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**Assessment of the outcomes of the national reviews
and multisectoral consultations on policy and legal
barriers to universal access to HIV services**

Overview of good practices in conducting national reviews and consultations on policy and legal barriers to universal access to HIV prevention, treatment, care and support in Asia and the Pacific

Note by the secretariat

Summary

Since the adoption of Commission resolutions 66/10 and 67/9 and the Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS and the endorsement of the ESCAP road map to 2015, several ESCAP members and associate members have conducted national reviews and multisectoral consultations, which have been particularly effective in galvanizing national interest and ownership on actions that have sensitive cultural and political implications and are critical to successful AIDS responses. The present document contains highlights of good practices for conducting national reviews and multisectoral consultations on policy and legal barriers to universal access to HIV prevention, treatment, care and support, as indicated in region-specific and international commitments cited above, as well as recommendations for further action to improve the enabling legal and policy environment for effective AIDS responses.

Delegations may wish to consider the findings and recommendations discussed in the document and extend guidance to the secretariat on steps to be taken to support countries in this regard.

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I. Introduction

1. One of the main reasons behind the low rates of access to needed HIV services among key populations at higher risk of exposure to HIV¹ is the lack of an enabling policy and legal environment. In Asia and the Pacific, the ability of governments to develop effective HIV responses has often been hampered by a legal and policy environment that remains unwelcoming to efforts that target the key populations at higher risk of HIV exposure². Over the past decade, governments have found it challenging to design and implement programmes for people engaged in behaviour that is often viewed as illegal or unacceptable not only by the general population, but also by their judicial and legislative systems.

2. AIDS responses are more effective in contexts in which the human rights of people living with HIV and other key populations, such as sex workers, men who have sex with men, transgender persons, migrants, people who inject drugs and prisoners, are protected by laws and policies. Key populations are more likely to engage in HIV prevention efforts and access testing, treatment and care if legal environments (laws, law enforcement and access to justice) provide protection from human rights violations. Protective legal environments also enable key populations to participate more openly in planning, managing and delivering HIV services without fear of reprisals. This helps to ensure that the services to their communities are effective, accessible and acceptable.

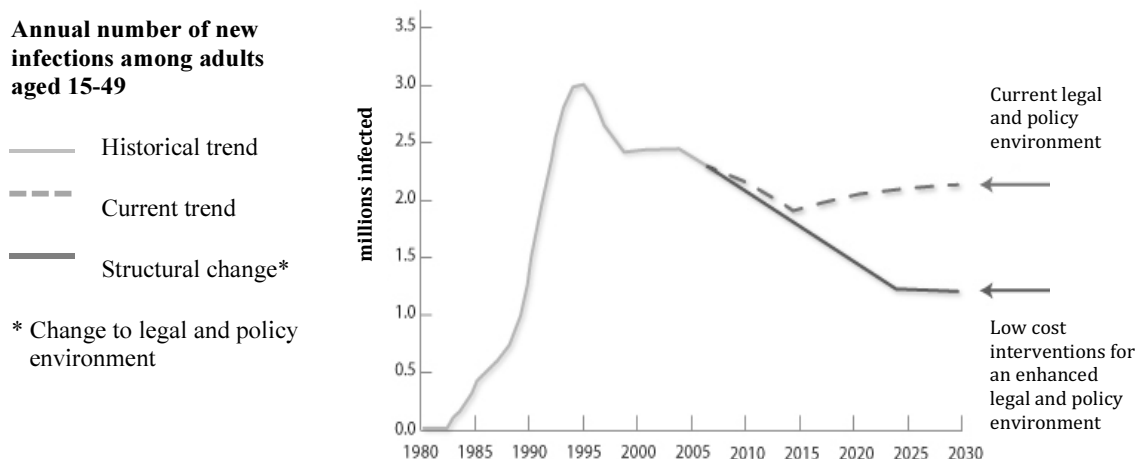
¹ As explained in the UNAIDS Terminology Guidelines, the term “key populations at higher risk refers to those most likely to be exposed to HIV or to transmit it”. The Guidelines are available from www.unaids.org/sites/default/files/media_asset/JC2118_terminology-guidelines_en_0.pdf.

² Joint United Nations Programme on HIV/AIDS, “Terminology Guideline”, October 2011. Available from www.unaids.org/sites/default/files/media_asset/JC2118_terminology-guidelines_en_0.pdf.

3. The Global Commission on HIV and the Law has reviewed public health and relevant health and legal research and literature, as well as evidence on the impact of legal environments on the lives of people living with and vulnerable to HIV from countries in the ESCAP region and beyond in order to identify changes in the legal and policy environment that could transform the AIDS response and reduce HIV epidemics (see figure).

