

UNAIDS/PCB(29)/11.27
25 November 2011

29th Meeting of the UNAIDS Programme Coordinating Board

**Geneva, Switzerland
13-15 December 2011**

Thematic Segment: HIV and Enabling Legal Environments

FORMAT AND BACKGROUND NOTE

PCB THEMATIC SEGMENT, THURSDAY, 15 DECEMBER 2011 INTERACTIVE DIALOGUE HIV AND ENABLING LEGAL ENVIRONMENTS	
8:00 - 10:00	MORNING PREPARATORY SESSION – plenary and small groups Coffee will be served around 9:30
10:00 - 10:45	PLENARY WELCOME (speaker to be confirmed) INTRODUCTION ON HOW THE INTERACTIVE DIALOGUE WILL WORK (Moderator) CONTEXT SETTING - REFLECTIONS FROM THE <i>GLOBAL COMMISSION ON HIV AND THE LAW</i> RELATING TO ENABLING LEGAL ENVIRONMENTS: 2 Commissioners of the <i>Global Commission on HIV and the Law</i> (tbc); a speaker from an affected population (Civil society – tbc)
10:45 - 12:00	DIALOGUE (conducted by Moderator with background support from Thematic Segment Working Group) Section 1: Law (with focus on discrimination/criminalization; women and children; access to treatment) 10:45 – 12:00
LUNCH BREAK: 12:00 – 13:00	
13:00 - 15:30	DIALOGUE (continued) Section 2: Law Enforcement (with focus on discrimination/criminalization; women and children; access to treatment) 13:00 – 14:15 Section 3: Access to Justice (with focus on discrimination/criminalization; women and children; access to treatment) 14:15 – 15:30
COFFEE BREAK: 15:30 – 16:00	
16:00 - 16:05	WRAP-UP (Moderator)
16:05 - 16:30	CLOSING COMMENTS - presenters to be selected, suggested speakers include: <ul style="list-style-type: none"> • 1 Commissioner from the <i>Global Commission on HIV and the Law</i> (tbc) • Other speaker(s) (tbc)
16:30 - 17:30	CLOSING, PCB REGULAR SEGMENT

THEMATIC SEGMENT FORMAT AND AGENDA

Overview and background to format:

1. The Working Group on the Programme Coordinating Board Thematic Segment, *Enabling Legal Environments*, decided that the format of the segment would take the form of an “interactive dialogue” or “town-hall meeting” with the goal of providing an opportunity to elucidate and discuss the three components of an enabling legal environment that are relevant to national HIV responses. These components are: law, law enforcement, access to justice.¹
2. The format is an adaptation of that used for the Regional Dialogues² of the *Global Commission on HIV and the Law (Commission)*.³ It is intended that the Interactive Dialogue, in the form of a moderated meeting, elicit experiences and provide for an exchange of positive examples relating to enabling legal environments among the participants of the Programme Coordinating Board meeting, including people living with and affected by HIV, as well as those working on HIV and the legal environment. It will also provide an opportunity to inform the Board about the work of the *Commission* relating to enabling legal environments carried out over the last 18 months.⁴

Description of Interactive Dialogue:

3. The day will begin with a *Preparatory Session* to enable participants to familiarise themselves with the three components of the legal environment (law, law enforcement, access to justice) and issues to be addressed under these components, to identify the topic they may wish to speak on, and to plan their key points and discuss with others. The *Preparatory Session* will include a general presentation to participants about the legal environment, its relevance to HIV, and the way the Interactive Dialogue will work. Participants will then break into smaller groups to discuss and prepare their interventions. Members of the *UNAIDS Reference Group on HIV and Human Rights* will be on-site to assist delegates in their preparations.
4. After the *Preparatory Session*, the Board will reconvene in plenary at which time the Interactive Dialogue will be kicked off with a *Welcome and Introductory Session* that will set the stage for the interactive sessions that will follow.

¹ Please refer to *Background Note* for descriptions of these components.

² From 2010 to 2011, seven dialogues have been held, one each in the following regions: Asia Pacific, the Caribbean, Middle East and North Africa, Eastern Europe and Central Asia, Africa, Latin America, and one for High Income Countries. The dialogues have proven to be an effective way of sharing information, engaging governments and civil society in dialogue regarding complex and sensitive issues, and stimulating action at the country and regional levels to create legal environments that enable more effective HIV responses. Further information on the work of the *Global Commission on HIV and the Law*, including video footage of the Regional Dialogue in Asia Pacific and selected footage from other Regional Dialogues, is available at: www.hivlawcommission.org.

³ Michel Sidibé, Executive Director of UNAIDS, announced that UNDP would convene a high-level commission on HIV and the law at the 25th PCB meeting in December 2009.

http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/speechexd/2009/20091208_pcb_exd_speech_en-1.pdf. Since the *Commission's* launch at the 27th Programme Coordinating Board meeting in June 2010, UNDP has led the *Commission* on behalf of the UNAIDS family. The *Commission* has mobilised hundreds of individuals and organisations across the global to work in support of the objective of improving legal environments for HIV responses.

⁴ The report of the *Commission* will be published in January 2012.

5. The plenary *Interactive Dialogue* will then start, with each of its three sections focusing on one component of the legal environment (law, law enforcement, access to justice). The emphasis during the dialogue will be on eliciting positive experiences/lessons in the creation of enabling legal environments, and how concrete initiatives and programmes under the three components can improve HIV responses.
6. Furthermore, within the context of the relevant component of the legal environment (law, law enforcement and access to justice) each of the three sections should also address, to the degree possible, the three sub-issues which have been the three areas of focus of the *Commission's* Regional Dialogues:⁵ (a) discrimination and criminalization experienced by people living with HIV and key populations,⁶ (b) violence and discrimination experienced by women and children in the context of HIV,⁷ and (c) increasing access to HIV-related treatment.⁸
7. The *Interactive Dialogue* will run for approximately 3½ hours, with each of the three sections lasting 70 minutes. Each section will have three pre-selected speakers: two (one from government and one from civil society) to open the discussion with comments of 3 to 5 minutes, ideally focusing on the three sub-issues; and one speaker (from government or civil society) to conclude the session with reflections of 3 to 5 minutes. It is intended that there be balanced representation in terms of regions and gender and that at least one of the pre-selected speakers be an expert in the field of HIV and the legal environment. *It is preferable that the style be informal and without written statements. The dialogue should be tailored toward positive, clear follow-up actions for the PCB in June 2012.*

Location:

8. The *Preparatory Session, Introductory Session* and *Interactive Dialogue* will be in the main plenary room (Room XIX).

Background papers:

9. This Background Note for the Thematic Segment will be translated and distributed as the main paper for the Segment. The report by the NGO representative to the Board (ref. UNAIDS/PCB(29)/11.18) will also be used as a background paper for the Segment. The attention of PCB participants is also brought to the issue briefs and reports from the Regional Dialogues of *the Global Commission on HIV and the Law* which can be found on

⁵ Using the three distinct issues examined by the *Global Commission* as the sub-issues framework for discussion of enabling legal environments will ensure that the cross-cutting benefits of enabling legal environments for the three Strategic Directions under the UNAIDS Strategy "Getting to Zero" are examined, and that the way in which legal environments impact on the achievement of the Goals under each of these Directions is fleshed out with concrete examples.

⁶ Relates directly to the goals under Strategic Direction 1 "Sexual transmission of HIV reduced by half, including amongst young people, men who have sex with men, and transmission in the context of sex work" and "All new HIV infections prevented among people who use drugs"; and to the goal under Strategic Direction 3 "Countries with punitive laws and practices around HIV transmission, sex work, drug use or homosexuality that block effective responses reduced by half."

⁷ Relates directly to the goal under Strategic Direction 1 "Vertical transmission of HIV eliminated and AIDS-related maternal deaths reduced by half"; and to the goals under Strategic Direction 2 "HIV-specific needs of women and girls are addressed by at least half of all national HIV responses" and "Zero tolerance for gender-based violence".

⁸ Relates directly to the goal under Strategic Objective 2 "Universal access to antiretroviral therapy for people living with HIV who are eligible for treatment" and to the goal under Strategic Direction 1 "Vertical transmission of HIV eliminated and AIDS-related maternal deaths reduced by half".

its website at www.hivlawcommission.org.⁹ Other relevant materials on HIV and the law produced by the UNAIDS Secretariat, Cosponsors and others (e.g. *IDLO/UNDP/UNAIDS Toolkit: Scaling up HIV-Related Legal Services*) will be made available for participants.

Interpretation:

10. Simultaneous interpretation will be provided in the six official UN languages during the plenary in the *Preparatory Session* and during the *Dialogue*. During the group work aspects of the *Preparatory Session*, participants will be supported with informal whisper translation and other arrangements to support participants' language needs.

[Background note follows]

⁹ These papers comprise regional overviews prepared in advance of the Regional Dialogues as well as the reports of the Regional Dialogues themselves.

