that transferred to the national level. Follow-up activities such as LEAs and national dialogues built on this foundation and resulted in increased evidence and collaboration as well as reported changes in government attitudes relating to how the law affects the HIV response and the lives of members of key populations. Governmental receptivity to this collaborative work can be seen in the institutionalization of follow-up activities and the creation of structures that have become embedded within national institutions, thereby helping to foster their sustainability.

Some duty-bearers have acknowledged that the grounding of this work in human rights expanded their understanding of rights as a constructive framework for responding to HIV – rather than simply a mechanism through which they might be accused of human rights violations. For example, in Malawi, the capacity building initiatives undertaken as follow-up activities are understood to have led to a significant increase in the ability of duty bearers to understand issues around human rights, the law and the HIV epidemic.

¹² Supplemental Document 1

Collaborations between government, civil society and other partners

National-level follow-up activities are dependent on political buy-in, national ownership, and multi-stakeholder groups that bring together government and civil society. The LEA process has been highlighted as particularly useful in this regard because it constitutes a process of generating broad-based buy-in, introducing the notion of assessing laws and policies, and promoting ownership of the process, outputs and follow-on agenda. Through the LEA or National Dialogue processes, a critical mass of stakeholders can be created who recognize the importance of law and human rights to the HIV response. In Malawi, longer-term benefits of this type of collaboration included an alliance formed between the National AIDS Commission (NAC) and sex workers, which facilitates access to HIV prevention and treatment services. This combination of different stakeholders can open channels for deeper communication and advocacy towards more positive legal environments.

Landmark rulings

Many examples exist of court rulings at national level that were influenced by the Global Commission or its follow-up work. For example, in 2018, the Supreme Court overturned Section 377 of the Indian Penal Code which stated that “carnal intercourse against the order of nature” was a criminal offense punishable by life imprisonment.”¹³ The case effectively decriminalized homosexuality in India while simultaneously recognizing the identities of LGBT persons within the country. Evidence presented by the Commission report was used by the court in the lead-up to their ultimate decision.¹⁴ In addition, in 2015, the Botswana Court of Appeal upheld a ruling that foreign prisoners should receive free HIV treatment.¹⁵ In this case, judges who had attended the Regional Judges’ Forum were presiding.

¹³ UNDP. (n.d.) *Innovative judges forum sensitizes African judges on HIV, TB, SHR, law & human rights*. Retrieved from <https://www.undp-capacitydevelopment-health.org/en/legal-and-policy/case-studies/innovative-judges-forum>.

¹⁴ O’Neill Institute. (2018, September 20). *‘History owes apology to the LGBT community’ – Supreme Court of India reads down colonial era Section 377*. Georgetown Law. Retrieved from <https://oneill.law.georgetown.edu/history-owes-apology-to-the-lgbt-community-supreme-court-of-india-reads-down-colonial-era-section-377/>

¹⁵ BBC News. (2015, August 26). *Botswana prisons: Foreign inmates win case for free HIV treatment*. Retrieved from <https://www.bbc.com/news/world-africa-34064945>.

National Impact: Conclusion

The sheer number and range of follow-up activities carried out following the Global Commission, including at national level, is a testament to the relevance of its work. National level work grounded in inclusion and participation has demonstrated that collaboration across multiple channels can yield tremendous results. By following a process that moved from generating buy-in to facilitating multi-stakeholder conversations and embedding activities in national plans, there is evidence that the in-country impact from a range of Global Commission activities is still ongoing. Implementing a deliberate mix of regional and national level activities has now been shown to be key to fostering change by maximizing the advantages of these synergistic levels of engagement. It is worth noting again that UNDP's comparative advantage in their convening power and the Global Commission's ability to harness this power has led to better results. Across many countries, the high levels of national buy-in have also led to externally funded Global Commission follow-up work as part of the national response.

Conclusions

The section presents some conclusions around the impacts of the Global Commission starting with some overarching findings, and then in relation to the UNDP evaluation criteria of relevance, effectiveness, and sustainability.

General Conclusions

To start, it is useful to reflect on whether the Commission has achieved its stated overarching aims, including to “contribute to the evidence base on the relationships between HIV, human rights and legal environments.” The success is evident from the wide use of the Commission report from 2012 to the present day as well as citations of the Global Commission's reports and recommendations across different types of publications, researchers, policy makers and implementers. From increasing understanding of the links between the law, human rights and HIV (and other areas of health) to expanding notions of what ‘counts’ as evidence to include testimony and civil society voices alongside more traditional evidence, the Commission provided a strong foundation on which others are already building.

The other primary aim of the Global Commission was to provide evidence-informed and actionable recommendations for law and policy reform. The Commission did indeed provide a long list of evidence-informed and actionable recommendations that have since been taken up at global, regional and national levels.

Relevance

Participatory Approach

Across all levels – global, regional and national – attention to human-rights was seen as critical to the success of the Global Commission’s work. This started with the inclusive, participatory approach fostered through the regional dialogues carried out around the world as a part of developing the Global Commission’s original report. These regional-level consultations, along with written submissions from around the world, not only enabled useful connections within and across regions, but generated buy-in by a wide range of stakeholders and, importantly, resulted in ownership and connections within countries, sowing seeds for collaborative follow-up to implement the Commission’s recommendations at the national-level actions.

Continued Relevance

Follow-up meetings and activities, including in relation to the supplement that was published in 2018, demonstrated the Commission was still a relevant body to external actors: while many of the topics from the original report remained relevant, as science had evolved other topics had also become relevant for analysis using the Global Commission’s lens. Perhaps most unusually and possibly as a result of the considerable effect that representation had on Commissioners in regard to fostering sustained follow-on, people still actively saw themselves as Commissioners in these follow-up activities. UNDP’s ongoing commitment to promoting action resulting from the work of the Commission, maintaining an updated website to serve as a resource for work in this area, and expanding attention to emerging areas of relevance within HIV and the law (e.g. interactions with responses to COVID-19) continues to contribute to the ongoing relevance and visibility of the work of the Commission today and into the future.

Effectiveness

Commitment to the follow-up work

From its inception, the Global Commission made clear it saw the report as part of a much larger strategy to improve HIV-related legal environments around the world which has ultimately contributed to its overall success. Senior UNDP leadership made clear that following up on Commission recommendations was part of the institutional mandate at regional and national

levels, which led to support for activities across UNDP globally.¹⁶ Many others, including civil society organizations and international development partners, have also invested time and resources in the recommendations and approaches championed by the Commission.

Respect for Commissioners and other key participants

The collective experience and capacity of the Commissioners, their independence, and clear investment in the work was a factor that contributed immensely to the report and its recommendations being taken seriously. The Commissioners and the Technical Advisory Group, along with affiliations to the United Nations provided for strong credibility for what they set out to accomplish. Civil society, strongly engaged from the beginning of the Global Commission, are seen to be key participants in this work and have been instrumental in follow-on work that continues today.

Adoption of a human rights-based approach

In grounding the Global Commission process in a human rights-based approach, follow-up activities and ensuing work has been organized according to the same principles of participation, equality, and non-discrimination and accountability. Participation was a major conduit to the effectiveness of the Commission in that it allowed for interventions to be tailored to respond directly to local realities and account for local factors such as politics, legal systems, epidemiological trends, and civil society capacity.

Meaningful engagement of communities: the value of personal testimony

Emphasis was placed on representation from civil society and communities in the form of fully integrated written submissions to as well as participation in the initial regional dialogues. This paved the way for direct engagement between communities and duty bearers, in addition to showcasing the value of personal testimony as data. Testimony had previously been valued primarily in legal work, rather than public health, policy or government offices more generally. Inclusion of this testimony alongside quantitative data and legal judgments in the Commission's report proved effective for the overall accessibility of the reports. Furthermore, it provided civil society with another advocacy tool and decision-makers with another type of evidence through which ongoing follow-up work could be evaluated.

¹⁶ Key Informant Interview 35

New partnerships and collaboration

The Global Commission was pioneering in bringing together such a wide range of stakeholders to collaborate on improving HIV-related legal environments. This multi-stakeholder approach is now much more common around the world. Perhaps one of the most influential partnerships catalysed by the Global Commission process is the HIV activist movement connection with the movement around the reform of intellectual property regimes, strengthening the advocacy base for access to HIV medications.¹⁷

Sustainability

Incorporation of activities into national structures, laws, policies and plans

The Global Commission's investment in broad participation and country ownership of activities has helped to promote the sustainability of this work: with so many invested stakeholders at country level it has been possible to incorporate what started as UNDP-supported follow-up work into national strategies, plans and budgets as well as external funding proposals. This is equally true for project structures (such as Technical Working Groups) as outputs (such as action plans arising from the LEA and National Dialogue processes).

Sustaining and adapting regional level activities

Sustaining the regional efforts will be important to maximize the overall impacts at national level over time and it will require continued external funding. The value of peer learning outside the confines of a national context has proved invaluable in creating in-country traction and momentum for addressing challenging issues within and across all regions. The recent and ongoing adaptation of interventions carried out in sub-Saharan Africa as follow-up to the Global Commission in other regions (e.g. the regional judges' forum in Eastern Europe and Central Asia as well as the Caribbean, and interest in learning from legal environment assessments to inform interventions relating to drug policy in Latin America) augur well for the sustainability of Global Commission processes and concerns moving forward.

¹⁷ Key Informant Interview 2

Capacity Building

Capacity building and sensitization of a range of duty-bearers and rights-holders has been a cornerstone of the follow-up activities to the Global Commission. Not only has this served to expand knowledge around HIV and the law, which is critical for sustainability, but by making capacity building tools publicly available it also promotes the replicability of the work. That much of this work was carried out at the regional level supported the creation of peer networks of different types of duty-bearers and rights-holders across regions with the knowledge and commitment to drive work within and across countries to improve HIV-related legal environments.

Financial Sustainability

Although some activities have yielded impacts that constitute fundamental transformations to the landscape that may help this work to move forward even without continued financial investment, other activities initiated as follow-on to the work of the Global Commission will require continued funding in order to be sustained. This is true for capacity building activities, regional convenings and support to strategic litigation for example. Financial support for these activities is critical for advances to continue.

Weathering political winds

Politics and ideology continue to influence laws and policies regardless of solid evidence. Changes in government can erase hard fought wins. The Global Commission's effort to apply an evidence-informed approach to addressing the role of law in the HIV response together with efforts around capacity building help to ensure that where negative political shifts happen, these changes will not completely erase all progress. The multi-sectoral nature of follow-on work and the increased capacity of civil society have immense implications for sustainability and resilience in the face of negative political climates.

Looking Forward

The work of the Global Commission, inclusive of all that has followed since, has set a strong foundation for work on HIV and the law. Momentum generated over the years has catalyzed tangible and positive change at national, regional and global levels bolstered by the Global Commission's initial work and publications. There now exists not only a blueprint for work specific to HIV but a model for work around the law and other areas of health on which people and institutions can continue to build.

The value in evaluating the type of work carried out by the Global Commission lies in understanding not only the impacts of this particular Commission but also its critical success factors and potential shortcomings with a view to informing future endeavors of relevance. The Evaluation Report can be useful for informing how UNDP and other institutions might design and implement future global commissions or convenings, partnerships with global and local partners, and engagements with civil society.

In the context of the global COVID-19 pandemic, the resolve of institutions to pay attention to rights and justice issues in addressing health issues across a range of sectors has been put to the test. Governments adjusting to the demands associated with curtailing a new infectious disease have implemented policies that work to mitigate its damage, but too often at the expense of the human rights of vulnerable and other populations. The need to address the legal and policy environment to ensure it helps and does not hurt the most marginalized and vulnerable has become more critical than ever before. Many of the lessons learnt and documented in this report about how and why the Global Commission was so effective might help assess and inform the ways in which governments address COVID-19 and future epidemics, and how best to engage civil society and their allies in their response.

The Global Commission's focus on capacity building in the context of HIV and the law provides lessons and tools about the power to strengthen voices across a range of stakeholders. From communities and the key populations who comprise them, to rights holders and duty bearers, to partners including UN and other international organizations, the Global Commission raised the voices of multiple groups in an epidemic context in order to draw attention to the needed law and policy response. This is exemplified throughout this Evaluation Report. The evidence shows that through human rights-based framing, principles such as inclusion and participation, can be key strategic entry points leveraged to tackle the most challenging global health inequalities and issues of our time.

II. OVERVIEW

In 2010, UNDP, on behalf of the Joint UN Programme on HIV/AIDS (UNAIDS), convened the Global Commission on HIV and the Law (the Global Commission). UNDP served as the Secretariat for the Global Commission. This independent Global Commission comprised fourteen distinguished individuals from diverse disciplines and nationalities, each with extensive experience and expertise on matters of public health, human rights, law or development, and a Technical Advisory Group (TAG). The terms of reference for the Global Commission included to:

- Develop actionable, evidence-informed and human rights-based recommendations for effective HIV responses that promote and protect the human rights of people living with and most vulnerable to HIV
- Interrogate the relationship between legal environments, human rights and HIV
- Focus on the most challenging legal issues in the context of HIV: criminalization of HIV, behaviours of Key Populations, legal and social status of women, and access to prevention and treatment
- Contribute to ensuring that law, human rights and HIV receive the interrogation and exposition necessary to facilitate universal access to HIV prevention, treatment, care and support

The work of the Commission was shaped by mutually reinforcing axes: written submissions and regional dialogues; the work of the TAG, and the findings and recommendations of the Commission members. Over the course of 18 months, the Global Commission was involved in regional dialogues, research, and analysis. The Global Commission's final report, *HIV and the Law: Risks, Rights and Health*, was published in July 2012. The report interrogates the relationship between HIV and the law, and includes recommendations covering the breadth of the HIV response. In July 2018, the Commission released a *Supplement on HIV and the Law*. This Supplement highlights developments since 2012 in science, technology, law, geopolitics, and funding that affect people living with or at risk of HIV and its coinfections. The recommendations bring in a few new areas and add to and amplify those of the Commission's 2012 report *Risks, Rights & Health*, which remained as relevant as they had been six years prior.¹⁸¹⁹

¹⁸ ToR

¹⁹ Inception Report

UNDP contracted the Program on Global Health and Human Rights (GHHR), Institute on Inequalities in Global Health (IIGH), University of Southern California to carry out an evaluation of the impact, success factors, challenges and good practices of the Global Commission from January 2012 to June 30, 2019, with a particular focus on the global and regional level. This evaluation seeks to draw lessons relating to the relevance, effectiveness, sustainability and impact of the Global Commission and its 2012 and 2018 reports.²⁰ The Terms of Reference (ToR) for this evaluation provide further depth stating that the purpose “is to conduct an evaluation of the UNDP led/convened Global Commission on HIV and the Law which aimed to (1) contribute to the evidence base on the relationships between HIV, human rights and legal environments, taking into account the perspectives and experiences of governments including law and policy makers, law enforcers, as well as civil society including those most marginalised and affected by HIV; and (2) provide evidence-informed and actionable recommendations for law and policy reform. The overall goal of the evaluation is to assess the impact in relation to the aforementioned aims.”²¹

Human rights are a cornerstone of the conceptual framework for this evaluation, helping to draw attention not only to the impact of the Commission’s work but to its consideration of human rights throughout its working processes. Particular attention has been given to the principles of inclusion, participation, equality and non-discrimination, and accountability.

Using a mix of methods, this evaluation seeks to assess the overall impact of the Global Commission on HIV and the Law – intended and unintended, long-term and short-term, positive and negative – in relation to the aforementioned objectives. A desk review was carried out of available relevant project documents including papers, tools, conference presentations, proposals, communication materials and reports, as well as materials produced by others where the Commission or its work are explicitly mentioned or referenced. Qualitative data were collected through semi-structured key informant interviews using an interview guide developed for this evaluation. Outputs from the desk review and qualitative interviews were analysed jointly.

This evaluation report is comprised of four main sections: introduction, methodological approach, findings, and conclusions. This introductory section provides an overview of the purpose and scope of the evaluation as well as the evaluation objectives, conceptual framework and approach. The methodological approach section details the steps involved in the evaluation as well as the

²⁰ ToR

²¹ ToR

methods adopted for data collection and analysis. The findings section includes four sub-sections. It begins with a sub-section on findings relevant to the processes of the Global Commission including the inception, structure, approaches, and key outputs of the Global Commission covering the period from its inception to the release of the 2012 report *HIV and the Law: Risks, Rights and Health*. The three subsequent sub-sections focus on the key impacts identified at the global, regional and national levels respectively following the release of the 2012 report. The final section provides overarching conclusions from the evaluation, including the relevance, effectiveness and sustainability of the work.

III. INTRODUCTION

In 2010, the United Nation Development Programme (UNDP), on behalf of the Joint UN Programme on HIV/AIDS (UNAIDS), convened the Global Commission on HIV and the Law (the Commission). UNDP served as the Secretariat for the Global Commission. This independent Global Commission was comprised of fourteen distinguished individuals from diverse disciplines and nationalities, each with extensive experience and expertise on matters of public health, human rights, law or development, and a Technical Advisory Group (TAG). The Global Commission's final report, *HIV and the Law: Risks, Rights and Health*, was published in July 2012. The report interrogates the relationship between HIV and the law, and includes recommendations covering the breadth of the HIV response. It was based on decades of medical, public health and legal research and the vast experience of the Commissioners and TAG. The report focuses on the group of important, though not exhaustive, issues determined by the Commissioners to be most critical at the time: HIV-related stigma and discrimination; criminalization of HIV transmission, exposure and non-disclosure; and key populations, including people who use drugs (PWUD), sex workers, men who have sex with men (MSM), transgender persons, prisoners and migrants; gender-based violence, discrimination and inequalities; children and adolescents; and innovation, intellectual property and access to treatment. These topics served as chapters of the report and the Global Commission made a series of recommendations related to each topic intended to promote effective, sustainable responses to HIV consistent with governments' human rights commitments.

Following the release of the 2012 report, UNDP supported follow-up activities to implement recommendations of the Global Commission globally, regionally, and nationally. This has included the development of global level policy and structures as well as leveraging financial and

technical support for regional and national level activities to support an enabling legal environment for HIV responses.

In July 2017, five years after the release of the Global Commission’s report, UNDP convened a multi-stakeholder meeting titled ‘The Global Commission on HIV and the Law at Five: Reflecting on Progress, Challenges and Opportunities to End AIDS by 2030’. The meeting, including some of the original commissioners and members of the TAG, provided an opportunity to revisit and critically examine ongoing efforts and partnerships required to meet the targets in SDG 3 to end AIDS, tuberculosis and malaria by 2030 and the pledge of the 2030 Agenda for Sustainable Development (2030 Agenda) to leave no one behind and to reach those who are furthest behind first. The meeting recommended, among other things, issuing a Supplement to the Global Commission’s report, addressing issues on human rights and law in the context of these global agendas and the latest science on HIV.

In July 2018, the Global Commission released its *Supplement on HIV and the Law*. This Supplement highlights developments since 2012 in science, technology, law, geopolitics, and funding that affect people living with or at risk of HIV and its coinfections. The recommendations bring in a few new areas and add to and amplify those of the Commission’s 2012 report *Risks, Rights & Health*.^{22 23}

From the outset, it has been clear that the Global Commission on HIV and the Law is concerned with ensuring that it has had discernable impact in the world and, unlike any other global commission to date, it has also sought to understand the impacts of its work through a formal external evaluation. UNDP contracted the Program on Global Health and Human Rights (GHHR), Institute on Inequalities in Global Health (IIGH), University of Southern California to carry out an evaluation of the impact, success factors, challenges and good practices of the Global Commission, with a particular focus on the global and regional level. This report presents the findings of the evaluation.

²² ToR

²³ Inception Report

The Evaluation

Purpose of the evaluation

This evaluation seeks to draw lessons relating to the relevance, effectiveness, sustainability and impact of the Global Commission and its 2012 and 2018 reports.²⁴ The Terms of Reference (ToR) for this evaluation provide further depth stating that the purpose “is to conduct an evaluation of the UNDP led/convened Global Commission on HIV and the Law which aimed to (1) contribute to the evidence base on the relationships between HIV, human rights and legal environments, taking into account the perspectives and experiences of governments including law and policy makers, law enforcers, as well as civil society including those most marginalised and affected by HIV; and (2) provide evidence-informed and actionable recommendations for law and policy reform. The overall goal of the evaluation is to assess the impact in relation to the aforementioned aims.”²⁵ This evaluation was conducted independently with logistical support—including access to documentation and introductions to key stakeholders—provided by UNDP.²⁶

Evaluation objectives

As described in the initial ToR, the evaluation has the following objectives:

1. “Assessment of the impact of the Commission’s report and follow up including the following:
 - i. Global and regional advocacy and resource flows
 - ii. Global, regional and national policy and programming
 - iii. National laws and policies (including number of laws changed but also, to the extent possible, how the Commission contributed)
2. Analysis of the critical success factors for the Commission’s success (including for example, the Commissioners, the Technical Advisory Group, the Commission model and

²⁴ ToR

²⁵ ToR

²⁶ Inception report

approach, Secretariat support, resources, civil society engagement etc.)”²⁷

During the course of this evaluation, and in discussions with UNDP, findings supporting the second evaluation objective became more salient and as a result an emphasis on critical success factors such as processes and approach are prominent throughout this evaluation.

Scope of the evaluation

For the purposes of the evaluation, impact was assessed at global, regional and national levels to the extent possible. It was understood that impacts at global and regional levels would be particularly relevant and potentially easier to capture and, as a result, less focus was given to assessing national level impact. The ToR describes the scope to include a review of the Global Commission’s documents, including documents and reports prepared by the Secretariat from 2012 through June 30, 2019. This was supplemented, as relevant, by additional documentation that was published throughout the course of the evaluation process. Documents reviewed included papers, tools, conference presentations, proposals, communication materials and reports, as well as materials produced by others where the Global Commission is mentioned or referenced.²⁸ The review of the project documents was not limited to documents provided by UNDP and its partners. Additional materials were also identified and reviewed by the evaluation team as appropriate to help assess broader impact.

Chapter headings from the 2012 and 2018 reports broadly served as entry points to help determine the focus areas of this evaluation. This evaluation was not designed to determine the uptake of each of the individual recommendations from the 2012 and 2018 reports. Instead any focus on specific recommendations is intended as part of the general assessment, with attention only to those recommendations which emerged as most salient during the desk review process. Qualitative data, including interviews with key stakeholders, have been analysed in combination with findings from the desk review. Further details are provided in the Methodological Approach

²⁷ ToR

²⁸ ToR

section below.²⁹

This evaluation seeks to identify impact, success factors contributing to meeting its targets, challenges and good practices in the Global Commission’s work and the follow up by disentangling, to the extent possible, the different elements of the processes through which targets were or were not achieved in different settings. The evaluation reviews the critical factors affecting the Global Commission’s impact, including seeking to understand who has led processes at each level, which partners have been engaged and through what processes, the relevance of interactions between the different levels of activities, and the extent to which risks to success were foreseen and mitigated with the aim of assessing the difference this ultimately made to impact.³⁰

Conceptual framework

Human rights are a cornerstone of the conceptual framework for this evaluation, helping to draw attention not only to the impact of the Global Commission’s work but to its consideration of human rights throughout its working processes. Particular attention has been given to the principles of inclusion, participation, equality and non-discrimination, and accountability. This assessment of processes can help to identify the enabling factors and challenges to the Global Commission’s work with a view to informing its sustainability moving forward, as well as how the work of future commissions might be planned.³¹

In addition to the human rights lens, the conceptual framework has been informed by UNDP’s standard evaluation criteria—relevance, effectiveness, impact, and sustainability as outlined in the UNDP Evaluation Guidelines.³²

²⁹ Inception Report

³⁰ Final Technical Proposal

³¹ Final Technical Proposal

³² UNDP. (2019, Jan). Evaluation Guidelines. Retrieved From
http://web.undp.org/evaluation/guideline/documents/PDF/UNDP_Evaluation_Guidelines.pdf

Approach

Following a brief introduction of the general approach to this evaluation, this section will outline our involvement in other relevant evaluations and the Global Commission itself, and describe the evaluation’s approach to attribution and the evaluation’s focus and limitations.

Using a mix of methods, this evaluation seeks to assess the overall impact of the Global Commission on HIV and the Law – intended and unintended, long-term and short-term, positive and negative – in relation to the aforementioned objectives. While the focus is on impact to date, attention is also given to the Commission’s contribution to longer-term desired outcomes and sustainable change in the context of the 2030 Agenda and the maxim of ‘leaving no one behind’.

The Commission was initially convened to make recommendations highlighting the need for attention to law as a critical tool in the HIV response. Follow-up, however, relies on a range of partners and other actors. The long-term benefits of this initial work rely on adequate capacity and commitment among a wide range of actors at global, regional and national levels that stretch far beyond the Secretariat, the Technical Advisory Group and Commissioners. Implementation of the Global Commission’s recommendations for legal change, and subsequent attention to ensure improvements to the legal environment, and that these in turn improve access to health and justice requires sustained action by many stakeholders. The extent to which the Commission’s report and its follow-on work is and can be sustainable is assessed here with a view to identifying any key actions that have promoted sustainability as well as critical factors influencing the impacts of follow-on efforts.^{33 34}

The qualitative data collected are critical for understanding the various enabling and explanatory factors for the results attributable to the Global Commission’s report and follow-on work. While documentation existed for some of the concrete changes that have been affected, much of the detail surrounding the processes and partnerships that have been central to success had not yet been documented. It is hoped that analysis of these factors in this evaluation can not only help

³³ Final Technical Proposal

³⁴ Inception Report

clarify the results of the Commission but can also yield lessons for other global commissions that may be convened.

Relevant evaluations and involvement

The Program on Global Health and Human Rights (GHHR), Institute on Inequalities in Global Health, University of Southern California has been engaged over the years in the evaluation of several projects that were directly connected to follow-up activities of the Global Commission.

These evaluations include:

- Evaluation of the Africa Regional HIV Grant: Removing Legal Barriers (Baseline: 2017; Endline: 2020)
- Strengthening Regional and National Legislative Environments to Support the Human Rights of LGBT People Women and Girls affected by HIV and AIDS in Sub-Saharan Africa (A Sida Supported Project – Phases I and II) (Midline: 2015; End of project Evaluation: 2019)

The above series of evaluations and associated work in Sub-Saharan Africa and beyond have positioned GHHR well for this evaluation. The current evaluation draws upon this in-depth knowledge and these rich data sources to add depth and specificity to the analysis of impact where possible.

One of the Principal Investigators (Sofia Gruskin) was on the Global Commission’s Technical Advisory Group, which afforded additional insight into the processes through which the Commission worked.

Attribution

Given the complexity of effecting change at the various levels that the Global Commission has sought to influence, and the range of actors required for such change to happen, direct causal attribution of change to the Global Commission itself is difficult to establish. The focus of this

report has been on understanding and documenting the processes through which the Global Commission has worked and through which relevant materials have been used in different settings so as to support a better understanding of impact. Still, the precise contribution of the Global Commission to these changes is difficult to quantify. The evaluation has relied primarily on qualitative data to elucidate this as best possible, but there are nonetheless limitations in this regard.³⁵

Focus and limitations

To the extent possible, impact was assessed on the global, regional and national levels. Due to the geographic distribution of funded follow-up activities, disease burden of HIV, and richness of available data much of the regional and national level findings presented here are particularly focused on sub-Saharan Africa. Fewer data were available for the Middle East and North Africa, Eastern Europe, and Latin America and the Caribbean. One key informant representing the Middle East and North Africa (MENA) region was interviewed. Efforts were made to interview informants from other regions with limited success. As such, these regions are covered in less depth in this report.

Structure of the Evaluation Report

This evaluation report is comprised of four main sections: this introduction, methodological approach, findings, and conclusions. This introductory section provides an overview of the purpose and scope of the evaluation as well as the evaluation objectives, conceptual framework and approach. The section on the methodological approach details the steps involved in the evaluation as well as the methods adopted for data collection and analysis. The findings section includes four sub-sections. It begins with a sub-section on findings relevant to the processes of the Global Commission including the work that went into preparing the 2012 report *HIV and the Law: Risks, Rights and Health*, the 2012 report itself, and follow-up to the 2012 report including the 2018 report. The three subsequent sub-sections focus respectively on the key impacts identified

³⁵ Inception Report

at the global, regional and national levels following the release of the 2012 report. The last section provides overarching conclusions from the evaluation.

A series of annexes provide supplemental data to support the information presented in the report.

IV. METHODOLOGICAL APPROACH

Introduction

A range of methodologies have been employed to achieve the evaluation objectives. This mixed methods approach is designed to maximize learning from the data made available by UNDP and colleagues, with additional primary data collected to help fill gaps in documentation. Additional details of the methods employed are provided below.

Evaluation Team Briefing

The first step in the evaluation process was a series of in- person meetings and phone calls between the evaluation team and UNDP. These discussions were critical to determining the specific focus and scope of the evaluation as elucidated in this document. The aim of this process was to define the evaluation scope and methods to ensure an optimal balance of efficiency, stakeholder participation and ability to answer the key questions of interest through document review, Skype and phone interviews, and fieldwork. Taking into account logistical constraints and ethical considerations, a shared understanding of the evaluation questions and priorities was developed and the areas where more in-depth data collection was needed were identified. The briefings also provided an opportunity to understand the range of evidence, including project documentation, available for review.³⁶

³⁶ Inception Report

Defining impact

The ultimate impacts desired by the Global Commission work were defined as creating an enabling legal environment in relation to HIV with improved health outcomes and lived experiences, particularly for key and vulnerable populations. The challenges around attribution that impede assessing these impacts in an evaluation such as this one were discussed. It was therefore determined GHHR/IIGH would assess impacts in terms of processes and interim outcomes that lie on the pathway towards achieving these ultimate impacts. These processes and outcomes vary slightly by level of analysis – global, regional and national – but include things such as capacity building around HIV and the law, legal environment assessments and their follow-up, key court decisions, and changes in laws. The primary focus of this evaluation is on global and regional level impact, with inclusion of a few illustrative examples of country-level impact.

Data Collection

Desk review

A desk review was carried out of available relevant project documents. This included papers, tools, conference presentations, proposals, communication materials and reports, as well as materials produced by others where the Global Commission or its work is explicitly mentioned or referenced. The focus of the desk review was on Commission documents, reports on Commission follow-up and documents citing or referencing the Commission's work and follow-up. UNDP provided extensive documentation with regard to the Global Commission's work, which was supplemented by additional documents identified through the Global Commission website, internet searches and a review of selected literature, discussions with key stakeholders, and data from the aforementioned relevant project evaluations.^{37 38}

³⁷ Inception Report

³⁸ <https://hivlawcommission.org/>

Document Reviews

Mapping of the Global Commission website

The first step in understanding the scope of the Global Commission documentation to draw from was a mapping of the Global Commission’s website. The contents of the website were reviewed and summarized to identify the key events, outputs, programs, and follow-up activities that had been documented with an eye towards what could be learned in terms of potential impact (Supplemental File 1).³⁹

Alignment with strategic priorities of major global health institutions

The strategic priorities, defined as the explicit focus areas, goals, targets, or priorities emphasized and/or outlined in the strategic plans of major global health institutions were reviewed for alignment with the Global Commission’s recommendations. This included the United Nations Development Programme (UNDP), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the Global Fund to Fight AIDS, Tuberculosis and Malaria, The United States President’s Emergency Plan for Aids Relief (PEPFAR), United States Agency for International Development (USAID) and select foundations, development cooperation agencies, and key bi-lateral donors including the Ford Foundation, Open Society Foundations, Sida, Norad, Danish International Development Agency (DANIDA), the Dutch government, and the Canadian government. The findings determined to be most relevant from these analyses are presented in the “Global Level Impact” section of this report.

Alignment with Agenda 2030, the SDGs and the pledge to leave no one behind

Alignment of the Global Commission recommendations from the 2012 and 2018 reports with the Sustainable Development Goals (SDGs) and Universal Health Coverage (UHC) priorities was assessed. The Global Commission 2012 and 2018 report recommendations, SDG goals, targets,

³⁹ Available Separately

and indicators, and UHC key asks and milestones were mapped and analyzed for thematic alignment and commonalities. The most relevant findings from these analyses are presented in the “Global Level Impact” section of this report.

Assessment of regional level activities

Information on regional-level findings was drawn from evaluations of work designed as follow-on to the Global Commission and supplemented by online searches and key informant interviews. In addition, beyond reviewing documents provided by UNDP, searches were carried out relating to regional bodies to understand any changes to their work around HIV and the law. While a multitude of factors influence regional level efforts to create a more enabling environment for the HIV response, efforts were made to highlight where the Commission and its work appears to have influenced activities that took place.

Assessment of national-level activities

UNDP conducted an assessment of the implementation of national-level of activities to support an enabling legal environment and provided the evaluation team a document with this information covering the period of January 2012- May 2019. Using these data, a spreadsheet of select follow-up activities by country was created (Supplemental File 2).⁴⁰

Data abstraction from relevant project evaluations

Data abstraction from the aforementioned relevant project evaluations carried out by GHHR/IIGH between 2015 and 2020 was conducted. Each of these evaluations included a desk review of relevant documentation, and interviews with key informants from a total of 19

⁴⁰ These activities included legal environment assessments, national dialogues, law review and legal scans, civil society engagement, dialogues with members of the judiciary, dialogues with and capacity strengthening of parliamentarians, dialogues with and capacity strengthening of law enforcement officials, sensitization and dialogues with other key stakeholders, and empowering key populations to promote human rights-based approaches to HIV. (See supplemental file 2).

countries representing government, civil society, UN agencies and project consultants. Both the primary qualitative data as well as project specific documentation from these evaluations were consulted to add depth to the current evaluation. Findings that include this material are primarily presented in the “Regional Level Impact” and “National Level Impact” sections of this report.

Citation searches

Key global level references to the Global Commission

Key mechanisms that form part of the global health and human rights landscape were reviewed to quantify explicit mention of the Global Commission, the Commission’s reports and thematic alignment with specific recommendations from January 2012- June 30, 2019. This included Human Rights Council resolutions, World Health Assembly resolutions, Human Rights Treaty Monitoring Bodies’ reports and reporting guidelines, Commission on the Status of Women conclusions, and Commission on Population and Development resolutions. The 2016 UN General Assembly Special Session on HIV Political Declaration on HIV and AIDS, Report of the Secretary-General, and side event materials were also reviewed for reference to the Global Commission. The most relevant findings from these materials are presented in the “Global Level Impact” section of this report.

Scholarly citations

Scholarly citations of the Global Commission 2012 and 2018 reports published in English between January 2012 and June 30, 2019 have been quantified using Google Scholar and Scopus search results. A number of different citation formats for the reports were found in the initial stages of searches, so the following two search titles were ultimately used to maximize capture: "HIV and the Law Risks Rights and Health" and "HIV and the Law Risks Rights & Health." Each citation search result was reviewed by a member of the research team to ensure accurate reference to the 2012 or 2018 reports. Content of the scholarly citations were reviewed to determine subject matter and the ways in which the Global Commission reports were included in the published work.

Accepted abstracts from global International AIDS Society conferences were also reviewed to quantify the explicit mention of the Global Commission, the Commission's reports and thematic alignment with specific recommendations from January 2012 - June 2019. The most relevant findings from this material are presented in the "Global Level Impact" section of this report.