Figure

Projected global trends in new HIV infections based on different legal and policy environment scenarios



Source: Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights and Health* (New York, UNDP, July 2012).

4. The final Report of the Global Commission reveals that existing evidence-based laws and practices firmly grounded in human rights serve as powerful instruments for challenging discrimination, promoting public health and protecting human rights. The Global Commission has recommended countries to design a human rights-based approach to health by implementing a set of combined interventions aimed at removing barriers to health services and creating enabling environments for effective AIDS responses. These interventions should do the following: address harmful practices and social attitudes through awareness-raising activities directed at health providers, police officers, media and religious leaders; build the capacity of communities to advocate for their rights (legal empowerment through legal literacy and legal aid services and community mobilization for policy advocacy); and improve the legal and policy environment (awareness-raising activities for parliamentarians and judicial officials, national human rights institutions trainings, legal reviews and legislative reforms).³

5. Significant progress has been made in removing legal and policy barriers to universal access to HIV services in the Asia-Pacific region, even before the adoption of such commitments as Commission resolutions 66/10 and 67/9 and the Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS,⁴ which accelerated progress in creating enabling legal and policy environments in the region.

³ Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights and Health* (New York, UNDP, July 2012).

⁴ General Assembly resolution 65/277.

6. Many of the laws, policies and law enforcement practices in the Asia and Pacific region are punitive. Specifically, the legal environment for key populations, such as sex workers, people who inject drugs, men who have sex with men and transgender people (as specified in Commission resolution 67/9) are punitive in most countries.

7. Legal and policy barriers hindering AIDS responses in Asia and the Pacific include:

(a) Laws and practices that effectively criminalize people living with HIV and the most vulnerable to HIV (key populations):

(i) Restrictions on the entry, stay and residence of people based on their HIV status;

(ii) Provision of the death penalty for drug-related offenses;

(iii) Criminalization of the possession of needles and syringes;

(iv) Laws maintaining compulsory detention centres for people who use drugs;

(v) Criminalization of consensual relations between adults of the same sex;

(vi) Criminalization of some (or all) aspects of sex work;

(vii) Criminalization of HIV transmission, exposure and non-disclosure;

(viii) Non-recognition of third gender identity;

(b) Laws and practices that mitigate or sustain violence and discrimination as lived by women;

(c) Laws and policies pertaining to children and young people, including age of consent to access HIV services;

(d) Laws and practices that impede access to affordable medicines.

8. In addition to these punitive laws, law enforcement practices that compound stigma, such as police extortion, harassment and assault, often act as barriers for key populations to access HIV services.

9. Notably, several countries of Asia and the Pacific have national HIV and AIDS laws in place, including, among them, Cambodia, China, Fiji, the Lao People's Democratic Republic, Papua New Guinea, the Philippines and Viet Nam, while others have yet to provide comprehensive anti-discrimination protection for people living with HIV.⁵ Additionally, reports of stigma and discrimination affecting people living with HIV and key populations continue to persist across the region, even in those countries that have in place comprehensive protective laws. For example, data from the People Living with HIV Stigma Index⁶ in several countries of the region indicate that HIV-related stigma and discrimination are prevalent in all areas of society, including in the key areas of employment and health care.

⁵ Godwin, John, *Legal Protections against HIV-related Human Rights Violations: Experience and Lessons Learned from National HIV Laws in Asia and the Pacific* (Bangkok, UNDP, 2013).

⁶ See People Living with HIV Stigma Index reports. Available from www.stigmaindex.org.

II. Overview of global and region-specific commitments made for conducting national reviews and consultations

10. In 2010, the Commission in its resolution 66/10 called upon all members and associate members to ground universal access in human rights and undertake measures to address stigma and discrimination, as well as policy and legal barriers to effective AIDS responses, in particular with regard to key populations.

11. In the following year, the Commission in its resolution 67/9 called upon members and associate members to initiate, as appropriate, in line with national priorities, a review of national laws, policies and practices to enable the full achievement of universal access targets with a view to eliminating all forms of discrimination against people at risk of infection or living with HIV, in particular key affected populations. This commitment was echoed in the Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS, which was adopted by the General Assembly later that year.

12. The 2012 Asia-Pacific High-level Intergovernmental Meeting on the Assessment of Progress against Commitments in the Political Declaration on HIV/AIDS and the Millennium Development Goals, which was held in Bangkok from 6 to 8 February, was the first regional intergovernmental meeting held after the adoption of the Declaration. The meeting endorsed a regional framework for action, referred to as the ESCAP road map to 2015, to support countries in implementing the Declaration and Commission resolutions 66/10 and 67/9.