BACKGROUND NOTE

INTRODUCTION

1. At its 26th meeting, the Programme Coordinating Board (PCB) agreed that the topic of the thematic segment of the 29th meeting would be *HIV and Enabling Legal Environments*. It was intended that this session would assist participants to:
 - a. Allow for more in-depth understanding, consideration and discussion of the legal environment relevant to HIV, its three components (law, law enforcement and access to justice, as described below) and their impact on national HIV responses;
 - b. Reflect on the challenges and opportunities to ensuring that legal environments support national and international responses to HIV;
 - c. Review best practices in terms of law, law enforcement and access to justice that facilitate access to HIV prevention, treatment, care and support services and programmes for all; and
 - d. Discuss partnerships with those who can support enabling legal environments in the context of HIV, such as Ministries of Justice, Interior, Gender, Foreign Affairs, Health, Social Affairs; Parliaments; the judiciary; national and regional human rights institutions; law enforcement; traditional and religious leaders; human rights, legal and women's civil society groups; organizations of employers and workers; networks of people living with HIV and other key populations, including sex workers, men who have sex with men, transgender people, people who use drugs; young people; and groups working on health and rights of refugees, migrants, displaced persons and prisoners, including women prisoners living with HIV.
2. The session will allow Board participants to better understand: (a) how enabling legal environments are key to effective national HIV responses, as well as to the human rights of those vulnerable to or living with HIV, and (b) how aspects of legal environments relevant to HIV can be improved and strengthened at country-level.

BACKGROUND

3. Since 2001, countries have reported on actions in the response to the commitments to human rights, law and HIV that they made in the *2001 Declaration of Commitment on HIV/AIDS* and the *2006 Political Declaration on HIV/AIDS* under the UNGASS reporting framework. These reports, as well as information from other sources, reveal that progress has been made in some sectors towards creating enabling legal environments for effective HIV responses. However, there are also indications that many governments have yet to take sufficient steps, in the context of HIV, to codify and implement protective laws, change laws and law enforcement that act as obstacles to HIV services or violate human rights, and increase access to justice.
4. In 2010, one in three countries reported that they still did not have laws prohibiting discrimination against people living with HIV.¹⁰ In 2010, 46% of countries acknowledged the existence of laws, regulations and policies that obstructed access to prevention, treatment,

¹⁰ Based on UNGASS country reports, see UNAIDS, *Report of the Global AIDS Epidemic, 2010*, p 128 (http://www.unaids.org/globalreport/documents/20101123_GlobalReport_full_en.pdf, accessed 07 November 2011).

care and support services for populations at higher risk.¹¹ And as of 2011, some 47 countries continue to impose some form of restriction on the entry, stay and residence of people living with HIV.¹² Other laws that can increase vulnerability to HIV infection and/or act as barriers to access to HIV prevention, treatment, care and support include the overly-broad criminalization of HIV transmission and exposure; laws that fail to sufficiently protect women from violence; laws that result in the denial of property and inheritance rights of women and children in the context of HIV; policies involving the *refoulement*¹³ of HIV positive asylum-seekers and refugees, as well as the summary deportation of migrants living with HIV; laws or regulations that result in the denial of HIV prevention and treatment in prisons; laws that restrict women's access to sexual and reproductive health commodities and services; legislation that does not allow sexuality education in schools; policies of mandatory HIV testing, including for employment purposes; regulations that prohibit HIV-positive individuals from engaging in particular professional occupations; and failure to implement TRIPS flexibilities, when applicable, to keep prices of HIV medicines as low as possible.

5. With regard to the impact of laws on some key populations, it is reported that 76 countries continue to criminalize same-sex sexual relations between consenting adults, with five countries retaining the possibility of the death penalty for such acts.¹⁴ More than 100 countries criminalize some aspect of sex work;¹⁵ and most countries have policies or laws that result in those dependent on drugs being subject to criminal penalties, including incarceration,¹⁶ which can further increase vulnerability to HIV infection.
6. The workplace remains a common setting for HIV-related discrimination. Employment discrimination can take many forms: denial of access to employment or to a specific occupation; discrimination in the terms and conditions of employment, including in access to work-related benefits; and unjust dismissals. Mandatory HIV testing and forced disclosure of HIV status are also common forms of HIV-related discrimination in the workplace. Discriminatory employment practices impede effective HIV prevention and treatment efforts. In contrast, both formal and informal workplaces can be highly effective entry points to facilitate access to HIV prevention, treatment, care and support services when workplace protections exist and are credibly enforced by law, employment regulation and access to justice,.
7. Law enforcement also impacts the response to HIV. One challenge in this area is the non-enforcement of protective laws. For example, many countries that have legislation against

¹¹ *Id.* at 126.

¹² For list maintained by the UNAIDS Secretariat, see http://www.unaids.org/en/media/unaids/contentassets/documents/priorities/20110620_CountryList_TravelRestrictions_en.pdf.

¹³ Return to countries where they will face persecution.

¹⁴ The five countries are Iran, Mauritania, Saudi Arabia, Yemen and the Sudan. There are also some parts of Nigeria and Somalia that retain the death penalty for consensual same-sex acts. Eddie Bruce-Jones and Lucas Paoli-Itaborahy, *State-sponsored homophobia—a world survey of laws prohibiting same sex activities between consenting adults*, International Lesbian, Gay, Bisexual, Trans and Intersex Association, 2011 (http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2011.pdf, accessed 09 November 2011).

¹⁵ *2009 Country Reports on Human Rights Practices*, United States Department of State, Bureau of Democracy, Human Rights and Labor (<http://www.state.gov/g/drl/rls/hrrpt/2009/index.htm>, accessed 07 November 2010).

¹⁶ *Drugs, punitive laws, policies, and policing practices, and HIV/AIDS: a briefing paper*. New York, Human Rights Watch and the International Harm Reduction Association, 2009 (<http://www.hrw.org/en/news/2009/11/30/drugs-punitive-laws-policies-and-policing-practices-andhiv/AIDS>, accessed 07 November 2011).

discrimination based on HIV status do not adequately implement or enforce such laws. Another challenge is inappropriate law enforcement. For instance, many individuals of key populations, including sex workers, people who use drugs, men who have sex with men and transgender people, are often the subject of abusive or illegal police practices, regardless of their countries' codified laws. These practices take the form of harassment, arbitrary arrest, extortion, violence and rape. Not only do such police actions comprise a violation of human rights, but they also serve to drive these populations away from HIV treatment and other health services, and/or make it very difficult to reach them with prevention and treatment programmes.

8. Access to justice for those living with or vulnerable to HIV consists of policies and programmes that allow those affected to be protected by the justice system - through the courts or through law enforcement. Many countries report that they are implementing programmes that increase access to justice such as legal services, legal literacy and stigma reduction.¹⁷ Indeed, these programmes are often mentioned in National Strategic Plans, but they tend to either not be implemented at the project level or to fall out of the plan at the budget or costing phase. For instance, a 2009-2010 study conducted by UNDP, UNAIDS and the Global Fund to Fight AIDS, Tuberculosis and Malaria regarding the Global Fund's HIV portfolio for Rounds 6 and 7 found that one third of the programmes that would support access to justice were not implemented.¹⁸ The study also found that less than one quarter of the planned programmes specifically targeted key populations, including men who have sex with men, people who inject drugs, sex workers, transgender people and prisoners.¹⁹
9. In 2011, the UNAIDS NGO Delegation conducted global focus group discussions with civil society including people living with HIV, individuals representing key populations and some participants from the Regional Dialogues of the *Global Commission on HIV and the Law*.²⁰ These focus groups included discussions about the legal environment and its relationship to the HIV response. (Ref. UNAIDS/PCB (29)/11.18) Participants were asked about their experiences with and knowledge about the laws relating to HIV and HIV-related services. They were also asked to discuss their personal experiences with the law and law enforcement and propose solutions to the challenges they faced. The findings of the focus groups re-affirmed the importance of the legal environment to the development and implementation of effective HIV responses. The consultation found that the overly-broad criminalization of HIV transmission, as well as stigma and discrimination and repressive laws and policies involving women and girls, migrants, men who have sex with men, people who use drugs, sex workers and transgender people, undermine the HIV response by limiting access to and/or discouraging uptake and use of HIV-related services. It also found that misinformation or lack of awareness regarding HIV also fuels stigma, discrimination and ultimately contributes to a policy environment where HIV transmission is more likely to be criminalized. Furthermore, the responses from the focus groups pointed to insufficient or unenforced legal protections for people living with and vulnerable to HIV. Finally, the focus groups found that such individuals do not know their rights, especially as they relate to punitive and protective laws that impact them in the context of HIV.

¹⁷ UNGASS Country Reports, 2010.

¹⁸ UNDP, UNAIDS and the Global Fund to Fight AIDS, Tuberculosis and Malaria, *Human rights programmes in Global Fund-supported HIV responses in Rounds 6 and 7*. New York, United Nations Development Programme (www.undp.org, accessed 07 November 2011).

¹⁹ *Id.*

²⁰ For full description of the Global Commission and its Regional Dialogues, see www.hivlawcommission.org.