Qualitative data collection

Skype/phone interviews were carried out to allow for primary data collection with a range of stakeholders. Interview guides were developed based on initial findings from the desk review and tailored to the key informant to address gaps in knowledge and questions raised from the desk review (which included summaries of interviews conducted as part of earlier GHHR/IIGH evaluations).

UNDP provided a list of key informants and facilitated introductions as needed. In total, 11 new interviews were carried out between January and March 2020. Participants in this round of interviews included current and past UNDP staff, Commissioners and implementers. Detailed notes were taken during the interviews to maximize data capture.

Data collection for the endline evaluation of the "Africa Regional HIV Grant: Removing Legal Barriers" was ongoing at the time this evaluation began so pertinent questions were also included in some key informant interviews for that evaluation in Malawi and the Seychelles. Data were also used from 19 qualitative interviews that had already been carried out as part of previous evaluations.

See Annex 1: List of Interview Participants for a full list of key informant interviews.

Data Analysis

Data analysis involved an iterative process of data immersion across different sources and ensuring systematic attention to the framework guiding the evaluation. The use of standardized data collection instruments for the desk review and qualitative data collection facilitated thematic

analyses. Using themes derived primarily from the evaluation objectives, data from all sources were analyzed jointly.

V. FINDINGS

The findings section is organized to reflect the assessment of evaluation objectives and includes four sub-sections: Process, Global Level Impact, Regional Level Impact, and National Level Impact. Along with broader findings, case studies are presented that provide in-depth analysis of processes and impacts for key findings. In the Global Level Impact sub-section, three case studies are presented. The first is on the International Guidelines on Human Rights and Drug Policy (Case Study One), the second is on the High-Level Panel on Access to Medicines (Case Study Two), and third is an examination of efforts to address overly broad use of criminal law in the years following the Global Commission (Case Study Three). In the Regional Level Impact sub-section, the evaluation examines the impact of the regional level grants to support follow-up work to the Commission. This is followed by a case study on the corresponding impact of these grants and activities on regional laws, policies, and resolutions in the Africa region (Case Study Four). In the Country level impact sub-section, the evaluation examines broad changes to which follow-on activities to the Global Commission have contributed.

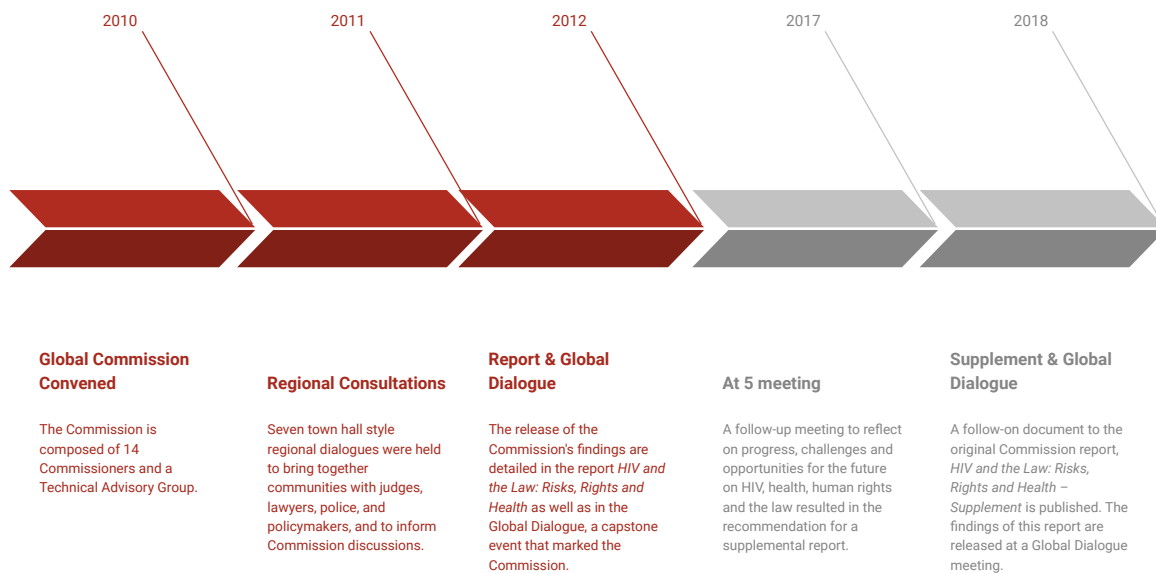
Process

Introduction

Impact as described below explores both *what* the Global Commission did but also *how* it was done. The approach taken by the organizers from the outset appears to have been a key enabling factor in the ability of the Global Commission to accomplish its goals at global, regional and national levels. This section of the report focuses on the approach taken and highlights a number of key factors in regard to structures, processes, and strategies that facilitated the Global Commission's progress towards its goals. A focus on the human rights principles of inclusion, participation, equality and non-discrimination, and accountability appear to have been instrumental in the approach of the consultative processes undertaken at the start which set the stage for similar tactics for follow-up activities globally, regionally, and nationally. The findings

in this section are divided into three sections: Preparation for the 2012 report, The report itself and Follow-up to the 2012 report. ‘The Preparation for the 2012 report’ section focuses on the structures, processes, and strategies of the work prior to publication of the report. The short sub-section on the report itself touches on its immediate impact while the ‘Follow-up to the 2012 report’ section focuses on broader impacts of the Global Commission and its follow-up activities.

Figure 1. Timeline of key Global Commission activities



Preparation for the 2012 Report

The Global Commission on HIV and the Law, convened in in June of 2010, was brought together as an independent body of eminent individuals with proficiency in law, human rights

and HIV.⁴¹ It set out to address and make recommendations on key human rights and legal issues relating to HIV such as criminalization of HIV transmission, behaviors and practices including drug use, sex work, same-sex sexual relations, and issues related to prisoners, migrants, children's rights, violence against women and access to treatment. The work of the Global Commission that led to the publication of the report in 2012 was based on mutually reinforcing axes: written submissions and regional dialogues; the work of the TAG, and the findings and recommendations of the Global Commission members.⁴² Over the course of 18 months leading up to the publication of the report, the Commission was involved in consultations, research, and analysis. Testimonials from those affected by their legal environment were received from over 700 individuals representing 140 different countries. In addition to this, the Commission received submissions from experts on HIV, health and the law.⁴³

Design inspiration

The decision to convene the Global Commission was inspired by several prior activities, occurring at global, regional and national levels. In particular, several other meetings and dialogues contained lessons, processes, and structures that would greatly influence the eventual development of the Commission including the real and perceived independence of the Global Commission from UNDP, the approach to shaping relevant information for synthesis by the Commissioners, as well as determining the structure of dialogues between communities and the Commission. These prior activities took place all over the world, including in India, Canada, and Brazil, and within multilateral bodies such as the World Health Organization (WHO).

⁴¹ Global Commission on HIV and the Law. (2017) *Information Note*. Retrieved From <https://hivlawcommission.org/wp-content/uploads/2017/06/CommissionBooklet-English-18May2011.pdf>

⁴² Global Commission on HIV and the Law. (2017, July 12). *Commission Overview*. Retrieved from <https://hivlawcommission.org/overview/>

⁴³ Global Commission on HIV and the Law. (2012, July). *Risks, Rights & Health*. (2012, July). Retrieved from <https://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf>

At a global level, in 2005, WHO had established the Commission on Social Determinants of Health (CSDH).⁴⁴ Policy makers, researchers, and civil society actors were convened to support countries and global health partners in addressing the social factors leading to ill health and health inequities. According to one key informant, the Global Commission looked closely at the CSDH for inspiration in a few key areas. This included careful speculation about what is understood to constitute evidence, what sorts of evidence are actually sufficient and the process by which Commissioners determined the issues to be discussed. The Global Commission was able to rely on the process and findings of the CSDH in determining how to approach law in its work. The CSDH had recognized that written law does not always translate directly into implementation and that safeguards are necessary for top down change. The key informant noted the importance of this lesson from the CSDH, stating, “*we are clear there is law on books and law on the streets, we wanted to highlight both.*”⁴⁵

The Latin American Commission on Drugs and Democracy, which was convened in March 2008, was, according to one key informant, another source of inspiration for the functioning of the Global Commission. The Latin American Commission had been convened by three former presidents: Henrique Cardoso of Brazil, César Gaviria of Colombia, and Ernesto Zedillo of Mexico. Of great importance, especially to the conceptualization of the Global Commission, was the structure of the Latin American Commission, which was a wholly independent body, even as it received support from Edelstein Center, Fernando Henrique Cardoso Institute, the Open Society Foundations, the Democratic Platform and Viva Rio.⁴⁶ The concept of the Global Commission was pulled from the model and work of the Latin American Commission, in particular the way it demonstrated the importance of having an independent body, even as the Global Commission was designed to maintain a strong connection with the UN system.⁴⁷

The Global Commission on Drug Policy was established in January of 2011 – after the Global Commission on HIV and the Law had been convened but still during the period during which the processes leading to the drafting of the original report was occurring. Hailed for bringing to light

⁴⁴ The Commission on Social Determinants of Health (2017, May 16). *What, Why and How?* Retrieved from https://www.who.int/social_determinants/thecommission/finalreport/about_csdh/en/

⁴⁵ Key Informant Interview 3

⁴⁶ Latin American Commission on Drugs and Democracy, (2008, April 30), *First Meeting*, Retrieved From http://fileserv.idpc.net/library/LABlueRibbonCommission_EN.pdf

⁴⁷ Key Informant Interview 2

many of the negative consequences of the ‘War on Drugs’, the Commission on Drug Policy is notable in that Commissioner and Founding Chair Fernando Henrique Cardoso, former president of Brazil, was simultaneously also a prominent Commissioner for the Global Commission on HIV and the Law. The Global Commission on Drug Policy oriented itself around a regional focus through its inclusion of the Latin American Commission on Drugs and Democracy and the West African Commission on Drugs. A Secretariat in Geneva coordinated the proceedings and oversaw all publications and products. As with the Global Commission on HIV and the Law, the Global Commission on Drug Policy relied on a wide network of partners and experts for its work.⁴⁸ While it is ultimately not clear exactly how these two Commissions have influenced each other, the overlap in timing, process, substance and even a Commissioner suggest some level of possible mutual learning.

The 2011 Political Declaration on HIV/AIDS was yet another critical document that proved instrumental for the creation of the Global Commission. This political declaration was adopted by the United Nations General Assembly on June 10th, 2011 as a testament to the intensification of efforts to eliminate HIV/AIDS. The report states the importance of human rights efforts that reduce stigma, discrimination, and violence related to HIV and maintains that it will, “commit to review, as appropriate, laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes to people living with and affected by HIV and consider their review in accordance with relevant national review frameworks and time frames.”⁴⁹

The importance also of country level experiences and approaches in inspiring the Global Commission should not be understated. In both India and Canada, policy dialogues had been used to address difficult conversations amongst diverse stakeholders. In both cases, these brought together a variety of different points of view and life experience with the intent to help drive policy change through reaching a common understanding. In Canada, these sorts of policy dialogues were convened by the government bringing together affected communities with decision-makers including Members of Parliament and representatives of UN agencies as a way of having community voices participate at high-level tables. In India, an NGO, the Lawyers’

⁴⁸ The Global Commission on Drug Policy. (n.d.). *Mission and History*. Retrieved From <https://www.globalcommissionondrugs.org/about-usmission-and-history>

⁴⁹ United Nations General Assembly. (2011, June 10). Political Declaration on HIV/AIDS: Intensifying our Efforts to Eliminate HIV/AIDS

Collective, institutionalized this approach in their HIV work. Meetings were held to bring together “those who make the law, those who enforce it, and those who are most affected by it.” Judges, parliamentarians, lawyers, and representatives of key populations participated in open dialogues together, and with an eye towards structured outcomes. For many in attendance this would mark the first time these actors interacted and heard from one another as equals.⁵⁰ By convening these distinct populations in this novel but structured setting, these meetings provided a rough model for the regional and national processes and dialogues used in preparation for and after publication of the Global Commission’s 2012 report.

UNDP drew lessons from across all of these different initiatives and used them to inform the Commission’s overall structure and processes.⁵¹

UNDP’s role as the Secretariat

The Global Commission on HIV and the Law was an independent body established at the request of the Program Coordinating Board of the Joint United Nations Programme on HIV/AIDS (UNAIDS). The United Nations Development Programme (UNDP) is the UNAIDS cosponsor responsible for leading work on human rights law, stigma and discrimination, and key populations. As outlined in the UNAIDS 2010 Division of Labor, there are several priority areas of joint action led by UNDP which are especially pertinent to this Global Commission:

- Remove punitive laws, policies, practices, stigma and discrimination that block effective responses to AIDS
- Empower men who have sex with men, sex workers, and transgender people to t themselves from HIV infection and to fully access antiretroviral therapy (with UNFPA)
- Meet the HIV needs of women and girls and stop sexual and gender-based violence⁵²

In this capacity, UNDP served as the Secretariat for the initiative and was heavily involved in almost all aspects of the Global Commission’s work. In the initial phase, UNDP worked closely with the Commissioners and the TAG, facilitated the process of the written submissions, and convened the regional dialogues including ensuring the effective participation of key populations

⁵⁰ Key Informant Interview 8

⁵¹ Key Informant Interviews 2, 3, 8

⁵² UNAIDS. (2010). *Division of Labor*. Retrieved from

https://www.unaids.org/sites/default/files/sub_landing/files/JC2063_DivisionOfLabour_en.pdf

and civil society partners in all aspects of this work. The UNAIDS Secretariat also helped to engage other UNAIDS cosponsors and linked the work of the Global Commission to regional actors through the preparation and execution of regional level dialogues as well as country consultations on universal access.⁵³

Impact

From a structural standpoint, situating the Global Commission as an independent body, with UNDP as the Secretariat on behalf of UNAIDS, was reportedly a key decision made right from the outset. This strategic arrangement allowed the Commission to leverage the credibility and convening power of the UN, while simultaneously operating with autonomy.⁵⁴

Independence allowed for a level of freedom to produce written guidance that prioritized the use of many sorts of evidence and tackled topics potentially perceived to be sensitive or controversial with fewer political considerations than would have been required by a UN mechanism.⁵⁵ A number of key informants reported that there was great weight placed on the independence of the Global Commission. This was important to both government and civil society, and to this day there remains the perception that the 2012 report was authoritative and unbiased.⁵⁶

Alongside this, the importance of the credibility and convening power of the UN and its ability to catalyze global momentum is not to be understated. A number of key informants highlighted the significance of having the UN brand behind the Global Commission also as key to the legitimacy of its recommendations across the globe.⁵⁷ In addition, at the country level the strength of the regional and national networks of UN offices engaged with the follow-up reportedly lent credibility to the process and facilitated localized buy-in. A key informant noted

⁵³ Global Commission on HIV and the Law. (2012, July). *Risks, Rights & Health*. (2012, July). Retrieved from <https://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf>

⁵⁴ Key Informant Interview 2, 3, 8

⁵⁵ Key Informant Interview 2, 3, 8

⁵⁶ Key Informant Interview 9

⁵⁷ Key Informant Interview 2, 3, 6, 8

this was critical to implementation and explained “*Enthusiasm and engagement on a national level makes all the difference moving this forward.*”⁵⁸

UNDP was exceptionally well positioned not only to play the Secretariat’s convening role but also to move this work forward.⁵⁹ UNDP has great credibility on the ground with a global, regional and country presence covering over a 140 countries, a longstanding mandate in democratic governance and the strong support of the former UNDP Administrator (Helen Clark) facilitated widespread follow-up actions at regional and national levels by actors in all parts of the institution. Her leadership and active engagement helped mobilize actors across the organization who might not otherwise have taken up this work as part of their mandate. UNDP as a whole is a well-connected convening organization with the ability to work across many sectors of government and civil society. This was essential for gaining access to the various political and organizational mechanisms that are ultimately most likely to help effect change globally, regionally, and nationally. UNDP’s knowledge of the political landscape and ability to bring together key stakeholders from across sectors and swathes of society allowed for tactical approaches to specific topic areas that helped to optimize traction on issues, leverage resources and form synergies that were useful not only at the time of the release of the report but also over time.⁶⁰

Commissioners and the TAG

The Global Commission was comprised of 14 eminent individuals whose expertise on a wide range of issues marked them as ideal candidates to serve as Commissioners in the area of HIV and the law. According to one key informant, seniority and diversity were two additional factors in the recruitment of Commissioners, and it was expected that each would take a substantive role in Commission processes.⁶¹ Key informants also noted the importance of the UNDP brand in the successful recruitment of influential Commissioners and their ability to carry out work.⁶² One key informant noted, “*Having former heads of state and senior judges had tremendous potency*

⁵⁸ Key Informant Interview 3

⁵⁹ Key Informant Interview 3, 8

⁶⁰ Key Informant Interview 1

⁶¹ Key Informant Interview 2

⁶² Key Informant Interview 2, 4, 6

and legitimacy under the UNDP brand.”⁶³ This mutually reinforcing credibility married technical expertise and political savvy to the evidence and report recommendations. A Commissioner noted the delicate balance of Commissioner recruitment commenting “Getting the right commissioners is really important. Not just time-servers or advancing their glorious careers – hard workers/fresh thinkers – aware of global importance in what they are doing. This greatly influenced the success of the Commission.”⁶⁴

The importance of regional representation of Commissioners was highlighted by key informants with respect to both successes and challenges. It was reported that prominent Latin American representation on the Commission made a big difference in moving recommendations forward regionally in Latin America as well as increased uptake on a national level in that region.⁶⁵ Other key informants pointed to lack of appropriate representation or even total lack of representation on the Commission may have contributed to the limitations in follow-up in the Middle East and North Africa, Francophone countries in Africa, Eastern Europe and Central Asia.⁶⁶ Despite important efforts to ensure truly global representation and reach through all of the Regional Dialogues and written submissions from these regions, this remains a valuable lesson in understanding the key impact Commissioners can have not only initially but in facilitating regional buy-in over time.

The Commissioners met three times over the course of 18 months. Outside of these official Commission meetings, Commissioners also notably participated in many of the regional dialogues.⁶⁷ There was informal recognition of the expertise of different Commissioners leading to different people championing different issues in the discussions amongst the Commissioners. Within this, Commissioners played active roles not only with respect to topical areas, but in a range of tasks including analyzing the interaction between the legal environment and HIV, encouraging evidence-based public dialogues concerning rights-based law, policy and evidence

⁶³ Key Informant Interview 2

⁶⁴ Key Informant Interview 6

⁶⁵ Key Informant Interview 3

⁶⁶ Key Informant Interview 5

⁶⁷ Global Commission on HIV and the Law. (2012, July). *Risks, Rights & Health*. (2012, July). Retrieved from <https://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf>

in the context of HIV and, based on all the information provided, identifying actionable recommendations coupled with a roadmap for follow-up.⁶⁸

The Technical Advisory Group (TAG) consisted of 23 experts representing law, human rights, and public health. Members included representatives of civil society organizations, key populations, people living with HIV, academia, and the UNAIDS Secretariat.⁶⁹ The TAG was involved in reviewing all materials sent to the Commission and all materials that the Commission produced. The TAG informed the Commission about key technical issues and research as relevant to the content of the report and its recommendations.⁷⁰

The TAG was also responsible for advising the Commission on the process and substance of the regional dialogues and how to best shape any follow-up on the findings and recommendations of the Commission. Technical Advisory Group members were noteworthy participants at many of the regional dialogues, reviewed materials, and met several times as a group to debate issues amongst themselves. Their role included provision of advice and assessment of submissions.⁷¹

A full list of Commissioners and TAG members can be found in Annex 2.

Preparation for the Regional Dialogues

Prior to the dialogues, individuals and civil society organizations were asked to make written and video submissions in areas that linked to the work of the Global Commission. This included laws and practices that effectively criminalized people living with HIV or vulnerable to HIV, laws and

⁶⁸ Key Informant Interview 2, 8

⁶⁹ Global Commission on HIV and the Law. (2012, July). *Risks, Rights & Health*. (2012, July). Retrieved from <https://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf>

⁷⁰ Global Commission on HIV and the Law. (n.d.). *Technical Advisory Group*. Retrieved from <https://hivlawcommission.org/overview/technical-advisory-group/>

⁷¹ Global Commission on HIV and the Law. (2011, August 4). *Report of the Africa Regional Dialogue of the Global Commission on HIV and the Law*, Retrieved from https://hivlawcommission.org/wp-content/uploads/2017/06/AfricaRD_ReportEn.pdf

practices that mitigated or sustained violence and discrimination as experienced by women, laws and practices that facilitated or impeded HIV-related treatment access, and issues of law and HIV pertaining to children. Over 1000 people in 140 countries submitted 680 written submissions.⁷² The sheer quantity of submissions received was unprecedented at the time. Later, when buy-in for action was needed from experts, countries, and multilateral bodies, the sheer number and substance of submissions lent credence to the importance and relevance of the work carried out by the Commission.

A key informant explained the tremendous value of the written submissions over and above their importance to the Commission itself. Specifically, that such a large number of people could comment on, be invested in, and see other issues being raised by people in other places at the time, indicated that the value of ensuring this information was publicly available was another issue critical to the success of the Commission. The key informant explained that they had integrated country specific examples drawn from the written submissions into regional trainings around key population issues, noting, *“When people say this doesn’t happen in my country, these examples show it does. There was something incredible in weaving those submissions into those trainings. I was so excited by what these submissions could do to strengthen the trainings.”*⁷³ Including written submissions into the Global Commission process thereby contributed to the evidence base that civil society, and other actors, could draw on as they moved the work forward. Alongside a wealth of other Commission resources, the written submissions for the Regional Dialogues are still publicly available on the Global Commission website.

Regional Dialogues

The regional dialogues convened by the Global Commission were intended to generate policy debate through the inclusion and participation of individuals and communities, policy and law makers, judges, and law enforcers on equal footing. Convened at a regional level rather than in countries, a key component of the dialogues was that they allowed individuals who often faced restrictive, stifling legal environments to voice their experiences with HIV and the positive and

⁷² Global Commission on HIV and the Law. (2012, July). *Risks, Rights & Health*. (2012, July). Retrieved from <https://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf>

⁷³ Key Informant Interview 9

negative impacts of the law in a safe space to government officials who were not used to hearing these perspectives.⁷⁴ The focus of each dialogue was individually tailored so as to prioritize the issues most appropriate to the context. Regional dialogues occurred sequentially, with some of the same actors involved in multiple dialogues across different regions. This supported greater learning across regions and towards the final global products.

Drawing on the Indian and Canadian experiences, regional dialogues were held to ensure that affected communities could interact with judges, lawyers, police, and policymakers and that their collective deliberations could inform Commission discussions.⁷⁵ These dialogues, which leveraged the convening power and experience of UNDP and other UN agencies, were designed to create an enabling environment for discourse bringing together an array of diverse groups. This included facilitating dialogue between affected communities, including key populations, and other stakeholders with whom they had had limited contact traditionally. These dialogues were supported by the use of social networking, new media technology, and Regional Issues Papers. Regional dialogues were convened across seven different regions: Africa, Asia Pacific, Caribbean, Eastern and Central Asia, High Income countries, Latin America, and Middle East and North Africa. Regional dialogues took place in a “town hall” format, with the largest taking place in Africa. The dialogues were geared in such a way that participants were encouraged to bring home the lessons learned and translate them into action in their respective home countries.

Over 700 people presented submissions to the regional dialogues. Commissioners listened to the testimonies of a diverse range of individuals, including people affected by HIV-related law, people living with HIV, people who had been prosecuted for HIV-related offences, prison directors, police officials, ministers of justice, health and home affairs, public health officials and

⁷⁴ The Global Commission on HIV and the Law. (n.d.). *Regional Dialogues*. Retrieved From <https://hivlawcommission.org/dialogues/>

religious leaders. In addition to these communities, an array of specialists in areas including human rights, the law, pharmaceuticals, and religion also provided input into the dialogues.⁷⁶

Human Rights Principles underpinning the Regional Dialogues

Use of the human rights principles of inclusion, participation, equality and non-discrimination, and accountability appears to have been instrumental in the approach taken to the regional dialogues. Each of these principles was operationalized in systematic and unprecedented ways and was ultimately key to the approach taken and the impact. A key informant explained the interplay of these principles and how the process impacted the way dialogues ultimately unfolded: *“I think they [regional dialogues] made a difference in particular in that people felt like they were listened to. They were setting priorities, not an outside source doing it for them. This creates ownership in the priorities that were set, not a UN Consensus document they must follow. The fact that they were able to set the agenda in terms of what was discussed in the dialogue and what were the topics being covered made a difference for what was produced but also for the buy-in with respect to follow-up.”*⁷⁷ This human rights-informed approach set the stage for follow-up activities globally, regionally, and nationally. A key informant described the consultation process as *“groundbreaking”* and noted the impact of the Global Commission goes far beyond the written work products and that *“it’s actually the processes that are the real contribution.”*⁷⁸

Regional Dialogues as safe spaces

In many cases, the dialogues for the first time set up processes to ensure an equal voice for people who were marginalized and most affected in regional and global settings.⁷⁹ A key informant reported that beyond making sure key populations were represented, the dialogues

⁷⁶ Global Commission on HIV and the Law. (2012, July). *Risks, Rights & Health*. (2012, July). Retrieved from <https://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf>

⁷⁷ Key Informant Interview 8

⁷⁸ Key Informant Interview 5

⁷⁹ Key Informant Interview 3

were about creating a safe space for key populations to engage as equal players with and eventually hold governments to account.⁸⁰ In thinking about lessons learned and the importance of wide consultation in this approach a key informant explained “*Sometimes the process is as important as the substance.*”⁸¹ The regional level discussions that preceded the drafting of the report have been found to be critical fora for moving forward the Global Commission’s recommendations. A number of key informants reported the importance of these early regional level activities for the discussion of sensitive topics citing the creation of a safe space and an increased ability to speak freely outside the constraints of national settings.⁸² This will be described further in the “Regional Level Impacts” section below.

A key informant explained that the regional dialogues were not only about civil society voices but about bringing in government leaders and creating a safe space for them as people and not simply as representatives of government, all critical to get buy-in. They explained, “*Fundamentally for this work to move forward past simply a report required buy-in from governments.*”⁸³ The long-lasting buy-in of government representatives who attended the regional dialogues was highlighted by key informants as a significant outcome and imperative for the appetite to move towards uptake of recommendations nationally.⁸⁴

Challenges with Regional Dialogues

Though the regional dialogue model at the outset of the Global Commission process was effective in many regions to encourage widespread participation and catalyze momentum, there were reported challenges in Eastern Europe and Central Asia as well as Middle East and North Africa.⁸⁵ Key informants reported civil society engagement but a lack of governmental buy-in in these regional dialogues.⁸⁶ The Eastern Europe and Central Asia regional dialogue report itself noted “The importance of engaging government representatives from the Russian Federation in

⁸⁰ Key Informant Interview 1

⁸¹ Key Informant Interview 1

⁸² Key Informant Interview 9, 21, 22

⁸³ Key Informant Interview 3

⁸⁴ Key Informant Interview 1, 3

⁸⁵ Key Informant Interview 3, 4, 5, 8, 35

⁸⁶ Key Informant Interview 4, 8

order to ensure an effective regional response to HIV was highlighted at the meeting.”⁸⁷ As noted earlier, a key informant posited a lack of regional representation on the Commission from Eastern Europe and Central Asia could have played a role in governmental decisions not to engage.⁸⁸ To note, nonetheless, a few months after the Eastern Europe and Central Asia regional dialogue was held, a follow-up satellite session took place in Russia during the High-level Forum on the Millennium Development Goal Six (to combat HIV/AIDS, malaria and other diseases). The session allowed for high level discussion, that might not have happened otherwise, on regionally relevant issues around people who inject drugs and punitive laws and policies among representatives from UN agencies, at least one Commissioner and government.⁸⁹

With respect to the Middle East and North Africa regional dialogue, a modified approach was adopted due to a range of challenges including low governmental engagement resulting from political and substantive concerns as well as government upheaval around the Arab Spring.⁹⁰ One key informant also highlighted the need for a greater explicit recognition of the religious context of the region, and noted that as this had not been visible it might have negatively affected their level of engagement.⁹¹

The 2012 Report – Global Commission on HIV and the Law: Risks, Rights and Health

The findings of the Global Commission culminated in the 2012 report *Global Commission on HIV and the Law: Risks, Rights and Health*. The report encapsulates the results of the written submissions, regional dialogues, and 18 months of research, analysis and deliberations undertaken by the Commissioners and the TAG. Findings are synthesized and organized into substantive chapters and in each chapter both specific and general recommendations are given

⁸⁷ UNDP. (2011). Report of the Eastern Europe and Central Asia Regional Dialogue of the Global Commission on HIV and the Law. Retrieved from <https://hivlawcommission.org/regional-dialogue-resources/eastern-europe-and-central-asia-downloads/>

⁸⁸ Key Informant Interview 4

⁸⁹ <https://hivlawcommission.org/2011/10/11/satellite-session-on-hiv-and-the-law-high-level-forum-to-address-hiv-in-eastern-europe-central-asia-moscow-russia-11-october-2011/>

⁹⁰ Key Informant Interview 3, 5, 8

⁹¹ Key Informant Interview 5

for moving forward.⁹² A 2012 Global Dialogue, then envisaged as a final dialogue on the Global Commission, recapped the 18-month period over which the Commission took place and laid out groundwork for using the Commission’s findings to advance HIV responses in the future.⁹³

The impact of the 2012 report can be seen in the actions of a wide array of decision-making bodies, including governments, regional and national organizations, and civil society.

For example, a key informant who worked at AMSHeR (African Men for Sexual Health and Rights) described the Global Commission as “*a necessary tool for the mandate that AMSHeR had*” the informant explained the value of the 2012 report, as well as the independent nature of the Global Commission, stating “*What I found most useful and underreported was what an effective tool the 2012 report was for our work. When you are working on LGBT issues, particularly in Africa, you come against a lot of push back by government, HIV providers, and human rights organizations. What the Global Commission did was place the information that we were already bringing to government and the impact of the law that the government cares about not from the perspective of civil society or people personally impacted. It was important the information had come from an independent body.*”⁹⁴

The informant pointed out how the 2012 report as well as subsequent documents produced on different aspects of HIV and the law also made it easier for regional bodies to engage with this topic, including using the title and other ways of presenting the material based on the 2012 report.⁹⁵ For example, even a number of years later, in 2018 the African Commission on Human and Peoples’ Rights used the framework of the Global Commission report when they produced a report with UNAIDS entitled: “HIV, the Law and Human Rights in the African Human Rights

⁹² Global Commission on HIV and the Law. (2012, July). *Risks, Rights & Health*. (2012, July). Retrieved from <https://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf>

⁹³ Global Commission HIV and the Law. (n.d.). *Global Dialogue Speeches*. Retrieved From <https://hivlawcommission.org/dialogues/global-dialogue-speeches/>

⁹⁴ Key Informant Interview 9

⁹⁵ Key Informant Interview 9

System: Key Challenges and Opportunities for Rights-Based Responses to HIV.”⁹⁶ Further, this was then used to frame a dialogue in Kenya in October 2019 with the same name showing the extent to which the framing used by the Global Commission to bring attention to these issues is still being used to this day.⁹⁷

Follow-up to the 2012 Report

Perhaps the most significant element of the Global Commission’s approach was the intentional focus on follow-up from the outset.⁹⁸ A key informant explained that the “*formation of the Commission and ongoing support was a tactical and strategic way of pushing it [a cohesive agenda around HIV and the law] forward.*”⁹⁹ Key informants reported that this degree of strategic thinking about the use of regional dialogues, a Commission, a report and then sustained follow-up was unprecedented and a distinguishing feature of the Global Commission’s approach.¹⁰⁰ Although much of the follow-up work can be seen as having been driven or supported by UNDP, it is important to note the significance of strategic thinking including the inclusion and participation of Commissioners, civil society and government during the initial processes resulting in lasting buy-in.

Though the initial aims of the Commission as described in the ToR were to carry out consultations and create actionable recommendations for reform, the efforts did not stop once the 2012 report was complete. One key informant noted, “*The single most important insight is that the Global Commission didn’t die with the final report. I do think something that makes this particularly striking is how much follow-up there has been, partly because of the Commissioners, partly because of UNDP, and partly because of civil society.*”¹⁰¹ Other key

⁹⁶ UNAIDS. (n.d.). *HIV, The Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses*. Retrieved From https://www.unaids.org/sites/default/files/media_asset/HIV_Law_AfricanHumanRightsSystem_en.pdf

⁹⁷ ACHPR. (2019, October 4-5). *National Dialogue on the Study: “HIV, the Law, and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses to HIV.”* Retrieved From <https://www.achpr.org/news/viewdetail?id=202>

⁹⁸ Key Informant Interview 2, 4, 8, 35

⁹⁹ Key Informant Interview 8

¹⁰⁰ Key Informant Interview 4, 35

¹⁰¹ Key Informant Interview 2

informants reinforced the idea that the Commissioners were part of the driving process, and in some cases were actively engaged in championing relevant issues or involved in implementation activities.¹⁰² A key informant reported it was *“Not surprising that the Commission had a life of its own in the aftermath because everyone was proud of it.”*¹⁰³ Another key informant noted, *“Commissioners took a tremendous amount of initiative to even be continued to be called Commissioner years later... still have them going around now 8 years later talking about the report.”*¹⁰⁴

There are a number of strategic activities that were part of follow-up described below, all of which can be seen as enabling factors supporting the Global Commission’s impact globally, regionally and nationally.

Staffing, tracking, communication, and website

UNDP has put substantial effort into following up on the work of the Global Commission, including through investment in staffing, tracking of activities and outcomes, and public and internal communication. As far back as 2012, designated staff supported follow-up activities as well as prioritized the tracking of follow-up and outcomes.¹⁰⁵ Staff have consistently been engaged in designing and implementing follow-up work, as well as setting up additional meetings and opportunities to share lessons learned and further advance knowledge about this and related work around HIV and the law. In addition, tracking through reports and materials sent by UNDP offices and partners continued, as did communication with Commissioners which was also prioritized. A former Commissioner reported that, in addition to general communications, they received biannual reports of follow-up activities from the Secretariat noting this was a unique feature of how this commission operated, and helped enhance their feelings of ongoing engagement with the Global Commission.¹⁰⁶ Efforts to communicate the work of the Commission extended to a range of venues. There were also sustained efforts to continue publishing material relevant to the Commission, all of which has been useful for

¹⁰² Key Informant Interview 6, 7, 35

¹⁰³ Key Informant Interview 35

¹⁰⁴ Key Informant Interview 8

¹⁰⁵ Key Informant Interview 1

¹⁰⁶ Key Informant Interview 6

expanding the evidence base around how the law can be used to positive effect in HIV responses and for keeping the messages of the Commission alive.

One critical avenue of information dissemination is the website of the Global Commission itself, which includes a wide range of documents and news. Beyond housing important documents such as the original report and its 2018 Supplement, the website serves as a repository for a wide range of information including all of the original background materials and inputs into the Global and Regional Dialogues, information on follow-on projects implemented to further the work of the Global Commission, as well as other follow up stories and fact sheets of use to people interested in the relationship between HIV and the law. Since its inception, the website has been regularly updated with new features, functionality, and data, all of which add to its overall value.