13. Since the adoption of the resolutions and the Declaration, and the endorsement of the ESCAP road map, national reviews and multisectoral consultations have been particularly effective in galvanizing national interest and ownership of actions with sensitive cultural and political implications that are critical to carrying out successful AIDS responses. National reviews and multisectoral consultations have resulted in significantly improved strategic information on and understanding of the particular legal and policy barriers hindering the AIDS response in countries and led to stronger leadership from key stakeholders in Government and civil society; facilitated important conversations centred on social and cultural issues; and resulted in the launching of actions that have improved the ability of the most marginalized groups in society, namely people living with HIV and key populations, to access HIV services and claim their rights.

III. Status of national reviews and multisectoral consultations in the Asia-Pacific region

14. Twenty-three⁷ countries and areas in the Asia-Pacific region have responded to an intergovernmental survey on progress in achieving universal access to HIV prevention, treatment, care and support in Asia and the Pacific being administered by the ESCAP secretariat. An analysis of the information provided in the survey along with additional information obtained from other United Nations resources indicates that, to date, at least 27 ESCAP members

⁷ As of 21 November 2014, survey responses had been received from the following ESCAP members and associate members: Afghanistan; Armenia; Australia; Azerbaijan; Bangladesh; Bhutan; Brunei Darussalam; Cambodia; Fiji; France; Georgia; Iran (Islamic Republic of); Japan; Malaysia; Maldives; Mongolia; New Zealand; Pakistan; Russian Federation; Tajikistan; Thailand; Timor-Leste; and Hong Kong, China.

and associate members have conducted reviews and/or consultations on legal and policy barriers since the 2012 endorsement of the ESCAP road map. At the national level, Afghanistan, Azerbaijan, Bangladesh, Bhutan, Cambodia, China, Indonesia, the Islamic Republic of Iran, Japan, Malaysia, Mongolia, Myanmar, Pakistan, the Philippines, the Russian Federation, Sri Lanka, Tajikistan, Thailand, Viet Nam and Hong Kong, China have conducted at least one review and/or multisectoral consultation. Additionally, at the subregional level, a consultation for Pacific island countries involving Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tuvalu and Vanuatu was organized in April 2013.

15. In addition, a subregional multisectoral consultation for South and South-West Asian countries was held in November 2011 which included as participants Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.⁸

A. Conducting national reviews and multisectoral consultations

16. The publication *Creating Enabling Legal Environments: Conducting National Reviews and Multi-sectoral Consultations on Legal and Policy Barriers to HIV Services*⁹ serves as a guidance document for the Asian and Pacific region for conducting national reviews and multisectoral consultations. It is intended to support national stakeholders, including Governments, civil society partners and United Nations country teams, in undertaking reviews of national laws, policies and practices to enable full achievement of universal access to HIV prevention, treatment, care and support, and in conducting national, multisectoral consultations on legal and policy barriers to HIV services for people living with HIV and key populations at higher risk of HIV exposure. A review of existing evidence on national reviews and consultations indicate that many countries and areas have adopted recommended practices identified in the publication.

17. Indeed, countries and areas across the region have taken a variety of approaches to conceptualizing and initiating the review and consultation processes. Diversity among their approaches is necessary given that each one of them faces unique political and resource constraints, and the legislative and policy context varies widely from country to country.

18. On the one hand, some countries have made a clear distinction between a national review and a consultation based on the view that they are two distinct stages in a process. For example, the Pacific region and Indonesia commissioned detailed review reports from independent consultants that were finalized prior to the consultation in order to make the findings of the review available as a report for discussion and to put forward action-oriented recommendations to be agreed to at the consultation.

19. On the other hand, some countries, such as Cambodia and Myanmar, treated the multisectoral consultation as an integral part of the national review process. In those cases, the initial findings of the national review were presented to the multisectoral consultation for validation, discussion and

⁸ International Development Law Organization, *South Asia Roundtable Dialogue: Legal and Policy Barriers to the HIV Response* (Rome, IDLO, 2011).

⁹ Godwin John, *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* (Bangkok, UNDP, 2014). Available from http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/creating-enabling-legal-environments--conducting-national-review/.

subsequent revision. The final review report had taken into account the outputs of the national consultation, as well as other inputs, such as a literature review and interviews with key informants. In this second approach, the national consultation contributed to the finalization of the national review report by serving as consultative validation workshop during which stakeholders with skills, expertise and experience were brought together to discuss key issues identified by the review and recommendations for moving forward. The national review report of Thailand was also validated at a multisectoral consultation prior to finalization. By following this approach, multisectoral consultations offered an opportunity to discuss the results of the review, prioritize recommendations for future action, and develop action plans with a time-bound framework for implementation of the recommendations emanating from both the review and the consultation.