STATES' COMMITMENTS REGARDING LEGAL ENVIRONMENTS AND HIV

10. Recognition of the relevance of, and flaws within, the legal environment regarding HIV has led to a growing commitment by States to ensure that the legal environment supports effective HIV responses.²¹ In the *2001 Declaration of Commitment on HIV/AIDS* and the *2006 Political Declaration on HIV/AIDS*, governments made major commitments to protect the human rights of people living with HIV, women and girls, and vulnerable populations.²² In the *2001 Declaration*, they also committed to develop national and legal policy frameworks to protect the rights and dignity of persons living with and affected by HIV in the workplace.²³ In the *2006 Political Declaration*, States committed to overcome legal and regulatory barriers to commodities and services; to intensify efforts to enact, strengthen or enforce legislation to eliminate all forms of discrimination; to eliminate gender inequalities, including harmful traditional and customary practices, abuse, rape and other forms of sexual violence, as well as battering and trafficking; to provide full protection of confidentiality and informed consent; to promote a social and legal environment that is supportive of safe and voluntary disclosure of HIV status; and to ensure evidence- and skills-based, youth-specific HIV education, mass media interventions and the provision of youth-friendly health services.²⁴
11. In the *2011 Political Declaration on HIV/AIDS: Intensifying Our Efforts to Eliminate HIV/AIDS*, States reaffirmed their commitment to “fulfil obligations to promote universal respect for and the observance and protection of all human rights and fundamental freedoms for all” in their responses to HIV.²⁵ They also renewed their commitment “to intensify national efforts to create enabling legal, social and policy frameworks in each national context in order to eliminate stigma, discrimination and violence related to HIV and promote access to HIV prevention, treatment, care and support.”²⁶ The *2011 Political Declaration* also calls on governments, employers and trade unions to take action to eliminate employment-related stigma and discrimination, taking into consideration relevant ILO guidelines. With regard to access to justice, States committed in the *2011 Political Declaration* to implement “programmes aimed at eliminating stigma and discrimination against people living with and affected by HIV, including their families, including through sensitizing police and judges, training health care workers in non-discrimination, confidentiality and informed consent, supporting national human rights learning campaigns,

²¹ Governments also recognized the importance of an enabling legal environment in promoting health equity and quality health care more generally at the World Conference on Social Determinants of Health in October 2011. In the *Rio Political Declaration on Social Determinants of Health*, States pledged to “reach out and work across and within all levels and sectors of government by promoting mechanisms for dialogue, problem-solving and health impact assessment with an equity focus to identify and promote policies, programmes, practices and legislative measures that may be instrumental for the goal pursued by this Political Declaration and to adapt or reform those harmful to health and health equity.” *Rio Political Declaration* at para. 13(2)(viii), 2011.

²² Declaration of Commitment on HIV/AIDS (2001), United Nations General Assembly, Special Session on HIV/AIDS (http://www.unaids.org/en/media/unaids/contentassets/dataimport/publications/irc-pub03/aidsdeclaration_en.pdf accessed 07 November 2011) and Political Declaration on HIV/AIDS (2006), 87th Plenary Meeting, United Nations General Assembly (http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/report/2006/20060615_hlm_politicaldeclaration_ares60262_en.pdf, accessed 07 November 2011).

²³ Declaration of Commitment on HIV/AIDS (2001), United Nations General Assembly, Special Session on HIV/AIDS, para. 69 (http://www.unaids.org/en/media/unaids/contentassets/dataimport/publications/irc-pub03/aidsdeclaration_en.pdf accessed 07 November 2011).

²⁴ Political Declaration on HIV/AIDS (2006), 87th Plenary Meeting, United Nations General Assembly (http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/report/2006/20060615_hlm_politicaldeclaration_ares60262_en.pdf, accessed 07 November 2011).

²⁵ Political Declaration on HIV/AIDS (2011), United Nations General Assembly, para 38 (http://www.un.org/ga/search/view_doc.asp?symbol=A/65/L.77, accessed 07 November 2011).

²⁶ *Id.* at para 77.

legal literacy, and legal services, as well as monitoring the impact of the legal environment on HIV prevention, treatment, care and support.”²⁷ States pledged to implement the Declaration’s commitments as consistent with “national laws, national development priorities and international human rights.”²⁸ Also in 2011 (July), Member States of the UN Economic and Social Council passed a resolution urging UNAIDS to support States in strengthening their national responses to HIV “in accordance with their specific epidemiological situation, national contexts and priorities.”²⁹

12. The *UNAIDS Strategy 2011-2015: Getting to Zero* stresses the importance of “protective social and legal environments to reach universal access to HIV prevention, treatment, care and support.” It urges States to implement protective laws and measures to ensure that all people benefit from HIV programmes and have access to justice regardless of health status, sexual orientation, drug use or sex work.³⁰ Moreover, it highlights specific goals and actions to ensure that the legal environment works for the HIV response, and not against it. This means generating more complete, timely and transparent information on country-level rights and legal frameworks; providing support for expanding programmes on legal literacy, legal assistance and law reform; and providing support to leadership to enhance the justice system in the context of HIV.³¹

WHAT IS THE “LEGAL ENVIRONMENT”?

13. The legal environment broadly consists of three components which are closely related. These are (a) access to justice; (b) law enforcement; and (c) law and regulations (formal or codified law, as well as jurisprudence, international law, customary law and religious law). Each component is critically important to enable an effective and rights-based response to HIV.

Access to Justice

14. Access to justice is a basic matter of governance and human rights. In the context of HIV, it involves policies and programmes that enable those living with and vulnerable to HIV infection to know their human rights, to know the laws in their country and community that apply to them in the context of HIV, to mobilize around those laws for HIV-related needs, to be protected by the police with regard to relevant laws, and to access the justice system when they have been harmed or to address a hindrance to effective HIV responses. Throughout the epidemic, those with access to justice have been able to use the justice system to protect themselves in the context of HIV and also, in some cases, to provoke policy and legal change through the courts that has increased their access to HIV services and treatment.

²⁷ *Id.* at para 80.

²⁸ *Id.* at para 2.

²⁹ Economic and Social Council of the United Nations Resolution, E/2011/L.46, 21 July 2011, para 3. See also the 2009 Resolution on UNAIDS of the Economic and Social Council of the United Nations (ECOSOC) encouraged countries and international organisations to improve responses to HIV in alignment with national HIV strategies and circumstances. ECOSOC Resolution, E/2009/L.23, 24 July 2009, para 15 and 19.

³⁰ *UNAIDS 2011-2015 Strategy: Getting to Zero* (2010), p 44

(http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2010/JC2034_UNAIDS_Strategy_en.pdf, accessed 07 November 2011).

³¹ *Id.* at 45.

Examples of programmes to increase access to justice

In India, the Tamil Nadu State AIDS Control Society, in partnership with the Tamil Nadu State Legal Services Authority and UNDP, operates legal aid services (referred to as ‘clinics’) at the district level. The clinics provide legal advice to people living with HIV twice a week, addressing a range of human rights issues including HIV-related discrimination and access to property and livelihood. In the Ukraine, a community-based organization called *Time to Live* has integrated the provision of legal services into local harm reduction programmes, thereby reaching out to people who use drugs. This integration both attracted new clients to the project, as well as improved relations with local police. More info on these initiatives can be found in *Annex: Case Studies*.

15. Access to justice remains a critical issue for those living with and vulnerable to HIV. Only 51% of all countries who reported have a legal aid system for HIV-related cases.³² In lower income countries, the percentage of legal aid systems for HIV-related cases is even smaller, with only 48% of low-income countries and 40% of lower-middle income countries reporting such systems.³³ Furthermore, only 56% of countries have a mechanism to record, document and address any cases of discrimination against people living with or vulnerable to HIV.³⁴ Despite these figures, there are examples of strong legal services being provided to populations in need. For example, in countries like Brazil and Argentina, well known for their effort to achieve universal access to HIV treatment, NGOs are supported by the State to provide legal services to people living with HIV. NGOs, such as *Gestos* in Brazil and *FEIM* and *CELS* in Argentina, have several legal cases registered.³⁵
16. Many steps can be taken to implement policies and programmes that increase access to justice in the context of HIV. The Joint Programme promotes seven key programmes which include:³⁶
 - a. **Law reform and legal audits** (See description in section on *Law and Regulations* below)
 - b. **Legal aid** or services for people living with HIV and other key populations which take various forms, such as **legal “hotlines”, legal services, community paralegals, and dispute resolution mechanisms**, including through religious and traditional leaders.³⁷
 - c. **Legal literacy (“know your rights and laws”)** programmes that empower those affected by HIV to know their rights and laws relevant in the context of the epidemic and draw them down into concrete demands in terms of gender equality, non-discrimination

³² See UNAIDS, *Global Report of the AIDS Epidemic, 2010*, pp 129-130 (http://www.unaids.org/globalreport/documents/20101123_GlobalReport_full_en.pdf, accessed 07 November 2011).

³³ *Id.*

³⁴ *Id.* at 128.

³⁵ www.gestos.org.

³⁶ These key programmes are examples of critical enablers from the UNAIDS Investment Framework. The programmes are deemed critical because they complement and are crucial to the success of HIV prevention, treatment, care and support programmes. For more information, please see Bernhard Schwartländer et. al., *Towards an improved investment approach for an effective response to HIV/AIDS*, *The Lancet*, 2011, 377: 2031-2041. See also UNAIDS Brochure “Key programmes to reduce stigma and discrimination and increase access to justice in national HIV responses”, 2011.

³⁷ For descriptions of these as well as guidance on scaling-up legal services, please refer to the toolkit developed by UNAIDS, UNDP, and IDLO (*Scaling-Up HIV-Related Legal Services*), available at <http://www.idlo.int/english/WhatWeDo/Programs/Health/Pages/Details.aspx?ItemsID=144>.

on basis of HIV and other social status, elimination of violence against women and girls, protection of the rights of the child, and access to HIV prevention, treatment, care and support.

- d. **Sensitization and training of health care providers** that focus on non-discrimination, duty to treat, informed consent, confidentiality, as well as help health care providers to avoid HIV infection, and if living with HIV, to avoid discrimination and gain access to HIV-related treatment, care and support services.
- e. **Sensitization and training of police, prosecutors and judges** (see description in Law Enforcement section below)
- f. **Programmes to change harmful gender norms and practices**, reduce violence against women, and empower women and girls affected by HIV economically and socially, including care-givers and child-headed households.
- g. **Stigma and discrimination reduction programmes** which seek to reduce stigma and discrimination based on HIV and related social status and create a social environment that encourages and enables people to come forward for HIV testing, to disclose their status safely and to take up and adhere to HIV prevention and treatment.