Funding

In addition to offering technical support, UNDP leveraged funding to support follow-up activities.¹⁰⁷ One key informant explained the uniqueness of this approach noting *“They did something not often done. They mobilized resources from donors. They built a program with support for follow-up, not just for writing a report.”*¹⁰⁸ Resources for the Global Commission and follow-up work drew from a number of partnerships including with UNAIDS, the Global Fund to fight AIDS, Tuberculosis and Malaria (the Global Fund), European Commission, Office of the High Commissioner for Human Rights, Open Society Foundations (OSF), Ford Foundation, the American Jewish World Service (AJWS), the Australian Agency for International Development (AusAid), Health Canada – International Affairs, the Norwegian Agency for Development Coordination (Norad), the Swedish International Development Agency (Sida), UNFPA, UNICEF, and the Government of the Netherlands.¹⁰⁹ UNDP has been the interim principal recipient for several Global Fund grants, including regional grants in Africa, the Caribbean and the Pacific. Many of these funders, appreciating the need to tailor this type of work to local context, have been very flexible in terms of how their funding can be spent. In turn,

¹⁰⁷ Key Informant Interview 8

¹⁰⁸ Key Informant Interview 4

¹⁰⁹ Key Informant Interview 8

this helped maximize relevance to each setting. The donor-supported implementation of relevant activities is described further in the “Regional Level Impacts” section of this report.¹¹⁰

Global, Regional and National Implementation

UNDP’s strategic efforts to operationalize the recommendations of the 2012 report included not only securing funding but working with a range of partners including governments, civil society, UNAIDS and others. Using an evidence-based approach grounded in human rights, over the years UNDP leveraged funding to provide financial and technical support to facilitate implementation of recommendations globally, and on a regional and national level.¹¹¹

One year after the 2012 report was released UNDP organized a public e-discussion, “*The Global Commission on HIV and the Law – Taking the Commission’s Recommendations Forward*”, to begin to assess uptake, and share best practices and lessons learned in implementing the recommendations. Submissions were solicited and received from stakeholders around the world.

It was determined that the activities to be undertaken to promote an enabling legal environment consistent with the Commission recommendations would fall within the following categories:

- a) legal environment assessments (LEAs) or legal audits;
 - b) legislative review or reform;
 - c) national dialogues on HIV and the law;
 - d) capacity building and/or training with members of the judiciary or parliamentarians;
 - e) access to justice and legal services, including rights-based trainings for law enforcement;
- and

¹¹⁰ The Global Commission on HIV and the Law, (2017, July). *The Global Commission on HIV and the Law at Five*.

¹¹¹ Key Informant Interview 8

- f) community based advocacy on stigma and discrimination, including through the media and community and religious leaders.¹¹²

These activities have charted the course not only for national level follow-up activities, but for the majority of subsequent regional activities as well.

Support for national dialogues, LEAs and other follow on work

The success of the regional dialogue model described earlier was evident in the high number of requests to UNDP from national representatives to replicate the process on a national level.¹¹³ UNDP published a practical manual for the implementation of national dialogues¹¹⁴ as well as LEAs in 2014.¹¹⁵ These manuals and the processes they guide people through, though thoroughly detailed for practical operationalization, were not prescriptive in approach. Recognizing the unique contexts in which these tools would be implemented, approaches were presented in ways that could be tailored to what is feasible and most effective in-country. There was also nothing prescriptive as to whether countries needed to implement them both, and if so the appropriate sequence for this to occur. One key informant explained, *“In some cases, people went with national dialogues because it was more important to get everyone together to discuss problematic laws, policies etc. In some cases, in order to get momentum, an LEA or legal scan was needed. Then with results, a national level discussion would be convened. The two tools were used in tandem.”*¹¹⁶ Despite this flexibility, a coordinated approach where lessons learned

¹¹² UNDP. (2013). *Summary of E-Discussion: The Global Commission on HIV and the Law - Taking the Commission's Recommendations Forward*. Retrieved From <https://hivlawcommission.org/wp-content/uploads/2017/06/summary-of-e-discussion-the-global-commission-on-hiv-and-the-law-2014.pdf>

¹¹³ UNDP. (2014, January). *National Dialogues on HIV and the Law: A Practical Manual for UNDP Regional HIV Teams and Country Offices*. Retrieved from <https://hivlawcommission.org/wp-content/uploads/2017/06/National-Dialogues-on-HIV-and-the-Law-A-Practical-Manual-for-UNDP-Regional-HIV-Teams-and-Country-Offices.pdf>

¹¹⁴ UNDP. (2014, January). *National Dialogues on HIV and the Law: A Practical Manual for UNDP Regional HIV Teams and Country Offices*. Retrieved from <https://hivlawcommission.org/wp-content/uploads/2017/06/National-Dialogues-on-HIV-and-the-Law-A-Practical-Manual-for-UNDP-Regional-HIV-Teams-and-Country-Offices.pdf>

¹¹⁵ UNDP. (2014, January). *Legal Environment Assessment for HIV: An operational guide to conducting legal, regulatory and policy assessments for HIV*. Retrieved from <https://hivlawcommission.org/wp-content/uploads/2017/06/UNDP-Practical-Manual-LEA-FINAL-web.pdf>

¹¹⁶ Key Informant Interview 1

across countries could be shared and regional momentum generated did take place through communication and concerted learning and evaluation activities.

Moving beyond LEAs and national dialogues, the Global Commission website includes a range of tools, from training manuals to policy options, designed to build capacity and support work around HIV and the law more broadly. Within the context of LEAs, the model has been expanded to other areas of health such as hepatitis.

The tools and guidance available on the website allow for others beyond those directly involved in the work to replicate these processes in other contexts. Whether that means engaging in a similar LEA or for informing another process entirely, these tools are significant for the sustainability of this work.

Tools and Guidance

The Global Commission website continues to host a suite of tools and other resources in support of national dialogues and LEAs. UNDP provides access to the specific methodology for conducting LEAs in the context of HIV. This operational guide is a useful examination of LEAs that extensively covers the specifics of how to plan, conduct, review, disseminate, and document the entire process. The methodology continues to be adapted to other health issues, including LEAs relating to tuberculosis, tobacco control, Hepatitis C, and infectious disease outbreaks. Distinct from most other legal audits, the LEA is centered around its participatory methodology: its success derives in large part from the sense of buy-in that it generates through the engagement of such a wide range of stakeholders throughout the process. Ensuring the involvement of representatives of different parts of government and civil society can lead to true ‘country’ ownership of the process, report and recommendations for action.

Available resources include a complete collection of LEAs published to date as well as other legal reviews (such as desk reviews) found in the National Dialogue Reports section. Other resources, such as a toolkit titled “Engaging with parliamentarians on HIV and the law: a practical manual for UNDP Country Office and Regional Staff,” can be found on the Resources page of the Global Commission website. All of these are useful resources for people working at the intersection of law and health who might be interested in taking forward similar legal scans (or associated activities).

UNDP is well-recognized as a neutral convening power: governance is a primary feature of their mandate and they have experience convening groups such as the Commission of Legal Empowerment of the Poor.¹¹⁷ They are seen as a ‘trusted broker’ who can bring together a wide range of stakeholders, from civil society and key populations to governments and other large agencies. Despite the fact that many of these stakeholders may not normally be communicating amongst themselves, their trust in UNDP means they will participate if called upon, which opens up safe spaces for discussion, as well as serving as a basis for collaborative planning. This convening power was also relevant to the implementation of LEAs and national dialogues within countries and any subsequent follow-up. As previously described, buy-in from government is critical to the effectiveness of these processes. When necessary, UNDP was able to leverage the strength of their regional and national networks to facilitate localized buy-in. One key informant explained that country offices were briefed and activated to engage their connections noting *“in countries where UNDP had a country office that was engaged there was a lot more traction.”*¹¹⁸ These processes moved much more slowly where UNDP did not have a country office working on these issues and activities had to be coordinated regionally.¹¹⁹

Annual strategy meetings

A key informant reported that, in the first several years following publication of the Global Commission’s report, UNDP convened annual strategy meetings with representatives from groups including civil society organizations, UN Member States, and academia to advance those Global Commission’s recommendations that were thought to be most likely to be able to advance in the political moment as it was. These meetings appear to have happened in the years between the publication of the 2012 report and the 2017 ‘At five’ meeting. Each year, the meeting was themed around one of the chapters of the 2012 report such as treatment access, women and girls,

¹¹⁷ United Nations. Legal Empowerment of the poor and eradication of poverty. Report of the Secretary General. A/64/133. 2009.

¹¹⁸ Key Informant Interview 3

¹¹⁹ IIGH-GHHR, (2020). Endline Evaluation of the Africa Regional HIV Grant: Removing Legal Barriers (QPA-H-UNDP)

sex work and drug policy.^{120 121 122} The strategy meetings that focused on treatment access and drug policy in particular appear to have been key in catalyzing movement around two significant areas of global-level impact and are highlighted in the “Global Level Impacts” section below.

Working papers

A series of working papers was published from August 2016 to June 2017 with the intention of informing the work of the Global Commission as it was preparing the ‘After Five’ report. While the papers stand independent from the direct opinions of the Commission, UNDP, and UNAIDS, it is worth pointing out that selected TAG members reviewed and provided commentary on each. Each working paper touches on topics that were integral to the Global Commission such as gender, access to medicines and intellectual property, sexuality, and drug laws, among others, in the context of HIV.¹²³

Global Commission on HIV and the Law at Five and the 2018 Supplement

In July 2017, a follow-up meeting to the Global Commission was convened to reflect on progress in implementing the recommendations of the Commission, to discuss persistent and emerging challenges and risks in following up on the recommendations of the Commission, and to consider opportunities for the future on HIV, health, human rights and the law. It brought together some of the original Commissioners, members of the TAG, experts on HIV and the law, academics, civil society representatives, human rights activists, key populations groups, and representatives from foundations, governments, UNAIDS, and other UN organizations.

The meeting was important in that it showed that the Global Commission’s momentum had not ceased after the publication of the 2012 *Risk, Rights, and Health* report. In fact, five years after

¹²⁰ Key Informant Interview 1

¹²¹ UNDP; UNAIDS, (2013, September 4-5), *UNDP-UNAIDS Strategy Meeting to Advance the Intellectual Property Recommendations of the Global Commission on HIV and the Law*

¹²² UNDP. (2015). *Meeting report UNDP Strategy Meeting to Advance the Findings and Recommendations of the Global Commission on HIV and the Law Related to Drug Control Policy* 29-30 June 2015, New York

¹²³ Global Commission on HIV and the Law. (n.d.). *Working Papers*. Retrieved From <https://hivlawcommission.org/report-resources/working-papers/>

the initial report, the continued relevance of the findings and recommendations was evidenced by their considerable ongoing traction, as communities and experts continued implementing efforts based on both. The meeting concluded with a recommendation that a supplementary chapter be added to the original Commission report that discussed “new and emerging issues including effective and rights-based responses to tuberculosis, viral hepatitis and other diseases; the recent scientific developments, particularly pre-exposure prophylaxis [PrEP] and the ability of people on antiretroviral therapy [ART] to achieve viral suppression, and the implication for HIV and the law; as well as ways to apply the successes of the Commission’s work to the global discourse on universal health coverage and other health-related SDG targets.”¹²⁴

In 2018, the report *HIV and the Law: Risks, Rights and Health – Supplement* was completed. The Supplement highlights developments since the original Global Commission report in science, technology, law, geopolitics and funding surrounding people living with or at risk of HIV.¹²⁵ The supplement was launched at a pre-conference meeting to the International AIDS Conference of 2018 titled ‘Global Dialogue: HIV, Rights and Law in the Era of the 2030 Agenda for Sustainable Development’. Guests in attendance of the meeting included Commissioners, members of TAG, and notable champions of the Global Commission such as Helen Clark.¹²⁶

Global Level Impact

Introduction

Prior to the formation of the Global Commission in 2010, there was already a lot of work being done across disciplines and sectors on HIV, the law and human rights, including on the issues included in 2012 report. Nonetheless, the Global Commission, its report and its methodologies impacted the global HIV response in a number of ways. These contributions, explored below, are all notable and can certainly be generally connected to the work and legacy of the Global

¹²⁴ UNDP, (2018, April 5). *UNDP Report of the Meeting on the Global Commission on HIV and the Law and Five: Reflecting on Progress, Challenges, and Opportunities to End AIDS by 2030*

¹²⁵ Global Commission on HIV and the Law. (2018, July). *Risks, Rights & Health Supplement*

¹²⁶ Global Commission on HIV and the Law. (2018, July 22). *Global Dialogue: HIV, Rights and Law in the Era of the 2030 Agenda for Sustainable Development*. A pre-conference of the International AIDS Conference 2018

Commission. This work can, to a large extent, be seen as emanating from changes to the environment caused in part by the Commission and its processes even if not all directly attributable to the Commission per se.

This section of the report includes some of the critical, if at times slightly intangible, impacts at the global level of the Commission's work. These are interspersed with case studies designed to explore in more depth specific examples that bring attention to the broader findings. The case studies cover: an overview of the work to develop the International Guidelines on Human Rights and Drug Policy, an extensive exploration of the work of the High-Level Panel on Access to Medicines,— both directly attributable to the work of the Global Commission, and a more general examination of efforts to address overly broad use of criminal law in the years following the Global Commission.

Critical impacts

Three overarching global-level impacts of the Global Commission seem critical to understand in order to frame the more specific examples that follow: its impact on processes; on advancing substantive discussions; and in promoting collaborative learning and action.

Perhaps most significantly, the Global Commission helped to shape a global landscape more open to enabling progress to be made with regard to HIV-related legal environments.¹²⁷ This allowed other partners to explore and finance these issues and influenced global discussions and actions. At the start, there were specific activities after 2012 that were deliberately funded with this in mind that began to do this, but all this in turn led to a broader opening of the space to work on related legal issues, and that ultimately may be the most lasting substantive legacy of the Global Commission.¹²⁸

Key informants suggested the most important substantive contributions of the Global Commission may be how it influenced politics globally, and therefore legal environments,

¹²⁷ Key Informant Interview 2

¹²⁸ Key Informant Interview 9

around criminalization, intellectual property, access to medicines, drug policy, sex work and sexual minorities.^{129 130} As one person explained, “*The Commission played a dramatic and central role to drive forward the conditions to make this sort of work possible.*”¹³¹

The Global Commission report also played an important role in breaking down topical silos in how legal environments are considered. Those working in any individual topical area could draw on a much broader evidence base that demonstrated the value of law overall. A key informant explained, “*there are a number of areas where the Global Commission helped to consolidate, amplify and deepen international best practice. I do think for a lot of countries that international best practice as consolidated in the Global Commission report did have a lot of impact on domestic technical and political understating of what to do.*”¹³² The report itself was seen to make the law accessible.¹³³ This impact, though difficult to quantify, is seen by many to be a critical contribution in creating an enabling environment on a global scale.

Case study one below provides an example of how the Global Commission demonstrated that having open spaces for dialogue between communities and policy makers can help to humanize issues and create joint ownership of resulting documents and plans.

Case Study One: International Guidelines on Human Rights and Drug Policy

In 2015, a background paper was developed and a strategy meeting convened by UNDP to advance the findings and recommendations of the Global Commission related to drug control policy.¹³⁴ UNDP and the International Centre on Human Rights and Drug Policy, University of Essex (HRDP) then led a consultative process between 2016-2018 to support the development of

¹²⁹ Key Informant Interview 2

¹³⁰ Key Informant Interview 8

¹³¹ Key Informant Interview 2

¹³² Key Informant Interview 2

¹³³ Key Informant Interview 3

¹³⁴ UNDP. (2015). Meeting report UNDP Strategy Meeting to Advance the Findings and Recommendations of the Global Commission on HIV and the Law Related to Drug Control Policy 29-30 June 2015, New York

international standards to enhance human rights protections in drug control policy.¹³⁵ The process used mirrored that used for the Global Commission, in particular the approach to community participation. In 2019 the International Guidelines on Human Rights and Drug Policy were released jointly by UNDP and a group of UN Member States, WHO, HRDP, OHCHR and UNAIDS. . The Guidelines noted that they were explicitly “informed by the global experience of UNDP in following up with the Recommendations of the Global Commission on HIV and the Law.”¹³⁶ A key informant engaged in this work explained the explicit linkages to Global Commission follow-up efforts, noting in particular the impact and critical engagement of individual Commissioners at meetings along the way. The inclusive and participatory approach used during consultations, similar to those used in the Global Commission processes, to include members of key populations, government, people who cultivate drugs, and the UN was reported to be critical in humanizing issues in such a way that they were able to shape a final document all could own.¹³⁷

At a January 2020 meeting for Latin America and the Caribbean entitled “Regional Implementation Dialogue: International Guidelines on Human Rights and Drug Policy”, sponsored by UNDP, HRDP and others, lessons learned from implementation of the Global Commission recommendations were drawn on to start planning how to make this guideline effective within regions and countries. Similar meetings are planned for other regions. Beyond the substantive content of the International Guidelines, the meeting explored how the LEA process and other components of the regional work on HIV and the law implemented in Africa might be transferrable to a different topic and region of the world. The Guidelines were also cited by a judge at the Constitutional Court in Colombia in a ruling on drug use in June 2019.¹³⁸

This example highlights the value of the innovative approaches and tools used throughout the Global Commission process, and their relevance and effectiveness for continued adaptation. The

¹³⁵ UNDP and International Centre on Human Rights and Drug Policy (2017). Concept Note Project title: ‘International guidelines on human rights and drug control’ (Phase 1).

¹³⁶ UNDP. (2019). *International Guidelines on Human Rights and Drug Policy*. Retrieved From https://www.undp.org/content/dam/undp/library/HIV-AIDS/HRDP%20Guidelines%202019_FINAL.PDF

¹³⁷ Key Informant Interview 7

¹³⁸ GPDPD. (n.d.) *One year Review: International Guidelines on Human Rights and Drug Policy*. Retrieved From <https://www.gdpdp.org/en/drug-policy/human-rights-and-drug-policy/one-year-review-international-guidelines-on-human-rights-and-drug-policy>

approach used by the Commission with regard to participation and engagement of communities alongside policy makers has set an important precedent for subsequent work in this area.

Global HIV, Health and Development Agendas

Agenda 2030, the SDGs and the pledge to leave no one behind

The Global Commission was formed and carried out its initial consultations while the global community was still operating under the Millennium Development Goals. The 2030 Agenda for Sustainable Development was developed at the time the Global Commission was active, including the commitment to “leave no one behind.”¹³⁹ The push for UHC by 2030 was also born out of the more inclusive approach to the development agenda at the time of the Global Commission and “Key Asks” from the UHC Movement were announced in 2019.¹⁴⁰

Though the efforts around the SDGs and UHC set out to accomplish different objectives than the Global Commission, the general attention to law, rights and health promulgated by the Global Commission can be seen to have helped move global attention towards those “left behind”, thereby contributing in some part to shaping the approach and processes used in these large-scale efforts. Many of the recommendations of the Global Commission support achievement of what ultimately became SDG targets and UHC Key Asks. There is substantial overlap between all of these agendas. The table below gives two examples of how these agendas align:

¹³⁹ United Nations. United Nations. (n.d.) *Transforming Our World: The 2030 Agenda for Sustainable Development*. Retrieved From

<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

¹⁴⁰ United Nations. (2019). *Moving Together to Build a Healthier World: Key Asks from the UHC Movement*. Retrieved From

https://www.uhc2030.org/fileadmin/uploads/uhc2030/Documents/UN_HLM/UHC_Key_Ask_fina.pdf

Table 1. Global Commission recommendations, SDG targets, and UHC key asks

Global Commission Recommendation	Sustainable Development Goal Target	UHC Key Ask
<p><i>“Countries must ensure that their national HIV policies, strategies, plans and programmes include effective, targeted action to support enabling legal environments, with attention to formal law, law enforcement and access to justice. Every country must repeal punitive laws and enact protective laws to protect and promote human rights, improve delivery of and access to HIV prevention and treatment, and increase the cost-effectiveness of these efforts.”</i></p> <p>Discrimination recommendation 1.1</p>	<p><i>“Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.”</i></p> <p>SDG 10.3¹⁴¹</p>	<p><i>“Create an evolving and responsible regulatory and legal system that sets an ethical framework, promotes responsiveness and inclusiveness of all stakeholders and supports innovations. This system must respond to changing needs and comply with medical and public health ethics in a period of rapid technological evolution and medical innovation.”</i></p> <p>Key Ask 3.1¹⁴²</p>
<p><i>“Countries must remove legal barriers that impede women’s access to sexual and reproductive health services. They must ensure that:</i></p> <p><i>Health care workers provide women with full information on sexual and reproductive options</i></p>	<p><i>“Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome</i></p>	<p><i>“Establish resilient, responsive and inclusive health systems that are accessible to all, irrespective of socio-economic or legal status, health condition or any other factors. Such systems should prioritise an essential health package based on PHC principles...</i></p>

¹⁴¹United Nations. (n.d.) *Transforming Our World: The 2030 Agenda for Sustainable Development*. Retrieved From <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

¹⁴²United Nations. (2019). *Moving Together to Build a Healthier World: Key Asks from the UHC Movement*. Retrieved From https://www.uhc2030.org/fileadmin/uploads/uhc2030/Documents/UN_HLM/UHC_Key_Ask_fina.pdf

Global Commission Recommendation	Sustainable Development Goal Target	UHC Key Ask
<p><i>and ensure that women can provide informed consent in all matters relating to their health. The law must ensure access to safe contraception and support women in deciding freely whether and when to have children, including the number, spacing and methods of their children’s births.”</i></p> <p>Women Recommendation 4.3.1¹⁴³</p>	<p><i>documents of their review conference...</i></p> <p><i>Governments must adopt and enforce laws that protect and promote sexual and reproductive health and rights. Governments must remove legal barriers to accessing the full range of sexual and reproductive health services.”</i></p> <p>SDG 5.6¹⁴⁴</p>	<p><i>Governments and the private sector must adjust their policies and subventions for universal health coverage to focus on the rights of individuals to access the highest attainable standard of health. They must not derogate from individual rights provided in international human rights law by reference to economic classifications of national wealth that result in derogations from these human rights.”</i></p> <p>Key Ask 2.1¹⁴⁵</p>

2016 High-Level Meeting on Ending AIDS

On the heels of the adoption of the 2030 Agenda for Sustainable Development, the high-level meeting on HIV/AIDS took place in June 2016. This meeting was organized to build on the lessons learned from the AIDS response and catalyze global momentum for the SDGs, fast-track targets and core actions for ending AIDS by 2030, as outlined in the UNAIDS 2016-2021 strategy.¹⁴⁶ The impact of the Global Commission’s work was explicitly noted in the report of the Secretary-General leading into the meeting where he stated “Modest improvements have been made in reducing discriminatory attitudes towards people living with HIV and in shaping more enabling national laws and policies. I commend the recommendations outlined by the

¹⁴³ Global Commission on HIV and the Law. (2012, July). *Risks, Rights & Health*. (2012, July). Retrieved from <https://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf>

¹⁴⁴ SDGs, 2018 Recommendations

¹⁴⁵ UHC Key Asks, 2018 Recommendations

¹⁴⁶ UNAIDS. (2016, May 9). *On the fast track to ending the AIDS epidemic*. Retrieved From https://www.unaids.org/en/resources/documents/2016/SG_report_HLM

Global Commission on HIV and the Law, which have encouraged progress.”¹⁴⁷ In addition, the overall recommendations of the Global Commission were explicitly noted for “advancing progress towards ending the AIDS epidemic” in the resulting 2016 *Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030*.¹⁴⁸ These are valuable references to the Global Commission’s work at the global level.

Case study two below illustrates barriers that inhibited access to medicines for a range of populations and shows how the Global Commission influenced the creation and sustainment of the High-Level Panel on Access to Medicines. It highlights specific global, regional, and national outcomes resulting directly and indirectly from the High-Level Panel.

Case Study Two: High-Level Panel on Access to Medicines

The Global Commission’s 2012 report noted a continuing crisis in the affordability of and accessibility to treatment for people living with HIV despite widespread achievements in legal strategy, global advocacy, and the proliferation of generic competition.¹⁴⁹ The regional dialogues convened by the Global Commission additionally brought to light the lived experience resulting from the incongruities between multilateral trade agreements, intellectual property laws, international human rights, and global public health objectives.¹⁵⁰ Some of the Commissioners wanted to ensure that intellectual property (IP) issues moved forward on the global agenda, particularly as bodies like UNDP were getting pushback for trying to advance work in this area.¹⁵¹ Most notably, the Commission focused on the ways in which intellectual property regimes limit access to medicines as a key area inhibiting progress. The Global Commission commented on the complicated relationship between high income and low- and middle-income

¹⁴⁷ UNAIDS. (2016, May 9). *On the fast track to ending the AIDS epidemic*. Retrieved From https://www.unaids.org/en/resources/documents/2016/SG_report_HLM

¹⁴⁸ 2016 Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030. https://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_en.pdf

¹⁴⁹ Global Commission on HIV and the Law. (2012, July). *Risks, Rights & Health*. (2012, July). Retrieved from <https://hivlawcommission.org/wp-content/uploads/2017/06/FinalReport-RisksRightsHealth-EN.pdf>

¹⁵⁰ <http://www.unsgaccessmeds.org/the-process>

¹⁵¹ Key Informant Interview 1

countries and suggested that the latter should no longer be pressured by the former to adopt TRIPS-Plus measures in trade agreements that impede access to life-saving treatment. The 2012 report was explicit in its response to these incoherencies and made the following very specific recommendation:

“The UN Secretary-General must convene a neutral, high-level body to review and assess proposals and recommend a new intellectual property regime for pharmaceutical products. Such a regime should be consistent with international human rights law and public health requirements, while safeguarding the justifiable rights of inventors. Such a body should include representation from the High Commissioner on Human Rights, WHO, WTO, UNDP, UNAIDS and WIPO, as well as the Special Rapporteur on the Right to Health, key technical agencies and experts, and private sector and civil society representatives, including people living with HIV. This re-evaluation, based on human rights, should take into account and build on efforts underway at WHO, such as its Global Strategy and Plan of Action on Public Health, Innovation, and Intellectual Property and the work of its Consultative Expert Working Group. Pending this review, the WTO Members must suspend TRIPS as it relates to essential pharmaceutical products for low- and middle-income countries.”

Further relevant recommendations in the Global Commission report included a call to address inequalities that resulted in low-and middle-income countries facing impediments from higher income countries to access to treatment, but this recommendation in particular served as the touchstone for the convening of the High-Level Panel and the work that followed.¹⁵²

From the Global Commission to the High-Level Panel

Following the release of the Global Commission’s 2012 Report, UNDP and UNAIDS organized a strategy meeting in 2013 to begin follow-up on the above-cited and related recommendations. The strategy meeting touched on the mechanics of access to medicines and led to the production of a roadmap that helped identify key fora and approaches to advance the conversation. These included the World Trade Organization (WTO) and the World Health Organization (WHO). It

¹⁵² Global Commission on HIV and the Law. (2012, July). *Risks, Rights & Health*. (2012, July). Retrieved from <https://hivlawcommission.org/wp-content/uploads/2017/06/FinalReport-RisksRightsHealth-EN.pdf>

also proposed that the then UNDP Administrator, Helen Clark, who was emerging as a leading advocate¹⁵³, and then UNAIDS Executive Director, Michel Sidibé, request that the then United Nations Secretary-General, Ban-Ki Moon, establish a high-level panel on access to medicine and a new intellectual property regime for pharmaceutical products.¹⁵⁴ The timing and framing of the request was particularly important in noting that the discussions centering around the post-2015 development agenda, “present an important and unique opportunity to redesign the framework for pharmaceutical patents so that it is able to better serve the health needs of individuals, especially for those living in LMICs.”¹⁵⁵ The request from Clark and Sidibé was sent to the Secretary-General in October of 2013. It then took the informal intervention of one of the Commissioners, sometime later, to ensure the Secretary-General saw the document, which then led to action.

Convening of the High-Level Panel

As a direct result of this request from UNDP and UNAIDS, albeit more than a year later, the High-Level Panel on Access to Medicines (High-Level Panel) was convened by Ban-Ki Moon in 2015. The High-Level Panel was tasked to “review and assess proposals and recommend solutions for remedying the policy incoherence between the justifiable rights of inventors, international human rights law, trade rules and public health in the context of health technologies.”¹⁵⁶ The work was designed and implemented around three pathways: 1) the High-Level Panel convened to review and assess proposals as well as propose solutions with attention to international human rights law, trade rules, rights of inventors (intellectual property), and health technologies, 2) an Expert Advisory Group designed to give technical support to the High-Level Panel, and 3) a process of consultation in which two public hearings were held to analyze

¹⁵³ Key Informant Interview 1

¹⁵⁴ UNDP; UNAIDS, (2013, September 4-5), *UNDP-UNAIDS Strategy Meeting to Advance the Intellectual Property Recommendations of the Global Commission on HIV and the Law*

¹⁵⁵ UNDP; (2014, September). *Background Note on follow-up to Recommendation 6.1 of the Global Commission on HIV and the Law*.

¹⁵⁶ United Nations Secretary-General’s High-Level Panel on Access to Medicines, (n.d.). *The Process*, Retrieved From <http://www.unsgaccessmeds.org/the-process>

proposals coming from a variety of stakeholders.¹⁵⁷ The composition of these bodies and the three structures were organized to operate in ways reminiscent of the Global Commission itself.

Specifically, the High-Level Panel on Access to Medicines was comprised of 15 individuals representing a diverse array of stakeholder groups based on their knowledge of legal, commercial, trade, public health, and human rights issues as they pertained to innovation and access to health technologies.¹⁵⁸ The Expert Advisory Group that provided support to the panel was comprised of 25 experts from an array of multilateral organizations, the United Nations, the public and private sector, academia, professional and civil society organizations including people living with HIV.¹⁵⁹ UNDP in conjunction with UNAIDS served as the Secretariat for the High-Level Panel.¹⁶⁰

Outputs, outcomes, and impact

The High-Level Panel can be seen as a great success in terms of process, outputs and outcomes. The final Report on Access to Medicines stands as the chief tangible output emanating from their work. The short and long-term impacts of the High-Level Panel, which occurred at global, regional, and national levels, are wide-ranging, including in relation to policy, legislative change, and advocacy meetings ultimately designed to influence policy discussions.

The global policy impacts of the High-Level Panel are multi-faceted and far-reaching. This can be seen in the activities of multilateral organizations, across global trade agreements, and through the work of civil society. The High-Level Panel's recommendations have also served as

¹⁵⁷ United Nations Secretary-General's High-Level Panel on Access to Medicines, (n.d.). *The Process*, Retrieved From <http://www.unsgaccessmeds.org/the-process>

¹⁵⁸ United Nations Secretary-General's High-Level Panel on Access to Medicines, (2016, September). *Report of the United Nations Secretary-General's High-Level Panel on Access to Medicines*, Retrieved From https://static1.squarespace.com/static/562094dee4b0d00c1a3ef761/t/596fed6d914e6b24d15ece26/1500507506991/50923+-+HLP+Report+-+ENGLISH+-+web_v3.pdf

¹⁵⁹ United Nations Secretary-General's High-Level Panel on Access to Medicines, (n.d.). *The Expert Advisory Group*, Retrieved From <http://www.unsgaccessmeds.org/the-expert-advisory-group-eag-2>

¹⁶⁰ United Nations Secretary-General's High-Level Panel on Access to Medicines, (n.d.). *The Process*, Retrieved From <http://www.unsgaccessmeds.org/the-process>

an impetus for the assembly of intergovernmental and nongovernmental organizations concerning accessibility, affordability, and intellectual property issues around access to medicines in a variety of ways. In addition to what is noted above, multilateral organizations and civil society have utilized the High-Level Panel report in a multitude of ways in global dialogue spaces, as highlighted in Table 2 below.¹⁶¹

There have been a number of regional level policy changes stemming from the High-Level Panel. Several examples are presented in the sub-section on regional impact below.

National governments, in conjunction with intergovernmental organizations such as WHO and civil society, have utilized findings from the High-Level Panel to enact policy reform and make legislative changes.

The following table, stratified by global, regional, and national levels, showcases a variety of outcomes resulting from the High-Level Panel:

Table 2. High-Level Panel on Access to Medicines

Date	Countries/ Organization	Outcome	Link to the High-Level Panel
Global			
June, 2016	United Nations General Assembly – Seventieth Session	The General Assembly adopted a resolution in which they committed to measures to ensure access to safe, affordable and efficacious medicines, including generic medicines, diagnostics and related health technologies, utilizing all available tools to reduce the price of life-saving drugs and diagnostics. The General Assembly also notes the establishment of the	The resolution points to the need for and the establishment of the High-Level Panel

¹⁶¹ The Global Commission on HIV and the Law, (2017, July). *The Global Commission on HIV and the Law at Five*.

Date	Countries/ Organization	Outcome	Link to the High-Level Panel
		High-level Panel on Access to Medicines convened by the Secretary General.	
September, 2016	United Nations General Assembly – Seventy-First Session	The General Assembly adopted this resolution highlighting tensions between low- and middle-income countries and high-income countries on access to medicine issues. The resolution asked the Secretary-General to encourage conversation among Member States and stakeholders on topics surrounding policy options that promote access to medicines and innovation and health technologies. ¹⁶²	The resolution explicitly mentions and builds on the High-Level Panel on Access to Medicines, and its work.
December 2016	UNAIDS Programme Coordinating Board	At the 39 th Meeting of the UNAIDS PCB, the Board noted the High-Level Panel report and requested the Joint Programme to facilitate further discussions on access to medicines	The official meeting report takes note of the UN High Level Panel on Access to Medicines and requests the Joint United Nations Programme on HIV/AIDS to facilitate further discussions on access to medicines bearing in mind, as appropriate, the UN High-Level Panel report and other relevant reports, including the trilateral report of WHO/WIPO/WTO Promoting Access to Medical Technologies

¹⁶² United Nations General Assembly. (2016, December 8). *Global health and foreign policy: health employment and economic growth*. Retrieved From https://www.who.int/hrh/com-heeg/UN_Resolution-on-COMHEEG-DEC2016.pdf?ua=1

Date	Countries/ Organization	Outcome	Link to the High-Level Panel
			and Innovation and keep the PCB informed of the matter ¹⁶³
January, 2018	World Health Organization – Executive Board Meeting	At the 142 nd Session of the Executive Board of the World Health Organization, a diverse representation of Member States drew the link between access to medicines, Universal Health Coverage (UHC), and Agenda 2030.	Several governments and many civil society organizations specifically mentioned the High-Level Panel report in their interventions. Algeria, Angola, Bolivia, Brazil, Egypt, Ghana, Morocco, India, Philippines, Portugal and Zambia all requested to move forward on implementation of the High-Level Panel’s recommendations. ¹⁶⁴
December, 2018	United Nations General Assembly – Seventy-Third Session	The 2018 UN General Assembly Global Health and Foreign Policy Resolution was delivered in conjunction with a request for the Secretary-General to accelerate follow-up discussion on access to medicines and innovation among Member States and relevant stakeholders. ¹⁶⁵	The resolution explicitly recognizes the High-Level Panel Report.
May, 2019	World Health Organization – Seventy-Second	Member States adopted a resolution on improving transparency of markets for drugs, vaccines, and other health-related technologies. The resolution pushed for	A background paper to support the Resolution refers explicitly to the High-Level Panel as

¹⁶³ UNAIDS. (2016, December 6-8). *39th Meeting of the UNAIDS Programme Coordinating Board*. Retrieved From https://www.unaids.org/sites/default/files/media_asset/20161208_UNAIDS_PCB39_Decisions_EN.pdf

¹⁶⁴ World Health Organization. (2018, January 22-27). *Executive Board 142nd Session*. Retrieved From https://apps.who.int/gb/ebwha/pdf_files/EB142/B142_1Rev1-en.pdf

¹⁶⁵ United Nations General Assembly. (2018, December 13). *Resolution adopted by the General Assembly on 13 December 2018*. Retrieved from <https://undocs.org/pdf?symbol=en/A/RES/73/132>

Date	Countries/ Organization	Outcome	Link to the High-Level Panel
	World Health Assembly	Member States to enhance public sharing of information and requested that the WHO Secretariat support, monitor, and evaluate the impact of transparency on the availability and affordability of health products. ¹⁶⁶	inspiration for these requests.
July, 2019	United Nations Human Rights Council – Forty- first Session	The Council called for states to promote access for all to safe, effective, quality, and affordable medicines and vaccines in the context of the TRIPS agreement. The Resolution calls for Member States to take the necessary steps to implement policies that promote access to “comprehensive and cost-effective” treatment and care for the integrated management of non-communicable diseases, and includes the need for access to safe, affordable, effective, quality medicines, vaccines, diagnostics and other health products. ¹⁶⁷	Consistent with issues initially raised by the Global Commission, the resolution specifically mentions the High-Level Panel in noting the policy incoherence that still exists in public health, trade, the justifiable rights of inventors, and human rights.
Regional			
June, 2017	Members of MERCOSUR (Argentina, Brazil, Paraguay, Uruguay, and Chile)	The members came together to issue a Declaration calling for implementation of the High-Level Panel recommendations as they apply to access to medicines, public health, and intellectual property. ¹⁶⁸	The High-Level Panel is explicitly mentioned in the Declaration.