20. Additionally, due to resource constraints or the need to avoid duplicating other processes, some economies, including Afghanistan, Bangladesh, Bhutan and Hong Kong, China, have conducted a multisectoral consultation, without carrying out a separate review process to systematically gather and analyse information on legal and policy barriers. Notwithstanding, important legal and policy barriers were discussed at those multisectoral consultations and key actions to remove those barriers were identified. In Sri Lanka, the AIDS Foundation convened a national round-table meeting, drawing upon information and data from a regional multisectoral consultation for South and South-West Asia, which was made available to participants. Similarly, in the Philippines, the consultation took the form of a national dialogue that occurred against the backdrop of several separate and ongoing national review processes, such as a series of reviews and consultations on development of the revised national legislation on HIV and AIDS, and as a national level follow-up to the Asia-Pacific Regional Dialogue of the Global Commission on HIV and the Law, which was held in Bangkok in 2011.

21. The experience of the Philippines entailed the application of different approaches for linking the reviews and consultations to other policy processes, such as the recommendations from the final report of the Global Commission on HIV and the Law, and reviews of national HIV and AIDS strategic plans. In Armenia, Cambodia, Indonesia, Malaysia and Myanmar, the national reviews and multisectoral consultations were directly linked to the midterm-review processes for each country's national HIV and AIDS strategic plan. Similarly, the review of the Fourth National Strategic Plan of the Islamic Republic of Iran is expected to take into consideration the recommendations for removing legal and policy barriers to universal access to HIV services that were developed during the review and multisectoral consultation process. As a follow-up to the Pacific subregional multisectoral consultation, Fiji conducted a desk review on the implementation of the 2011 Political Declaration on HIV and AIDS in which legal and policy barriers affecting people living with HIV and other key populations were reviewed.

22. Many reviews and consultations have engaged different sectors of Government and local leaders and empowered civil society organizations to play a role in the review and consultation process. One such example is in Cambodia, where a technical working group, inclusive of key civil society and government stakeholders, provided oversight of the review and consultation. Reviews and consultations have also benefited from the involvement of United Nations agencies, particularly the coordinating role of the Joint United Nations Programme on HIV/AIDS and the United Nations Development Programme (UNDP) at the national level.

23. Many national reviews have systematically collected and analysed available information on aspects of the legal environment relevant to the AIDS response in a country, while some have focused on a specific sector. The national review process has included a literature review, stakeholder interviews and group consultations or focus group discussions that gathered perspectives and first-hand accounts of the impact of laws, policies and police practices on communities. Additionally, the national midterm reviews on the implementation of the 2011 Political Declaration on HIV and AIDS often supported the work undertaken for the national reviews.

24. For example, a national review undertaken by Indonesia involved a literature review to describe the national legal environment supplemented by interviews with stakeholders in Northern Sumatra, Jakarta, East Java and Bali. The review was guided by a steering committee comprising representatives of the National AIDS Commission, the Ministry of Law and Human Rights, the National Human Rights Commission, key population networks, UNAIDS and UNDP.

25. Similarly, the national review process in Pakistan was guided by a steering committee comprising representatives of the Government, the Human Rights Commission of Pakistan, United Nations agencies and non-governmental organizations (NGOs). It also included members of the community, including those from key populations. The methodology included interviews with key stakeholders (NGOs and Provincial AIDS Control Programmes for Sindh and Punjab), an extensive desk review and focus group discussions with key populations, including people who inject drugs, male and female sex workers, men who have sex with men and transgender people in three cities (Karachi, Lahore and Rawalpindi).

26. A point of departure for the conduct of many multisectoral consultations has been a common understanding of the objectives of the consultation. The objectives clarify the relationship of the multisectoral consultation to the national review process, and in them, the outcomes are explicitly defined, such as in a time-bound action plan. Most multisectoral consultations have been convened or co-convened by a government agency, ensuring government ownership of the consultation and their results. This arrangement has increased the prospects of recommendations being acted on by governments. Participation of senior representatives of Government (the responsible minister or senior government officials) has helped to ensure that the plans and recommendations emanating from a multisectoral consultation are acted on by the responsible Government sectors. In several instances, members of law enforcement have also been involved in order to address the implications of police abuses of key populations on HIV responses. For example, the multisectoral consultation in Bangladesh included presentations from the State Minister; the Ministry of Law, Justice and Parliamentary Affairs; the National Human Rights Commission; the Law Commission; Bangladesh Legal Aid and Services Trust; the National AIDS/STD Programme, and the Police Commissioner of the Dhaka Metropolitan Police.