Law Enforcement

Working with the Police to Prevent Abuse of Sex Workers in the Philippines

Action for Health Initiative, Inc (ACHIEVE) in Manila is engaged in an initiative to improve communication, dialogue and cooperation among the police, sex venue owners and city government health officials. In partnership with Quezon City Health Department, ACHIEVE organised a dialogue involving the Quezon City Police Department and SAMACKA (the association of establishment/venue owners in Quezon City). This initiative is part of an ongoing strategy to improve cooperation among police, entertainment establishments and city health officials in relation to condom distribution in venues where sex is sold. More info on this case can be found in *Annex: Case Studies*.

17. It is important that law enforcement be protective in the context of HIV, particularly regarding protection from discrimination and against violence, for people living with HIV, women, children and other key populations, depending on the national epidemic. It is also important that law enforcement supports access to HIV prevention, treatment, care and support services for people living with HIV and other key populations. However, law enforcement can also be a barrier, particularly when it involves the illegal or abusive police practices described in paragraph 7.
18. One type of programme that helps to improve law enforcement in the context of HIV involves assessing and monitoring its impact on the provision of HIV services and on those living with and vulnerable to HIV. These assessments can help identify areas of improvement in order to implement more effective HIV responses. They look at how laws are enforced and how enforcement impacts issues such as HIV risk, access to HIV services, HIV-related stigma, and the ability of groups to organize, associate and participate meaningfully in the decisions and processes that affect them. The results of such assessments should feed into any necessary reviews of laws and policies.

19. Other programmes in this area might involve sensitization and training for police and judges that focus on non-discrimination, the rights and needs of those living with HIV and key populations, and support to access to HIV services. Programmes also involve working with police leadership to ensure (a) good policing practices and (b) pragmatic arrangements that help to ensure access to HIV prevention, care and treatment for individuals of key populations.³⁸ Other programmes might involve training of judges and prosecutors on HIV-related issues, such as how HIV is and is not transmitted, privacy and confidentiality needs of those before the courts, and the importance of the law to support access to HIV services.
20. HIV-related programmes for law enforcement should seek to help those who enforce the law to become knowledgeable about HIV both in terms of reducing their own HIV vulnerabilities, as well as helping to ensure that HIV services are easily accessible in the communities. Law enforcement programmes should also focus on the reduction of abuse and violence perpetrated by the police. For example, in India, to reduce the abuse that sex workers experienced from police officers, the organization *Veshya AIDS Mukabala Parishad* (VAMP) developed a booklet outlining legal and illegal police practices.³⁹ It served as a reminder that laws prohibiting abuse and violence apply to all, including the police. Since the introduction of the booklet, sex workers have felt more confident about their safety, and their interactions with law enforcement have improved.⁴⁰ Furthermore, while police still detain sex workers, once sex workers are detained, they are less likely to be abused.⁴¹ Working with law enforcement is critical to ensuring respect for human rights and effective HIV responses, as law enforcement impacts not only those living with and vulnerable to HIV, but also the provision of HIV prevention, treatment, care and support, particularly where it involves peer or community outreach. Moreover, it is important that this work be developed in alliance with NGOs, which should receive financial support for such work.

Laws and Regulations

21. Many countries have conducted legal audits that assess what laws (codified, traditional, religious) are relevant to or affect the HIV response and how these laws might be improved if necessary. For instance, some countries have passed or modified laws or used legal flexibilities to ensure access to treatment for antiretroviral medicines, striking a balance between the need to protect intellectual property rights and the need to provide treatment for people living with HIV (see box).⁴² Such assessments have also led to reforms of existing laws to ensure they apply

Using Laws and Regulations:

Using TRIPS flexibilities, the Brazilian Government has successfully lowered the price of various antiretroviral medications. This resulted in an estimated cost-saving of approximately \$1.2 billion on antiretroviral purchasing costs between 2001 and 2005, hereby expanding access to HIV medication and guaranteeing access to treatment for Brazilian residents living with HIV. More info on this case can be found in *Annex: Case Studies*.

³⁸ Training programmes could also be useful for those directly involved or in contact with key populations. For example, in regards to sex work, trainings and/or education programmes could be developed for clients and brothel managers, with the aim of reducing violence and abuse against sex workers.

³⁹ UNFPA, APNSW and UNAIDS, *Building Partnerships on HIV and Sex Work* (2011), p 21.

⁴⁰ *Id.*

⁴¹ AIDSTAR-One, SANGRAM's Collectives (http://www.aidstar-one.com/focus_areas/gender/resources/case_study_series/sangrams_collectives#tab_5, accessed 07 November 2011).

⁴² UNDP, WHO and UNAIDS, *Policy Brief: Using TRIPS Flexibilities to Improve Access to HIV Treatment*, (http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2049_PolicyBrief_TRIPS_en.pdf, accessed 07 November 2011).

appropriately to HIV, e.g. ensuring that non-discrimination laws apply to those living with HIV, and/or result in the passing of omnibus HIV laws that govern a wide-ranging number of issues relevant to the national AIDS response and to those living with and vulnerable to HIV.

22. International legal human rights instruments can also be used to complement national HIV legislation. For instance, States could rely on their obligations to uphold the right to health, as outlined in Article 12 of the *International Covenant on Economic, Social and Cultural Rights*, as a justification to strengthen domestic support for laws that facilitate effective responses to HIV or they could directly incorporate the right to health into their constitutions, providing a legal basis for the provision of HIV prevention and treatment. Throughout the epidemic, international and national laws have been used successfully by people living with HIV to demand their rights in the courts to non-discrimination and access to treatment.⁴³ In addition to international law, international guidelines, such as the *International Guidelines on HIV and Human Rights (2006)* and the *ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200)*, could be cited in national court decisions that uphold the rights of those living with and vulnerable to HIV.⁴⁴
23. Moreover, in a number of regions, there have also been efforts to promote “model legislation” in the context of HIV. An example of this type of legislation is the 2008 Southern Africa Development Community *Model Law on HIV in Southern Africa*, which provides governments with legal text that they can adopt to support effective prevention, treatment, care and anti-discrimination for people living with and populations vulnerable to HIV.⁴⁵ The Canadian HIV/AIDS Legal Network has also produced draft model legislation, based on best practices across the world, regarding the protection of women in the context of HIV and addressing HIV-related vulnerabilities of people who use drugs.⁴⁶
24. In addition to legislation, binding law can take other forms, such as collective bargaining agreements and court decisions. These too help to create an enabling legal environment. For example, in the 2009 case of *Naz Foundation Trust v. Government of NTC* from India, the High Court of Delhi decriminalized consensual sex between men.⁴⁷ Many of the arguments made in the court’s decisions related to the increased vulnerability to HIV infection due to the law that criminalized consensual sex between men. Moreover, in 2011, the Brazilian Federal Superior Labour Tribunal held in two separate cases that employers violated the rights of HIV-positive workers by unfairly dismissing them from their posts

⁴³ Cases come from a range of countries, such as Venezuela, South Africa, Botswana and the United Kingdom. For a description of several such cases, see *Courting Rights: Case Studies in Litigating the Human Rights of People Living with HIV*, CHLN/UNAIDS Publication (2006) (http://data.unaids.org/Publications/IRC-pub07/jc1189-courtingrights_en.pdf, accessed 07 November 2011).

⁴⁴ OHCHR and UNAIDS, *International Guidelines for HIV and Human Rights*, 2006, (http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf, accessed 07 November 2011). International Labour Organisation, *Recommendation concerning HIV and AIDS and the World of Work, 2010, No. 200* (http://www.ilo.org/aids/lang--en/docName--WCMS_142706/index.htm, accessed 07 November 2011). For specific examples involving employment discrimination, see *Allpass v. Mooikloof Estates*, Case No. JS178/09, *Adriana Ricardo da Rosa contra Sociedade de Ônibus Porto Alegre Ltda. – SOPAL* (Case No. TST-RR-104900-64.2002.5.04.0022; *Edson Osório Leites contra SOGAL – Sociedade de Ônibus Gaúcha Ltda* (Case No. TST-RR-61600-92.2005.5.04.0201). See also discussion of case law in paragraph 21.

⁴⁵ SADC, *Model Law on HIV in Southern Africa*, 2008 (<http://www.sadcpf.org/hiv/aid/downloads/SADC%20PF%20Model%20law%20on%20HIV%20November%202008%20final.pdf>, accessed 07 November 2011). For reception of law, see *Judges welcome SADC model law on HIV/AIDS*, (<http://www.africafiles.org/article.asp?ID=22152>, accessed 07 November 2011).

⁴⁶ The CHLN’s model law covers a variety of issues related to HIV, including criminal law, treatment for drug dependence, sterile syringe programs, and stigma and discrimination. It is available at <http://www.aidslaw.ca/EN/modellaw/english.htm>.