¹⁶⁶ World Health Organization. (2019, May 28). *Improving the transparency of markets for medicines, vaccines, and other health products*. Seventy-second World Health Assembly, Agenda item 11.7. Retrieved From https://apps.who.int/gb/ebwha/pdf_files/WHA72/A72_ACONF2Rev1-en.pdf

¹⁶⁷ United Nations General Assembly. (2019, July 8). *Access to medicines and vaccines in the context of the right to everyone to the enjoyment of the highest attainable standard of physical and mental health*. Human Rights Council, Forty-first session, Agenda item 3. Retrieved From <https://undocs.org/A/HRC/41/L.13>

¹⁶⁸ Personal Communication from Key Informant 8

Date	Countries/ Organization	Outcome	Link to the High-Level Panel
November, 2017	Malawi, UNDP, African Regional Intellectual Property Organization (ARIPO)	Parties organized a High-Level Meeting on Promoting Policy Coherence on Health Technology Innovation and Access among ARIPO Member States. As a result of the meeting, the ARIPO Secretariat was then given the mandate to explore and address legal and policy incoherencies impacting access to health technologies among ARIPO Member States. ¹⁶⁹	In the Meeting Outcome Document, the High-Level Panel report is explicitly recognized.
National			
May, 2017	Chile	The High-Level Panel report was cited in a resolution passed by Chile’s Chamber of Deputies, a branch of the Chilean National Congress. The resolution was hailed as an attempt to “encourage the use of compulsory licenses to import generic versions of a patented drug when necessary to protect and promote the health of the population.” ¹⁷⁰	The Chilean resolution cites the High-Level Panel when mentioning compulsory licensing under the Doha Declaration.
September, 2017	Spain – Spanish Parliamentary meeting	The Spanish Parliament approved a non-binding proposal to pressure the Spanish government to take into consideration High-Level Panel recommendations on access to medicines. ¹⁷¹	The Spanish Parliament is explicit in its references to the High-Level Panel during this meeting.

¹⁶⁹ UNDP. (2017, November 3). *President Mutharika calls for access to medicines revolution*. Retrieved from <https://www.undp.org/content/undp/en/home/news-centre/news/2017/president-mutharika-calls-for-access-to-medicines-revolution.html>

¹⁷⁰ Intellectual Property Watch. (2017, January 2). *Resolution on Compulsory Licences for Patented Medicines Passes in Chile*. Retrieved From <https://www.ip-watch.org/2017/02/01/resolution-compulsory-licences-patented-medicines-passes-chile/>

¹⁷¹ Salud Por Derecho. (2017, September 22). *UN and European Parliament reports on access to medicines reach Congress*. Retrieved From <https://saludporderecho.org/los-informes-la-onu-del-parlamento-europeo-acceso-medicamentos-llegan-al-congreso/>

Date	Countries/ Organization	Outcome	Link to the High-Level Panel
April, 2019	Johannesburg, South Africa – Fair Pricing Forum	Co-convened by WHO and the Government of South Africa, the meeting featured representation from industry, civil society, patient groups, and academia. ¹⁷²	Many of the discussions during the forum explicitly touched on the High-Level Panel findings including the opening remarks given by the South African Minister of Health.

Conclusion

The influence of the Global Commission on the High-Level Panel on Access to Medicines and its subsequent impact is clear. This is true with respect to substance, but also in relation to process. According to one key informant, the processes of the Commission were helpful to ongoing work in this area in that they facilitated links between different organizations around intellectual property reform.¹⁷³ For example by linking people in the HIV activist movement with those whose work addresses intellectual property reform.¹⁷⁴ In many senses, the Global Commission’s work is seen to have served as a “great facilitator” in improving access to medicines.

Strategic priorities of global health institutions

Though global health actors had already been engaged in work around HIV and the law prior to the Global Commission, key informants nonetheless made it clear that the Global Commission and its recommendations had a strong impact on the strategies and related funding priorities of a

¹⁷² World Health Organization. (2019, April 11-13). *Fair Pricing Forum Johannesburg*. Retrieved From <https://apps.who.int/iris/bitstream/handle/10665/326407/WHO-MVP-EMP-IAU-2019.09-eng.pdf?ua=1>

¹⁷³ Key Informant Interview 2

¹⁷⁴ Key Informant Interview 2

number of relevant institutions.¹⁷⁵ Some of these are explored below, starting with UNDP and then looking at some other global institutions.

Within UNDP itself, the HIV and health portfolio has grown, leveraging the work of the Global Commission. It is clear that the support of the Secretariat was critical in driving this forward, both within UNDP and more generally. As a key informant explained “*If you look at what UNDP was doing before and after it was the quantum leap forward. The process and visibility of the Global Commission and quality of the public products all legitimized and amplified that work. It attracted money and political attention.*”¹⁷⁶ Even several years later, it is important to note, the UNDP HIV, Health and Development Strategy 2016-2021, *Connecting the Dots*, includes reference to the Global Commission. Action area 2, *Promoting effective and inclusive governance for health*, explicitly includes “Implementing the findings and recommendations of the Global Commission on HIV and the Law, including through Global Fund grants and on issues of innovation and access to health technologies, in partnership with governments, civil society, academia and UN partners”.¹⁷⁷ Implementation of this part of the strategy can be seen still to support this sort of work by UNDP at global, regional and national levels. This work also contributed to the UNDP Strategic Plan 2018-2021 which specifically mentions addressing discrimination experienced by marginalized groups.

UNAIDS published *The Gap Report* in 2014 as the world began the discussion to shape the post-2015 development agenda and explore how to “close the gap between the people moving forward and the people being left behind” in the HIV response. In making its recommendations, this UNAIDS report directly cited the 2012 report and a number of Global Commission working papers including those about violence against women, punitive drug laws and people who inject drugs, and HIV among transgender people.¹⁷⁸

¹⁷⁵ Key Informant Interview 8

¹⁷⁶ Key Informant Interview 2

¹⁷⁷ UNDP. (2019). HIV, Health and Development Strategy 2016-2021, *Connecting the Dots*, <https://www.undp.org/content/dam/undp/library/HIV-AIDS/UNDP%20HIV%20Health%20and%20Development%20Strategy%202016-2021.pdf>

¹⁷⁸ UNAIDS. (2014, July). *The Gap Report*. Retrieved From https://www.unaids.org/sites/default/files/media_asset/UNAIDS_Gap_report_en.pdf

Though not to suggest direct causality but pointing again to a general change in the overall zeitgeist on these issues, the Global Commission and its recommendations also align with the strategic approach taken up by a number of key global health institutions in the past several years. For example, the UNAIDS 2016-2021 *On the Fast Track to End AIDS*¹⁷⁹, the Global Fund 2017-2022 *Investing to End the Epidemics*¹⁸⁰ and the PEPFAR's *PEPFAR 3.0—Controlling the Epidemic: Delivering on the Promise of an AIDS-Free Generation*¹⁸¹ strategies all highlight the role of human rights and the law in the HIV response as part of their approaches, an area which had not previously been so explicit in their strategic materials.¹⁸²

As simply one example, with respect to the Global Fund specifically, one key informant reported that it was only following the 2012 report that there was an effort by the Fund to reshape a strategic objective on human rights and gender. In addition, while country coordinating mechanisms (CCMs) had always had NGO representation, post the regional dialogues and Commission report there was a more concentrated effort to engage representatives of key populations in these processes.¹⁸³ The 2018 CCM policy indicates “Engagement of key populations, people living with or affected by disease and civil society” as a key principle for CCMs, something which had not previously been stated.¹⁸⁴ It was also noted at the 2015 UNAIDS Programme Coordinating Board meeting that following the development of the LEA methodology by UNDP, the LEA tool had become part of the Global Fund’s guidance on developing HIV concept notes and that this would also be carried forward with respect to the

¹⁷⁹ Joint United Nations Programme on HIV/AIDS (UNAIDS), 2014. Fast-Track: Ending the AIDS epidemic by 2030, https://www.unaids.org/sites/default/files/media_asset/20151027_UNAIDS_PCB37_15_18_EN_rev1.pdf

¹⁸⁰ Global Fund to Fight AIDS, TB and Malaria, The Global Fund Strategy 2017-2022: Investing to End Epidemic, (May, 1 2017), https://www.theglobalfund.org/media/1176/bm35_02-theglobalfundstrategy2017-2022investingtoendepidemics_report_en.pdf

¹⁸¹ <https://aidsfree.usaid.gov/resources/prevention-update/editions/december-2014/pepfar-30-controlling-epidemic-delivering>

¹⁸² The Global Commission on HIV and the Law, (2017, July). *The Global Commission on HIV and the Law at Five*.

¹⁸³ Key Informant Interview 8

¹⁸⁴ The Global Fund. (2018, May 10). *Country Coordinating Mechanism Policy Including Principles and Requirements*. Retrieved From https://www.theglobalfund.org/media/7421/ccm_countrycoordinatingmechanism_policy_en.pdf

development of concept notes for tuberculosis and malaria.¹⁸⁵ The Global Fund also utilizes an in-country assessment, referred to as a baseline assessment, that aims to understand the landscape for introducing and scaling up programs that remove human rights barriers to the access of HIV, TB and malaria services. The programmatic nature of baseline assessments means that they are complementary to LEAs. Synergies between UNDP LEAs and the Global Fund’s baseline assessments have been coordinated by the respective organizations. Depending on which assessment is conducted first in a country, information is then shared to inform the other assessment in order to minimize duplication.

Safeguarding civil society space

The trends towards shrinking civil society space have been well documented in all regions of the world in recent years, and this is true in virtually all project countries. As described in the key findings of the 2018 supplement as well as the aforementioned project evaluations in Africa^{186,187}, the very inclusive approach of the projects supported by UNDP in the Global Commission follow-up has been well-received and important for creating safe spaces for different stakeholders to work individually and in collaboration.

The contraction of the civil society space globally increases the imperative for the sector to gather, strategize, and mobilize on issues safely. Through regional dialogues and cross-country organizations, safe fora for civil society to interact ensure that despite worrisome trends, there are still avenues in which dialogue and collaboration are possible.

In addition to helping ensure safe spaces for civil society, the Global Commission catalyzed momentum around addressing some legal issues relating to HIV, with broad-based action across

¹⁸⁵ 2015 Report on the implementation of the decisions and recommendations of the Programme Coordinating Board of the Joint United Nations Programme on HIV/AIDS

https://digitallibrary.un.org/record/797733/files/DP_2015_31_DP_FPA_2015_13-EN.pdf

¹⁸⁶ End of Project Evaluation – UNDP RSC Africa: “Strengthening Regional and National Legislative Environments for HIV/SRHR to Support the Enjoyment of Human Rights of LGBT People and Women and Girls in Sub-Saharan Africa – Phase II” (A Sida Supported Project) 2019

¹⁸⁷ IIGH-GHHR, (2020). Endline Evaluation of the Africa Regional HIV Grant: Removing Legal Barriers (QPA-H-UNDP)

a range of civil society actors. This is evident, for example, in how global conversation and action in regard to the overly broad criminalization of HIV in countries around the world evolved over this period. Case Study Three below explores this concept in greater detail.

Case Study Three: Movements to Challenge HIV Criminalization

This case study considers HIV-related criminalization, including with respect to sexuality, reproduction, gender and drug use, as well as the responses by a range of stakeholders to each. The focus of this case study is on the Global Commission as a momentum-building catalyst, with many platforms and outputs to move other actors towards effectively addressing criminalization of HIV. While movements of people living with HIV and key populations may have initially come together on the basis of shared vulnerabilities and the need to access services, using HIV as an entry point for work towards a common agenda against criminalization, as outlined in the Commission's original report, may have galvanized and strengthened cross-movement collaboration. The focus of this case study is on the Global Commission as a momentum-building catalyst, with many platforms and outputs to move other actors towards effectively addressing criminalization of HIV.

The Global Commission consultation process provided a platform for cross-sectoral engagement on the health and human rights impact of criminalized approaches, and the importance of inclusion and participation of key populations, activists and other key stakeholders in these processes. This has had positive influence on other organizations also working on these same issues. A key informant indicated that the consultative approach of the regional dialogues has since become a more accepted way of working by UNAIDS and others, especially in the global response to HIV.¹⁸⁸ More explicitly, another key informant reported that the International Commission of Jurists (ICJ) is trying to utilize this approach for their work around human rights and criminal law. Similar to how the Global Commission developed its methodology, the ICJ is "*Learning lessons about how the Commission operated and taking the best of this and marry[ing it] to the best of others.*"¹⁸⁹ This is described in further detail below. On top of this, the Global

¹⁸⁸ Key Informant Interview 8

¹⁸⁹ Key Informant Interview 9

Commission report provided an evidence-based compelling case about the negative impacts of overly broad criminalization, giving other stakeholders an invaluable tool for advocacy and action.

In the years since the Global Commission, there has been increasing critique from a range of actors who now recognize that the overly-broad use of criminal law to punish HIV exposure, transmission [and/or actual or potential non-disclosure of HIV status] fails to prevent harm and negative impacts public health, social justice and human rights.¹⁹⁰ In particular, there have been increased civil society efforts to decriminalize HIV with notable gains. Global, regional and national campaigns opposing HIV criminalization have contributed to these successes. This is evidenced within the Southern and East Africa regions, “specifically in countries that have opposed and rejected existing provisions contained in draft legislation, which push for criminal sanctions against people living with HIV, based solely on their status. Examples of these pressures have been seen in countries such as Mauritius, Comoros and Mozambique, where successful campaigning has led to less draconian laws.”¹⁹¹ Notably, coordinated advocacy by national and regional organizations to challenge overbroad criminalization has been financially supported by UNDP, as part of post-Global Commission follow-up. Additionally, UNDP country offices and UNAIDS have collaborated to issue proposed recommendations amidst HIV law reform processes based on the approach taken in the Global Commission report, as was the case in Malawi where mandatory testing and HIV criminalization provisions were successfully removed from the national HIV bill in 2017.¹⁹²

While efforts to challenge HIV criminalization began prior to the Global Commission, including with leadership from ARASA and the Canadian HIV/AIDS Legal Network, overarching critiques of and advocacy challenges to criminalized approaches to HIV and other related issues are now being undertaken with greater frequency by international, regional and national NGOs.

¹⁹⁰ ARASA, From N’Djamena to SADC and EAC model laws & beyond: Revolutionising approaches to Criminalisation of HIV non-disclosure & exposure (meeting report), 2017, p. 3.

¹⁹¹ ARASA, From N’Djamena to SADC and EAC model laws & beyond: Revolutionising approaches to Criminalisation of HIV non-disclosure & exposure (meeting report), 2017, p. 3.

¹⁹² UNDP, Malawi HIV law amended to remove rights-infringing provisions, December 12, 2017, <https://www.mw.undp.org/content/malawi/en/home/presscenter/articles/2017/12/12/malawi-hiv-law-amended-to-remove-rights-infringing-provisions.html>.

HIV Justice Worldwide, a collaboration of seven civil society organizations, have been working together formally to end HIV criminalization globally since 2016.¹⁹³

Building on the momentum of the Commission, organizations such as Amnesty International,¹⁹⁴ Accountability International,¹⁹⁵ CREA¹⁹⁶ and Realizing Sexual and Reproductive Justice (RESURJ)¹⁹⁷ have undertaken cross-issue, work to challenge criminalization of sexuality, reproduction, gender and drug use globally and regionally. Amnesty International launched a “Criminalization of Sexuality and Reproduction” project in 2012 (the same year as the Global Commission report) and frequently relies on the Global Commission’s recommendations as authoritative guidance.¹⁹⁸ Despite this reliance, and demonstrating the ways in which the Global Commission has influenced the landscape around these issues more broadly, the Amnesty International project did not exclusively focus on HIV, but rather took a broader intersectional focus on punitive regulation of sexuality, reproduction and gender expression. In terms of relevant outputs, the organization has undertaken country research on criminalization of sex

¹⁹³ HIV Justice Network, The HIV Justice Network is a global information and advocacy hub for individuals and organisations working to end the inappropriate use of the criminal law to regulate and punish people living with HIV, December 19, 2018, <http://www.hivjustice.net/after-two-years-of-our-coalition-were-really-getting-somewhere-heres-to-even-more-hiv-justice-worldwide-in-2018-by-edwin-j-bernard-global-co-ordinator-hiv-justice-network-hiv-justice-worldw/>.

¹⁹⁴ Amnesty International, What does it mean when sexuality and reproduction are criminalized?, March 12, 2018, <https://www.amnesty.org/en/latest/campaigns/2018/03/un-body-politics-explainer/>.

¹⁹⁵ Accountability International, Challenging Criminalisation Globally: Un-Policing Identity, Morality, Sexuality and Bodily Autonomy, <https://accountability.international/projects/challenging-criminalisation-globally/>.

¹⁹⁶ CREA, Flaws in Laws Campaign, <https://twitter.com/ThinkCREA/status/1184782520900112384>

¹⁹⁷ RESURJ, Shortcomings of Criminalization, <https://accountability.international/projects/challenging-criminalisation-globally/>; see also RESURJ, Beyond Criminalization: A feminist questioning of criminal justice interventions to address sexual and reproductive rights violations (Executive Summary), 2019, <http://resurj.org/sites/default/files/2020-02/Executive%20Summary%20-%20Desk%20Review%20Beyond%20Criminalization%20%285%29.pdf>.

¹⁹⁸ See, for example, Amnesty International, Body Politics: The Criminalization of Sexuality and Reproduction, A Primer, 2018, <https://www.amnesty.org/download/Documents/POL4077632018ENGLISH.PDF>.

work in four countries,¹⁹⁹ drug use during pregnancy in the USA²⁰⁰ and consensual sex outside of marriage and pregnancy in Jordan,²⁰¹ and published a Primer,²⁰² Campaigning Toolkit²⁰³ and Training Manual²⁰⁴ on criminalization of sexuality and reproduction. Project staff also co-lead the organization's adoption of an institutional policy on states' obligations to respect, protect and fulfill the human rights of sex workers,²⁰⁵ which calls for full decriminalization of sex work, as well as the update of Amnesty International's abortion policy, calling for full decriminalization of abortion and broad access for all who need abortion services. Authoritative recommendations by the Global Commission, as well as other international experts, bolstered the organization's confidence and provided evidentiary support to take these bold policy positions.

In more recent years, Amnesty International's "Criminalization of Sexuality and Reproduction" project team has partnered with allies such as RESURJ, CREA, Accountability International, the Yale Global Health Partnership, the Office of the High Commissioner for Human Rights (OHCHR) and UNDP to work to achieve a broader impact. Much of the human rights analysis and campaigning and advocacy strategies being undertaken by these groups mirror the Global

¹⁹⁹ Amnesty International, Amnesty International publishes policy and research on protection of sex workers' rights, May 26, 2016, <https://www.amnesty.org/en/latest/news/2016/05/amnesty-international-publishes-policy-and-research-on-protection-of-sex-workers-rights/> (with links to the organization's policy, an accompanying explanatory note, research reports on Norway, Buenos Aires, Argentina, Hong Kong and Papua New Guinea, and a research summary).

²⁰⁰ Amnesty International, Criminalizing Pregnancy: Policing Pregnant Women who Use Drugs in the USA, 2017 (Index: AMR 51/6203/2017), <https://www.amnesty.org/download/Documents/AMR5162032017ENGLISH.pdf>.

²⁰¹ Amnesty International, Imprisoned Women, Stolen Children: Policing Sex, Marriage and Pregnancy in Jordan, 2019, (Index: MDE 16/0831/2019), <https://www.amnesty.org/download/Documents/MDE1608312019ENGLISH.PDF>.

²⁰² Amnesty International, Body Politics: The Criminalization of Sexuality and Reproduction, A Primer, 2018, <https://www.amnesty.org/download/Documents/POL4077632018ENGLISH.PDF>.

²⁰³ Amnesty International, Body Politics: The Criminalization of Sexuality and Reproduction, A Campaigning Toolkit, 2018 (Index: POL 40/7764/2018), <https://www.amnesty.org/download/Documents/POL4077642018ENGLISH.PDF>.

²⁰⁴ Body Politics: The Criminalization of Sexuality and Reproduction, A Training Manual, 2018 (Index: POL 40/7771/2018), <https://www.amnesty.org/download/Documents/POL4077712018ENGLISH.PDF>.

²⁰⁵ Amnesty International, Policy on State Obligations to Respect, Protect and Fulfill the Human Rights of Sex Workers, 2016 (Index: POL 30/4062/2016), <https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF>.

Commission’s reliance on evidence, and human rights analysis and first-hand experience of key populations and those most affected by criminalization issues.

Norm building endeavors around addressing states’ resort to criminalization of HIV, sexuality, reproduction, gender and drug use have also gained momentum in recent years. For example, in 2015, the OHCHR began assessing the human rights impact of criminalizing sexual conduct, sexuality and sexual and reproductive health. After years of civil society and expert consultations, the OHCHR is in its final stages of developing internal guidance on overbroad criminalization. Additionally, in 2017, UNAIDS and OHCHR jointly organized an expert meeting on “Understanding and building synergies for addressing the misuse of the criminal law and its impact on women, sex workers, people who use drugs, people living with HIV and LGBT persons.”²⁰⁶ The meeting explicitly referenced building upon the Global Commission’s work, as well as civil society and UN agencies, which “have increasingly addressed the challenges posed by the misuse of criminal law in specific contexts as well as against specific populations”, and called for “further strategies and renewed mobilisation to address the unjust application and the detrimental effects of criminal law, which particularly target sex workers, people who use drugs, people living with HIV, LGBT persons, women who seek abortion, and people who are accused of adultery, as well as where these identities, contexts and statuses intersect.”²⁰⁷

At present, the International Commission of Jurists (ICJ) is developing a set of international legal principles to guide courts and jurists worldwide around the appropriate application of criminal law.²⁰⁸ The ICJ specifically cites the Global Commission’s 2012 and 2018 report recommendations urging states to address criminalization of key issues, as a rationale for its

²⁰⁶ UNAIDS, OHCHR, Expert Meeting Report, 2017 (Unpublished, on file with authors February 8-10, 2017, Bellagio Italy)

²⁰⁷ UNAIDS, OHCHR, Expert Meeting Report, 2017, para. 5. Unpublished, on file with authors. February 8-10, 2017, Bellagio, Italy.

²⁰⁸ ICJ, Report on the May 2018 Expert Meeting of Jurists: “Developing principles to address the detrimental impact on health, equality and human rights of criminalization with a focus on select conduct in the areas of sexuality, reproduction, drug use and HIV” (contained in the ICJ call for submissions on the misuse of criminal law in the areas of sexuality, reproduction, drug use and HIV), <https://www.icj.org/wp-content/uploads/2019/01/CallforSubmission-DecriminalizationProject-ICJ-2019-2-eng.pdf>.

elaboration of key principles on criminalization.²⁰⁹ While this process is still in its initial phases, ICJ anticipates organizing a global consultation around these jurist principles and is considering the Global Commission’s consultation process as a model to follow.

Much of this transformative work being undertaken to challenge unjust criminalization has been built upon the synergies and networks created and/or bolstered through the Global Commission process, which created a momentum around this type of work, providing a rigorous report that constituted a critical advocacy tool, and effectively galvanized the actions of a wide variety of actors as discussed in this case study. Additionally, and synergistically, it appears that the funding community has begun to pay more attention to these issues as well, including Ford Foundation, Wellspring and Open Society Foundations.

Conclusion

There is substantial alignment between Global Commission recommendations and other key health, HIV, gender, development and governance frameworks at the global level including the SDGs and UHC. Global level institutions including not only UNDP but UNAIDS, the Global Fund and other partners have demonstrated a sustained interest in the links between the law and HIV and have also expanded this into new areas including TB, malaria, and sexual and reproductive health. The mutually reinforcing nature of this alignment can allow stakeholders to leverage their areas of competitive advantage and provide different entry points for working towards shared objectives.

²⁰⁹ ICJ, Report on the May 2018 Expert Meeting of Jurists: “Developing principles to address the detrimental impact on health, equality and human rights of criminalization with a focus on select conduct in the areas of sexuality, reproduction, drug use and HIV” (contained in the ICJ call for submissions on the misuse of criminal law in the areas of sexuality, reproduction, drug use and HIV), <https://www.icj.org/wp-content/uploads/2019/01/CallforSubmission-DecriminalizationProject-ICJ-2019-2-eng.pdf>.

Regional Level Impact

Introduction

Beginning with the consultative process leading up to production of the Global Commission’s 2012 report, regional level engagement has been a cornerstone of the Commission’s approach. This section of the report focuses on the regional follow-up activities to the Global Commission. This first sub-section provides an overview of regional grants leveraged by UNDP that supported regional efforts to implement recommendations of the Global Commission. The next sub-section provides in-depth analysis of some of the key regional follow-up activities and their impact. Drawing on the experience of the evaluation team, the regional impact of projects in Africa is described in detail. The last sub-section is a case study that highlights the impact of the Global Commission and its recommendations on regional laws, policies, and resolutions focusing on the processes through which the legal environment was impacted through regional follow-up activities.

Regional initiatives

As previously described, UNDP facilitated funding and technical support to enable implementation of the Global Commission’s recommendations at regional level.²¹⁰ Obviously, this work does not happen in a vacuum and as a result, changes at the regional level cannot be attributed solely to the Global Commission. It is however important to recognize UNDP as the driving force behind relevant regional grants and their subsequent implementation as part of their overall strategy to improve the legal environment around HIV. Nonetheless, this work required sustained action by many stakeholders. This section highlights regional work in the Caribbean, Asia, and Africa. Since 2013, there have been eight relevant grants across these regions to support follow-up activities. These initiatives have been implemented by UNDP and regional

²¹⁰ Key Informant Interview 8

partners (Table 3). To provide a framework for assessment of regional activities, these are presented below.

Table 3. Regional grants in Africa, Asia and the Caribbean to support follow-up to the Global Commission

Title	Years	Stated Aims	Countries	Implementer	Funder
Multi-Country South Asia Global Fund HIV Programme	2013-present	“to reduce the impact of, and vulnerability to, HIV of men who have sex with men, hijras and transgender people through Community Systems Strengthening” ²¹¹	Afghanistan, Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka.	UNDP, Save the Children, Nepal	Global Fund
Strengthening Regional and National Legislative Environments to Support the Human Rights of LGBT People and Women and Girls affected by HIV and AIDS in Sub-Saharan Africa (Phase 1 and Phase 2)	2013-2019	Phase I “strengthening national and regional legal environments to support the enjoyment of human rights of LGBT people and women and girls affected by HIV” Phase II “to strengthen national and regional legal environments relating to HIV/SRHR, particularly relating to prevention of child marriages and sexual and gender-based violence, including female genital mutilation	Angola, Burkina Faso, Cameroon, Chad, Democratic Republic of Congo, eSwatini, Gabon, Ghana, Kenya, Lesotho, Malawi, Mozambique, Namibia, Nigeria, Seychelles, Sierra Leone, South Africa, Tanzania,	UNDP	Governments of Sweden and Norway

²¹¹ Global Commission on HIV and the Law. (n.d.). *The Multi-Country South Asia Global Fund HIV Programme*. Retrieved from <https://hivlawcommission.org/programmes/south-asia-global-fund-hiv-programme/>

Title	Years	Stated Aims	Countries	Implementer	Funder
		and to human rights for LGBT people.” ²¹²	Uganda, and Zambia		
Being LGBTI in Asia	2014-2020	“addressing inequality, violence and discrimination on the basis of sexual orientation, gender identity or intersex status, and promotes universal access to health and social services” ²¹³	China, the Philippines and Thailand	UNDP, regional partners	UNDP, Embassy of Sweden in Bangkok, USAID, Australian Department of Foreign Affairs and Trade, Ministry for European Affairs and Equality (Malta), Government of Canada and Faith in Love Foundation (Hong Kong)
Being LGBTI in Eastern Europe	2016-2017	To provide a comprehensive review and analysis of the impacts of the legal, institutional, policy, social, cultural and economic environment on LGBTI people. ²¹⁴	Albania, Bosnia and Herzegovina, North Macedonia, and Serbia	UNDP, regional partners	USAID
Being LGBTI in the Caribbean	2017-2021	1. To develop and disseminate knowledge, strategic information and evidence on the	Barbados, Dominican Republic, Grenada,	UNDP, regional partners	USAID, Philips Do Brasil Ltda., Foreign &

²¹² Saha, Amitrajit, UNDP. (2019, July 23). *Strengthening regional and national legislative environments for HIV/SRHR to support the enjoyment of human rights of LGBT people and women and girls in Sub-Saharan Africa – Phase II. Project Management Committee Meeting*. Durban, South Africa. PowerPoint presentation.

²¹³ UNDP. (2015, February 26-27). *Report of the Regional Dialogue on LGBTI Human Rights and Health in Asia-Pacific*. Retrieved From https://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2015-report-regional-dialogue-lgbti-rights-health.pdf

²¹⁴ UNDP. (2017, Nov 28). *Being LGBTI in Eastern Europe*. Retrieved From https://www.eurasia.undp.org/content/rbec/en/home/library/democratic_governance/being-lgbti-in-eastern-europe--albania-country-report.html

Title	Years	Stated Aims	Countries	Implementer	Funder
		<p>impact of inequality and exclusion of LGBTI people</p> <p>2. To support the meaningful engagement of governments in the selected countries (supported through national and regional dialogues)</p> <p>3. To develop the capacity of LGBTI Community Groups through enhanced coordination, increased access to existing tools, transfer of knowledge and concrete actions to address stigma & discrimination²¹⁵</p>	Guyana, Haiti, Jamaica and St Lucia.		Commonwealth Office
Multi-Country Western Pacific Integrated HIV/TB Project	2015 - 2017	<p>“HIV prevention initiatives for key populations; prevention of mother-to-child transmission; sexually transmitted infections and TB prevention, treatment and care services; TB/HIV coinfection and multi-drug resistant TB; and removing legal barriers to access and community systems strengthening”²¹⁶</p>	Cook Islands, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Palau, Samoa, Tonga, Tuvalu and Vanuatu	UNDP, Ministries of Health, regional partners and community-based organizations	Global Fund

²¹⁵ UNDP. (n.d.) *Being LGBTI in the Caribbean: Reducing Inequality & Exclusion Experienced by LGBTI People*. Retrieved by: <https://www.bb.undp.org/content/barbados/en/home/projects/BLIC.html>

²¹⁶ <https://hivlawcommission.org/programmes/multi-country-western-pacific-integrated-hivtb-project/>

Title	Years	Stated Aims	Countries	Implementer	Funder
Linking Policy to Programming in five South African Development Community (SADC) countries	2016-2020	“Improve sexual and reproductive health outcomes for young key populations through strengthening the HIV and sexual and reproductive health related rights of young key populations through changes in law, policy and strategy” ²¹⁷	Angola, Madagascar, Mozambique, Zambia, and Zimbabwe	UNDP, African Men for Sexual Health and Rights (AMSHeR), and the Health Economics and HIV/AIDS Research Division (HEARD) of the University of KwaZulu-Natal	Netherlands Ministry of Foreign Affairs
Africa Regional HIV Grant: Removing Legal Barriers	2016-2019	“to address human rights barriers faced by vulnerable communities in Africa, and facilitate access to lifesaving health care” ²¹⁸	Botswana, Côte D’Ivoire, Kenya, Malawi, Nigeria, Senegal, Seychelles, Tanzania, Uganda and Zambia	UNDP, AIDS and Rights Alliance of Southern Africa (ARASA), Enda Santé (ENDA), Kenya Legal & Ethical Issues Network on HIV and AIDS (KELIN), and the Southern Africa Litigation Centre (SALC)	Global Fund
Challenging Stigma and	2017-2019	“to respond to the HIV epidemic in the Caribbean	Belize, Cuba, Dominican	UNDP, Caribbean	Global Fund

²¹⁷ UNDP. (n.d.). *Linking Policy to Programming*. Retrieved From <https://www.africa.undp.org/content/rba/en/home/about-us/projects/linking-policy-to-programming.html>

²¹⁸ <https://hivlawcommission.org/programmes/removing-legal-barriers-in-africa/>

Title	Years	Stated Aims	Countries	Implementer	Funder
Discrimination in the Caribbean		by focusing on the impact on key populations, including people living with HIV, men who have sex with men, transgender people, sex workers, people who use drugs, and young people belonging to any of these groups ²¹⁹	Republic, Guyana, Haiti, Jamaica, Suriname and Trinidad and Tobago	Vulnerable Communities Coalition and El Centro de Orientación e Investigación Integral	

A key informant supporting regional level follow-up activities in Asia noted that in addition to the positives there are challenges in working at a regional level, relevant to almost all regions, given the diversity of political, legal and cultural contexts across individual countries in any area.²²⁰ In regions with a shared colonial history, it may however be easier to plan, implement and learn across countries due to similarities in governmental structures, laws and languages, even as there are of course important political and cultural differences across countries in any region. Additionally, in Eastern Europe and Central Asia, where the remnants of Soviet laws still persist, there may be an opportunity for countries to collaborate and develop a new, evidence-based model code to address legal questions around HIV.²²¹

As noted in the table above, three key regional grants in Africa, leveraged by UNDP as follow-up to the Global Commission, have catalyzed critical work across the continent. The projects have achieved tangible results, including completion of LEAs in several countries; strengthened capacity related to human rights and HIV amongst the judiciary, national human rights institutions, law enforcement agencies as well as among affected communities; greater inclusion of LGBTI people, adolescent girls and young women, people living with HIV, sex workers and

²¹⁹ Global Commission on HIV and the Law. (n.d.). *Challenging stigma and discrimination in the Caribbean*. Retrieved from <https://hivlawcommission.org/programmes/challenging-stigma-and-discrimination-in-the-caribbean/>

²²⁰ Key Informant Interview 31

²²¹ Global Commission on HIV and the Law. (2011, May 19). *Eastern Europe and Central Asia Regional Dialogue of the Global Commission on HIV and the Law*. Retrieved From https://hivlawcommission.org/wp-content/uploads/2017/06/EECA_RD-Report.pdf

people who use drugs (PWUD) in national and regional processes; law review and reform; and greater involvement of Regional Economic Communities (RECs) and the African Union Commission (AUC) in addressing human rights and legal challenges pertaining to HIV and AIDS.²²² There is substantial evidence of this type of inclusion across Africa. For example, following long-term active advocacy, criminalization of HIV was taken out of the Draft HIV Act before the Act was passed, PWUD and female sex workers are active members of the CCM in Uganda, and in Mozambique, a revised colonial criminal code provision that commuted the sentence of rapists who married their victims was reversed.