27. Participation of the judiciary of the country in multisectoral consultations has raised awareness of the barriers to creating an enabling legal environment for AIDS responses while participation of the legal profession has ensured that issues relating to access to legal services and legal redress mechanisms for resolving disputes were addressed in the consultations. In Papua New Guinea, the multisectoral consultation process included separate meetings with the following officials: solicitor-general; public solicitor; public prosecutor; state solicitor; deputy chief ombudsman; and director of village courts secretariat. In Thailand, the multisectoral

consultation included participation of the Ministry of Justice's Department of Rights and Liberty Protection and the Office of Supreme Attorney and key law mechanisms, such as the National Law Reform Commission and the Lawyers Council under Royal Patronage.

28. Multisectoral consultations in the region have been structured to encourage information sharing through a mix of presentations, panel discussions and interactive dialogues involving members of the audience. Participation of people living with HIV and other key populations in the consultation has contributed first-hand accounts of the impacts of the legal environment on AIDS responses and people's daily lives to discussions during multisectoral consultations. It has also reassured community participants that their voices are regarded as being of central importance and that the opinions and perspectives of people living with HIV and other key populations are valued and respected by other participants throughout the meeting. It is important to note, however, that confidentiality concerns of community participants need to be kept in mind.

29. Some multisectoral consultations have included specific presentations on women's issues by women living with HIV or other relevant experts. Some consultations have specifically engaged young people, resulting in specific recommendations for addressing legal and policy barriers hindering their access to HIV services, while at others, the specific issues facing young people were not discussed. At the Myanmar multisectoral consultation, representatives of a network of young people from key populations at higher risk of HIV exposure, the Myanmar Youth Stars Network, gave a presentation on key legal issues for young people. Support was extended to those young people to develop their presentation skills prior to the meeting.

30. National reviews and multisectoral consultations have led to the identification of a number of key actions that may need to be further prioritized, taking into account such factors as upcoming law reform and policy opportunities. It can be strategic to give priority to a limited number of high priority recommendations for which opportunities have been identified to achieve progress. For example, issues that are being given priority consideration in Thailand relate to laws affecting people who use drugs and the implementation of policies pertaining to health insurance for migrant workers.

31. In some cases, substantial time was allocated during the multisectoral consultation for government and civil society stakeholders to jointly develop action plans and reach consensus on priority recommendations and actions. It is important that there is clarity regarding the relationship between those plans agreed at national consultations and the planning mechanisms of the various organizations (government agencies, community-based groups, including national key population networks, members of the United Nations system and development partners) that are expected to lead implementation. To ensure accountability, the parties spearheading the implementation of activities under the action plans and how progress is to be monitored must be clearly spelled out.

32. In the action plans, specific laws or regulations that create obstacles to effective AIDS responses and require repeal need to be identified. For example, in the action plans of several countries, the need to advocate the repeal of the provisions of penal codes or other laws that criminalize homosexual conduct (Bangladesh, Indonesia, Myanmar and Papua New Guinea) and sex work (Bangladesh, Fiji, Myanmar and Papua New Guinea) were pointed out. Furthermore, action plans have addressed the aspects of the

legal environment, including laws, regulations and policies at national and subnational levels; law enforcement issues, including police practices and enforcement of protective laws; access to justice and legal literacy; and capacity-building of key sectors in a human rights-based approach to HIV, including health-care workers, people working in the law and justice sector, parliamentarians and the media.

33. In Bangladesh, the multisectoral consultation produced an action plan that focused on six key populations — people living with HIV, female sex workers, men who have sex with men, transgender people (*hijras*), people who inject drugs and migrant workers. The action plan was based on more than 30 recommendations for removing legal and policy barriers to universal access that were developed during the consultation. The key legal and social barriers addressed by the plan include lack of access to treatment for migrant workers, unequal employment opportunities and access to property for people living with HIV, punitive laws and law enforcement measures affecting key populations, and discrimination in the workplace, health-care system and society in general. In the action plan, a list of activities, the key actors responsible for the activity (a government ministry or agency, or an NGO) and specific outputs to be delivered by 2015 were developed for each population group. Of those activities, legal recognition of *hijras* by the Government was one of the first outcomes to be achieved. The Ministry of Social Welfare issued a policy directive in 2013 that a third gender option would be available for *hijras* on government documents, including passports. This increases the legal recognition of *hijras*, who were previously unable to avail themselves of full legal documentation.

34. Approaches to integrating outcomes from national reviews and consultations into government processes have varied among countries. In Cambodia, Indonesia and Myanmar, recommendations emanating from national reviews and consultations are to be considered in the midterm review of each country's national HIV strategy and action plan. Additionally, some countries are seeking to mainstream the outcomes of the national reviews and consultations in human rights planning. For example, Thailand has referred findings from the national review and consultation for inclusion in the country's Third National Human Rights Plan, and Indonesia is considering incorporating HIV-related issues into its next Government Framework on Human Rights Monitoring System (RANHAM).