⁴⁷ *Naz Foundation (India) Trust v. Government of NTC* (2009) 160 DLT 277, (http://www.nazindia.org/judgement_377.pdf, accessed 07 November 2011).

because of their HIV status.⁴⁸ The Tribunal cited the *ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200)* in its decisions, noting that real or perceived HIV status should never be a cause for termination of employment.⁴⁹ It concluded that the workers should be reinstated and compensated for lost wages and benefits.⁵⁰

25. It is important to remember that States may choose from a wide range of options when addressing their HIV responses through law reform. These options range from not making the implementation of the law a priority, passing implementing regulations or guidelines that circumscribe the circumstances in which the law is to be implemented, reforming the law, or repealing it. With regard to reforming criminal law, this too can take many forms. Prosecutorial guidelines can be issued that describe which types of cases should be prosecuted under the law and which should not. Reforming the criminal law can also involve addressing the behaviour or activity in question in a different manner. Some options open to a State are (a) legalizing the conduct, (b) decriminalizing it, (c) de-penalizing it and/or (d) regulating it.
26. Though there is no generally agreed-upon definition of these terms, the authors in one article have defined “legalization” as “the complete removal of sanctions, making a certain behaviour legal and applying no criminal or administrative penalty”; “decriminalization” as the removal of criminal sanctions, such as incarceration, with the option to use civil fines; and “de-penalization” as the decision by law enforcement not to criminally penalize offenders, by not arresting or prosecuting them.⁵¹
27. Thus, it should be emphasised that “decriminalization” does not necessarily mean “legalization”. In some cases where States decriminalize, they may choose to still penalize certain conduct (as Portugal has done with regard to those who possess drugs for personal use⁵²) or to regulate the behaviours in question (as New Zealand has done with regard to sex work⁵³). In the context of HIV, the concern is that criminalization (the harshest sanction of society) of some key populations at risk of HIV infection, among other things, drives these populations underground and away from health services, including those related to HIV. Therefore, different forms of decriminalization can be a critical step toward supporting greater access to HIV services among those formerly criminalized.

⁴⁸ See *Adriana Ricardo da Rosa contra Sociedade de Ônibus Porto Alegre Ltda.* – SOPAL (Case No. TST-RR-104900-64.2002.5.04.0022, issued 3 August 2011); and *Edson Osório Leites contra SOGAL – Sociedade de Ônibus Gaúcha Ltda* (Case No. TST-RR-61600-92.2005.5.04.0201, issued 22 June 2011).

⁴⁹ Citing *ILO Convention No. 111 and Recommendation No. 200, Brazilian Federal Superior Labour Tribunal (TST) affirms the rights of HIV-positive workers in two cases of unfair dismissal*, ILO News, 23 September 2011 (http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_163753/lang--es/index.htm, accessed 07 November 2011).

⁵⁰ *Id.*

⁵¹ Hughes, Caitlin Elizabeth and Alex Stevens, *What can we learn from the Portuguese decriminalization of illicit drugs?* Brit. J. Criminol. (2010) 50, p. 999.

⁵² *Id.* For more information, please see Annex: Case Studies.

⁵³ For example see the New Zealand *Prostitution Reform Act* (2003) which states: “The purpose of this Act is to decriminalize prostitution (while not endorsing or morally sanctioning prostitution or its use and to create a framework that (a) safeguards the human rights of sex workers and protects them from exploitation: (b) promotes the welfare and occupational health and safety of sex workers: (c) is conducive to public health: (d) prohibits the use in prostitution of persons under 18 years of age: (e) implements certain other related reforms. See the New Zealand *Prostitution Reform Act* 2003, No. 28 (as at 29 November 2010), Part I, section 3 (<http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197821.html>, accessed 08 November 2011). For more information, please see Annex: Case Studies.

28. Policies and programmes to address laws and regulations relating to HIV might involve establishing a Parliamentary Committee on HIV and/or health, performing a legal audit of national laws that impact HIV, putting in place new laws, or changing existing laws and regulations to ensure that the law benefits individuals and groups in the HIV response and provides a legal framework for the response (e.g. multi-sectoral government structures and accountabilities; non-discrimination on the basis of HIV; right to prevention, treatment, care and support; reduction in tariffs and taxes on import of HIV-related commodities; using existing flexibilities in intellectual property law). Programmes might also mean working with traditional and religious leaders in these areas to find ways to ensure that customary and religious laws support non-discrimination in the context of HIV, the protection of women and girls, and access to HIV services for key populations.

POSITIVE DEVELOPMENTS

29. Despite the challenges regarding the creation of enabling legal environments, it is important to note that over the years of responding to the HIV epidemic, many successes have been achieved in strengthening such environments. As of 2010, 65% percent of countries reported having laws or regulations that specify protections for key populations, such as women, young people, men who have sex with men, people who inject drugs, sex workers, prisoners and migrants.⁵⁴ This is a welcome increase from the 32% of countries that reported on the same category in 2004.⁵⁵ Recognition of the importance of the legal environment has enabled States, through the three components (laws, law enforcement and access to justice), to protect and empower those vulnerable to HIV, to help them avoid HIV infection, and for those living with HIV, to access HIV-related prevention, treatment, care and support services so that they may lead full and dignified lives.

30. Positive examples include anti-discrimination laws that have helped people living with HIV keep their jobs and their homes and look after their families.⁵⁶ Laws to protect confidentiality have contributed to increased confidence in health systems, encouraging people to learn their HIV status and to access HIV prevention and treatment. Laws that guarantee property and inheritance rights, coupled with legal services, have helped to mitigate the social and economic burdens of HIV for women and girls. Laws, law enforcement and access to justice have also protected women and girls from domestic and gender-based violence, as well as helped to address the HIV-related needs of survivors of such violence. Stigma reduction and legal literacy programmes have increased the ability of people vulnerable to HIV or living with HIV to mobilize around and petition government actors on their HIV prevention and treatment needs. HIV sensitization programmes for police and judges have resulted in law enforcement supporting outreach programmes for key populations, as well as ensuring non-discrimination and protection from violence in the context of HIV.

Global Commission on HIV and the Law

31. One of the flagship initiatives on the issue of the legal environment is the *Global Commission on HIV and the Law* (Commission), led by UNDP on behalf of the Joint United

⁵⁴ UNAIDS, *Report on the Global AIDS Epidemic, 2010*, p 128

(http://www.unaids.org/globalreport/documents/20101123_GlobalReport_full_en.pdf, accessed 07 November 2011).

⁵⁵ *Id.*

⁵⁶ See *HIV, Disability and Discrimination: making the links in international and domestic human rights law*, Journal of International AIDS Society, 2009.

Nations Programme on HIV/AIDS.⁵⁷ The Commission is an 18-month initiative, established to interrogate the relationship between legal responses, human rights and HIV and to develop actionable, evidence-informed, rights-based recommendations for effective HIV responses that mitigate the impact of HIV and promote and protect the human rights of people living with and most vulnerable to HIV. The work of the Commission has involved not only examination of the ways in which legal environments can block effective HIV responses, but also on how the laws, law enforcement and access to justice can support more effective HIV responses, as well as protect the human rights of the marginalized and disempowered in the context of HIV. The role of legal environments has been considered by the Commission through focus on four key areas: (a) laws and practices that effectively criminalize and discriminate against people living with HIV and those vulnerable to HIV; (b) laws and practices that mitigate or sustain violence and discrimination as experienced by women and children; and (c) laws and practices that facilitate or impede HIV-related treatment.

32. The Commission is based on three mutually reinforcing axes: 15 Commissioners (eminent and influential individuals from a range of backgrounds across the globe); a Technical Advisory Group comprising 23 experts on human rights, law and HIV, including people living with HIV and other key populations; and regional dialogues (held in Asia Pacific, the Caribbean, the Middle East and North Africa, Eastern Europe and Central Asia, Africa, Latin America and High Income countries). In support of the regional dialogues and to inform the work of the Commission, the Commission has received over 640 civil society submissions concerning HIV and aspects of the legal environment from 133 countries in more than 10 different languages.⁵⁸ Through its work, the Commission has drawn together and analysed the evidence base for enabling legal environments for effective HIV responses, by increasing awareness among key government stakeholders and engaging with civil society to strengthen their input into the legal aspects of the response, in addition to other objectives. The Commission will formally issue its findings and recommendations in early 2012. Several Commissioners and members of the Technical Advisory Group will be available to participate in the Thematic Segment and provide insights into the issues and ways forward.

CONCLUSION

33. Given the importance of legal environments to national HIV responses and the commitments made by States to ensure they are enabling, the Thematic Segment provides an invaluable opportunity to focus on the policies and programmes in terms of law, law enforcement and access to justice that will best support, sustain and help to scale-up effective HIV responses. This paper has provided examples of how States can take measures to assess how their laws (formal, religious and customary) impact the national HIV response and to reform those laws as necessary to improve the response in the context of the national epidemic. It has also shown that much can be done to encourage and enable the law enforcement community (police, prosecutors and judges) to provide leadership and support to increase

⁵⁷ www.hivalwcommission.org.

⁵⁸ The regional dialogues of the *Global Commission on HIV and the Law* brought together 619 Parliamentarians, police, judiciary, human rights institutions, government experts from Ministries of Health, Justice, Development, people living with HIV, sex workers, people who use drugs, men who have sex with men, transgender people, religious leaders, civil society organizations and community based groups working on HIV, health, development and human rights to discuss positive and negative interactions between law, legislative reform, law enforcement practices, access to justice and public health responses.

access to HIV prevention, treatment, care and support and to minimize discrimination, violence and marginalization in the context of HIV. Finally, it has described how access to justice in the context of the national response to HIV is critical for those living with and vulnerable to HIV (as it is for any citizen) to be able to live productive and dignified lives, as well as to seek redress and policy change through litigation. In every national legal environment and in each component of the legal environment (law, law enforcement and access to justice), there is much that can be accomplished through programmatic and pragmatic efforts tailored to the legal challenges posed by the national epidemic. The Thematic Segment will allow participants to review current experiences, discuss possible partnerships and analyze best practices regarding these efforts and should stimulate dialogue, exchanges and learning within the UNAIDS Programme Coordinating Board on this important topic.