Key regional activities

The first sub-section below explores the legacy of the regional dialogues around the world as it pertains to follow-up activities at regional level. The following sub-sections zero in on Africa and detail three regional level initiatives supported by one or more of the regional grants: the Africa Regional Judges' Forum, the Africa Key Populations Expert Group and the training of lawyers. These activities were expressly designed to move forward the Global Commission's recommendations and resulted in tremendous impact nationally, regionally and cross-regionally.

The legacy of the Regional Dialogues

Introduction

The 2012 report of the Global Commission on HIV and the Law argues that an enabling legal and policy environment is key to an effective HIV response. The regional dialogues that were held as part of the Global Commission process early on all pointed to this need, as well as access

²²² Mid-Term Evaluation: Strengthening Regional and National Legislative Environments to Support the Enjoyment of Human Rights of LGBT People and Women and Girls Affected by HIV and AIDS in Sub-Saharan Africa. 2015.

to justice and judicial sensitization, specifically in the Caribbean, African, and Asian Pacific regions.²²³

The importance of sensitization and capacity building for duty bearers and rights holders was highlighted throughout the regional dialogue processes. A wide range of duty bearers were involved in these processes, including law enforcement, parliamentarians, and judges. Here, we highlight some of the sensitization work done with the judiciary as an example of working with duty bearers. Additional examples, including sensitization of law enforcement and parliamentarians, are provided later in the report.

As noted earlier in this report, judicial sensitization in India served as a model for the regional dialogues that would precede the Global Commission report. This sensitization had also focused on how to give judges ownership in agenda-setting and how best to introduce an evidence-based approach, both areas of focus in subsequent Global Commission activities.²²⁴ The training also yielded important takeaways as to how regional dialogues might be preferable to national dialogues – particularly with respect to the discussion of sensitive issues. A key informant noted that in regional dialogues people feel safer, allowing for a more frank discussion – a sentiment that has been almost universally voiced by participants in evaluations and subsequent fora of this nature.²²⁵

Regional Dialogues: Attention to the Judiciary

The 2011 Report of the Caribbean Regional Dialogue of the Global Commission on HIV and the Law revealed how conversations between key stakeholders from the judiciary, civil society, and key populations can advance the conversation including with respect to the role of judges in the global response to HIV. Judges present at the dialogue saw that the judicial system could be used as an avenue of redress by civil society and acknowledged that facilitation of legal aid would be necessary to bring such cases to light. Another justice brought up the importance of sensitizing

²²³ Global Commission on HIV and the Law. (2012, July). *Risks, Rights & Health*. (2012, July). Retrieved from <https://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf>

²²⁴ Key Informant Interview 6

²²⁵ Key Informant Interview 8

judges. Noting the need for follow-up action for sustained change, it was recognized that judges who have done work in the field of HIV and human rights should relate their knowledge to colleagues who do not have the same experience. Judges spoke of the need to sensitize judicial officers about global developments, recognizing that “on the legal response to HIV and AIDS, there is much wisdom in the courts of other lands and different regions. Judges need to be informed of these resources so that, in the countries of the Caribbean, they can have access to them when like problems arise for their consideration.”²²⁶

A panel discussion on judicial sensitization featuring 100 members of the Caribbean judiciary was held as a follow up to the Caribbean Regional Dialogue in 2011. Attended by Magistrates, Supreme Court judges, Appeals Court judges, representatives from the Caribbean Court of Justice, civil society, academia and UNDP representatives, there was additional recognition of the need for further judicial sensitization at a national level.²²⁷ This dialogue, and relevant follow-up activities fed into the larger Global Commission process, including the 2012 report and 2018 Supplement to the Global Commission HIV and the Law Report.

The Report of the Asia Pacific Regional Dialogue of the Global Commission on HIV and the Law, published in 2011, highlighted that the judgment in India that decriminalized homosexuality was issued by a judge who had been sensitized to these issues. The report pointed to this example as a call to action to better sensitize judges in order to address prejudices and enact change.²²⁸ The 2012 report and the recommendations section of the 2018 Supplement to the Global Commission on HIV and the Law report both draw from the lessons learnt in this dialogue in regard to judicial sensitization.

²²⁶ Global Commission on HIV and the Law. (2011, April 12-13) *Report of the Caribbean Regional Dialogue of the Global Commission on HIV and the Law*. Retrieved from <https://hivlawcommission.org/wp-content/uploads/2017/06/CRD-report.pdf>

²²⁷ Global Commission on HIV and the Law. (2011, April 12-13) *Report of the Caribbean Regional Dialogue of the Global Commission on HIV and the Law*. Retrieved from <https://hivlawcommission.org/wp-content/uploads/2017/06/CRD-report.pdf>

²²⁸ Global Commission on HIV and the Law. (2011, February 17) *Report of the Asia Pacific Regional Dialogue of the Global Commission on HIV and the Law*. Retrieved from https://hivlawcommission.org/wp-content/uploads/2017/06/Report_of_the_APRD_Final.pdf

In the 2011 Report of the Africa Regional Dialogue of the Global Commission on HIV and the Law, participating countries focused on the need to implement measures to strengthen access to justice for key populations. Participants in the regional dialogue recognized a need to sensitize advocates and judges to ongoing human rights violations in the context of HIV.²²⁹ This sentiment is echoed and built upon in the 2012 report and in the recommendations section of the 2018 Supplement to the Global Commission on HIV and the Law report.

In high income countries, a well-informed judiciary was also recognized as a necessary tool for change. The Report of the High-Income Countries Regional Dialogue explicitly recognizes that judges should be actively involved in discussions around changing people’s attitudes towards HIV.²³⁰ The need for a well-informed judiciary in the global HIV effort was of course recognized prior to the formation of the Global Commission. Parliaments could pass laws but, as stated by one key informant, courts “*interpret law.*” Courts were slow moving, but uninformed conservative rulings could have devastating impacts within a country far beyond the individual case at hand.²³¹ The regional dialogues provided a safe place for judges to begin to learn about the lived realities of key populations and the need for their rulings to align with accurate medical and public health evidence. In the Africa Regional Dialogue, for example, a judicial expert from Botswana noted the fundamental importance of working with judges, explaining that, “in the broader scheme of things there are opportunities in the judiciary to advance the course of human rights. There is more scope in the judiciary than in the legislature. In Botswana, even where there is no protective law on HIV, the labour court judges did not fold their arms and chase away litigants. The courts were innovative and used international law to develop the jurisprudence to protect human rights.”²³²

²²⁹ Global Commission on HIV and the Law. (2011, August 4). *Report of the Africa Regional Dialogue of the Global Commission on HIV and the Law*, Retrieved from https://hivlawcommission.org/wp-content/uploads/2017/06/AfricaRD_ReportEn.pdf

²³⁰ Global Commission on HIV and the Law. (2011, September 16-7). *Report of the High Income Countries regional Dialogue of the Global Commission on HIV and the Law*, Retrieved from <https://hivlawcommission.org/wp-content/uploads/2017/06/HIC-RD-report.pdf>

²³¹ Key Informant Interview 4

²³² Global Commission on HIV and the Law. (2011, August 4). *Report of the Africa Regional Dialogue of the Global Commission on HIV and the Law*, Retrieved from https://hivlawcommission.org/wp-content/uploads/2017/06/AfricaRD_ReportEn.pdf

This idea that courts can shape laws that are consistent with public health evidence and create a more enabling environment was echoed by a range of key informants interviewed as part of these evaluations. In 2012, UNDP began supporting judicial dialogues in Africa, Asia, and the Caribbean.²³³ These dialogues were created as platform for experience-sharing between members of the judiciary within regions on the various legal and human rights issues raised by the HIV epidemic. With a view to building their knowledge base, judges and other representatives of the judiciary define an agenda of topics they wish to explore, meet regularly and interact with scientific experts as well as representatives of affected communities to build up a more complete understanding of cutting-edge science relating to HIV as well as how relevant laws impact affected populations' day-to-day lives. A key outcome of the Global Commission process therefore was funding and support for activities to provide judges' fora for open discussions about evolving science and law which are continuing to this day.

The Africa Regional Judges' Forum

The 2012 Global Commission report, *Risk, Rights and Health* highlights a need to comprehensively engage the judiciary in the HIV response. The Judicial Dialogue on HIV, Human Rights and the Law for the Eastern and Southern Africa Region was planned in direct response to this recommendation. The 2013 judicial dialogue in Nairobi catalyzed the creation of the Africa Regional Judges' Forum on HIV, Human Rights, and the Law which had its first meeting in 2014. This event marked an institutionalization of the judges' forum, which has been continued every year since its inception.²³⁴

The Africa Regional Judges' Forum was initiated by UNDP, with support from the Government of Sweden. Subsequent support has also been provided by the Global Fund through the "Africa Regional Grant on HIV: Removing Legal Barriers". Ongoing technical support is also provided, directly responsive to the needs of the participating judges.

²³³ The Global Commission on HIV and the Law, (2017, July). *The Global Commission on HIV and the Law at Five*.

²³⁴ KELIN. (2013, October 28-31). *Judicial Dialogue on HIV, Human Rights and the Law*. Retrieved from <https://kelinkenyana.org/wp-content/uploads/2014/03/Judicial-Dialogue-Forum.pdf>

Each year, judges from across the continent meet to discuss effective strategies and programs to promote ongoing sharing of information to better prepare for and respond to HIV-related human rights cases that come before them.²³⁵ Early fora centered only on HIV but have since expanded in scope to include sexual and reproductive health and TB.²³⁶ The founding group of judges collectively agreed on the goals of the Forum and the sorts of information they wanted more access to, including scientific and medical evidence about HIV and TB, data about resources and healthcare provision, and opportunities to hear directly from members of key and vulnerable populations.

Much of the success of the forum can be attributed to the fact that it “grew organically” from a small group of committed judges who took the initiative and drove the process themselves, with UNDP’s support.²³⁷ The approach to giving judges ownership of these fora has some roots in the approach taken to the previous judicial dialogues held in India. A key informant noted that judges are naturally skeptical and suspicious of efforts by governments and other experts to “sensitize” them. This recognition informed the decision that judges themselves drive the agenda for the forum, including evidence-based conversations with health and medical professionals. It is up to judges to decide what they will eventually do with the evidence but the forum gives them the space to ask questions and to learn outside the structures of their courtroom or country, and alongside other judges.²³⁸ For example, at one meeting there was a lot of discussion around the similarities and differences between the Kenya and Botswana cases on decriminalization of sex between men, which went before the respective national courts at roughly the same time. The penal code provisions being challenged were the same in both countries but there were differences in the strategies adopted to challenge them as well as the outcomes of the cases. Many of the participants reported that it was useful to study these similarities and differences as

²³⁵ UNDP. (2019, July 3). *Judges and legal experts from 22 countries meet for the Sixth Africa Regional Judges Forum to discuss HIV, TB and human rights*. Retrieved from <https://www.africa.undp.org/content/rba/en/home/presscenter/articles/2019/judges-and-legal-experts-from-22-countries-meet-for-the-sixth-af.html>.

²³⁶ UNDP. (2019, December 17). *Judges and legal experts from 22 countries meet for the Sixth Africa Regional Judges Forum to discuss HIV, TB and human rights*. Retrieved from https://www.mz.undp.org/content/mozambique/en/home/presscenter/articles/Judges_and_legal_experts_from_22_countries_meet_for_to_discuss_HIV_TB_Human_Rights.html

²³⁷ Key Informant Interview 24

²³⁸ Key Informant Interview 4

they suspected that such cases might soon arise in their own countries.²³⁹ Access to information on different courts' views on a range of issues across the region is said to have helped judges better understand how law might be interpreted (for good and bad) with direct impacts on the HIV response.²⁴⁰ Participants noted the value of the increased debate around HIV, TB and key populations, and strengthening of the legal perspective with an emphasis on human rights standards.

Since its inception, at least 129 judges and magistrates from over 30 African countries have participated in the forum, a number of whom have gone on to hand down precedent-setting judgments promoting the rights of people living with HIV, TB survivors and key populations.²⁴¹ The forum has also led to the development of a “core” group of renowned and committed judges committed to sustaining judicial excellence on health and human rights issues more broadly in countries across the region in the years ahead.²⁴²

With this core of judges at the helm, the forum now seeks to support the development of a new generation of judicial leaders equipped to handle issues relating to HIV, TB, and human rights.²⁴³ At the behest of the forum, UNDP has developed an online searchable database of HIV and law-related judgements which is shared amongst all participants and which judges reportedly find to be a useful reference tool.²⁴⁴ Participants have already gone on to lead efforts towards sustainable capacity-building of their peers in their home countries, including sensitization trainings, classes and workshops, as well as the institutionalization of such education about HIV,

²³⁹ Key Informant Interview 26

²⁴⁰ Ntaba, Zion. (2018). Linking the Africa regional judges' forum experience to redress of human rights violations of key populations. International AIDS Conference.

²⁴¹ UNDP. (n.d.) *UNDP's Submission to the Consultation on Promoting Human Rights in the HIV Response*. Retrieved from <https://www.ohchr.org/Documents/Issues/MentalHealth/HIVConsultation/Submissions/UNDP.pdf>.

²⁴² UNDP. (n.d.) *Innovative judges forum sensitizes African judges on HIV, TB, SHR, saw & human rights*. Retrieved from <https://www.undp-capacitydevelopment-health.org/en/legal-and-policy/case-studies/innovative-judges-forum>.

²⁴³ UNDP. (2019, July 3). *Judges and legal experts from 22 countries meet for the Sixth Africa Regional Judges Forum to discuss HIV, TB and human rights*. Retrieved from <https://www.africa.undp.org/content/rba/en/home/presscenter/articles/2019/judges-and-legal-experts-from-22-countries-meet-for-the-sixth-af.html>.

²⁴⁴ UNDP. (2017). *The Africa Regional Judges' Forum: Jurisprudence to protect key populations*. Retrieved from <https://undp-healthsystems.org/files/africa-regional-judges-forum-case-study-26-09-17.docx>.

TB, and human rights issues in judicial training curricula across Africa.²⁴⁵ An important legacy of the Global Commission with respect to both substance and process, these fora show that there are many benefits to taking a long-term regional approach to judicial sensitization and dialogues, and that “one-off national trainings” simply will not accomplish the same goals as effectively.²⁴⁶

Landmark judgments and rulings (outcomes)

The Global Commission brought to light the sorts of laws and policies in countries around the world that are detrimental to people’s lives and to the HIV response, as well as those that can create a more positive environment. Four illustrative examples are provided below:

Kenya

In 2015, the High Court of Kenya ruled on two landmark cases. In the first, the High Court ruled that the overbroad criminalization of HIV transmission was unconstitutional. In the second, the High Court ruled that the imprisonment of patients with TB was unlawful and beyond the parameters of public health legislation.²⁴⁷ Members of the High Court involved in these rulings had attended the Regional Forum and said they applied information they had learned in determining these cases.

Botswana

In 2015, the Botswana Court of Appeal upheld a ruling that foreign prisoners should receive free HIV treatment.²⁴⁸ In this case, judges who had attended the Regional Judges’ Forum were presiding.

²⁴⁵ UNDP. (n.d.) *Innovative judges forum sensitizes African judges on HIV, TB, SHR, saw & human rights*. Retrieved from <https://www.undp-capacitydevelopment-health.org/en/legal-and-policy/case-studies/innovative-judges-forum>.

²⁴⁶ Key Informant Interview 24

²⁴⁷ UNDP. (n.d.) *Innovative judges forum sensitizes African judges on HIV, TB, SHR, saw & human rights*. Retrieved from <https://www.undp-capacitydevelopment-health.org/en/legal-and-policy/case-studies/innovative-judges-forum>.

²⁴⁸ BBC News. (2015, August 26). *Botswana prisons: Foreign inmates win case for free HIV treatment*. Retrieved from <https://www.bbc.com/news/world-africa-34064945>.

Malawi

In 2017, the High Court of Malawi overturned the conviction of an HIV-positive woman for exposing a child to HIV through breastfeeding where HIV was not transmitted.²⁴⁹ “One of the key issues in the case was how HIV can be transmitted and the risk of HIV transmission when breastfeeding,” said Justice Zione Ntaba, the presiding judge. “I was able to use the information from previous meetings of the Judges’ Forum as well as material on the database [the online compendium of judgments noted earlier] to assist me in determining whether breastfeeding a baby put the baby at significant risk of contracting HIV.”²⁵⁰

India

While slightly different from the above examples, the Supreme Court of India decision *Navtej Singh Johar v. Union of India*, is a remarkable example of a major court relying on the Global Commission for evidence. In 2018, the Supreme Court overturned Section 377 of the Indian Penal Code which stated that “carnal intercourse against the order of nature” was a criminal offense punishable by life imprisonment.²⁵¹ The case effectively decriminalized homosexuality in India while simultaneously recognizing the identities of LGBT persons within the country. Evidence presented by the Commission report was used by the court in the lead-up to their ultimate decision.²⁵² More on this case follows in the national Level Legal Judgments section later in this report.

²⁴⁹ SALC. (2017, January 29). *Malawi: Challenging the criminalization of breastfeeding by women living with HIV*. Retrieved from <https://www.southernafricalitigationcentre.org/2017/01/29/malawi-challenging-the-criminalisation-of-breastfeeding-by-women-living-with-hiv/>.

²⁵⁰ UNDP. (2017, June 29). *Regional judges meet to promote law as a tool to strengthen the HIV response in Africa*. ReliefWeb. Retrieved from <https://reliefweb.int/report/world/regional-judges-meet-promote-law-tool-strengthen-hiv-response-africa>.

²⁵¹ UNDP. (n.d.) *Innovative judges forum sensitizes African judges on HIV, TB, SHR, law & human rights*. Retrieved from <https://www.undp-capacitydevelopment-health.org/en/legal-and-policy/case-studies/innovative-judges-forum>.

²⁵² O’Neill Institute. (2018, September 20). *‘History owes apology to the LGBT community’ – Supreme Court of India reads down colonial era Section 377*. Georgetown Law. Retrieved from <https://oneill.law.georgetown.edu/history-owes-apology-to-the-lgbt-community-supreme-court-of-india-reads-down-colonial-era-section-377/>

Extending the lessons learned through South-South approaches

There are at least two different types of spillover visible in the work of the judges' forum: substantive and geographic. Judges who have participated in the fora have reported that the knowledge gained has also influenced non-HIV related judgments that they have subsequently made. For example, a judge who participated ruled on a case on children in detention which he said was informed by his experiences attending the forum.²⁵³ Participating judges have voiced appreciation for the strengthened checks and balances that have been instituted in their courts in relation to how best to address human rights violations or legislation or practices that discriminate that they believe have resulted from participation in the Regional Forum. They have also noted, and welcomed, that in some cases within their countries they now have a more central role in the process of law and policy development. Even as it is not clear exactly why this change has occurred, with their expertise this can help support a more enabling legal environment relevant to HIV.²⁵⁴

Building on the Africa Regional Judges' Forum and further indicating the potential for continued spillover, the South African Judicial Education Institute, and UNDP convened to brainstorm how to integrate HIV/TB and human rights issues into the training of judges and magistrates across the continent. Following a resolution stemming from a roundtable of judges, magistrates, and judicial training institutions, a Judicial Education Subcommittee was created in 2018 charged with updating needs assessments to further develop this integration project.²⁵⁵ This a key step and an effort that is ongoing, demonstrating the long-term impact of the Global Commission, and the potential it created for improving HIV-related legal environments within countries.

At least two of the judges who have participated in the Africa Forum sit part-time in courts in the Asia Pacific region. Thus, the knowledge they have gained through this regional forum has the potential to influence cases relating to the legal environment around HIV and TB in those countries as well. The Africa Regional Judges' Forum periodically extended invitations to judges from other regions to participate in their fora. This has resulted in the Eastern Europe and Central

²⁵³ Key Informant Interview 26

²⁵⁴ Ntaba, Zione. (2018). Linking the Africa regional judges' forum experience to redress of human rights violations of key populations. International AIDS Conference.

²⁵⁵ Ibid.

Asia (EECA), and the Caribbean replicating the Regional Judges' Forum, drawing directly on experiences and expertise from the Africa Regional Judges' Forum to inform similar efforts. A key informant reported, "now all of a sudden the Regional Judges' Forum is informing a similar mechanism in the EECA and the Caribbean. As of the writing of this evaluation, a second Caribbean judges' forum has been planned for November of 2020. We are seeing depth and more profound impact in how we make things more replicable and sustainable."²⁵⁶

Eastern Europe and Central Asia

The First Regional Judges' Forum in Eastern Europe and Central Asia (EECA) took place in Moldova in October 2019. Participants came from Belarus, Georgia, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, and Ukraine. Following the format of the African Regional Judges' Forum, participants included not only judges, but government representatives, academics, representatives of civil society organizations, and key population representatives.²⁵⁷ A second forum in Tajikistan is planned for October 2020.

Caribbean

Shortly after the EECA Judges' Forum, a Caribbean Judges' Forum was convened in Trinidad and Tobago in November 2019.²⁵⁸ Some of the key takeaways from this first forum in the region concerned how best the model might be adapted to the realities of the Caribbean region. Some of these recommendations included inviting magistrates to future meetings, jointly convening judges and senior police officers, expanding sensitivity training of police officers through civil

²⁵⁶ Key Informant Interview 8

²⁵⁷ UNDP. (2019, October 3). *Judges, national human rights institutions and communities meet to ensure human rights protection of those with HIV and TB*. Retrieved From <https://www.eurasia.undp.org/content/rbec/en/home/presscenter/pressreleases/2019/judges-meet-to-ensure-protection-for-hiv-and-tb.html>

²⁵⁸ PANCAP. (2019, November 27). *PANGAP Director's reflection on the Caribbean Judges' Forum on HIV, Human Rights and the Law*.

society, and collaborating with PANCAP, UNDP and UNAIDS to synthesize information which can then be published within their shared Judiciary web page.²⁵⁹

Conclusion

The Africa Regional Judges' Forum was established to directly further the Global Commission's follow up to sensitize judiciary as key for a sustainable HIV response.²⁶⁰ Not only has this work had a positive impact on legal frameworks in a range of countries across sub-Saharan Africa, but, through spillover and replication, its impact is beginning in other regions as well. The South-South approaches leveraged here, in conjunction with UNDP's comparative advantage and convening power, were critical components that led to the achievement of the described impacts. The ideas generated through the original Global Commission processes are in this way continuing to grow and flourish.

Strengthening Communities

Through the regional dialogues and written submissions, the Commission's process gave voice to communities in unprecedented ways. For many rights holders, it was the first time that they were given a seat among an audience of such diverse stakeholders, ranging from civil society and affected communities to duty bearers, such as parliamentarians, judges, and law enforcement. Additionally, the Commission report stood out as an advocacy piece around which communities could organize, learn, forge alliances, and develop programs. In the context of shrinking civic space around the world, as highlighted in the 2018 supplement, and the resurgence in recognition of the role communities play in epidemic response, the impact the Commission had on supporting the strengthening of communities cannot be overstated. The text box below provides

²⁵⁹ PANCAP. (2019, November 27). *PANGAP Director's reflection on the Caribbean Judges' Forum on HIV, Human Rights and the Law*. Retrieved From <https://pancap.org/pancap-releases/pancap-directors-reflection-on-the-caribbean-judges-forum-on-hiv-human-rights-and-the-law/>

²⁶⁰ Global Commission on HIV and the Law. (2012, July). *Risks, Rights & Health*. (2012, July). Retrieved from <https://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf>

an example of community strengthening work that can be seen to have largely happened as a result of the Global Commission, illustrating the broad impact that this has had.

Africa Key Populations Expert Group

As a direct follow-on to the work of the Global Commission, the Africa Key Populations' Expert Group (AKPEG) came into being in 2014.²⁶¹ As initially envisioned, the focus was to develop interventions to advance the engagement of key populations in the HIV response, and to help RECs develop regional HIV strategies for key populations.²⁶² ²⁶³ Originally convened and supported by UNDP, from 2016 to 2018, the AKPEG also received technical and financial support from the SADC Secretariat, EAC, and regional civil society organizations through the “Africa Regional Grant on HIV: Removing Legal Barriers.”²⁶⁴

The AKPEG meets annually and is now an initiative made up of more than 105 experts from 16 different countries, representing men who have sex with men, people who use drugs, transgender people, and sex workers.²⁶⁵ ²⁶⁶,²⁶⁷ Central to these regional meetings are updates on national, regional, and global developments in the HIV response, information on how best to understand and utilize the latest scientific evidence and data, and discussions on advocacy and strategy. The

²⁶¹ Personal Communication, Member of AKPEG

²⁶² UNDP. (n.d.). *Webinar: Connecting the dots between health and human rights*

²⁶³ UNDP. (n.d.). *Africa Regional Grant on HIV: Removing Legal Barriers – Emerging Results*, Retrieved From <https://www.developingngo.org/wp-content/uploads/2018/11/gERRIT-dESIGN-revised-2.pdf>

²⁶⁴ UNDP. (2018, November 29). Official registration of key populations organizations opens doors for funding and sustainable HIV responses. Retrieved from <https://www.africa.undp.org/content/rba/en/home/presscenter/articles/2018/official-registration-of-key-populations-organizations-opening-d.html>.

²⁶⁵ UNDP. (2018, November 29). *Official registration of key populations organizations opens doors for funding and sustainable HIV responses*. Retrieved from <https://www.africa.undp.org/content/rba/en/home/presscenter/articles/2018/official-registration-of-key-populations-organizations-opening-d.html>.

²⁶⁶ Patel, Deena. (2019). Africa Regional Grant on HIV – Removing Legal Barriers PowerPoint presentation.

²⁶⁷ UNDP. (2018, November 29). *Official registration of key populations organizations opens doors for funding and sustainable HIV responses*. Retrieved from <https://www.africa.undp.org/content/rba/en/home/presscenter/articles/2018/official-registration-of-key-populations-organizations-opening-d.html>.

group's work is recognized to be incredibly important in ensuring the voices of key populations help to shape regional and national responses to HIV in Africa. A few examples follow below:

As a first step, the AKPEG developed the “Model Regional Strategic Framework on HIV for Key Populations in Africa” in 2014, which was the first of its kind in Africa.²⁶⁸ Outlining the principles and contingencies necessary to address key structural barriers impeding comprehensive HIV prevention, treatment and care for key populations across Africa, it formed the basis for the SADC key population strategy, which is designed to inform national policies for key populations,²⁶⁹ and is influencing ongoing development of ECOWAS work in this area. Further, it is also being used to inform Global Fund catalytic funding proposals for both SADC and the EAC.²⁷⁰

The AKPEG has been active in other ways as well that draw from and extend the 2012 Global Commission recommendations. For example, in 2014, to address the lack of data on key populations within the region they produced an initial list of relevant indicators and, in 2015, began work on a more expansive methodology that included key population-led assessment and analysis of HIV policies, as well as strategies and programs at the regional, national, and sub-national levels.²⁷¹

Recognizing that civil society organizations throughout Sub-Saharan Africa, especially those led by key population representatives, often find it difficult to register as official government-recognized organizations, the AKPEG has worked to help civil society organizations with the registration processes they must go through. This in turn has opened these individual organizations up to increased opportunities for funding, while, in keeping with the Global

²⁶⁸ UNDP. (2017, August 8). *Making the SDGs work for key populations in Africa*. Retrieved From <https://www.africa.undp.org/content/rba/en/home/presscenter/articles/2017/08/making-the-sdgs-work-for-key-populations-in-africa.html>

²⁶⁹ UNDP. (2019 February 19). *List of UNDP-specific UBRAF Strategic Results Areas (SRAs) and outputs*.

²⁷⁰ KELIN, (n.d.) *Africa Regional Grant on HIV: Removing Legal Barriers - Emerging Results*, Retrieved From https://www.kelinkenya.org/wp-content/uploads/2018/12/Emerging-Results-from-the-Africa-Regional-Grant-on-HIV-Removing-Legal-Barriers_18122018_changes.pdf

²⁷¹ UNDP. (n.d.). *Webinar: Connecting the dots between health and human rights*

Commission's recommendations, also helping to ensure that the engagement of key populations can be sustained in the region.²⁷²

The AKPEG supports country level activities throughout the year as well, often providing mentorship and peer support. In 2015, for example, members of the AKPEG participated in negotiations with the government of Zimbabwe to secure a safe environment for participation of key populations at the ICASA conference that was to be held in Harare.²⁷³ In South Africa, the AKPEG helped inform the language used in the South African national strategic plan, which was published in May of 2017, and facilitated the creation of the South African National Sex Worker HIV plan published in 2016.²⁷⁴ In Senegal, they assisted in the design of projects and advocacy focused on lowering the risks for active drug users as well as advocacy for better mainstreaming the concerns of key populations in project and program implementation.²⁷⁵ The AKPEG has been engaged in key populations strategies for all African RECs.²⁷⁶

The AKPEG has also been a key player in strengthening transgender programming within the region. This work has contributed to the inclusion of transgender persons in Technical Working Groups (TWGs), and in the drafting of National Strategic Plans (NSPs) and national-level funding proposals. Examples of results exist in several places, for example in Kenya where their work is seen to have helped establish the East Africa Trans Health and Advocacy Network

²⁷² UNDP. (2018, November 29). *Official registration of key populations organizations opens doors for funding and sustainable HIV responses*. Retrieved from <https://www.africa.undp.org/content/rba/en/home/presscenter/articles/2018/official-registration-of-key-populations-organizations-opening-d.html>

²⁷³ UNDP. (n.d.). Webinar: Connecting the dots between health and human rights

²⁷⁴ UNDP; UNFPA. (2016, October 5). *Report on the implementation of the decisions and recommendations of the Programme Coordinating Board of the Joint United Nations Programme on HIV/AIDS*. Retrieved From <https://digitallibrary.un.org/record/846993?ln=en>

²⁷⁵ UNDP; UNFPA. (2016, October 5). *Report on the implementation of the decisions and recommendations of the Programme Coordinating Board of the Joint United Nations Programme on HIV/AIDS*. Retrieved From <https://digitallibrary.un.org/record/846993?ln=en>

²⁷⁶ Personal Communication, Member of AKPEG

(EATHAN) and in Uganda in ensuring funding for transgender programming within a Global Fund program.²⁷⁷

The AKPEG meetings are widely recognized by participants to help organizations in the region to better address HIV because of the knowledge transfer and cross-learning that occurs. A key informant reported that through their participation in the AKPEG they “learnt how to be a leader, how to talk to leaders, how to mobilize resources, [and] not to be fearful. It also allowed me to participate. I was part of creating a regional document which is a big deal. My national work has been recognized.”²⁷⁸

In 2018, the AKPEG finished its first strategic plan. Designed as an advocacy document to be used with national authorities, the strategic plan sets out the needs of key populations from the perspective of the populations themselves in ways intended to support regional and country level programming.²⁷⁹ Moving forward, the AKPEG continues to focus on how best to strategically support key population programming throughout the region. There is a willingness and commitment to keeping the work moving despite uncertainty about continued funding.²⁸⁰ Future plans include a virtual platform for increased interactions and knowledge management, and participation in relevant regional and global events.²⁸¹ Members of the AKPEG note also a desire for cross-regional learning with key population groups in Asia and Latin America.²⁸²

The success of this work demonstrates the continued importance of the Global Commission’s original focus on the engagement of key populations, and the programming needed to support their ability to effectively challenge the legal, political and social environments that impede effective HIV responses.

²⁷⁷ UNDP. (n.d.). Webinar: Connecting the dots between health and human rights

²⁷⁸ Key Informant Interview 30

²⁷⁹ Key Informant Interview 30

²⁸⁰ Personal Communication, Member of AKPEG

²⁸¹ UNDP. (n.d.). Webinar: Connecting the dots between health and human rights

²⁸² UNDP. (n.d.). Webinar: Connecting the dots between health and human rights

Regional sensitization and trainings of duty-bearers

The 2011 Africa Regional Dialogue of the Global Commission on HIV and the Law included a focus on law enforcement practices and access to justice as it pertained to key populations and HIV. The regional dialogue sparked public conversations around law reform, legal education, legal support services, law enforcement and community mobilization, and in particular the roles that lawyers could play in facilitating change.²⁸³ The 2012 Commission report and recommendations reflected this discussion and the need for ensuring lawyers had the proper skills and knowledge to advocate effectively on HIV-related legal issues.

The training of lawyers at the regional level on these issues began in earnest during the “Africa Regional Grant on HIV: Removing Legal Barriers” which ran from 2016 to 2019. Over the course of the grant, the Southern Africa Litigation Center (SALC) hosted three regional trainings for lawyers from across sub-Saharan Africa on human rights-based strategic litigation, advocacy on HIV and TB, and legal defense. SALC partnered with HIV Justice Worldwide, StopTB Partnership, UNAIDS, ARASA and KELIN to carry out these workshops.²⁸⁴ The first training, held in 2016 was attended by 57 participants from 13 African countries. By 2018, the final training, those numbers had grown to over 82 participants from 27 countries.

A conscious approach was adopted in bringing together the lawyers to participate in the training based in large part on their issues of interest, their experience, the expertise they wanted to develop and their capacity to take on cases relating to HIV and TB criminalization.²⁸⁵ The overall aim of each workshop was to equip lawyers to successfully litigate cases relating to HIV and TB so as to improve the lives of key populations. These workshops were also designed to strengthen alliances of domestic and international actors.²⁸⁶ Journalists, representatives from key populations and activists were invited to participate in the trainings, resulting in the sharing of

²⁸³ Global Commission on HIV and the Law. (2011, August 4). *Report of the Africa Regional Dialogue of the Global Commission on HIV and the Law*, Retrieved from https://hivlawcommission.org/wp-content/uploads/2017/06/AfricaRD_ReportEn.pdf

²⁸⁴ UNDP. (2018, February 23). *Equipping lawyers and activists with the skills to counter criminalization of HIV and TB*.