35. Several countries have ensured the implementation of action plans arising from the national review and multisectoral consultation process. The country action plan developed at the Pacific regional consultation has been fully adopted by the HIV/AIDS Board of Fiji, which is overseeing its implementation. The implementation of the recommendations of the Myanmar national review and multisectoral consultation are being supported through a subcommittee on human rights and gender of the Myanmar Health Sector Country Coordinating Mechanism, and a parliamentary group on human rights and gender. In the case of Afghanistan, the Ministry of Public Health and the National AIDS Control Programme were nominated to oversee the implementation of recommendations issued at a multisectoral consultation conducted in 2012. The recommendations mainly focused on condom and syringe distribution in closed settings.

36. Engaging development partners, such as United Nations entities, have provided additional sources of technical and financial resources to support implementation of the national review and multisectoral consultation process. In several countries, UNAIDS, UNDP and other relevant United Nations entities have played a key role in co-convening or extending technical

assistance to national consultations. Several United Nations entities, notably UNAIDS and UNDP, have also played a key role in resource mobilization for reviews and multisectoral consultations. Indeed, in an ESCAP intergovernmental survey on conducting national reviews, Afghanistan cited lack of technical and financial capacity to undertake a written national review as the main challenge and Georgia highlighted lack of financial resources as its main challenge for conducting a multisectoral consultation. In the case of Brunei Darussalam, a national review was conducted by UNDP and the results were shared with the Ministry of Health. In Malaysia, a report on the review and consultation on the policy and legal environments related to HIV services in the country was published by the United Nations Theme Group on HIV/AIDS in cooperation with the Human Rights Commission of Malaysia (SUHAKAM).

37. In some countries, bilateral development partners were engaged. For example, the Government of Australia extended support to the convening of the Papua New Guinea National Consultation on HIV, Human Rights and the Law, which was held in Port Moresby on 13 and 14 June 2011. Additionally, UNDP provided support to eight national consultations in the Asian and Pacific region through two multi-country programmes funded by the Global Fund to Fight AIDS, Tuberculosis and Malaria.¹⁰ Under a new funding model established by the Global Fund, which took effect in 2014, the concept note developed by a country at the incipient stage of the grant process could include activities on HIV, human rights and the law, including follow-up activities for the implementation of recommendations developed at national reviews and multisectoral consultations. Georgia has expressed its intention to hold several national multisectoral consultations to identify barriers and make relevant recommendations with anticipated support from the Global Fund.

B. Good practices in conducting national reviews and consultations on policy and legal barriers to universal access to HIV prevention, treatment, care and support in Asia and the Pacific

38. Since the endorsement of the ESCAP road map to 2015, engagement in the process of national reviews and multisectoral consultations in Asia and the Pacific have contributed to comprehensive assessments and increased understanding of the legal environment in many countries, increased engagement of key stakeholders in addressing legal and policy barriers to universal access, including law enforcement entities, ministries of justice and law, parliamentarians, faith and community leaders and national human rights institutions, and the development of consensus-based recommendations for legal and policy reform and programmes to create enabling legal environments that in many cases were fed into government processes for implementation.

39. Based on country experiences, national reviews and multisectoral consultations that facilitated stakeholders to reach consensus on national priorities for initiating changes in the legal and policy environment for more effective AIDS responses shared the following characteristics:

(i) **Clear**, in terms of well-defined objectives for the review and the consultation, and clarity about the relationships among the review, the

¹⁰ Multi-Country South Asia Global Fund Programme (MSA-910-G02-H) and Multi-Country ISEAN-HIVOS Global Fund Programme (MEI-011-G01-H).

consultation and implementation of recommendations emanating from the process;

(ii) **Informed by evidence**, through the analysis of existing laws, policies, law enforcement practices and accessibility to justice issues through a variety of primary and secondary sources;

(iii) **Comprehensive** in addressing the legal environment, focusing not just on laws, but also on law enforcement issues, legal redress mechanisms and other issues related to access to justice;

(iv) **Participatory**, involving community representatives from key populations and multisectoral partners, including national HIV coordinating authorities, relevant ministries (at a minimum, health and justice), national human rights institutions and development partners. Participatory processes, including in the conceptualization and planning phases, have been particularly beneficial in fostering strategic alliances and partnerships;

(v) **Coordinated**, by establishing or making use of existing mechanisms at local, provincial and national levels to ensure multisectoral cooperation and coordination for legal review and policy reforms. Notably, however, each country has pursued different channels in order to ensure cooperation across different sectors of Government;

(vi) **Action-oriented**, in that there is a concrete plan for implementation of recommendations arising from reviews and consultations. This should either be an output of the consultation or a task allocated to a body, such as a committee of the national AIDS commission or HIV coordinating authority, with responsibility to define and oversee implementation of the action plan.