ANNEX: CASE STUDIES

ACCESS TO JUSTICE

Defending the Rights of People Living with and Affected by HIV: *Association de Protection Contre Le Sida (APCS)*⁵⁹ – ALGERIA

1. This case study highlights legal remedies for individuals to access treatment and health services, as well as issues related to employment and housing. In Algeria, several organisations working in HIV are increasingly addressing the legal rights of people living with HIV. Some are partnering with human rights organisations to develop their capacities to effectively address legal injustices, and others are benefiting from the volunteer support of legal professionals who regularly collaborate with the organisation to put forward legal complaints against rights abuses. The *Association de Protection Contre le SIDA (APCS)* in Algeria, through its partnership with *Le Fond de Droit Humain Mondial (FDHM)*, is working to challenge, through the courts, stigma and discrimination against people living with HIV. This partnership has allowed APCS to also fight discrimination against men having sex with men, vulnerable women affected by HIV, and migrants living in Algeria.
2. For example, in May 2010, the city of Oran experienced a stock out of anti-retroviral therapy which lasted over three months. This resulted in a formal legal complaint by people living with HIV and APCS to the Oran Tribunal citing “non-assistance to vulnerable individuals.” The Director of APCS submitted the legal complaint on behalf of seven individuals living with HIV. This complaint was followed by advocating in the local media of the treatment stock-out in the article “People Living with HIV Seek Justice.” The article underscored the sentiments of people living with HIV citing that “this rupture in treatment is not only scandalous but unacceptable and takes hostage of individuals who are fragile and vulnerable, who do not even have the right to fully express their anger.” The legal complaint, together with the advocacy efforts, appeared to help secure action by the Minister of Health to ameliorate the break in treatment.
3. APCS has also been able to pursue legal cases in which people living with HIV have been evicted from their residence when their HIV status became known, cases in which medical professionals have illegally disclosed the status of a people living with HIV to the employer, and in which people living with HIV experienced stigma and discrimination by health workers. Furthermore, APCS has been working simultaneously to develop the advocacy capacities of people living with HIV themselves to address these rights abuses. For example, recently groups of people living with HIV who are involved in community support groups known as “Groupes des Paroles” have mobilised themselves to take their complaints on stigma and discrimination to local authorities. Therefore, the benefit of the partnership with FDHM has not only been to support the capacities of organizations to secure the legal rights of people living with HIV but also of individuals to secure their rights through the law.

⁵⁹ Taken from UNAIDS, *Regional Report on the Middle East and North Africa* (forthcoming). On file with author. For more information on APCS, please see <http://www.pcpalgerie.org/?Association-de-Protection-Contre>.

Partnership between the State AIDS Control Society, the government legal aid office and networks of people living with HIV⁶⁰ – INDIA

4. This case study highlights an example of a successful multi-sectoral partnership on ensuring access to justice. The Tamil Nadu State AIDS Control Society, in partnership with the Tamil Nadu State Legal Services Authority and UNDP, operates legal aid services (referred to as “clinics”) at the district level. This programme builds on the success of a pilot legal aid service opened in the Government General Hospital.
5. The Clinics provide legal advice to people living with HIV twice a week, addressing a range of human rights issues including HIV-related discrimination and access to property and employment. All of the clinics function with lawyers provided by the State Legal Services Authority, one social worker and two outreach workers. Lawyers providing legal services and assisting in preparing cases are drawn from a pool of lawyers already sensitized to human rights and HIV issues through training by the *Lawyers Collective HIV/AIDS Unit*, a non-governmental organization comprising lawyers with expertise on HIV and legal rights in India. The legal aid services programme has a three - level structure:
 - a. Block-level citizen vigilance groups, which carry out legal literacy activities to raise awareness in communities of human rights and work in collaboration with the local network of people living with HIV;
 - b. Legal clinics, which provide free legal advice, assistance and psychological support where required, with outreach workers helping to ensure that people living with HIV can access the available legal services; and
 - c. The Rights Forum at the State AIDS Control Society, which provides expert guidance to the government and other stakeholders, monitors the work of the legal clinics at the district level and provides a multi-sectoral forum for addressing rights issues in the state.
6. The programme has empowered people living with and affected by HIV to claim HIV-related rights under the law and has contributed to the reduction of HIV-related stigma, discrimination and weak access to justice - all which hinder access to HIV prevention, treatment, care and support. Legal aid clinics were operating in five districts in 2009. Following the success of the programme, the government decided to scale up the programme to all 70 high-burden districts.

Use of traditional legal systems to reinstate disinherited women and children⁶¹ – KENYA

7. This case study highlights how the ways in which customary laws are interpreted and enforced can reduce the harmful impact of these laws on women and their vulnerability to HIV. The *Kenya Legal and Ethical Issues Network on HIV/AIDS* (KELIN) supports elders to act as mediators in the resolution of inheritance disputes. Training is provided to elders, widows and local law enforcement officials to create awareness on human rights related to

⁶⁰ Taken from Mohan H. (2007). *Local governance and empowerment for sustainable HIV responses: experiences from India*. Governance of HIV/AIDS responses: conference papers. University of Warwick, UK. See also http://www.tn.gov.in/policynotes/pdf/health/aids_control_society.pdf and UNAIDS, UNDP and IDLO, *Tool-kit: scaling up HIV-related legal services*, 2009, p 22.

⁶¹ Taken from Africa Regional Dialogue, *Use of customary law in Kenya to address inheritance practices that mitigate or sustain discrimination as lived by women and children* (2011).

HIV. The elders are also trained in alternative dispute resolution approaches to lead the mediation of disputes between widows and their in-laws. This process aims at reconciliation, based on customary law and guided by human rights norms. The approach recognizes that customary law evolves and can incorporate gender equality considerations, and that local mechanisms for enforcing customary law can be strengthened to facilitate the promotion and protection of women's rights.

8. Furthermore, the *KELIN Cultural Structures Project* (CSP) has also succeeded in securing improved rights for women in the context of a customary law system. Through a series of community dialogue forums and human rights training programs, culturally appropriate legal solutions to uphold women's inheritance rights have been successfully formulated. This project has resulted in access to inheritance rights for many women, and its approach merits consideration as part of a comprehensive rights-based response to HIV epidemics in Kenya and elsewhere.⁶²

Access to justice programme including legal services, legal literacy and capacity-building of the justice sector⁶³ – RWANDA

9. This case study highlights an access to justice programme that uses a variety of interlinked and mutually re-enforcing activities. Key challenges faced by women in Rwanda which increase their vulnerability to HIV include: (a) gender-based violence, including sexual violence, (b) a lack of autonomy to decide on matters affecting them, (c) property rights violations, and (d) lack of legal aid services for victims of violence. *The Forum for Activists against HIV/AIDS Scourge* (FAAS) has been working with a diverse range of partners to devise more effective means to protect women and girls from gender-based violence and to raise awareness of laws that protect women's property rights amongst women and girls, and amongst key stakeholders. Partners have included the national *Women's Machinery*, the judiciary, the Bar Association, the National AIDS Control Commission, the National Human Rights Commission, the National Police, Parliament and the UN family.
10. Through its legal aid clinic, FAAS pursues justice for women who have experienced gender-based violence or violations of property rights. FAAS has also adopted a combination of legal literacy ("know your rights") awareness programs and paralegal support services for women living with and affected by HIV and AIDS who face violence or property rights abuses. Increased understanding and awareness of their rights enables vulnerable groups to resist discrimination. For example, following the "Know Your Rights" campaign run by FAAS, people affected by HIV resisted discrimination by banks and insurance companies in granting loans and insurance policies.
11. FAAS also initiated a training programme for the police, judges, advocates, prosecutors, and community leaders to enable them to respond better to the claims of women and girls living with and affected by HIV. The results of this programme include: the empowerment of women to protect themselves from human rights violations including those that increase their vulnerability to HIV, increased capacity within the justice system to protect the rights of

⁶² For more information on KELIN and its Cultural Structures Project, please see <http://kelinkenya.org/our-work/legal-support-and-litigation/>.

⁶³ Taken from UNAIDS and UNDP, *A Win for Women is a Win for All: Update on the UNAIDS Agenda for Accelerated Country Action for Women, Girls, Gender Equality and HIV and the Universal Access for Women and Girls Now! Initiative*, July 2010. See also *Gender-sensitivity of the AIDS response*, 26th meeting of the UNAIDS Programme Coordinating Board, 22-24 June 2010, p 11.

women, and increased accountability within the government, resulting in greater efforts to translate political commitments into actions.

Legal services integrated into harm reduction services⁶⁴ – UKRAINE

12. This case study provides an example of how legal services can be integrated into existing HIV programmes, ensuring greater uptake of HIV services. Three organizations in Ukraine, *Time of Life*, *Mangust* and *Light of Hope*, have legal services integrated into harm reduction services. These organizations provide services to people living with HIV, people who use drugs, prisoners and former prisoners. Other services provided with this legal aid include treatment, back-up for support groups and harm reduction services. Some employ full-time lawyers, while others contract with private law firms that provide legal services as needed.
13. These programmes have increased access to legal services for populations in need by placing lawyers at sites where people who inject drugs access harm reduction services, such as needle and syringe programmes or methadone. The provision of legal services has drawn in new clients, resulting in an increased uptake of harm reduction services. The development of a relationship of trust between the harm reduction service providers and the clients, and empowering the clients with information and means of seeking legal redress, has resulted in improved interactions with law enforcement.