²⁸⁵ Key Informant Interview 22

²⁸⁶ SALC. (2017). SALC Newsletter 21.

experiences, strategies, and best practices. A key part of the workshops included supporting lawyers in the sensitization of media on how to report on HIV and TB criminalization, especially through a human rights lens. In keeping with the focus of the Global Commission, workshops were designed around advocacy strategies to change policy and legislation in the region.

A strong feature of the regional work that was done with lawyers was that beyond the workshops, SALC, KELIN and ARASA, the three civil society organizations supporting the training, provided ongoing technical assistance and, sometimes, financial support to help participants take on cases relating to HIV or TB once back in their countries. Some lawyers reported that it was this ongoing support that ultimately enabled them to carry out this work, describing not only the workshops but the ongoing mentorship as the key to their success.²⁸⁷

Work was also carried out to support sensitization of health workers and law enforcement – both groups of duty-bearers who come into contact with affected communities, particularly key populations – and to help improve their understanding of international and national legal obligations with regard to HIV, the law and communities. In some places, this has created cadres of duty-bearers known by key population members to be ‘friendly’ and supportive whom they can choose to see as health providers or on whom they can call, as necessary, during interactions with law enforcement.

In 2013 and 2016, the International Development Law Organization (IDLO) held a series of regional meetings, co-sponsored by UNAIDS, UNDP and various other organizations, to discuss law enforcement in the Middle East and North Africa and the role of the police in the context of HIV-related legal issues. For the first time in the region, senior police officers were invited to participate in the same forum as key populations. Conversation centered around the engagement of police in national HIV responses and building trust between police, key populations and civil society. Building on these meetings, in 2016 the Middle East and North Africa Network for AIDS and Law (MENAL) was formed. MENAL acted as a network for civil society organizations from Algeria, Djibouti, Egypt, Jordan, Lebanon, Morocco, Sudan, and Tunisia to

²⁸⁷ Key Informant Interview 32

share information and mobilize resources on legal issues relating to HIV. In 2017, UNDP began providing technical support to MENAL.²⁸⁸

Impacts of the regional capacity building

Participants at the regional lawyers' trainings have been involved in several landmark cases across Africa. Lawyers informed by the trainings have worked to remove laws and policies inhibiting prisoners' health in Botswana, Malawi and Zambia. Lawyers from SALC successfully obtained a court order from the Botswana Court of Appeal that required the government to provide antiretroviral treatment to all foreign prisoners living with HIV who meet treatment criteria. In Malawi, lawyers have been involved in successful cases that covered the release of children from prisons, mothers in prison with children, migrant detention, and medical parole for terminally ill prisoners. In Zambia, lawyers who participated in the regional training have been involved in litigation on access to food, health care, and improved conditions for prisoners living with HIV.²⁸⁹

Lawyers who participated in these trainings have also argued cases concerning police abuse of key populations, sexual orientation, gender identity and expression, and HIV criminalization. In Botswana, lawyers helped successfully challenge the criminalization of consensual same-sex acts. In Nigeria, lawyers were involved in a trial representing sex workers arrested by the Abuja Environmental Protection Board. In December 2019, the Federal High Court of Nigeria ruled that law enforcement agencies were liable for rights violations and applicants were awarded compensation and legal costs.²⁹⁰ Sensitized lawyers were also part of another case in Nigeria concerning HIV testing and dismissal from employment.²⁹¹ As a result of this case, the National Industrial Court of Nigeria set precedent by holding that “employers are prohibited from

²⁸⁸ IDLO. (2017). Equal Rights, Equal Treatment, Ending AIDS: Strengthening and expanding HIV-related legal services and rights. Retrieved from: <https://www.idlo.int/sites/default/files/pdfs/publications/IDLO%20Equal%20Rights%2C%20Equal%20Treatment%2C%20Ending%20AIDS%20%28English%29.pdf>

²⁸⁹ UNDP. (n.d.). Webinar: Connecting the dots between health and human rights

²⁹⁰ SALC. (2019, December 20). *Nigeria Court Orders Law Enforcement Agencies to Uphold Sex Workers' Rights*. Retrieved From <https://www.southernafricalitigationcentre.org/2019/12/20/nigeria-court-orders-law-enforcement-agencies-to-uphold-sex-workers-rights/>

²⁹¹ UNDP. (n.d.). Webinar: Connecting the dots between health and human rights

coercing existing or prospective employees to undergo HIV testing and that dismissing employees on the basis of their perceived or actual HIV-status is unlawful and discriminatory.”²⁹²

As of March 2020, there are several ongoing cases featuring lawyers who have attended trainings or who have been influenced by other lawyers attending trainings. These include a case in Tanzania in which sex workers were arrested on charges of being idle and disorderly, a case concerning registration of a LGBTIQ association in Malawi, and challenges to HIV criminalization provisions in Kenya, Lesotho and Zimbabwe.²⁹³

Lawyers who have participated in trainings now have a network of regional peers with whom they can consult on cases so as to maximize learning from one another, with one key informant reporting that this now happens regularly.²⁹⁴ An HIV Criminalization Defense Case Compendium was also compiled by SALC during the trainings, which comprises criminal cases from all over the world that are related to HIV exposure, non-disclosure, or transmission. This is reportedly now being used as a key resource by those who participated in the trainings, as well as partners across the region and beyond.²⁹⁵ Finally, a participant from Malawi noted that, although he did not give any official trainings domestically, he has used the knowledge he gained through the training in other fora: he teaches part-time at a university to police officers and prosecutors, and he trains people through the Bar Association.²⁹⁶

²⁹² SALC. (2018, September 26). *News Release: Abuja Court Decision a Warning Against HIV Discriminating Employers*. Retrieved From <https://www.southernafricalitigationcentre.org/2018/10/09/news-release-warning-against-hiv-discriminating-employers/>

²⁹³ UNDP. (n.d.). Webinar: Connecting the dots between health and human rights

²⁹⁴ Key Informant Interview 21

²⁹⁵ SALC. (2018, February 15). *Important New Resource, SALC's HIV Criminalisation Defence Case Compendium*, Retrieved From <http://www.hivjustice.net/news/important-new-resource-salcs-hiv-criminalisation-defence-case-compendium-published-this-week/>

²⁹⁶ Key Informant Interview 32

Ultimately, these regional trainings have had, and continue to have, important implications for improving the HIV-related legal environment in the region beyond even the ways envisioned when the Commission's 2012 report was produced.

Regional level laws, policies, resolutions and initiatives

Introduction

At the regional level, since the 2012 report, states have come together to develop HIV-specific, agreements and 'model laws' to harmonize legislation, share 'good practices' and promote public health and human rights.

Most regional initiatives have been carried out by Regional Economic Communities (RECs) in the African region, including the Southern African Development Community (SADC), Economic Community of West African States (ECOWAS) and East African Community (EAC) as well as their subsidiary bodies such as the Southern African Development Community Parliamentary Forum (SADC-PF), the West African Health Organisation (WAHO), and the East African Legislative Assembly (EALA). Across all three projects implemented in sub-Saharan Africa, work was carried out with the African Union Commission (AUC) and the relevant RECs to support alignment of national laws and policy with regional and international human rights commitments. Other regional entities such as the South Asian Association for Regional Cooperation (SAARC), the South American Regional Economic Organization (MERCOSUR/MERCOSUL), the Caribbean Community (CARICOM), and the Arab League, have also participated in joint regional action and shared strategies around HIV and related laws. Regional law, policy and practices around HIV have also been shaped and influenced by regional intergovernmental organizations and courts, as well as the UN and other expert bodies, including in particular the Global Commission.

It seems as though, over recent years, states are increasingly looking to other countries' experiences to help inform the development of laws, policies and practices around HIV. This appears to be particularly true since the launch and ongoing work following the Global Commission. Along these lines, the sharing and promotion of 'good practices', as well as the recognized importance of enabling environments by a range of stakeholders, has been a tangible

impact of follow-up to the Global Commission report. The importance of moving towards true participation and inclusion of key populations in HIV-related law and policy development and implementation has also become more widely accepted among states and other key actors.

Set forth below is an overview of HIV-specific legal and policy developments and practices that have taken place at the regional level in recent decades. While some initiatives included here pre-date the Global Commission, they are included because the approach to ongoing responses to their impact appear to have been influenced by the Global Commission's recommendations, learnings and ongoing engagement. Other initiatives covered here have been developed following the Global Commission's 2012 consultation process and have a more direct link to the report's outcomes. This section includes an overview of key regional level laws, policies and resolutions relevant to HIV across regions. The first sub-section is an in-depth case study on the African region resulting, in part, from the impacts of the aforementioned regional grants (Case Study Four). The subsequent sub-sections highlight key findings from Asia, the Americas, and the Middle East and North Africa.

Regional Initiatives

Case Study Four: Impact on regional laws, policies, resolutions and governance in the Africa region

Introduction

Regional-level HIV-specific initiatives and law and policy reform efforts have been carried out by RECs in Africa, including ECOWAS, SADC and EAC, both before and after the Global Commission consultation. As can be seen below, these initiatives include adoption of model laws, development of regional strategies, mobilization of civil society and key populations, and strategic litigation on issues raised during the Global Commission consultation. As can be seen below, awareness of the importance of enabling legal environments and the negative human rights and public health impacts of criminalized approaches to HIV have increased in the Africa region since the Global Commission consultation, facilitating deeper thinking, increased cross-sectoral engagement and civil society action.

As described above, three key regional grants in Africa were leveraged by UNDP to support follow-up activities to the Global Commission (Table 4). The AUC and RECs including SADC, ECOWAS and EAC were identified as key stakeholders and partners in these projects. UNDP provided technical support to AUC and RECs to strengthen the alignment of national laws and policy with regional and international human rights commitments.

Table 4. Follow-up activities to the Global Commission and engagement with regional bodies

Grant	Years	Regional bodies
Strengthening Regional and National Legislative Environments to Support the Human Rights of LGBT People Women and Girls affected by HIV and AIDS in Sub-Saharan Africa (A Sida Supported Project – Phases I and II)	2013-2019	AUC, SADC, ECOWAS and EAC
Africa Regional HIV Grant: Removing Legal Barriers	2016-2019	AUC, SADC, ECOWAS and EAC
Linking Policy to Programming	2016-2020	SADC

This section describes relevant historic regional laws and policies for context in which these grants were implemented to the extent applicable. Changes to relevant regional level laws, policies or resolutions, both positive and negative, have occurred before these regional grants and are noted below, even as most important are the continued efforts of UNDP beginning in 2013 to support the regional bodies. This is not to say all efforts towards the implementation of Global Commission recommendations made by the AUC and RECs during this period are directly attributable to UNDP-supported follow-up activities, but where direct attribution is possible it is noted below.

Background

The lack of regional, sub-regional, and national linkages to enable law and policy reform had been identified as barriers to improving legal environments for key populations prior to implementation of these UNDP-supported projects. The AUC, as the secretariat of the African Union, has guiding principles that include close coordination and cooperation with the RECs.²⁹⁷ RECs help ensure

²⁹⁷ African Union “The Commission”. Accessible via: <https://www.au.int/en/commission>

that laws and policies in the region are harmonized. As is well known, each of the RECs within the African region has a slightly different mandate, capacity, and legal authority.²⁹⁸

In addition to the AUC and key RECs, there are a number of regional intergovernmental organizations and tribunals such as the African Commission on Human and Peoples' Rights (ACHPR), African Court on Human and Peoples' Rights, Comesa Court of Justice, Court of Appeal for East Africa, East African Court of Justice, ECOWAS Community Court of Justice, SADC Administrative Tribunal and the former SADC Tribunal, which interpret and, in some cases, hold states to account for contravening national HIV laws and policies and regional commitments and normative guidance. Each has been active since the Global Commission and relevant details are therefore included below.

African Union Commission

The AUC's presence at the Africa Regional Dialogue resulted in UNDP and the AUC working together to establish their commitment to continuing work on these issues.^{299 300} Subsequently, the AUC was engaged in two regional grants supporting follow-up activities of the Global Commission from 2013-2019. Under Phase I of the "Strengthening Regional and National Legislative Environments to Support the Human Rights of LGBT People and Women and Girls affected by HIV and AIDS in Sub-Saharan Africa," project, the AUC was supported by the project during the "Abuja Plus-12 Special Summit for African Union Heads of State on AIDS, TB and Malaria," and hosted a Side Event at the Pre-Summit CSO Consultations in 2013 entitled "Strengthening Legal Environments for HIV". A number of recommendations emerged from this event regarding "human rights and HIV and the law, including about key populations",

²⁹⁸ IIGH-GHHR, (2017). *Baseline Evaluation - Africa Regional HIV Grant: Removing Legal Barriers (QPA-H-UNDP)*

²⁹⁹ Key Informant Interview 44

³⁰⁰ UNDP. (2015). *Midterm Evaluation- UNDP RSC Africa: Strengthening Regional and National Legislative Environments to Support the Human Rights of LGBT People Women and Girls affected by HIV and AIDS in Sub-Saharan Africa (A Sida Supported Project)*

and were included in the Final Declaration ratified by the African Unions Heads of State that year.³⁰¹

African Commission on Human and Peoples' Rights

In 2015, as part of the “Strengthening Regional and National Legislative Environments to Support the Human Rights of LGBT People and Women and Girls affected by HIV and AIDS in Sub-Saharan Africa” project UNDP provided technical support to the ACHPR to conduct the first comprehensive, Africa-wide study of HIV, human rights and the law under the AU and resulted in the landmark report *HIV, the law and human rights in the African human rights system: Key challenges and opportunities for rights-based responses to HIV*.³⁰² A key informant reported that this regional work was catalyzed and greatly influenced by the Global Commission.³⁰³ UNDP has also supported a number of ACHPR resolutions moving forward recommendations of the Global Commission, including:

1. Resolution 260 on Involuntary Sterilization and the Protection of Human Rights in Access to HIV Services (2013);
2. Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender identity (2014), and
3. Resolution 365 on Developing Guidelines on Combatting Sexual Violence and its Consequences (2017).³⁰⁴

Significantly, Resolution 275 was the first AU instrument to address sexual orientation and gender identity in Africa. A key informant reported the importance of the Global Commission

³⁰¹ Strengthening Regional and National Legislative Environments to Support the Enjoyment of Human Rights of LGBT People and Women and Girls affected by HIV and AIDS in Sub-Saharan Africa: Progress Report for 2013, United Nations Development Programme Regional Centre for Africa, 2013

³⁰² UNDP. (2016). Strengthening Regional and National Legislative Environments to Support the Human Rights of LGBT People and Women and Girls affected by HIV and AIDS in Sub-Saharan Africa Annual & End of Project Phase 1 Report 2015.

³⁰³ Key Informant Interview 9

³⁰⁴ Saha, Amitrajit, UNDP. (2019). The UNDP HHD Africa Team: Brief Overview. Project Management Committee Meeting. Johannesburg, South Africa. Power point presentation.

report when the Resolution was drafted, and that it was drafted in such a way as to leave room for follow-up work with UNAIDS and UNDP to continue to move this agenda forward.³⁰⁵

African Union

UNDP and others supported the AU to develop the Model Law on Medical Product Regulation in Africa. The Model Law, adopted by AU Heads of State in 2016, was created to provide a framework to support RECs and Member States to harmonize regulations that pertain to medical products.^{306 307} Similar to, and ostensibly inspired by, the Global Commission’s approach, it has been noted that “[a] unique feature of the Model Law process is the extent of stakeholder consultation and participation in the development of the legislation, which took place during 2014–2015.”³⁰⁸

West and Central Africa

In all regions of the world, legislating to account for the various dimensions of HIV prevention, care and treatment demands consideration of a range of complicated, often stigmatized legal and social issues (including sex work, injection of drugs, sexual orientation, gender identity and gender expression, domestic violence, discrimination, and rights in healthcare).³⁰⁹ As can be seen

³⁰⁵ Key Informant Interview 9

³⁰⁶ Global Commission on HIV and the Law, (2015, November 13). *Ministers of Justice and Attorney Generals of the African Union Adopt the Model Law on Medical Products Regulation in Africa*. Retrieved From <https://hivlawcommission.org/2015/11/13/ministers-of-justice-and-attorney-generals-of-the-african-union-adopt-the-model-law-on-medical-products-regulation-in-africa/>

³⁰⁷ UNDP. (2017, April). *Issue Brief - African Union Model Law for Medical Products Regulation: Increasing access to and delivery of new health technologies for patients in need*. Retrieved From <https://adphealth.org/upload/resource/AU%20Model%20Law.pdf>

³⁰⁸ UNDP. (2017, April). *Issue Brief - African Union Model Law for Medical Products Regulation: Increasing access to and delivery of new health technologies for patients in need*. Retrieved From <https://adphealth.org/upload/resource/AU%20Model%20Law.pdf>

³⁰⁹ Daniel Grace, Legislative epidemics: The role of model law in the transnational trend to criminalise HIV transmission, 39 *MED. HUMANIT.* 77, p. 78, 2013.

in the context of West and Central Africa, given the complexity of issues, model legislation may have seemed an attractive starting point to law and policy makers at first glance.

The first HIV-specific ‘model law’ was developed in 2004, in N’Djamena, Chad.³¹⁰ The initiative was largely led by the US government-sponsored Action for West Africa Region (AWARE) HIV/AIDS Project and its representatives, with some engagement with regional bodies, including the Forum of African and Arab Parliamentarians for Population and Development and ECOWAS.³¹¹ Records indicate that there was no official UN representation during initial consultations around this model law.³¹²

The N’Djamena model law was initially touted as a tool to bolster and protect the human rights of people living with HIV and contained a number of provisions intended to be protective, including anti-discrimination protections and policies that promote access to services for people living with HIV.³¹³ However, over time, because of the processes used and the limited attention to public health evidence and human rights norms it also resulted in the introduction of

³¹⁰ D. Grace, ‘Criminalizing HIV transmission using model law: Troubling best practice standardizations in the global HIV/AIDS response’ *Critical Public Health*, Vol. 25, 2015, [tandfonline.com/doi/abs/10.1080/09581596.2015.1049121?src=recsys&journalCode=ccph20](https://doi.org/10.1080/09581596.2015.1049121?src=recsys&journalCode=ccph20)

³¹¹ Robert Johnson, *The Model Law on HIV in Southern Africa: Third World Approaches to International Law insights into a human rights-based approach*, 9 *AFRICAN HUMAN RIGHTS LAW JOURNAL* 129, 2009, p. 148. ECOWAS is the regional counterpart to SADC, comprising 15 countries of West Africa, and similarly to SADC is a regional economic community of the AU.

³¹² During 2007 and 2008 consultations around this model law, UNAIDS and Canadian HIV/AIDS Legal Network staff emphasized that countries did not need to pass HIV-specific laws to address effectively address HIV and that law reform was not a sufficient solution to the HIV epidemic. Rather comprehensive national responses were required and that a broad onslaught of rapid legislative reform would likely be ineffective to combat this global health epidemic. See Daniel Grace, *Legislative epidemics: The role of model law in the transnational trend to criminalise HIV transmission*, 39 *MED. HUMANIT.* 77, p. 82, 2013.

³¹³ AIDS Map, *The ‘legislation contagion’ of the N’Djamena model law*, www.aidsmap.com/page/1442068/#ref1499478. This model law covered a range of issues, including access to education and information, secure health practices and procedures, mainly concerning the handling of and exposure to blood, the regulation of traditional medicine practitioners, voluntary counselling and testing, including provisions for mandatory testing, health and counselling services, confidentiality, including provisions for involuntary disclosure, and prohibitions on discrimination on the basis of real or suspected HIV status. See Robert Johnson, *The Model Law on HIV in Southern Africa: Third World Approaches to International Law insights into a human rights-based approach*, 9 *AFRICAN HUMAN RIGHTS LAW JOURNAL* 129, 2009, p. 145.

mandatory HIV testing, involuntary partner notification by physicians and overly broad criminalization of HIV non-disclosure, exposure and transmission.³¹⁴

The N'Djamena model law has been critiqued by many for its punitive nature, including by calling for criminalization of “willful transmission” of HIV, which is defined as transmission “through any means by a person with full knowledge of his/her HIV/AIDS status to another person”.³¹⁵ This overly broad definition led to sweeping interpretations within countries of what constitutes “wilful” behavior, inadvertently criminalizing a wide range of actions and giving license for further sanctions. The model law has also been criticized for its failure to account for gender inequalities, in particular for its lack of recognition that women are more likely than men to be blamed for HIV transmission regardless of whether they in fact transmitted the virus or whether they had any control over prevention.³¹⁶ In some countries, the vague definition of “wilful transmission” also allowed for the criminalization of exposure or transmission through childbirth or breastfeeding.³¹⁷

As was noted during the early Global Commission discussions, introduction of the N'Djamena model law led to the adoption of myriad HIV-specific laws in West and Central Africa between 2005 and 2010, that criminalized HIV transmission, among other things. Before November 2005, only three countries in sub-Saharan Africa (Angola, Burundi, and Equatorial Guinea) had adopted HIV-specific laws. The model law essentially transformed the legislative landscape around HIV in sub-Saharan Africa.³¹⁸ While none of the 18 countries in the West and Central

³¹⁴ P.M. Eba, ‘HIV-specific legislation in sub-Saharan Africa: A comprehensive human rights analysis,’ *African Human Rights Law Journal*, Vol. 15, 2015, www.ahrlj.up.ac.za/eba-p-m.

³¹⁵ AIDS Map, The ‘legislation contagion’ of the N'Djamena model law, www.aidsmap.com/page/1442068/#ref1499478. This definition failed to differentiate between intentional and unintentional transmission, whether an HIV-positive person disclosed their status to a sexual partner, obtained consent from an HIV-negative sexual partner, or used a condom. See Canadian HIV/AIDS Legal Network, A human rights analysis of the N'Djamena model legislation on AIDS and HIV-specific legislation in Benin, Guinea, Guinea-Bissau, Mali, Niger, Sierra Leone and Togo, 2017, sagecollection.ca/fr/system/files/lnhumanrtlegislrvwen0.pdf

³¹⁶ S. Burris, E. Cameron, ‘The case against criminalization of HIV transmission’, *Journal of the American Medical Association*, Vol. 300, issue 5, 2008, p. 578-581.

³¹⁷ *AIDS Law Project v Attorney General & Director of Public Prosecutions (Petition No. 97)* High Court of Kenya (2010).

³¹⁸ ARASA, From N'Djamena to SADC and EAC model laws & beyond: Revolutionising approaches to Criminalisation of HIV non-disclosure & exposure (meeting report), 2017, p. 4.

Africa region previously had HIV-specific laws, by 2008, 13 countries introduced such laws based on the N'Djamena template.³¹⁹

Notably, the problematic aspects of the N'Djamena model law and its fallout were assessed during the Global Commission consultation at the Africa regional dialogue and are included explicitly in the findings of the 2012 report. The various recommendations included in the 2012 report were able to take this on, ultimately addressing head-on the shortcomings of punitive, discriminatory and stigmatizing HIV-specific laws. Specifically, recommendation 2.1 states “Countries must not enact laws that explicitly criminalise HIV transmission, HIV exposure or failure to disclose HIV status. Where such laws exist, they are counterproductive and must be repealed. The provisions of model codes that have been advanced to support the enactment of such laws should be withdrawn and amended to conform to these recommendations.”³²⁰ This recommendation set the scene for much of the work that followed in the region.

As described above, ECOWAS engaged in two regional grants supporting follow-up activities of the Global Commission from 2013-2019. In this respect in 2018, ECOWAS launched a new Model Drug Law for West Africa: an initiative supported by the “Africa Regional Grant on HIV: Removing Legal Barriers”. This model law aims to guide law and policy makers in the region on how to better frame drug laws, with sufficient attention to public health and human rights concerns. In line with the importance of attention to public health evidence in framing HIV-related laws as championed by the Commission, it is based on recognition that unjust laws can prevent people from accessing the services they need to prevent or treat HIV, and people who use drugs need assistance and care, as opposed to punishment.

ECOWAS is also currently in the consultative stages of developing a strategy on HIV and key populations, another key initiative under the “Africa Regional HIV Grant: Removing Legal Barriers”. National consultations have been carried out in some countries with others still to be

³¹⁹ P.M. Eba, ‘HIV-specific legislation in sub-Saharan Africa: A comprehensive human rights analysis,’ *African Human Rights Law Journal*, Vol 15, 2015, www.ahrlj.up.ac.za/eba-p-m; R. Pearshouse ‘Legislation contagion: The spread of problematic new HIV laws in Western Africa’ *HIV/AIDS Policy and Law Review*, Vol.12, 2007.

³²⁰ Global Commission on HIV and the Law. (2012, July). *Risks, Rights & Health*. (2012, July). Retrieved from <https://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf>

held, following which there will be a sub-regional gathering to finalize the strategy. The 21st Ordinary Assembly of ECOWAS Health Ministers, planned for August 2020, aims to adopt a similar key population strategy for the sub-region. As noted earlier, local key population representatives have engaged in these processes, building on lessons learnt from the Africa Key Populations' Expert Group and their in-country work around these issues.³²¹ This type of collaborative work that is working toward shifting legal landscapes in the African region including the greater inclusion of key populations is a significant achievement of the Global Commission's follow-up work.

Southern Africa

Four years after the introduction of the N'Djamena model law, the SADC Parliamentary Forum adopted a model law in 2008. While this initiative also pre-dated the Global Commission, it is noted here as it was developed primarily in reaction to the negative impact of HIV criminalization, compulsory testing of pregnant women and involuntary disclosure, that emerged after the N'Djamena model law.³²² This SADC model law aimed to provide “a legal framework for national law reform on HIV in conformity with international human rights law standards; to promote effective prevention, treatment, care and research strategies and programs on HIV and AIDS; to ensure the respect, protection and realization of human rights for people living with or affected by HIV; and to promote the adoption of specific national measures to address the needs of vulnerable and marginalized groups in the context of AIDS. It seeks to be particularly informed by compatible provisions within existing HIV laws within countries of and beyond the region.”³²³

The SADC model law attempted to be more inclusive of marginalized groups than the N'Djamena model law but nonetheless raised a number of rights concerns.³²⁴ Nevertheless, the

³²¹ Key Informant Interview 23

³²² ARASA, From N'Djamena to SADC and EAC model laws & beyond: Revolutionising approaches to Criminalisation of HIV non-disclosure & exposure (meeting report), 2017, p. 3.

³²³ Robert Johnson, The Model Law on HIV in Southern Africa: Third World Approaches to International Law insights into a human rights-based approach, 9 AFRICAN HUMAN RIGHTS LAW JOURNAL 129, 2009, p. 142.

³²⁴ Robert Johnson, The Model Law on HIV in Southern Africa: Third World Approaches to International Law insights into a human rights-based approach, 9 AFRICAN HUMAN RIGHTS LAW JOURNAL 129, 2009, p. 149.

SADC model law has been deemed by some to be largely compliant with human rights standards.³²⁵ These laws form the context in which follow-up work to the Global Commission has taken place.

As noted above, SADC has been engaged in all three regional grants from 2013 to the present. In terms of Global Commission follow-up, in SADC countries where the “Africa Regional HIV Grant: Removing Legal Barriers” was implemented, some stakeholders have been keen to report on how their national laws align with the SADC model law. This may be an indicator of an increasing acceptance of the value of human rights and evidence-based law and policy making, which is one of the Global Commission’s overarching messages. It also highlights the importance of consultation follow-up in terms of providing ongoing engagement with parliamentarians and reinforcing key take-aways from the Global Commission’s consultation and subsequent work.³²⁶

More recently and since the Global Commission report, SADC has developed a series of regional strategies to address various HIV-related law and policy issues. For example, in 2015, SADC adopted a Regional Advocacy Strategy on HIV & AIDS, Tuberculosis and Sexually Transmitted Infections, which highlights the “most important issues relating to HIV and AIDS, TB and STIs” in the region and provides a broad advocacy framework for each issue and key targets, messages, and interventions.³²⁷ Although there is no explicit reference to the Global Commission in the strategy, one of the key recommended actions for addressing mobility and HIV in the sub-region is a review of HIV-related legal travel restrictions, the removal of which was a key Global Commission recommendation in its 2012 report.

³²⁵ Robert Johnson, The Model Law on HIV in Southern Africa: Third World Approaches to International Law insights into a human rights-based approach, 9 AFRICAN HUMAN RIGHTS LAW JOURNAL 129, 2009, p. 149.

³²⁶ IIGH-GHHR, (2020). Endline Evaluation of the Africa Regional HIV Grant: Removing Legal Barriers (QPA-H-UNDP)

³²⁷ SADC, Regional Advocacy Strategy on HIV & AIDS, Tuberculosis and Sexually Transmitted Infections, 2015, p. 4, https://www.hivsharespace.net/sites/default/files/resources/SADC%20regional%20advocacy%20strategy%20on%20HIV%20%26%20AIDS%2C%20TB%20and%20STIs_2016.pdf.

In 2018, as part of the “Linking Policy to Programming” and the “Strengthening Regional and National Legislative Environments to Support the Human Rights of LGBT People and Women and Girls affected by HIV and AIDS in Sub-Saharan Africa” projects, UNDP supported the SADC-Parliamentary Forum through consensus building to adopt the Minimum Standards for the Protection of Key Populations in SADC the context of HIV.^{328, 329, 330} Developed based on international best practices and the AKPEG “Model Regional Strategic Framework on HIV for Key Populations in Africa”, and tailored for the SADC context, the Minimum Standards were intended to support parliamentarians in the creation of legislation relating to key populations. Notably, the “Linking Policy to Programming” project specifically supported efforts to successfully integrate the issues of young key populations into the standards.³³¹ This information is included here as key stakeholders interviewed for this evaluation have referenced that the Global Commission consultation and follow-up work have been pivotal in reinforcing the importance of the inclusion and participation of key populations in all HIV-related law, policy and strategy development.

SADC was supported to draft the 2018 SADC Key Populations Regional Strategy and sensitize SADC members.³³² The progressive nature and language of the 2018 SADC Key Populations Regional Strategy, which draws heavily on the above-mentioned regional strategy developed by the Africa Key Populations’ Expert Group, was likely possible due to the expansion of civil society and funding space that appeared to emerge during and following the Global Commission 2012 report. Along these lines, some key stakeholders have observed that HIV has become a lens through which taboo issues relating to populations such as sex workers, men who have sex with men and other marginalized groups can be discussed in the region in a way that was not possible

³²⁸ https://www.sadcpf.org/index.php?option=com_content&view=article&id=232:sadc-pf-mps-adopt-minimum-standards-for-protection-of-key-populations&catid=125:news-a-events.

³²⁹ UNDP. (2020, February). *Linking Policy to Programming*. Retrieved From

<https://www.undp.org/content/dam/rba/docs/Outreach%20Material/lpp-project-brief-feb2020.pdf>

³³⁰ UNDP. (2019). Strengthening Regional and National Legislative Environments for HIV/SRHR to Support the Enjoyment of Human Rights of LGBT People and Women and Girls in Sub-Saharan Africa – Phase II - Project Progress 2018-2019; End of Project Report

³³¹ UNDP. (2020, February). *Linking Policy to Programming*. Retrieved From

<https://www.undp.org/content/dam/rba/docs/Outreach%20Material/lpp-project-brief-feb2020.pdf>

³³² UNDP; UNFPA. (2018, July 5). Report on the implementation of the decisions and recommendations of the Programme Coordinating Board of the Joint United Nations Programme on HIV/AIDS, Retrieved From <https://digitallibrary.un.org/record/1637535?ln=en>

in the past.³³³ Notably, this SADC regional strategy has subsequently formed the basis for similar strategies in the sub-region and is currently being used to inform strategy development by ECOWAS. As regional actors move forward with increasingly progressive law, policy and strategy development, governments in the SADC sub-region are better positioned to align with Global Commission recommendations and ‘good practices’ – yet another indicator of shifts in the legal landscape and the overarching impact of the Global Commission’s work.

While inroads have been made at the SADC sub-regional level, implementation continues to be an issue at the national level. The SADC Parliamentary Forum’s adoption of the model law carries no formal authority. As the model law was not adopted as a binding regional declaration or protocol, the SADC Administrative Tribunal has no enforcement power over it and implementation is left to national courts and authorities where states have adopted HIV-specific laws. Currently, six countries in SADC have incorporated provisions of the SADC model law into their legislation, whilst others still have not done so.³³⁴

The SADC Parliamentary Forum’s Model Law on Eradicating Child Marriage is being used by some countries in the sub-region to review/reform existing laws and to inform discussions with local leaders about child marriage. In 2015, during Phase II of the “Strengthening Regional and National Legislative Environments for HIV/SRHR to Support the Enjoyment of Human Rights of LGBT People and Women and Girls in Sub- Saharan Africa” grant, UNDP supported SADC-Parliamentary Forum through drafting a position paper on the topic, which helped to inform the creation of the “SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage” in 2016.³³⁵ This work also fed into work at the African Union level

³³³ Key Informant Interview 4, 5

³³⁴ ARASA, From N’Djamena to SADC and EAC model laws & beyond: Revolutionising approaches to Criminalisation of HIV non-disclosure & exposure (meeting report), 2017, p. 8.

³³⁵ UNDP. (2016). Strengthening Regional and National Legislative Environments for HIV/SRHR to Support the Enjoyment of Human Rights of LGBT People and Women and Girls in Sub- Saharan Africa – Phase II Project Report 2016

(supported by UNDP), to strengthen their work around child marriage. In Malawi, the model law was used as a reference document for the development of the Marriage Relations Act.³³⁶

The informal status of the SADC framework has enabled the body to develop a model law in an incremental and collaborative manner that has enabled it to canvass support and build consensus across a range of core but controversial elements.³³⁷ Overall, despite the good that has come from the progress and follow-up to the Global Commission noted above, misalignment between regional laws and national laws and tensions around state ‘sovereignty’ as impacts HIV-related laws continue to exist in the SADC sub-region.³³⁸

East Africa

As described above, the EAC was engaged in two regional grants supporting follow-up activities of the Global Commission from 2013-2019. In 2012 (the same year as the publication of the Global Commission’s report), the EAC HIV Prevention and Management Act (EAC HIV Act) was adopted by the East African Legislative Assembly (EALA), to regulate effective responses to HIV across the five countries of the East African Community (Burundi, Kenya, Rwanda, Uganda and the United Republic of Tanzania).³³⁹ Each country assented to the law in 2016.

With support from the Global Fund through the “Africa Regional HIV Grant: Removing Legal Barriers”, KELIN held a regional forum in 2017, to enhance understanding of states’ obligations under the new law, to establish a platform for comparative analysis on the new law and national HIV laws, and to foster regional and in-country partnerships for increased advocacy around the new law. Another overarching aim of the regional forum was to sensitize partners around HIV

³³⁶ IIGH-GHHR, (2020). Endline Evaluation of the Africa Regional HIV Grant: Removing Legal Barriers (QPA-H-UNDP)

³³⁷ Robert Johnson, The Model Law on HIV in Southern Africa: Third World Approaches to International Law insights into a human rights-based approach, 9 AFRICAN HUMAN RIGHTS LAW JOURNAL 129, 2009, p. 150.

³³⁸ ARASA, From N’Djamena to SADC and EAC model laws & beyond: Revolutionising approaches to Criminalisation of HIV non-disclosure & exposure (meeting report), 2017, p. 6.