C. **The contribution of national reviews and multisectoral consultations in improving the human rights situation of key populations and people living with HIV**

40. **A human rights-based approach has been applied in conducting national reviews and multisectoral consultations.** This approach is exemplified by the explicit use of human rights language and concepts in the analysis of the legal environment, such as the distinction between “rights holders” and “duty bearers”, and attention to key human rights principles, such as respect for human dignity, non-discrimination, privacy, gender equality, autonomy and the right to the highest attainable standard of health. Additionally, several national reviews and multisectoral consultations, including those conducted in Bangladesh, Indonesia, Pakistan and the Philippines, have engaged their country’s national human rights institution.

41. Some national reviews and consultations have made **specific reference to the recommendations set in the final report of the Global Commission on HIV and the Law** in formulating a framework for analysis. The Commission’s final report serves as an important resource for countries seeking comprehensive coverage of key issues in reviews and consultations as it applies a human rights-based approach and directs attention to key issues that were identified by global experts as priorities. For example, the Cambodian national legal review included a gap analysis to identify areas of law and policy that need to be addressed in order to bring the country in line with the recommendations of the Global Commission on HIV and the Law, with specific reference to recommendations regarding people living with HIV, sex workers, people who inject drugs, men who have sex with men, transgender people, prisoners, women, children and young people, and migrants.

42. As a result of concerted efforts to focus on law enforcement issues in national reviews and consultations, **a range of human rights issues affecting access to services have been identified.** Key population networks can report concerns without naming the individual person who may fear reprisals or victimization if they were to be identified. National reviews and multisectoral consultations that covered law enforcement issues have provided recommendations regarding training of police and changes to police guidance to ensure that police practices do not impede HIV prevention efforts. Recommendations stemming from those consultations have also encouraged partnerships among police, communities, health authorities and venue managers for HIV prevention. The Pacific regional consultation proposed a regional response by reactivating the engagement of the Pacific Islands Chief of Police Group in dealing with HIV issues and requesting that a high-level regional political leaders group known as the Melanesian Spearhead Group address the role of police in AIDS responses.

43. National reviews and multisectoral consultations have shown that **effective action can be taken at the subnational level to improve the legal environment through multisectoral initiatives at the provincial, district or municipal levels.** This approach is particularly important in countries with decentralized governance structures. A decentralized response enables development of local laws and policies that respond to the local factors contributing to HIV vulnerability, recognizing that the nature and causes of HIV epidemics vary among geographic areas.

44. Some countries intend to use the review and consultation process to **gain support for a comprehensive national law on HIV that addresses the rights of people living with HIV.** For example, civil society stakeholders in Myanmar are developing options for a national HIV law as a result of the review and consultation process. Civil society organizations in Nepal have stated their intention to use their forthcoming national consultation as an opportunity to refine the existing draft national HIV bill. At the Pacific regional consultation, Kiribati, Solomon Islands and Tuvalu identified the need for cabinet support for proposed national HIV laws as a priority in their country action plans.

IV. Progress in removing legal and policy barriers to universal access

45. This section provides examples of country progress in removing legal and policy barriers to universal access achieved since the Asia-Pacific High-level Intergovernmental Meeting on the Assessment of Progress against Commitments in the Political Declaration on HIV/AIDS and the Millennium Development Goals, which was held in Bangkok from 6 to 8 February 2012. These examples demonstrate that the leadership role of Government and civil society partners has enabled significant progress to be made by creating more enabling legal and policy environments for effective AIDS responses. In some cases, these advances are linked to national legal review and consultation processes as stipulated by Commission resolution 67/9 and the ESCAP road map to 2015.

A. Monitoring and reforming laws, regulations and policies relating to HIV

46. *Protection of the rights of people living with HIV.* Significant progress has been achieved in removing legal and policy barriers to universal access to HIV services in the Asia-Pacific region since the endorsement of the ESCAP

road map to 2015, many of which are covered in more detail in document E/ESCAP/HIV/IGM.2/1. Legal and policy initiatives implemented since 2012 in India, Indonesia, Mongolia, Pakistan, the Philippines and Timor-Leste are offering strengthened protection for the rights of people living with HIV.