“Simply having a legal professional on staff seemed to provide a salient benefit to programmes and their clients. In Lviv, clients said that they were certain that the fact that they had access to legal assistance influenced the way the police treated them.”⁶⁵

14. Legal issues addressed include alleged police misconduct (illegal search and seizure, obtaining confessions under duress, bribery, refusing access to HIV treatment or methadone in police custody, prosecuting clean syringe exchange), discrimination and child custody issues. Services include legal information and referral, telephone information and advice, court representation, mediation by a lawyer or social worker, legal rights education and outreach. Thus, it appears that enforcing the rights of people who use drugs through the justice system helps to reduce obstacles, such as discrimination, abuse and marginalization, to access to HIV prevention (including harm reduction services) and treatment.

LAW ENFORCEMENT

Supreme Court of Canada keeps open a safe injecting site in Vancouver⁶⁶ – CANADA

⁶⁴ Taken from Carey C, Tolopilo A (2008). *Tipping the balance: why legal services are essential for the health of drug users in Ukraine*, New York, Open Society Institute (http://www.soros.org/initiatives/health/focus/law/articles_publications/publications/balance_20080624). See also UNAIDS, UNDP and IDLO, *Tool-kit: scaling up HIV-related legal services*, 2009, p 23.

⁶⁵ *Id.* at 26.

⁶⁶ *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 (<http://scc.lexum.org/en/2011/2011scc44/2011scc44.html>). See also *International Coalition Applauds Supreme Court Decision to*

15. On 30 September 2011, the Supreme Court of Canada issued a decision to keep open *Insite*, a supervised safe injection site in Vancouver. Citing the *Canadian Charter of Rights and Freedoms*, the Court noted that all Canadians, including people who use drugs, should have their human rights upheld and respected. It reasoned that closing down *Insite* would be tantamount to a rights violation for a marginalized and key population. Moreover, the Court cited several public health reasons to keep *Insite* open, and specifically noted the danger of HIV transmission from sharing needles. Importantly, the Court stated that people who use drugs should not be forced to choose between abstinence and forgoing health services; it noted that “successful treatment requires acknowledgment of the difficulties of reaching a marginalized population with complex mental, physical, and emotional health issues.”

Working with police⁶⁷ – PHILIPPINES and THAILAND

16. This case study highlights a number of ways to successfully work with the police to improve the environment for condom use and access to HIV services. *Action for Health Initiative, Inc (ACHIEVE)* in Manila engaged in an initiative to improve communication, dialogue and cooperation among the police, sex venue owners and city government health officials. In partnership with Quezon City Health Department, *ACHIEVE* organised a dialogue involving the Quezon City Police Department and *SAMACKA* (the association of establishment/venue owners in Quezon City). This initiative is in its formative stages and is part of an ongoing strategy to improve cooperation among police, entertainment establishments and city health officials in relation to condom distribution in venues where sex is sold. While the project is ongoing, this first dialogue helped to clarify inconsistencies between local ordinances mandating the health department to distribute condoms in ‘entertainment’ establishments and provisions of anti-trafficking legislation used by police to justify detention of sex workers on the basis of condom possession...
17. A similar approach was successful in Bangkok to protect the rights of men who have sex with men and transgender persons. In 2000, police were using condoms as evidence of sex work to close venues and arrest managers and sex workers. The impact was a dramatic reduction in the use of condoms when HIV incidence was increasing sharply among men who have sex with men and transgender people. The *Gay Sauna Initiative* from *Rainbow Sky* and *Bangkok Rainbow* (two local NGOs) responded to this situation by lobbying for exemptions for gay saunas in the interests of public health. The *Australian Federation of AIDS Organisations* assisted *Rainbow Sky* and *Bangkok Rainbow* by providing funding and support to set up a meeting among representatives from the Thai Ministry of the Interior, the Department of Health, sauna owners and police. The result was an agreement by the Ministry of the Interior to provide letters to local police stations instructing them to take a “hands-off approach” to the city’s gay saunas. Copies of the letter were provided to gay sauna owners who then kept these letters at their receptions to show to police teams that came to the site. Condoms continued to be made available in the saunas, with no threat of repercussion for their use in those settings.

The labour rights of sex workers⁶⁸ – SOUTH AFRICA

Uphold Human Rights and Keep Insite Open (<http://www.idpc.net/sites/default/files/alerts/Statement-on-Supreme-Court-decision.pdf>).

⁶⁷ Taken from *Towards Universal Access: Examples of Municipal HIV Programming for Men who have Sex with Men and Transgender People in Six Asian Cities*, UNDP, 2011.

18. This case study highlights how law enforcement approaches can also reduce the negative impact of criminalization on the rights of key populations. Kylie, a sex worker dismissed unfairly from a massage parlour in Cape Town, filed an unfair termination claim under the South African Labour Relations Act and had her dispute referred to the Commission of Conciliation, Mediation and Arbitration.⁶⁹ The Commissioner ruled that the Commission of Conciliation, Mediation and Arbitration lacked jurisdiction to arbitrate the claim as Kylie's contract of employment was for an unlawful purpose (sex work - which is illegal in South Africa), and was accordingly invalid.⁷⁰ On appeal, the Labour Appeals Court found that the Commission of Conciliation, Mediation and Arbitration had the necessary jurisdiction to determine the dispute between the parties involved.⁷¹ The basis for the decision was Section 23 of the Constitution, which affords everyone the right to fair labour practices.⁷² The Labour Appeals Court held that sex workers fall within the definition of "everyone" and that they have the right to be treated with dignity by their employers.⁷³ The Court noted explicitly that the fact that sex work is illegal in South Africa does not "destroy all the constitutional protections which may be enjoyed by the appellant, were they not to be a sex worker."⁷⁴ However, the Court specified that the decision does not mean that the full range of remedies under the Labour Relations Act will be available in every case; rather, it stated that the Act gives considerable flexibility to a court to use the Act's provisions when they can reduce an applicant's vulnerability, exposure to exploitation and erosion of dignity.⁷⁵

LAWS AND REGULATIONS

Price negotiations and compulsory licenses for antiretroviral medications⁷⁶ – BRAZIL

19. This case study highlights how the flexibilities of the World Trade Organization (WTO) Agreement on Trade-Related Aspects on Intellectual Property Rights (TRIPS) allow countries to increase access to HIV treatment through passing laws that alter the standard intellectual property rights protected by the TRIPS agreement. Using the threat of compulsory licensing (one of the TRIPS flexibilities), the Brazilian Government has successfully lowered the price of various antiretroviral medications in 2001 (efavirenz and nelfinavir), 2003 (lopinavir), 2005 (lopinavir and ritonavir) and 2006 (tenofovir). In 2007, Brazil passed the laws necessary to issue a compulsory license for efavirenz, a critical antiretroviral medication used by one third of Brazilians on the national HIV treatment. The price decreased to USD 0.45 per dose from USD 1.60. It is estimated that the Brazilian Government has saved approximately \$1.2 billion on antiretroviral purchasing costs between 2001 and 2005, expanding access to HIV medication and guaranteeing access to treatment for Brazilian residents living with HIV. It is also estimated that 38% of the 200,000 patients that benefited from the health system in 2007 used efavirenz.

⁶⁸ Taken from *Kylie v. Commission for Conciliation Mediation and Arbitration and others*, (CA10/08) (2010) 31 ILJ 1600 (<http://www.saflii.org/za/cases/ZALAC/2010/8.html>, accessed 14 November 2011). See also Claudine T. (2011). *The Extension of Employment Rights to Employees who Work Unlawfully* (<http://www.nmmu.ac.za/documents/theses/TANJA%20CLAUDINE%20%20GAUSS.pdf>).

⁶⁹ *Kylie v. Commission for Conciliation Mediation and Arbitration and others*, (CA10/08) (2010) 31 ILJ 1600, para. 1-2 (<http://www.saflii.org/za/cases/ZALAC/2010/8.html>, accessed 14 November 2011).

⁷⁰ *Id.*

⁷¹ *Id.* at para. 61.

⁷² *Id.* at para. 21-22.

⁷³ *Id.* at para 26.

⁷⁴ *Id.* at para 54

⁷⁵ *Id.* at para. 52 and 54.

⁷⁶ Taken from UNAIDS/WHO/UNDP *Policy Brief – Using TRIPS Flexibilities to Improve Access to Treatment*, p 6.

Decriminalization of homosexuality⁷⁷ – FIJI

20. In 2007, the UNAIDS Secretariat and UNDP reviewed the legislation of 15 Pacific Island countries relevant to HIV issues, including discrimination, ethics, access to treatment and privacy and confidentiality. The laws of Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu were included in this project.
21. Following this review, the UNDP Pacific Centre, along with the UNAIDS Secretariat's Pacific office and the Regional Rights Resource Team, convened a meeting in New Zealand with Attorney Generals and Ministers of Health from the countries involved in the project. Together with leading international and regional experts, they discussed HIV, the law and human rights in relation to the specific national laws in the region that impact the response to HIV. The aim was to better support effective and rights-based legal responses to the epidemic.
22. The Attorney Generals and Ministers of Health then called for the review, reform and enactment of appropriate legislation that reinforces human rights to protect and ensure the dignity of all people affected by HIV; promotes an integrated response to HIV taking into account the interrelation between sexual and reproductive rights and prevention of HIV; and further protects the rights of people in communities, regardless of gender, sexuality, sexual or gender identity, or other defining characteristic.
23. As a result of this initial UN-sponsored consultation, the Republic of the Fiji Islands requested technical assistance from the UN to help draft comprehensive rights-based HIV legislation for the country. Parallel to the drafting and community consultation process for the national HIV Decree, and based on the High court's ruling in the 2005 case of *McCoskar v. State*, in which the Court overturned the convictions of two men for "unnatural offences" based on the principles of equality and privacy,⁷⁸ the government removed the colonial era law criminalizing sex between men. The Fiji National Crimes degree, passed 1 February 2010, removes all clauses about "sodomy" and "unnatural acts" and uses gender neutral language in the remainder of the sexual offences section. With this legislation, Fiji became the first Pacific Island nation with colonial-era sodomy laws to formally decriminalize sex between men.