³³⁹ KELIN, FAQ: EALA Bill, https://kelinkenya.org/wp-content/uploads/2010/10/QA_EALA_Bill_5July_Final1.pdf. The EAC HIV Act was adopted in response to the need for guidance in the region and across the continent in developing protective HIV laws.

criminalization and to assess national efforts in this regard, in part because the EAC HIV Act is silent and vague on criminalization. Gaps were identified, as well as the need for ongoing monitoring at country level using the Global Commission framework. During the regional forum, key stakeholders committed to a range of follow-up activities including in-country sensitization and implementation of the EAC HIV Act in Tanzania, national advocacy around the Act and its integration into national HIV programs in Uganda, and creating an enabling legal environments for access to HIV and TB services for persons living with HIV and key populations in Kenya.³⁴⁰

Like many regional endeavors, challenges remain regarding how to ensure that the strength of regional efforts is transferred to the country level.³⁴¹ For example, claims of national ‘sovereignty’ have impeded implementation of regional laws in EAC. However, in contrast to the SADC model law, which is non-binding on states, non-compliance with the EAC HIV Act can be escalated to the East African Court of Justice which may explain some of the blocks to the actual enactment of regional laws and strategies in this sub-region. There are also reports that some Member States are apathetic towards ratifying HIV protocols and thus there is pressure and reliance on civil society to take action.³⁴² For example, despite some efforts to adapt the SADC regional strategy on key populations to the East African context, this has not been possible due to political reluctance to engage on the issue. Civil society has been left to keep the pressure on through continued advocacy.³⁴³

One concern arising from the failure to adopt the above-referenced strategy is that some countries in the region appear to remain unwilling to explicitly adopt an HIV response that gives sufficient attention to the respect, protection and fulfilment of the rights of key populations.³⁴⁴ The situation in EAC is not unique. Rather it is akin to the “one step forward, two steps back” reality that is occurring in many countries, particularly around complex and socially sensitive

³⁴⁰ KELIN, (2017, April 18). *Tag Archives: EAC HIV Act*, Retrieved From <https://www.kelinkeny.org/tag/eac-hiv-act/>

³⁴¹ ARASA, From N’Djamena to SADC and EAC model laws & beyond: Revolutionising approaches to Criminalisation of HIV non-disclosure & exposure (meeting report), 2017, p. 26.

³⁴² ARASA, From N’Djamena to SADC and EAC model laws & beyond: Revolutionising approaches to Criminalisation of HIV non-disclosure & exposure (meeting report), 2017, p. 26.

³⁴³ Key Informant Interview 41

³⁴⁴ IIGH-GHHR, (2020). Endline Evaluation of the Africa Regional HIV Grant: Removing Legal Barriers (QPA-H-UNDP)

issues. In the end, and despite the challenges in this region, the EAC HIV Act remains a useful benchmark for coordination and collaboration at the regional level.³⁴⁵

Asia Region

The South Asian Association for Regional Cooperation (SAARC),³⁴⁶ which comprises seven countries (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka), has taken the lead since the early 2000s in developing regional commitments around HIV in the sub-region. Recognizing HIV and AIDS as major threats to economic transformation, SAARC leadership committed to reducing the spread of the epidemic through a 2004 joint declaration on ensuring access to easy and affordable prevention and treatment of HIV, tuberculosis and other infectious diseases.³⁴⁷ Following the declaration, the SAARC Secretariat, Member States and SAARC Tuberculosis and HIV/AIDS Centre (SAAC), with UNAIDS assistance, developed the First SAARC Strategy on HIV/AIDS, 2006–2010, which was “aimed at containing the epidemic and mitigating the socio-economic impact of the disease in the region.”³⁴⁸

In 2013, SAARC updated the Regional Strategy, following the Global Commission report, to further strengthen regional responses based on ‘lessons learned’ from the outcomes of the first strategy. The updated strategy aims to halt or reverse the spread and impact of HIV, to commit leaders to lead the fight against HIV, and to provide people living with HIV access to affordable treatment and care, and enjoy a dignified life.³⁴⁹ Notably, the strategy specifically calls for states

³⁴⁵ See ARASA, From N’Djamena to SADC and EAC model laws & beyond: Revolutionising approaches to Criminalisation of HIV non-disclosure & exposure (meeting report), 2017, p. 26.

³⁴⁶ SAARC Regional Strategy on HIV/AIDS, 2013-2017, p. 1, <http://saarctb.org/new/wp-content/uploads/2015/04/SAARC-Regional-Strategy-for-HIV-and-AIDS.pdf>. SAARC works to promote facilitate collaboration on regional issues and to promote public-private and civil society partnerships for the effective implementation of global and regional commitments of social and economic development.

³⁴⁷ SAARC Regional Strategy on HIV/AIDS, 2013-2017, p. 1, <http://saarctb.org/new/wp-content/uploads/2015/04/SAARC-Regional-Strategy-for-HIV-and-AIDS.pdf>.

³⁴⁸ SAARC Regional Strategy on HIV/AIDS, 2013-2017, p. 1, <http://saarctb.org/new/wp-content/uploads/2015/04/SAARC-Regional-Strategy-for-HIV-and-AIDS.pdf>. The 2006-2010 SAARC regional strategy was subsequently extended to 2012.

³⁴⁹ UNDP, South Asia Regional Advocacy Framework and Resource Guide: HIV, Human Rights and Sexual Orientation and Gender Identity, 2013, p. 54.

to follow the Global Commission’s recommendations in its third objective—ensuring supportive policies and adequately resourced programs.³⁵⁰ In particular, SAARC Member States are called to disseminate, consider and implement the Global Commission’s recommendations when planning inter-ministerial meetings on cross-cutting regional policy issues when developing laws and policies that promote and protect human rights and enable access to HIV services.³⁵¹

The SAARC 2013-2017 strategy has very strong commitments consonant with the Commission’s recommendations, provides a platform for cross-regional collaboration, calls for the elimination of discrimination based on HIV status, sexual orientation and gender identity, and references the need to “address” discrimination and punitive laws that hinder access to HIV services.³⁵² It does not name the Global Commission explicitly but its provisions signal clear attention to the issues raised in the Commission’s 2012 report.

In the Asia-Pacific sub-region, a ‘Regional Framework for Action on HIV and AIDS to 2015’ was adopted in 2012 after the release of the Global Commission report, that required states to organize multi-sectoral national reviews and consultations on the removal of legal and policy barriers to universal access.³⁵³ This strategy call essentially aligns with the Global Commission’s recommendation to create enabling legal and policy environments for effective HIV responses. In conducting these reviews and consultations, Asia-Pacific countries were specifically encouraged to consider the Global Commission’s 2012 report recommendations,³⁵⁴ particularly with regard to reforming discriminatory and punitive legal and policy environments and

³⁵⁰ SAARC Regional Strategy on HIV/AIDS, 2013-2017, <http://saarctb.org/new/wp-content/uploads/2015/04/SAARC-Regional-Strategy-for-HIV-and-AIDS.pdf> (The strategy’s three primary objectives include: 1) Individual and collective strengths of Member States leveraged; 2) Further the scale, quality and depth of programming; 3) Supportive policies and adequately resourced programs.)

³⁵¹ SAARC Regional Strategy on HIV/AIDS, 2013-2017, p. 16, <http://saarctb.org/new/wp-content/uploads/2015/04/SAARC-Regional-Strategy-for-HIV-and-AIDS.pdf>

³⁵² SAARC Regional Strategy on HIV/AIDS, 2013-2017, p. 8, 16, <http://saarctb.org/new/wp-content/uploads/2015/04/SAARC-Regional-Strategy-for-HIV-and-AIDS.pdf>

³⁵³ UN ESCAP, (2013, September 27). *ESCAP Roadmap to 2015*. Retrieved from <https://www.unescap.org/resources/escap-roadmap-2015>

³⁵⁴ UNDP, UNAIDS, ESCAP, Review of country progress in addressing legal and policy barriers to universal access to HIV services in Asia and the Pacific: Report of the UN Regional Interagency Team on AIDS, 2016, p. 1.

combatting stigma and discrimination that impede effective HIV prevention, treatment and support.

In 2014, UNDP, UNAIDS and UN Economic and Social Commission for Asia and the Pacific (ESCAP) published an updated guidance document for the Asia and Pacific region entitled ‘Creating Enabling Legal Environments: Conducting National Reviews and Multi Sectoral Consultations on Legal and Policy Barriers to HIV Services.’³⁵⁵ This guidance was a direct follow-up to the Global Commission’s global and Asia regional consultations and the call for countries to identify and remove legal and policy barriers to their national HIV responses. The guidance also aimed to support implementation of the regional framework for action (referenced just above) and other regional commitments, which called for Member States to organize national multi-sectoral consultations on policy and legal barriers to universal treatment access and to review national laws, policies and practices with a view to eliminating all forms of discrimination against people living with HIV or at risk of infection, in particular key populations.³⁵⁶ Notably, the Global Commission’s recommendations feature prominently throughout this guidance.

In 2015, ESCAP convened an Asia-Pacific Intergovernmental Meeting on HIV and AIDS where governments adopted a road map to ending the AIDS epidemic by 2030 (‘Regional Framework for Action on HIV and AIDS Beyond 2015’), which included a commitment to continuing national reviews and multi-sectoral consultations on legal and policy barriers.³⁵⁷ While not specifically referencing the Global Commission, many of the calls within the regional framework mirror the Global Commission’s recommendations. It also appears that momentum has been built around conducting national-level consultations, indicating a broader understanding of the

³⁵⁵ UNDP, UNAIDS, ESCAP, *Creating Enabling Legal Environments: Conducting National Reviews and Multi-Sectoral Consultations on Legal and Policy Barriers to HIV Services - Guidance Document for Asia and the Pacific Region (Revised)*, 2014.

³⁵⁶ UNDP, UNAIDS, ESCAP, *Creating Enabling Legal Environments: Conducting National Reviews and Multi-Sectoral Consultations on Legal and Policy Barriers to HIV Services - Guidance Document for Asia and the Pacific Region (Revised)*, 2014, p. 3, https://www.unescap.org/sites/default/files/Creating%20Enabling%20Legal%20Environments%20for%20HIV%20Responses_2.pdf.

³⁵⁷ *Regional framework for action on HIV and AIDS beyond 2015*, endorsed at the 71st session of ESCAP, E/ESCAP/HIV/IGM.2/4.

role of legal and policy assessments in creating enabling legal environments in the context of HIV.

In most cases, national consultations conducted in the Asia-Pacific have included people living with HIV and key populations, and in some countries, focused thematic consultations have been conducted on issues relating to particular populations, including people who use drugs, sex workers and men who have sex with men, with participation from government, civil society, people living with HIV and key populations. Several countries have also conducted specific consultations on legal and policy barriers to accessing medicines, with a focus on intellectual property and flexibilities under the World Trade Organization Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS).³⁵⁸ This level of engagement and the substantive-issues of focus align with the Global Commission's analysis and recommendations, as well as those of other authoritative bodies and stakeholders.

Law and policy reform priorities identified during the national reviews and consultations in the Asia-Pacific also mirror and/or align with Global Commission recommendations. For example, many focused on access to rights-based HIV prevention and treatment services, strengthening of protective laws and policies, removal of punitive laws, and mobilization of public support for legal and policy reforms. This included attention to a vast range of issues including improved legal and policy responses to discrimination, legal recognition of transgender people, and protections for all people from violence including sexual violence.³⁵⁹ Additionally, broad calls for reform of criminal laws affecting key populations were made. This included decriminalization or reduction in penalties for sex work, decriminalization of possession of needles and syringes and decriminalization of drug use and possession of small quantities of drugs for personal use and ending the overly-broad criminalization of HIV transmission.³⁶⁰

³⁵⁸ UNDP, UNAIDS, ESCAP, Review of country progress in addressing legal and policy barriers to universal access to HIV services in Asia and the Pacific: Report of the UN Regional Interagency Team on AIDS, 2016, p. 5.

³⁵⁹ UNDP, UNAIDS, ESCAP, Review of country progress in addressing legal and policy barriers to universal access to HIV services in Asia and the Pacific: Report of the UN Regional Interagency Team on AIDS, 2016, p. 13-15.

³⁶⁰ UNDP, UNAIDS, ESCAP, Review of country progress in addressing legal and policy barriers to universal access to HIV services in Asia and the Pacific: Report of the UN Regional Interagency Team on AIDS, 2016, p. 15-16.

In 2016, UNDP, UNAIDS and ESCAP conducted a ‘Review of country progress in addressing legal and policy barriers to universal access to HIV services in Asia and the Pacific’.³⁶¹ Among the conclusions was that work in the sub-region has demonstrated that:

*National and sub-national reviews can provide the necessary specificity in terms of identifying barriers and avenues for addressing these issues at the local level. It can also provide opportunities for stakeholders to consider and be guided by global-level recommendations such as those from the Global Commission on HIV and the Law and the policies of UN agencies.*³⁶²

While legal, policy and practical access barriers remain in the Asia-Pacific region, there appears to be an openness to the Global Commission’s recommendations and a willingness to incorporate those recommendations into regional and national work that continues to this day.

Americas Region

There are two regional common market associations in the Americas region that have led on the development of relevant regional HIV initiatives— the Caribbean Community (CARICOM) and the South American regional economic organization (MERCOSUR/MERCOSUL). In the Caribbean sub-region, the Pan-Caribbean Partnership against HIV and AIDS (PANCAP)³⁶³ launched the Caribbean Regional Strategic Framework on HIV and AIDS (2014-2018) in 2014,³⁶⁴ which represented a consensus to strategically align efforts in the fight against HIV through joint decision making in setting programmatic priorities and in harmonizing partner contributions.³⁶⁵ Among the Strategic Framework’s six priorities, creating enabling

³⁶¹ UNDP, UNAIDS, ESCAP, Review of country progress in addressing legal and policy barriers to universal access to HIV services in Asia and the Pacific: Report of the UN Regional Interagency Team on AIDS, 2016.

³⁶² UNDP, UNAIDS, ESCAP, Review of country progress in addressing legal and policy barriers to universal access to HIV services in Asia and the Pacific: Report of the UN Regional Interagency Team on AIDS, 2016, p. 14-39.

³⁶³ PANCAP is a multi-sectoral, multilevel partnership that brings together governments and national HIV programmes, civil society, including key populations, the private sector and regional and international organizations.

³⁶⁴ Caribbean Regional Strategic Framework on HIV and AIDS (2014-2018), https://caricom.org/documents/13212-final_crsf_2014-2018_final.pdf.

³⁶⁵ Caribbean Regional Strategic Framework on HIV and AIDS (2014-2018), p. 10, https://caricom.org/documents/13212-final_crsf_2014-2018_final.pdf.

environments was listed first,³⁶⁶ reflecting a primary focus of the Global Commission’s report and follow-up work.

To create enabling environments, Caribbean Member States are called upon in the Regional Strategic Framework to “change harmful social norms that sanction gender inequality and stereotypes, interpersonal and gender-based violence, child abuse, discrimination and stigma associated with HIV and against homosexuals and other marginalised groups, including the differently abled[,] through education, advocacy and a more open approach to human sexuality, as well as pragmatic responses to overcoming everyday manifestations of stigma, discrimination and social exclusion.”³⁶⁷ The focus of the PANCAP Regional Strategic Framework on harmful social norms, marginalized groups, key populations and evidence also parallel the focus of the Global Commission and its recommendations.

While some aspects of the Global Commission’s recommendations are squarely featured in the CARICOM/PANCAP Regional Strategic Framework, national legislative frameworks remain one of the foremost barriers to HIV prevention and treatment in the Caribbean sub-region. For example, the majority of Caribbean non-discrimination provisions lack reference to nondiscrimination on the basis of HIV status and there are limited non-discrimination protections on the basis of sexual orientation and gender identity.³⁶⁸ Additionally, same-gender intimacy, regardless of consent or physical location, is criminalized in eleven CARICOM states. There are also laws against cross-dressing and constitutional bans on legal recognition of same-sex relationships, and most PANCAP member countries prohibit activities related to sex work.³⁶⁹

Positive developments in the Caribbean have occurred as a result of Global Commission activity, particularly in the realm of jurisprudence. For example, in the case *McEwan and others v*

³⁶⁶ Caribbean Regional Strategic Framework on HIV and AIDS (2014-2018), p. 32-34,

https://caricom.org/documents/13212-final_crsf_2014-2018_final.pdf.

³⁶⁷ Caribbean Regional Strategic Framework on HIV and AIDS (2014-2018), p. 33,

https://caricom.org/documents/13212-final_crsf_2014-2018_final.pdf.

³⁶⁸ The Bahamas is the only CARICOM country that contains anti-discrimination provisions that reference HIV in the country’s employment act. See Caribbean Regional Strategic Framework on HIV and AIDS (2014-2018), p. 15,

https://caricom.org/documents/13212-final_crsf_2014-2018_final.pdf.

³⁶⁹ Caribbean Regional Strategic Framework on HIV and AIDS (2014-2018), p. 15,

https://caricom.org/documents/13212-final_crsf_2014-2018_final.pdf.

Attorney General of Guyana, the criminalization of clothing socially attributed to another gender was declared unconstitutional.³⁷⁰ In another case between Jason Jones and The Attorney General of Trinidad and Tobago, the court ruled legislations on offenses on committing sodomy were unconstitutional – the first such legislation in the country that successfully overturned laws criminalizing sex between men.³⁷¹

Middle East and North Africa (MENA) Region

The Arab League is the primary regional organization in the MENA region. It contains twenty-two Member States and its goal is to “draw closer the relations between Member States and coordinate collaboration between them, to safeguard their independence and sovereignty, and to consider in a general way the affairs and interests of the Arab countries.”³⁷² In 2012, the Arab Parliament (the legislative body of the Arab League) adopted the Arab Convention on HIV Prevention and Protection of People Living with HIV. Among other things, this Convention provides countries with a legal framework to review their national policies and laws to address HIV-related stigma and discrimination in a systematic and comprehensive manner.³⁷³ At present, Djibouti is the only state in the region that has ratified the Convention. However, UNAIDS and other key stakeholders continue to recommend that states follow suit, noting that ratification “can significantly alter the landscape in terms of law reform, including abolition of punitive laws and application of broader, positive interpretation of existing laws and policies.”³⁷⁴ While the Global Commission’s work may not be specifically referenced in the Arab Convention, its timing is important and its focus on facilitating law and policy reform and promoting enabling environments directly align with the Commission’s recommendations and follow-up work.

³⁷⁰ Outright International. (2018, Nov 13). *McEwan and others v Attorney General of Guyana*. Retrieved from <https://outrightinternational.org/sites/default/files/About%20the%20McEwan%20v%20AG%20case%20and%20upcoming%20CCJ%20decision.pdf>

³⁷¹ CCJ. (2018). *In the Caribbean Court of Justice*. Retrieved from <https://ccj.org/wp-content/uploads/2018/12/2018-CCJ-2-OJ.pdf>

³⁷² Pact of the League of Arab States, March 22, 1945, https://avalon.law.yale.edu/20th_century/arableag.asp.

³⁷³ Arab Strategic Framework for the Response to HIV and AIDS (2020-2014), p. 12
http://menahra.org/images/pdf/Arab_AIDS_Strategy_-_English_-_Final.pdf

³⁷⁴ UNAIDS, HIV in the Middle East and North Africa 2013 – 2015, p. 4,
<https://open.unaids.org/sites/default/files/documents/HIV%20in%20MENA.pdf>

In 2014, the ‘Arab Strategic Framework for the Response to HIV and AIDS (2020-2014)’ was adopted, following the Global Commission consultation, with the aims of supporting Arab States to achieve the goals and targets of the 2011 UN General Assembly High Level Meeting on HIV and AIDS, identifying suitable interventions taking into consideration the challenges associated with HIV, supporting the leadership roles of governments and concerned communities to enable them to achieve the goals and targets of the Strategy and ensuring universal access to HIV prevention, treatment, care and support. The above-mentioned Arab Convention is noted as one of the documents with which this strategic framework is meant to align. The Arab Strategic Framework also emphasizes the need to provide support for the most at-risk and vulnerable groups and to address risky behaviors and factors which heighten vulnerability to HIV.³⁷⁵ It calls for a comprehensive review of existing laws and policies hindering effective HIV responses and reform of legal frameworks to promote the implementation of international agreements and conventions on human rights and gender equality in the context of HIV and AIDS and to promote the rights of people living with HIV, more at risk populations and all inhabitants in accessing prevention, support, treatment and care services³⁷⁶—all proposals that directly align with the Global Commission’s overarching aims and recommendations.

It is reported that the Council of the Arab Ministers of Health, under the Arab League, is currently working to ensure accountability of states to implement the Arab Strategic Framework. UNAIDS has been working with the Arab League to establish an accountability mechanism for monitoring countries’ progress toward implementation of the Strategic Framework and expansion of regional solidarity and shared responsibility. Additionally, the Arab Parliament, League of Arab States, UNDP and UNAIDS are reported to be intensifying advocacy and partnerships with selected national parliaments to ratify the Arab Convention and to use it as an umbrella legal framework for legal and policy reviews to advance human rights.³⁷⁷

Overall, health systems, NGOs and organizations of people living with HIV have limited capacity in the MENA region, especially in terms of their ability to reach and provide services to

³⁷⁵ Arab Strategic Framework for the Response to HIV and AIDS (2020-2014),

http://menahra.org/images/pdf/Arab_AIDS_Strategy_-_English_-_Final.pdf

³⁷⁶ Arab Strategic Framework for the Response to HIV and AIDS (2020-2014), p. 26-27,

http://menahra.org/images/pdf/Arab_AIDS_Strategy_-_English_-_Final.pdf

³⁷⁷ UNAIDS 2016-2021 Strategy: On the Fast-Track to end AIDS, p. 99,

https://www.unaids.org/sites/default/files/media_asset/20151027_UNAIDS_PCB37_15_18_EN_rev1.pdf

key populations at higher risk. However, “opportunities and momentum created by regional networks of civil society organizations such as the Regional Arab Network Against AIDS (RANAA), Middle East and North Africa Harm Reduction Association (MENAHRRA) and networks of women living with HIV, such as MENARosa, are providing new avenues to enhance the role of CSOs in the region’s response.”³⁷⁸

While the Global Commission’s reach appears to be more limited in the MENA region, there may be valuable lessons to be learned as to why this may be. For example, one Commissioner has lamented that ultimately little or no attention was given to religious law within the 2012 report, but instead treated religion as an obstacle. The Commissioner believes this may have reduced engagement, particularly because the vast majority of people in the MENA region (approximately 1.7 billion) live under religious law.³⁷⁹ Other questions were raised as to the limited approach to consultation in the region, each of which raise important questions as to both content and process that may be potentially relevant to any future commissions.

Conclusion

From the outset, the Global Commission emphasized participation at the regional level as a way to maximize input and engagement from a variety of players. In order to achieve buy-in across sectors, the Global Commission leveraged UNDP’s comparative advantage as a convening power with immense credibility among both government and civil society, as well as their extensive in-country networks. Thus, in the follow-up work, a regional level focus also seemed like a useful entry point and it has proved to be so, particularly as demonstrated in sub-Saharan Africa and the Caribbean. The prominent participation of Latin Americans in the Global Commission contributed to moving recommendations forward regionally and nationally within the region. Although ‘regional’ work was also carried out in Asia, a key informant described this as more akin to multi-country work than truly regional work. The diversity of legal systems, coupled with diversity in other factors including health systems, history, culture, and traditions may ultimately have resulted in less attention to the potential for regional activities. Although none of this was explicitly spelled out in the work of the Global Commission, follow-up was

³⁷⁸ UNAIDS, HIV in the Middle East and North Africa 2013 – 2015, p. 4,
<https://open.unaids.org/sites/default/files/documents/HIV%20in%20MENA.pdf>.

³⁷⁹ Key Informant Interview 5

sufficiently grounded in local realities to ensure an approach appropriate to each context. Fewer examples were found of this sort of work in the Middle East and North Africa.

National Level Impact

Introduction

Given the extensive documentation of national level activities linked to the Global Commission already compiled by UNDP and, as agreed prior to the start of the evaluation, country level implementation will only be covered briefly in this report. The focus of this section will be primarily on broader activities that together can be seen to have fostered the legal and policy impacts already documented elsewhere. It is important to recall in this respect that the differences in political, cultural and epidemiological context of each country have greatly influenced civil society capacity and engagement as well as governmental receptivity to working on these issues. Likewise, changes in national level politics ranging from the change of political party after an election to political turmoil or uprising also greatly helped or hindered receptivity to these issues in the period since 2012. As such, changes noted in civil society capacity and engagement or governmental receptivity to recommendations of the Global Commission cannot be attributed solely to the work of the Commission. To the extent possible, the evaluation team has drawn on primary qualitative data and the wealth of information collected as part of the project evaluations in the African context. This section will provide general data points on national level activity, and briefly describe the impacts of the follow-up work of the Global Commission on changes at national level.

In-country implementation

Implementation of follow-up activities not only yielded value at regional level as described above but took place nationally with support to a wide range of national and sub-national activities. As of the end of 2019, UNDP had leveraged funds or provided technical support to a total of 89 countries to make strides towards implementation of the Global Commission

recommendations.³⁸⁰ It is important to look at both the scope and breadth of implementation activities, as multiple activities have often been carried out within a single country (Figure 2).

This geographic mapping of follow-up activities is based on tracking data that UNDP has been collecting since the inception of this work. These activities, with the global frequency of their implementation in parentheses include: empowering key populations to promote human rights based HIV approaches (45), LEAs (41); dialogues with and capacity strengthening of law enforcement officials (41), national dialogues (34); dialogues with and capacity strengthening of parliamentarians (26); law review and legal scans (25); dialogues with members of the judiciary (22); sensitization and dialogues with other key stakeholders (19); civil society engagement scans (5).³⁸¹ These nine types of activities can be seen to be directly connected to the recommendations of the Global Commission, and the work necessary to support legal change.

Figure 2. Density of follow-up activities ongoing or completed by country 2012-2019



³⁸⁰ UNDP. (2019) Overview of the Global commission on HIV and the Law UNDP-supported follow up 2012 - 2019. PowerPoint presentation

³⁸¹ Supplemental Document 1, Website Mapping

Those countries with the darkest shading have the highest number (density) of documented follow-up activities. To note, Malawi has the most reported follow-up activities with seven. In second place for the most follow-up activities are Botswana, Kenya, Madagascar, Nigeria, Tanzania and Zambia with six each. Only two other countries outside of Africa have as many documented follow-up activities: Ukraine and Panama each with six. In nearly all of these countries there was an LEA, a National Dialogue, dialogues with members of the judiciary, dialogues with and capacity strengthening of law enforcement officials, and empowering of key populations to promote human rights-based HIV approaches. Additionally, over two-thirds of countries that hosted an LEA also held National Dialogues. It also appears that countries who carry out LEAs are more likely to hold dialogues with parliamentarians and members of the judiciary than countries who did not have any LEA process.

Given the density of follow-up activities in Malawi and drawing on rich data obtained during in-country field work under the “Africa Regional HIV Grant: Removing Legal Barriers”, general findings will be presented below with examples from Malawi to further illustrate findings.

National-level impact

Beyond the impacts of the individual activities outlined above on their own, there are some broader impacts at national level that are visible across a wide range of the countries where this work has been implemented. These are outlined below.

Creating safe spaces for civil society

As noted earlier, beginning with the regional dialogues, the inclusive, participatory approach fostered through Global Commission activities bringing together government and civil society actors was a critical factor enabling not only useful connections within and across regions, but importantly for the resulting connections and actions within countries. Further, the regional dialogues approach was replicated as national dialogues in 34 countries³⁸², resulting in increased

³⁸² Supplemental Document 1

interactions and safe spaces for civil society to interact and work with government at national level. This approach to follow-up activities resulted in changes in how people work in important ways. The opening of safe spaces for discussion was a critical step that has allowed for multi-stakeholder working groups bringing together state and civil society actors to meaningfully engage in understanding issues around HIV and the law, fostering deeper collaborations to decide and act to improve the situations collectively.³⁸³

In Malawi, for example, a number of follow-up meetings to the 2012 LEA were held opening safe space for multi-stakeholder engagement including the 2016 National Action Planning Meeting and the 2017 National Advocacy Meeting.³⁸⁴ A key informant from Malawi explained that the building of partnerships and resulting collaborations and increased trust between stakeholders engendered through these spaces resulted in increased collaboration between communities, police, Ministries of Health and national human rights commissions in useful ways. Access to justice is seen to have improved as well.³⁸⁵

In the Democratic Republic of the Congo, the national dialogue held in 2013 was credited with bringing together a wide variety of stakeholders. A key informant described the dialogue as a catalyst for future work between duty bearers and key populations, noting that even among people who were not in attendance, different parts of government and civil society knew about the dialogue, recognized its value and could point to it as a resource.³⁸⁶ The multi-stakeholder technical working group that grew out of this initial dialogue was institutionalized as a government-led structure with substantial civil society engagement, fostering sustainability and broad national ownership.

³⁸³ End of Project Evaluation – UNDP RSC Africa: “Strengthening Regional and National Legislative Environments for HIV/SRHR to Support the Enjoyment of Human Rights of LGBT People and Women and Girls in Sub-Saharan Africa – Phase II” (A Sida Supported Project) 2019

³⁸⁴ End of Project Evaluation – UNDP RSC Africa: “Strengthening Regional and National Legislative Environments for HIV/SRHR to Support the Enjoyment of Human Rights of LGBT People and Women and Girls in Sub-Saharan Africa – Phase II” (A Sida Supported Project) 2019

³⁸⁵ Key Informant Interview 42

³⁸⁶ Key Informant Interview 29

In the context of the shrinking space for civil society in many contexts, the long-term impacts of this aspect of the Global Commission’s work at national level feels particularly important.

Government receptivity to collaborative work on HIV and the law

As previously described, a key outcome of the regional consultation processes was engagement with government and establishing buy-in that transferred to the national level. Building on and expanding this foundation, follow-up activities such as LEAs or national dialogues resulted in increased evidence and collaboration as well as reported changes in government attitudes about some issues. A key informant noted that follow-up work has changed the mindsets of many involved including both government and civil society, in national level work around HIV and the law.^{387, 388} This appears to be true both with regard to appreciating the important role of the law in the HIV response and also in relation to understanding among governments and key populations who, through joint meetings, have become humanized and see one another as people rather than simply ‘other’. This joint change in perspective has helped to facilitate key population participation in national HIV responses, including review and reform of laws, policies and practices, in ways documented to be beneficial.

Grounding follow-up national-level work in human rights commitments and principles was reported to have improved receptivity of duty bearers as it expanded their understanding resulting in an increased appreciation of rights as a constructive framework for responding to HIV – rather than simply a mechanism through which they might be accused of human rights violations. In addition, the inclusive participation of different populations in national dialogues and other activities resulted in sensitivities around LGBT rights becoming somewhat diffused in some places.^{389 390} For example, in Malawi, the capacity building initiatives undertaken as follow-up activities are understood to have led to a significant increase in the ability of duty

³⁸⁷ End of Project Evaluation – UNDP RSC Africa: “Strengthening Regional and National Legislative Environments for HIV/SRHR to Support the Enjoyment of Human Rights of LGBT People and Women and Girls in Sub-Saharan Africa – Phase II” (A Sida Supported Project) 2019

³⁸⁸ Key Informant Interviews 38, 42

³⁸⁹ Key Informant Interview 24

³⁹⁰ End of Project Evaluation – UNDP RSC Africa: “Strengthening Regional and National Legislative Environments for HIV/SRHR to Support the Enjoyment of Human Rights of LGBT People and Women and Girls in Sub-Saharan Africa – Phase II” (A Sida Supported Project) 2019

bearers to understand issues around human rights, the law and the HIV epidemic. This improvement in understanding among key duty bearers including police, lawyers, judges and parliamentarians has enhanced conversations around sensitive issues. For example, the Regional Judges Forum, described in the “Regional Level Impacts” section above, translated into more informed judgements at the national level aligned to human rights principles. Similarly, the Malawian lawyers trained have increasingly taken up human rights cases that initially were not of interest to them. Moreover, the trainings are also reported to have led to significant skills-transfer to other cadres such as the police.³⁹¹

Governmental receptivity to this collaborative work amongst different stakeholders on HIV and the law can be seen in the institutionalization of follow-up activities and the creation of structures that are then embedded within national institutions. This has ensured that priorities for follow-up are included in national plans and that responsibility for continued action rests with a range of national stakeholders, including the government. A key informant working for UNDP noted that *“these are seen as activities in a national plan, so the permanent secretary coordinates the work. It is totally aligned with the National Strategic Plan. Even without our [UNDP] money, things will move. We’ll support. We’d love more money, but others are also helping. The work is totally institutionalized.”*^{392, 393} This same sentiment was voiced by stakeholders, including government officials as well as UN agency staff and civil society representatives, across different countries in sub-Saharan Africa including not only Malawi, but also Burkina Faso, the Seychelles and Sierra Leone.

Collaborations between government, civil society and other partners

The collaboration needed for national level follow-up activities to be effective requires political buy-in, national ownership, and multi-stakeholder groups, bringing together government and civil society. All of this takes time to foster, and again the mechanisms created through the

³⁹¹ IIGH-GHHR, (2020). Endline Evaluation of the Africa Regional HIV Grant: Removing Legal Barriers (QPA-H-UNDP)

³⁹² Key Informant Interview 43

³⁹³ End of Project Evaluation – UNDP RSC Africa: “Strengthening Regional and National Legislative Environments for HIV/SRHR to Support the Enjoyment of Human Rights of LGBT People and Women and Girls in Sub-Saharan Africa – Phase II” (A Sida Supported Project) 2019

Commission processes may have been critical to long-term successes. For example, beyond the participatory nature of the regional dialogues, it was important that they came at the initial stages of the Commission’s work, generating early buy-in and allowing participants to shape the overall work, and that this then resulted in increased ownership at national level. At the national level, one key informant noted that the LEA process was one of the most useful follow-up activities because it constitutes a process of getting people on board, getting them used to the idea that they are going to assess laws and policies that they might not want to talk about, and that they are going to own it.³⁹⁴ In addition, the process of setting up the structures required for the LEA and involving the range of stakeholders recommended also allowed for opportunities to identify and cultivate “champions” who could help create opportunities for action and progress.³⁹⁵ In many countries, the LEA process culminated in a National Dialogue to validate and discuss the findings. This allowed for a relatively large number of stakeholders from across government and civil society, including key populations groups, as well as people from different sectors to actively participate in creating a shared understanding of the national situation with regard to HIV-related laws and to agree on priority action points for addressing the issues identified.

A key informant explained how collaborative activities such as the LEA, the National Dialogues and the capacity building of different groups played a role in creating a tipping point of stakeholders who did not previously pay attention to human rights programming to recognize its importance for an effective HIV response. The combination of stakeholders targeted by the project – policy makers, technocrats and communities – opened up diverse channels of communication and advocacy, which was then key to ensuring that the appropriate information reached those in charge and with the ability to change laws. Reaching this tipping point occurred when sufficient momentum had been generated around specific issues, which was seen to be crucial for effecting changes at national level, including having major positive impacts on the lived experiences of people living with HIV and other key populations. For example, ensuring large community presence in the court room of an important case alongside sustained media

³⁹⁴ Key Informant Interview 24

³⁹⁵ End of Project Evaluation – UNDP RSC Africa: “Strengthening Regional and National Legislative Environments for HIV/SRHR to Support the Enjoyment of Human Rights of LGBT People and Women and Girls in Sub-Saharan Africa – Phase II” (A Sida Supported Project) 2019

coverage was shown to positively influence public opinion about the case and even the judgment.