Workshop on legislative frameworks and HIV law: ordinance to amend the national HIV law⁷⁹ – GUINEA

24. This case study highlights how South-South learning and experience-sharing can influence positive changes to national laws. In April 2008, representatives from 15 countries in West and Central Africa convened for a workshop in Dakar on developing and amending legislative frameworks for the HIV response. The workshop was attended by parliamentarians, human rights specialists, jurists, the UNAIDS family, and civil society

⁷⁷ Taken from UNAIDS, *Feature Story, Fiji first Pacific Island nation with colonial-era sodomy laws to formally to decriminalize homosexuality*, 04 March 2010, <http://www.unaids.org/en/resources/presscentre/featurestories/2010/march/20100304fiji/>.

⁷⁸ *McCoskar v. State*, FJHC 500 (2005) (<http://www.pacii.org/fj/cases/FJHC/2005/500.html>, accessed 14 November 2011).

⁷⁹ From UNAIDS, *Feature Story, Human rights and gender in HIV-related legal frameworks*, 28 April 2008, <http://www.unaids.org/en/resources/presscentre/featurestories/2008/april/20080428humanrightsandgenderinhivrelatedle/>.

members, including people living with HIV and representatives of National AIDS Councils. The meeting identified challenges, opportunities and ways to ensure the incorporation of human rights and gender issues in the adoption and amendment of HIV-related legislation. Participants discussed several legal issues related to HIV and human rights, including mandatory HIV testing, confidentiality or disclosure of HIV information, the criminalization of HIV transmission, and the rights of women and other vulnerable groups. At the workshop, participants agreed to establish national working groups to review and identify key areas for (re)consideration in their HIV legislation. These working groups would include civil society members, representatives from government, parliamentarians and members of national AIDS commissions.

25. The Republic of Guinea was one of the countries present at the 2008 workshop in Dakar. After the meeting, Guinea formed a working group to review and amend its existing HIV law. After identifying key areas for reconsideration, the working group, with the help of a national consultant, drafted a new proposed law. The draft was circulated amongst several stakeholders, including members of civil society, government and people living with HIV. After obtaining a consensus on the draft law, representatives took it to the Government for approval. On 29 October 2009, the Government of Guinea passed the ordinance which revised its existing HIV law. The ordinance provides for access to age-appropriate HIV-related education and information for adolescents and young people. It also has stronger protections for the human rights of people living with HIV and increases access to services for prisoners and members of other key populations, such as men who have sex with men and sex workers. The ordinance has also narrowed the scope of criminal liability for HIV transmission, and excludes criminal liability for HIV transmission in the case of:
- a. Vertical transmission of HIV (mother to child);
 - b. Acts that represent no or insignificant risk of HIV infection;
 - c. A person who was unaware of her/his HIV status at the time;
 - d. A person who used protective measures to significantly reduce the risk of HIV infection; and
 - e. A person who informed his/her sexual partner of their HIV status prior to the act of exposure and obtained informed consent of that partner.

Decriminalization of sex work⁸⁰ – NEW ZEALAND

26. Countries can criminalize the act of selling or buying sex or can criminalize aspects of the sex industry, such as soliciting or keeping a brothel, living off the proceeds of sex work, loitering, etc. These sorts of laws can drive the industry underground, expose sex workers to violence and police abuse, and contribute to corruption.⁸¹ On the other hand, some countries have decriminalized sex work and regulate the sex industry to protect health and safety. For instance, in many Latin American and European countries, sex work is legal and

⁸⁰ Taken from Global Commission on HIV and the Law, Report of the Asia-Pacific regional Dialogue of the Global Commission on HIV and the Law, 2011. (http://www.hivlawcommission.org/images/stories/Report_of_the_APRD_Final.pdf).

⁸¹ International HIV/AIDS Alliance/Commonwealth HIV/AIDS Action Group, *Issues paper – HIV and the Law: A Leadership role for Senior Officials of the Law Ministries in Supporting an Effective Response to HIV in the Commonwealth*, October 2010, p 4 (<http://www.aidsalliance.org/includes/Publication/Issues-Paper-HIV-and-the-Law.pdf>).

brothels are regulated.⁸² Evidence indicates that that decriminalization has had a positive effect on health and provides sex workers with tools to manage their work environment.⁸³

27. For example, New Zealand reformed its laws so as to decriminalize sex work in the *Prostitution Reform Act (2003)*.⁸⁴ Workplace health and safety standards for sex work have been developed in consultation with the New Zealand Prostitutes' Collective and brothel operators. Employment disputes can be referred to the Government's Labour Inspectorate and Mediation Service. Moreover, sex workers are able to access tribunals to resolve work-related disputes, and employment discrimination complaints may be made by sex workers to the Human Rights Commission.
28. The Ministry of Health, rather than the police, is in charge of inspection and enforcement of workplace standards. In addition, there is an obligation on operators of sex work businesses, as well as sex workers and clients, to adopt and promote safer sex practices. The national government provides a centralized framework and acts as a support to local administrative bodies. Local governments have the power to issue by-laws for zoning and advertising relating to sex work. These measures help to safeguard the human rights of sex workers, protect them from exploitation, promote the welfare and occupational health and safety of sex workers and are conducive to public health.
29. With knowledge of their employment rights, sex workers are better able to know and assert their rights.⁸⁵ These improvements to the legal environment have assisted with HIV prevention and sexual health promotion by enabling sex workers to engage in peer education under safe conditions and to access sexual health.⁸⁶

Decriminalization of drug use⁸⁷ – PORTUGAL

30. On July 1, 2001, a Portuguese law came into effect that decriminalized the possession and use of small quantities of illicit drugs (amounts indicating personal use). Drug possession for personal use and drug use itself are still illegal activities, but violations of those prohibitions incur only administrative penalties and are thus removed completely from criminal sanctions. Moreover, although possession and use of small quantities of drugs is decriminalized, drug trafficking continues to be a criminal offense.
31. The 2001 Portuguese law on drug possession and use replaces the criminal sanction of imprisonment with various other sanctions issued by the Commissions for the Dissuasion of Drug Addiction (*Comissões para a Dissuasão da Toxicoddependência* – CDTs).⁸⁸ People found to be possessing/using drugs are sent to a CDT panel consisting of a psychologist, social worker and legal adviser. The panel has the authority to order a wide range of

⁸² *Id.* at 5.

⁸³ *Id.*

⁸⁴ New Zealand Prostitution Reform Act 2003, No. 28 (as at 29 November 2010) (<http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197821.html>, accessed 08 November 2011).

⁸⁵ International HIV/AIDS Alliance/Commonwealth HIV/AIDS Action Group, *Issues paper – HIV and the Law: A Leadership role for Senior Officials of the Law Ministries in Supporting an Effective Response to HIV in the Commonwealth*, October 2010, p 5 (<http://www.aidsalliance.org/includes/Publication/Issues-Paper-HIV-and-the-Law.pdf>).

⁸⁶ *Id.*

⁸⁷ Hughes, Caitlin Elizabeth and Alex Stevens, *What can we learn from the Portuguese decriminalization of illicit drugs?* Brit. J. Criminol. (2010) 50,

⁸⁸ *Id.* at 1002.

sanctions including fines, community service and suspension of professional licenses.⁸⁹ For those who are dependent on drugs, the panel may order that the individuals receive treatment or attend educational programmes rather than impose a sanction.⁹⁰

32. A report commissioned by the Cato Institute found that, in the five years after personal possession was decriminalized, illegal drug use among teens in Portugal declined⁹¹ and rates of new HIV infections caused by sharing of dirty needles dropped.⁹² Following decriminalization, Portugal reports one of the lowest rates of lifetime marijuana use in the EU: 8.2% (as opposed to 25% in the EU generally).⁹³ The Cato paper reports that between 2001 and 2006 in Portugal, rates of lifetime use (a measure of how many people have consumed a particular drug or drugs over the course of their lifetime) of any illegal drug among seventh through nine graders fell from 14.1% to 10.6%⁹⁴ and drug use in older teens also declined.⁹⁵ Lifetime heroin use among 16 to 18-year-olds fell from 2.5% to 1.8%.⁹⁶ New HIV infections among people who use drugs fell by 17% between 1999 and 2003,⁹⁷ and the total number of deaths related to drug use has decreased from 1999 to 2006.⁹⁸ In addition, the number of people on methadone and buprenorphine treatment for drug dependency rose to 14,877 from 6,040 after decriminalization,⁹⁹ and money saved on enforcement allowed for increased funding of drug-free treatment.

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⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Glenn Greenwald, *Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies*, Cato Institute, 2009. pp 11-12 (http://www.cato.org/pubs/wtpapers/greenwald_whitepaper.pdf, accessed 14 November 2011).

⁹² *Id.* at 16.

⁹³ *Id.* at 22.

⁹⁴ *Id.* at 11.

⁹⁵ *Id.* at 12.

⁹⁶ *Id.* at 14.

⁹⁷ *Id.* at 17.

⁹⁸ *Id.*

⁹⁹ *Id.* at 15.