With regard to a participatory approach, key informants involved in the UNDP-supported work to follow-up on the Commission's initial report spoke about the sense of satisfaction they derived from finding the appropriate way to work together in a challenging environment, focusing on the importance of bringing together the appropriate range of stakeholders to be involved in this work: *"Human rights is difficult but we've found the appropriate way to do it here, with the right mix of people – government, civil society, key populations – so we could all work together."* A UNDP focal point noted that previously all partners worked in silos but follow-up work has resulted in a technical team involving everyone, which could be a platform for work in other sectors and on other issues. He spoke of *"mobilizing partners around the key issue – bringing all hands on deck, bringing to life collective intelligence in moving towards what we are achieving now."*³⁹⁶ Many described how having everyone involved throughout the process as critical for ownership.³⁹⁷ This reflects the longer term benefits of participation generated throughout the processes of the Commission itself.

As an example of the longer-term benefits of this type of collaboration, in Malawi, the National AIDS Commission (NAC) has now collaborated with sex workers and supported formation of a sex workers alliance, to facilitate access to HIV prevention and treatment services. The NAC has also trained peer educators to reach out to specific groups including men who have sex with men.³⁹⁸ The Centre for the Development of People (CEDEP) is working with the police on how to protect LGBTI populations and collaborating with the government to develop a guide for health workers, even as the results of this work are yet to be seen.³⁹⁹

³⁹⁶ Key Informant Interview 40

³⁹⁷ IIGH-GHHR, (2019, June 30). *End of Project Evaluation Strengthening Regional and National Legislative Environments for HIV/SRHR to Support the Enjoyment of Human Rights of LGBT People and Women and Girls in Sub-Saharan Africa – Phase II (A Sida Supported Project)*

³⁹⁸ IIGH-GHHR, (2020). Endline Evaluation of the Africa Regional HIV Grant: Removing Legal Barriers (QPA-H-UNDP)

³⁹⁹ IIGH-GHHR, (2020). Endline Evaluation of the Africa Regional HIV Grant: Removing Legal Barriers (QPA-H-UNDP)

National level legal judgments

Mentioned above in the landmark rulings and outcomes section, the 2018 judgment in India that decriminalized sex between men cited the Global Commission explicitly, thus providing a concrete example of a critical case with impacts not only in India but around the world that drew on the work of the Global Commission.⁴⁰⁰ A few examples have been also provided above of changes to national laws where key informants have made clear that they were influenced, at least in part, by the work of the Global Commission. An exhaustive search of legal changes and judgments around the world explicitly referencing the Global Commission was not conducted, nor is it possible to state conclusively how many laws and judgments around the world may have been indirectly influenced by the Global Commission. Nonetheless, the positive impacts of the Global Commission on national-level legal change are a clear, if not fully tangible, success of the project.

Impact beyond the original scope of work

Since its inception, the innovative LEA process has been adapted by a range of actors, including for TB through the StopTB Partnership.⁴⁰¹ A key informant reported a recent request for further adaptation of the LEA methodology to include HIV, TB, and viral hepatitis. Currently, the development of this tool is ongoing and is expected to be published this year. The methodology is being written with the intention of adaptability to any disease with human rights implications or legal barriers in mind. A key informant reported that the LEA tool was also adapted for tobacco control in Panama⁴⁰² and its potential for use in the area of drug policy is currently being explored. There appears to be a lot of opportunity to build on the LEA methodology, and key

⁴⁰⁰ NAVTEJ SINGH JOHAR & ORS. (Petitioner(s)) VERSUS UNION OF INDIA THR. SECRETARY MINISTRY OF LAW AND JUSTICE (Respondent(s)), WRIT PETITION (CRIMINAL) NO. 76 OF 2016, India: Supreme Court, 6 September 2018, available at: https://www.refworld.org/cases,IND_SC,5b9639944.html [accessed 21 May 2020]

⁴⁰¹ StopTB Partnership. (2017). LEA, Retrieved From

http://www.stoptb.org/assets/documents/communities/StopTB_TB%20LEA%20DRAFT_FINAL_Sept%2027.pdf

⁴⁰² Key Informant Interview 9

informants noted the potential to adapt the LEA for other pressing issues such as universal health coverage (UHC).⁴⁰³

Conclusion

That follow-up activities to the Global Commission have been carried out across so many different countries around the world is a testament to the relevance of its work everywhere. Even where regional-level work has been successful, national level follow-up has always followed, explicitly tailored to the context. This again speaks to the convening power inherent to UNDP's comparative advantage and the Global Commission's ability to leverage this power to achieve results. The funders and implementers involved have, to a large degree, recognized the need for flexibility in grants and programs to ensure that they can be responsive to the situation on the ground in ways which have also served to ensure the continued relevance of the work. With high levels of national buy-in and political leadership in many countries, some of the work started as externally funded follow-up to the Global Commission is now embedded as part of national plans and activities (as well as other grants).

Global Processes and Research Explicitly Influenced by the Global Commission

The Global Commission produced publications and released findings that constituted a novel evidence base of the importance of a supportive legal environment to an effective HIV response. One way of trying to understand the impacts stemming from this is to look at how these materials were subsequently used as a foundation from which to expand the evidence. Although this is difficult to capture fully, one way to do so, at least partially, is to look at citations to Global Commission publications by key global bodies as well as in the peer reviewed literature. An overview of these citations is provided below.

⁴⁰³ Key Informant Interview 9

Citations by key global bodies

Efforts were made by the research team to find explicit reference to the Global Commission on HIV and the Law, as well as the Commission's reports and findings, in the resolutions and conclusions of the following bodies: The Human Rights Council; the Commission on the Status of Women; the Commission on Population and Development; and the World Health Assembly. Additionally, a search was done to determine if the Commission's reports and findings had explicitly influenced changes to the reporting guidelines of the Human Rights Treaty Monitoring Bodies. In all cases, searches covered the period between January 1, 2012 and June 30, 2019. Note that the search results presented here do not include documents covered in Case Study Two on the High-Level of Panel on Medicines above so as not to duplicate reporting of findings.

One can see a level of attention to the interplay between law, rights and health by all the bodies noted here in the past years, which may reflect a general shift in attention to these issues after 2012. However, these reviews yielded no explicit mention of the Global Commission on HIV and the Law nor the Commission's reports.

Citations in the Peer-reviewed Literature and AIDS Conference Abstracts

The results of the analysis of the citation search for the 2012 and 2018 reports brought to light a total of 213 peer-reviewed articles published between January 2012 and June 2019 that reference the Global Commission (Annex 3). Speaking to its role in normative guidance, every single search result in the peer-reviewed literature cited the Global Commission reports as part of the background, suggesting its results and approach are being used to substantiate further research and scholarly efforts. An analysis of these search results revealed coverage of a range of relevant issues, even as the subject matter could generally be categorized into a few topic areas as seen in Table 5 below.

Table 5. Breakdown of articles by topic area

Topic Area	Number of Articles
Sex Work	45
Key Populations	44
Criminalization of HIV Transmission	28
Law and Policy	26
Intellectual Property /Access to Medicines/Patent policy	13
Young Key Populations	11
Gender, Women	11
People who use drugs	10
Discrimination	9
Sexual and Reproductive Health	8
Adolescents	4
Forced/Coerced Sterilization	3

Results of searches for the Global Commission on HIV and the Law or the Commission’s reports in the accepted abstracts from International AIDS Society (IAS) conferences between 2012 and 2018 resulted in a total of seven accepted abstracts (one from 2015, five from 2016 and one from 2018). A list of these abstracts can be found in Annex 4.

Conclusion

These findings are important as they provide evidence of some of the different ways that the Global Commission’s reports were used in policy, programming, advocacy, as well as to frame subsequent research questions by a host of different actors. That UNDP had built up a significant rapport across actors was certainly useful for the distribution of evidence and reports. These data, however, do not tell the full story of the extent to which the Global Commission, the report, or its findings, were of help even to actors captured in this section. There were challenges associated with finding citations to the Global Commission, including the 2012 and 2018 reports, in the grey literature and this information was difficult to capture even using Google Scholar and Scopus search engines. There are certain to be other examples which our efforts failed to capture.

These analyses of how Global Commission publications were explicitly cited provides a foundation from which to further expand the evidence base of the importance of law, when used

appropriately, as an effective tool in HIV responses. This section on its own cannot be considered comprehensive but illustrates the strong influence of the Global Commission's work that is also evidenced throughout other sections of this report.

VI. CONCLUSIONS

General Conclusions

The section begins with some overarching findings, after which outcomes specific to the UNDP evaluation criteria of relevance, effectiveness and sustainability are presented, before some final concluding remarks are offered. Within the context of our evaluation, relevance is understood to mean the extent to which global, regional and national level stakeholders find the Commission's work to be relevant to their context and the traction to move the work forward locally. Effectiveness refers here not only to specific outcomes, such as the reports that were released as recently as 2018, but also considers *how* the Global Commission found success through adopting a rights-based approach and its adoption of inclusion-based processes. Finally, sustainability is interpreted as the lasting and continuing outcomes brought about by the Commission that manifest in global, regional and national structures, laws, policies, and plans around the world.

Overview

When considering the impact of the work of the Global Commission, an obvious starting point is to consider the degree to which it has achieved its overarching aims. The first of these stated aims was to “contribute to the evidence base on the relationships between HIV, human rights and legal environments.” Achievement of this aim is visible in the wide use of the Commission report from 2012 to the present day as well as citations of the Global Commission's reports and recommendations across different types of publications, researchers, policy makers and implementers. The tri-partite links between HIV, law and human rights had not been well recognized prior to the Global Commission outside those working directly in the field, and they are now widely understood by a range of actors in ways helping to improve the legal environment not only in HIV but more broadly. Likewise, the ways in which the Global Commission expanded acceptance of the value of different sorts of evidence, including testimony and civil society voices alongside quantitative data, legal judgments and peer-

reviewed articles, has helped to reinforce the multidisciplinary nature of the range of actors who need to work together for an effective HIV response. All of this is a legacy upon which to build. Over time, as the links between HIV, the law and human rights become more widely accepted, explicit citation of Global Commission reports or recommendations may continue to diminish, as more sources that acknowledge and address these connections become available to cite. This does not in any way lessen the Commission's role in catalysing change and should in fact be seen as a success.

The other primary aim of the Global Commission was to provide evidence-informed and actionable recommendations for law and policy reform. The Commission did indeed provide a long list of evidence-informed and actionable recommendations for this purpose; more importantly in terms of impact, substantial work has been implemented to move forward the recommendations at global level, regionally and within countries. The recommendations are widely seen as forward looking, and usefully written in ways that are understandable not only to experts but to the general public. They were delivered at a level of generality that they could be applicable across country contexts, but with enough specificity within each chapter that very precise points could be acted upon. This too is an important legacy of the Commission in that the approach to the chapter topics and the recommendations are still of value to the range of actors concerned with advocacy as well as implementation.

As apparent from this evaluation, there is a vast range of work that has been carried out to improve the HIV-related legal and policy environment that would not have been possible without the Global Commission. These activities further the objectives of the Commission but in many cases have now taken on a life of their own, without explicit recognition of the Commission itself. People newly involved in the work may not even be aware of the now 'historical' link with the Global Commission. As one example of this, a key informant noted that in his current work around LGBT inclusion in sub-Saharan Africa, which builds directly on the work of the Global Commission, many of the people involved "may not even have been adults" when the Global Commission was happening and do not know that it laid the foundation for their work.⁴⁰⁴ That the landscape has changed so much over the last decade, and the doors opened to carrying out this type of work is a remarkable legacy of the Global Commission. As one key informant stated:

⁴⁰⁴ Key Informant Interview 2

“The Commission played a dramatic and central role to drive forward the conditions to make this sort of work possible.”⁴⁰⁵

Relevance

Participatory approach

Great emphasis was placed on promoting widespread participation in the Global Commission’s processes from the very beginning. Regional consultations in the run-up to the original report were well-resourced and diligently organized to maximize input from a range of stakeholders including distinct government and civil society voices. Not only did this help ensure that the content and recommendations of the report resonated across the different regions, but it also helped people at global, regional and national level feel invested in the process and thus in follow-up.

Civil society participation throughout these processes fostered a broad sense of ownership and, importantly, engendered the feeling that national follow-up was a shared ‘country responsibility’ rather than a government responsibility. A diversity of civil society voices was actively encouraged, and all inputs were valued, which created a dynamic of broad partnership across different constituencies and joint investment in advancing the work at national level.

Representation of Commissioners also seems to be important with regard to fostering sustained follow-on, perhaps because if people see Commissioners from their own region who are willing to carry the work forward, they might be more likely to believe that it is locally relevant. This seems in particular to have been the case in Latin America. The converse may be true in Eastern Europe and Francophone Africa – low participation of Commissioners from these regions was seen by some to have had a negative impact on local perceptions of relevance in these regions.

⁴⁰⁵ Key Informant Interview 2

Continued relevance

The follow-up meetings of the Global Commission, in particular the one that took place five years after the initial report appeared and the supplement published in 2018, came out of a recognition that even as the world was evolving, the Commission was still a relevant body to external actors, as well as with people who still actively saw themselves as Commissioners. This is highly unusual. There was a defined need and a willingness to use the Commission as a vehicle to expand the initial body of work and recommendations in light of newer science and emerging topics of import. While the topics in the original report unfortunately remain relevant, the newer topics explored in the 2018 report were at the frontiers of knowledge at the time, and are high priorities for current work around HIV, human rights and the law, including for example laws relating to digital technologies/surveillance and laws used to curtail civil society space.

In addition, the commitment of UNDP, as secretariat to the Commission, to promote action resulting from the work of the Commission, their maintenance of an updated website to serve as a resource for work in this area, and their expansion of attention to emerging areas of relevance within HIV and the law (e.g. interactions with responses to COVID-19) continues to contribute to the ongoing relevance and visibility of the work of the Commission.

It will be useful to consider if/how to promote the ongoing relevance of the Global Commission's work. Additional follow-on meetings and supplements could be imagined. However, one key informant suggested that work in this field might now have moved beyond the Global Commission to the extent that it might not be most useful to focus on keeping it alive in its original format.⁴⁰⁶ Instead, other mechanisms might be considered to continue to garner attention to addressing the links between the law and HIV at the global, regional and national levels.

⁴⁰⁶ Key Informant Interview 35

Effectiveness

Commitment to follow-up work

Multiple key informants underscored that the effectiveness of the Global Commission lay primarily in the emphasis, from the outset, on ensuring that the work did not end with the publication of the initial report but that funding was mobilized for implementation of interventions explicitly designed to take forward the recommendations in the report. The top leadership of UNDP made it clear to regional and country offices that their mandate now included work to advance the Global Commission's recommendations, which meant that new projects were introduced into portfolios across UNDP globally.⁴⁰⁷ The report was understood to be a part of a much larger strategy to improve HIV-related legal environments around the world which ultimately contributed to its success.

Respect for the Commissioners and other key participants

The gravitas of the Commissioners, their perceived independence, and their obvious investment in the process was another factor that contributed to the report and recommendations being taken seriously. The combination of these very distinguished Commissioners, the respected technical expertise of the Technical Advisory Group, and the institutional weight of the affiliation with the UN provided substantial credibility to the Global Commission itself and its reports. Further, the explicit engagement with civil society from the very initial stages of the Commission's work to the present day has been key to taking this work forward. The Commission's methods were rigorous, and the recommendations grounded in evidence. And yet, the reports and recommendations were all written in a very accessible style that highlighted their practicality. This was key to encouraging people to read them and engage with the content. Additionally, the ongoing efforts to continue to engage the Commissioners and others who had been involved in these processes over the years helped ensure a range of actors continued to feel invested in carrying this work forward.

⁴⁰⁷ Key Informant Interview 35

Adoption of a human rights-based approach

The Global Commission process itself was grounded in a human rights approach (emphasizing participation, equality and non-discrimination and accountability among other rights principles in how it was organized and run) and much of the follow-on work was also designed in this way, which has contributed to its effectiveness. In particular, the participatory nature of the process described above also contributed to effectiveness as interventions were tailored to respond to local realities and account for such factors as local politics, legal systems, epidemiology, and civil society capacity.

Meaningful engagement of communities: the value of personal testimony

The Global Commission fully integrated written submissions from civil society and made a concerted effort to give public face and voice to communities. Not only did this create novel opportunities for direct engagement between communities and duty bearers, it also brought to the forefront of global discussions the value of personal testimony as data. Testimonies were always part of legal work, but not common to public health, policy or government offices more generally. While the report does not shy away from quantitative data, legal judgments or peer-reviewed literature, there was a recognition that the impact of the law is felt most acutely at the personal level, particularly among the most vulnerable and marginalized in society, and that sharing people's stories of how the law has affected them is critical to understanding potential weaknesses and informing reform processes. This contributed to the accessibility and compelling nature of the reports but has also helped change how this type of evidence is viewed more broadly by decision-makers, lending it newfound credence as follow-up work was carried out at regional and national levels. This was particularly apparent in the example of AMSHeR using the written submissions to the Regional Dialogues to strengthen their training activities when government and other actors they were training did not believe these issues to be real or relevant to their countries.⁴⁰⁸ The idea that the Global Commission was "*a necessary tool*" for AMSHeR's work is unlikely unique; additional undocumented examples of how others have used the Global Commission's data likely exist.

⁴⁰⁸ Key Informant Interview 9

New partnerships and collaborations

One important process catalyzed by the Global Commission was bringing together the HIV activist movement with the movement around the reform of intellectual property regimes.⁴⁰⁹ While the Global Commission may have been more of a facilitator than the sole driving force in this process, it undoubtedly played a role in this collaboration which has had, and continues to have, significant positive impacts on access to HIV and other medicines around the world.

More generally, some of the follow-on work to the Global Commission appears to have built in the methodologies employed in putting together the first report including regional dialogues which effectively brought together different types of stakeholders (governments, development partners, and civil society including key population-led organizations) to collaborate with a view to improving the HIV-related legal environment. Previously unusual, these multi-stakeholder spaces have become much more common regionally and within countries, helping to improve communication and collaboration among these groups, in ways that might be expanded or replicated to also address other health and development topics.

Specificity and generality of recommendations

The report included both general and specific recommendations. Not all recommendations appear to have gained equal traction, some were more general, others more easily tracked as they could be picked up, explicitly referenced, and ‘championed’ by specific individuals or institutions. The varying specificity of the recommendations, while perhaps appropriate to the actions being promoted, may therefore have influenced which ones can easily be attributed to the Global Commission. For example, the recommendation for the UN Secretary General to create a High-Level Panel on Access to Medicines was explicit in who should take action and what they needed to do; other recommendations such as those addressing the need for legal reform in a variety of areas require attention to legal and political context and action by a much broader coalition of stakeholders across multiple settings. These differences must be taken into account

⁴⁰⁹ Key Informant Interview 2

when seeking to understand which recommendations have been most effective, rather than simply having received most attention.

Sustainability

Incorporation of activities into national structures, laws, policies and plans

Substantial effort was put into fostering national buy-in of a lot of the work that has sought to further the Global Commission's recommendations. Support for the LEAs and National Dialogues in particular was very helpful in pushing this work forward. While the LEA methodology, with its focus on inclusivity, can be seen to be time-consuming, this is an invaluable investment in generating true understanding of the issues among different stakeholders, shared ownership of the outputs and long-term commitment to action. As a result, in many countries, national workplans developed by the National AIDS Commission (or equivalent) draw on national action plans that emanated from these LEAs and/or national dialogues. As part of the government's mandate, these activities therefore have some budget attached to them, fostering national-level sustainability moving forward.

Some of the structures that were established as a part of these processes (such as the Technical Working Groups set up for the LEA process) have subsequently been incorporated into government structures and are now working on other activities to improve HIV-related legal environments in ways that go beyond their initial mandate. This includes, for example, helping to draft relevant sections of national Global Fund proposals that cover human rights interventions (e.g. Burkina Faso, Cameroon, DRC, Gabon, Ghana). Not only do these structures now appear sufficiently stable to be sustainable but their members are also using the skills they have honed through participation in the UNDP-supported projects to help raise additional funds from other sources to build on the work that has been carried out to date.⁴¹⁰ In this respect, it is worth noting

⁴¹⁰ IIGH-GHHR, (2019, June 30). End of Project Evaluation Strengthening Regional and National Legislative Environments for HIV/SRHR to Support the Enjoyment of Human Rights of LGBT People and Women and Girls in Sub-Saharan Africa – Phase II (A Sida Supported Project)

the contribution that tool and guidance development, as well as training and sensitization ultimately make to sustainability and impact.

Sustaining and adapting regional level activities

Sustaining the regional efforts highlighted above including, within the African region, the work with the AUC and RECs, the judges' forum, the training of lawyers and the AKPEG will be important to maximize the overall impacts at national level over time. The value of peer learning outside the confines of a national context proved invaluable in creating in-country traction and momentum for addressing challenging issues within and across all regions. This work is of massive importance and will continue to require external funding, even if this may prove challenging in the current moment.

The recent and ongoing adaptation of interventions carried out in sub-Saharan Africa as follow-up to the Global Commission in other regions (e.g. the regional judges' forum in Eastern Europe and Central Asia as well as the Caribbean, and interest in learning from legal environment assessments to inform interventions relating to drug policy in Latin America) augur well for the sustainability of Global Commission processes and concerns moving forward. It also speaks to the perceived relevance and effectiveness of these activities. The more diffused these activities become, supported by different funders and involving diverse stakeholders, the more the ideas take hold and create a momentum for continuing and sustainable activities leading to important changes around the world.

As mentioned previously, certain regions such as MENA experienced limited follow-up work. Given the cultural and political sensitivities inherent to these regions, it is possible that individuals living within those regions are best placed to determine where adaptation of these lessons is possible. Overarching lessons around process may be a key starting point. In this report, key success factors surrounding process have been highlighted that can usefully inform stakeholders in these other regions, particularly as they seek to expand their work around HIV and the law.

Capacity Building

The public availability of capacity building tools also contributes to the sustainability and replicability of the work of the Commission. Stakeholders can leverage tools such as the aforementioned operational guide for LEAs which is readily available on the Global Commission website. Different stakeholders can utilize toolkits as needed and find collaborators within existing structures to continue to move the work of the Commission forward.

That so much of the follow-up work to the Commission incorporated a strong element of sensitization and capacity building augurs well for sustainability. While sustaining these activities over the long-term is well-recognized to be ideal, where capacity has already been built, it remains. Even if duty bearers change office, they take with them their knowledge and experience. Rights-holders have been equipped with tools to help them claim their rights, which they can continue to do in relation to HIV and to other spheres of life.

Financial sustainability

Some activities initiated as follow-on to the work of the Global Commission will require continued funding in order to be sustained. This is true for capacity building activities, regional convenings and support to strategic litigation for example. Financial support for these activities is critical for advances to continue.

However, as explored in the sub-section above, other activities have yielded impacts that constitute fundamental changes in operating environments – transformations to the landscape that may help this work to move forward even without continued financial investment to specific activities. Examples of this would include: the importance of multi-sectoral collaboration and meaningful participation of key and affected populations in HIV responses; recognition of the evidentiary value of personal testimony; and importantly the need to address the positive and negative role that the law plays in HIV responses at all levels. Funding for these types of activities will of course be necessary, but no longer necessarily as part of Global Commission related funding per se. While retrogression is unfortunately always possible, there is important precedent as to the effectiveness of the processes and content of this sort of work that might help

ensure some level of sustainability, making it harder for stakeholders to retreat from these newer ways of operating.

Weathering political winds

From the outset, the Global Commission sought to apply a technical, evidence-informed approach to understanding and addressing the role of the law in HIV responses. Yet, at national, regional and even global levels, politics and ideology continue to influence laws and policies even in the face of solid evidence. Hard-fought gains at every level can be erased with a change of government: there is a potential danger of retrogression without continued vigilance, which has been evident in the recent reductions of civil society space, particularly for key population-led organizations as well as, for example, the failure of the EAC to adopt a regional strategy on key populations.

However, even where laws and policies might be susceptible to negative political shifts, the benefits of the capacity building work that has taken place does not risk similar erasure. The knowledge gained by individual duty bearers in one job is not lost if they change positions. And the strength of civil society becomes an even more important asset if advocacy and playing a watchdog role become more needed. It may stand that the safe spaces opened up to civil society through the Global Commission are even more critical in the face of the political turmoil the world over. An improved understanding of why laws and policies matter in the HIV response now exists among diverse stakeholders working at different levels of the response around the world. These partners will be critical to maintaining a focus on this type of work moving forward, and help sustain alliances in addressing these changes amongst individuals whether now working in civil society, government, or UN organisations. The multi-sectoral nature of the work, in conjunction with the capacity building that has strengthened the entire spectrum of involved stakeholders, points to mechanisms and approaches that may support resistance and even resilience in the face of negative political climates.

Conclusion

Overall, the work of this Global Commission is unprecedented. A great deal can be learned for the future, in terms of both process and content. All this can help inform future global action relevant to HIV, health, development, human rights and the law. The demonstrated importance

of the law for the successes or failures of the HIV response globally, regionally and within countries is of key importance to other health issues, including, most recently, COVID-19. The methodologies employed by this Commission may also lend themselves to tackling other complex topics requiring a multi-disciplinary and cross-sectoral response.

The value in evaluating the type of work carried out by the Global Commission lies in understanding not only the impacts of this particular Commission but also the critical success factors and potential shortcomings with a view to informing future endeavors of relevance.

For example, the success factors reflected here echo many of those identified during recent reflections on the work of the Commission on Investing in Health (CIH). Although the Global Commission is not directly mentioned, the CIH was active between 2012 and 2016. Key stakeholders in the CIH noted the importance of selecting appropriate, diverse commissioners that ensure a range of technical expertise and appropriate networks, as well as the need for adequate resourcing and putting into place forward-looking recommendations to galvanize policy action, and stimulate additional work.⁴¹¹

As the world grapples with the global COVID-19 pandemic, the resolve of institutions to pay attention to rights and justice issues in addressing health issues across a range of sectors has been put to the test. Governments adjusting to the demands associated with curtailing a new infectious disease have implemented policies that work to mitigate its damage, but too often at the expense of the human rights of vulnerable and other populations. Legal and policy structures are being misused, and rights abuses are occurring all in the name of addressing a public health crisis. A reckoning will be needed, and most important will be the need to address the legal and policy environment to ensure it helps and does not hurt the most marginalized and vulnerable.

Many of the lessons learnt and documented in this report about how and why the Global Commission was so effective ought to be directly transferable to assessing the ways in which governments address COVID-19, and could also usefully inform responses to this and future epidemics. For example, legal environment assessments, national and regional dialogues bringing together a range of duty bearers and rights holders to hear from one another can go a long way towards ensuring an appropriate legal and policy environment to support the health and

⁴¹¹ Gavin Yamey, Lawrence H Summers, Dean T Jamison, Jessica Brinton, How to convene an international health or development commission: ten key steps, *Health Policy and Planning*, Volume 33, Issue 3, April 2018, Pages 429–435, <https://doi.org/10.1093/heapol/czx179>

well-being of affected populations locally, nationally and globally. Multi-sectoral technical working groups, embedded in national structures and including a wide range of stakeholders, can be a place for discussion and action that goes beyond HIV and the law to also encompass other emerging or priority issues where law and health intersect. This evaluation report can be useful for UNDP in global convenings in HIV and the law, partnerships with global and local partners, and future engagement with civil society. The Global Commission serves as a functional model for how this can be done. Through UNDP's comparative advantage, their convening power, and relationships with civil society, there is room to use these findings and move work forward within the HIV and law arena.

The Global Commission's effective capacity building approach in the context of the HIV epidemic provides lessons and tools about the power to give a voice to *any and all* affected communities, whether in the context of COVID-19 or any other disease, and for those voices to shine a light on the needed legal and policy response to control the pandemic. A range of duty bearers and rights holders equipped with cross-cutting tools that bring inclusion and participation to the forefront, along with an understanding of how the law can be used as a powerful tool to improve public health, can be a key strategic weapon. Moving forward, it is hoped this can serve as a model giving rise to a new generation well-equipped to work collaboratively and champion the rights of vulnerable communities on issues where law intersects with HIV, COVID-19 and indeed every other health issue.

VII. ANNEXES

Annex 1: List of participants interviewed

Annex 2: Roster of Commissioners and TAG

Annex 3: Citations in the Peer-Reviewed Literature

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Supplemental Documents

- 1. Global Evaluation Spreadsheet**
- 2. Mapping of the Global Commission website**

Annex 1: List of Participants Interviewed

Interviews conducted for the purpose of this evaluation

January-March 2019

Interviewers: Sofia Gruskin and Laura Ferguson

Name	Affiliation
Avafia, Tenu	Team Leader Human Rights, Key Populations, Health Technology Innovation and Access, UNDP
Chauvel, Charles	UNDP/Commissioner
Dhaliwal, Mandeep	Director of HIV, Health, and Development Group, UNDP
Divan, Vivek	Former UNDP
El Feki, Shereen	Commissioner
Esom, Kenechukwu	Policy Specialist: Human Rights, Law and Gender, UNDP
Kirby, Michael	Commissioner
Kismödi, Eszter	CEO of Sexual and Reproductive Health Matters
Lewis, Stephen	AIDS-Free World/Commissioner
O'Malley, Jeffrey	Former Director of HIV, Health and Development Group for UNDP, Independent Consultant
Schleifer, Rebecca	Consultant, UNDP

Interviews conducted outside the purpose of this evaluation

Amankwa, Belynda	UNDP Ghana
Ansah, Cephas	Senior Investigator, Human Rights Desk, CHRAJ, Ghana
Chijozi, Chikondi	Deputy Executive Director, CHREAA, CS
Clayton, Michaela	Director, ARASA
Fernando, Justice Anthony	Court of Appeal, Seychelles
Gbemeh, Edward	UNDP Sierra Leone
Gichohi, Allison	East Africa Community
Gleeson, Nana	Finance and Operations Manager, BONELA

Grant, Kitty	Independent Consultant
Kamara, Hasan	Lieutenant Colonel, Finance Officer, Army, Sierra Leone
Maleche, Allan	Director, KELIN
Maluza, Immaculate	Vice-President of Women Lawyers' Association Malawi, CS
Masasabi, Sheillah	Programme Officer for HIV and AIDS, UNDP
Maty Sow, Lala	And Soppeku, Senegal, CSO
Millogo, Brice	UNDP, Burkina Faso
Mujinga, Bimansha, Mme Marie Josée	Premier President de la cour d'Appel, Democratic Republic of the Congo
Mwafulirwa, Wesley	Lawyer, CS
Ntaba, Justice Ziona	High Court Judge, Malawi
Patel, Priti	Independent Consultant
Ramjathan-Keogh, Kaajal	Executive Director, SALC
Trapence, Gift	CEDEP, Malawi
Turpin, Nguissali	Programme Officer, Enda Santé

Annex 2: Roster of Commissioners and TAG

Name	Affiliation
His Excellency Fernando Henrique Cardoso	Brazil
His Excellency Mr. Festus Gontebanye Mogae	Botswana
Ms. Ana Helena Chacón Echeverría	Costa Rica
Mr. Charles Chauvel	New Zealand
Dr. Shereen El Feki	Egypt
Ms. Bience Gawanas	Namibia
The Hon. Dame Carol Kidu	Papua New Guinea
The Hon. Michael Kirby	Australia
Congresswoman Barbara Lee	United States
Mr. Stephen Lewis	Canada
Professor Sylvia Tamale	Uganda
Mr. Jon Ungphakorn	Thailand
Professor Miriam K. Were	Kenya
Mr. JVR Prasada Rao	India

LIST OF TECHNICAL ADVISORY GROUP MEMBERS

Name	Role
The Hon. Michael Kirby	Co-Chair, Australia
Allehone Mulugeta Abebe	Co-Chair, Ethiopia
JVR Prasada Rao	Member-Secretary, Commission, India
Aziza Ahmed	Member
Jonathan Berger	Member
Chris Beyrer	Member
Scott Burris	Member
Joanne Csete	Member
Mandeep Dhaliwal	Member
Sophie Dilmitis	Member
Vivek Divan	Member
Richard Elliott	Member
Sofia Gruskin	Member
Wendy Isaack	Member

Rick Lines	Member
Annie Madden	Member
Kevin Moody	Member
Vitit Muntarbhorn	Member
Cherly Overs	Member
Tracy Robinson	Member
Purna Sen	Member
Susan Timberlake	Member
Matthew Weait	Member

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Annex 6: Key Informant Interview Guide

KII Guide for Commissioners

This guide was adapted as appropriate for other types of key informants. Additional guides are available upon request.

Introduction (everyone)

1. How and when did you start working with the Global Commission?
 - a. How were you involved?
 - b. Did your role change overtime?
2. Are you still working with the Global Commission?
3. How do you characterize the impact of the Global Commission?

Commissioners

4. What role did the Commissioners play at the beginning of the Global Commission and how did that role change over time? Are there some Commissioners that remained more active and others less so... Why do you think that is?
5. What was the nature of the relationship of the Commissioners with other groups and institutions (UNDP, TAG etc.) interested in this work?
6. What impact do you think the individual positions and histories of Commissioners play in moving things forward with UN agencies, governments and other institutions?

Process

7. How did the Global Commission come about? What was the impetus and what was the process of making it happen?
8. What did you seek to accomplish? What kind of outcomes were you looking for?
9. Has this been accomplished? In what ways? Why/why not?

10. What did you see as the links between the global, the regional and the national level processes?
11. Where there any lessons learned from the Global Commission on Drug Policy that shaped the approach of the Global Commission on HIV and the Law?
12. In which regions did the regional dialogue approach seem most and/or least effective in catalyzing momentum?
 - a. Were there any common challenges or keys to success across regions?
13. Did the priorities identified at regional dialogues chart the course for follow-up activities regionally and within countries?
14. What role did partnerships play in the initial work of the Global Commission and follow-up activities?
 - b. Who were the key partners nationally, regionally, globally?

Follow-up activities/funding

15. Did the priorities identified through regional dialogues align with funding priorities at the time?
16. What were the implications for moving forward the work?
17. How do you characterize the impacts of follow-up work such as the Africa Regional Judges Forum?

Global

18. To your knowledge, has the 2012 Global Commission report or 2018 supplement impacted strategic priority setting for UNDP, UNAIDS, PEPFAR, UNICEF, Global Fund, Agenda 2030, SDGs? How?

19. To your knowledge, was the work of the Global Commission used directly or indirectly to inform global or regional level policy? National policy?

Wrap up

20. Are there any mechanisms are in place to ensure sustainability for the work of the Global Commission?
21. What do you think are the greatest accomplishments of the Global Commission to date?
- a. Globally, regionally, or nationally?
22. What are the factors that really help facilitate progress and promote success?
- a. Globally, regionally, or nationally?
23. Is there anything else you would like to tell me about the Global Commission, its impact, or your involvement in it that I haven't asked you about?

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