47. *Advances in the protection of the rights of men who have sex with men and transgender populations.* There have also been several notable positive developments in other countries of the region that have improved or have the potential to improve the legal status and legal protections for men who have sex with men and transgender people. These advances help to address the stigma experienced by those populations and provide a more enabling environment for AIDS responses among them. The Constitution of Fiji is one of the few national constitutions in the world that gives specific recognition to sexual orientation and gender identity issues. The country's new national Constitution, which was introduced in 2013, stipulates that a person must not be unfairly discriminated against because of health status, sexual orientation, gender identity or gender expression.¹¹ Additionally, six cities in the Philippines have introduced local ordinances or laws that protect people from discrimination on the grounds of their sexuality and/or gender identity.¹²

48. Recent policy changes in Bangladesh and judicial decisions in India, Nepal and Pakistan, that legally recognize a third gender help to advance the rights of this key population to access services in Asia and the Pacific. The Ministry of Social Welfare of Bangladesh and the supreme courts of India, Nepal and Pakistan have opted to address these issues by clearly communicating that all people, including transgender persons and *hijras*, are entitled to the fundamental rights guaranteed to them by international agreements and domestic constitutions. Legal recognition of a third gender and transgender people helps reduce stigma and discrimination, making it easier to access government and medical services and to be protected by the State.

49. *Advances in the protection of the rights of sex workers.* The courts in India have recognized that sex workers should be able to enjoy constitutional rights. The Delhi High Court decision *Tara v State*¹³ represents a step towards the protection of the rights of adult sex workers, which are sometimes undermined by the overreach of aggressive anti-trafficking measures. The National Assembly of Viet Nam passed the Law on Administrative Sanctions in 2012,¹⁴ which required authorities to release sex workers detained in rehabilitation centres by July 2013. Sex workers may still be fined for administrative violations, but are no longer ordered to undergo detention or compulsory rehabilitation.

¹¹ Fiji, Constitution of the Republic of Fiji, art. 26 (2013).

¹² Angeles, Bacolod City, Cebu, Dagupan City, Davao City and Quezon City as stated in *Being LGBT in Asia: The Philippines Country Report, A participatory review and analysis of the legal and social environment for lesbian, gay, bisexual and transgender (LGBT) persons and civil society* (Bangkok, UNDP, USAID, 2014). Available from www.ph.undp.org/content/philippines/en/home/library/democratic_governance/being-lgbt-in-asia--the-philippine-country-report.html.

¹³ India, *Tara v State*, W.P. (CRL) 296/2012, High Court of Delhi, New Delhi.

¹⁴ Joint United Nations Programme on HIV/AIDS, "Alternative action on compulsory detention: Innovative responses in Asia", 5 October 2012. Available from www.unaids.org/en/resources/presscentre/featurestories/2012/october/20121005detentioncenters.

50. *Strengthened community-based care and treatment of drug users.* Since 2012, laws have been introduced in Cambodia and Sindh Province, Pakistan that provide a legal framework for harm reduction programmes for people who inject drugs. Policy frameworks in Malaysia and Viet Nam are now also more supportive of harm reduction programmes than in the past. Since 2010, Malaysia has been changing the way it deals with people who use drugs by using a community-based treatment system as an alternative to detention in compulsory rehabilitation centres. Within the existing legislative framework, Malaysia has developed a harm reduction policy and a less punitive approach to drug treatment using community-based services and inter-agency collaboration. In an evaluation of the country's harm reduction policy, it was estimated that needle and syringe programmes and the application of methadone maintenance therapy have averted more than 23,000 new HIV infections and will result in savings of 210 million Malaysian ringgit (RM) (\$62.4 million) in direct health-care costs over the next 10 years.¹⁵ Malaysia and the Islamic Republic of Iran count their success in harm reduction among people who inject drugs, and in HIV control programmes among incarcerated populations, as the most important achievements of their efforts to ensure universal access to comprehensive HIV prevention, treatment, care and support in the last five years.

51. *Increasing recognition of the evolving capacity of children under the age of 18.* In the Report of the Secretary-General entitled "Towards ending the AIDS epidemic: meeting the 2015 targets and planning for the post-2015 era", it was noted that the AIDS response was failing young people.¹⁶ Laws enabling adolescents who have attained sufficient maturity to access HIV testing and health-care services are important in the context of HIV. Adolescents may otherwise be reluctant to access health services due to fear of disclosure of their sexuality, sexual conduct, drug use or health status to their parents or guardians. In framing laws that empower children to consent to medical treatment, consideration needs to be given to children's evolving capacities and maturity to make decisions in their own best interests.

52. Issued in 2011, Fiji's HIV/AIDS Decree 2011¹⁷ states the right of a person younger than 18 years old to access HIV testing provided that in the opinion of the counsellor to the person requesting the test, the individual understands the meaning and consequences of a HIV test. In the absence of this opinion, informed consent of a parent or guardian is required.

B. Law enforcement practices

53. Several countries have taken measures since 2012 to ensure that law enforcement practices are more supportive of HIV prevention measures and do not obstruct the distribution of condoms and clean needles and syringes. These initiatives indicate country progress in fulfilling the commitment made in Commission resolution 67/9 to establish strategic and operational partnerships between public health agencies, law enforcement agencies, civil society and key populations to scale up high impact HIV interventions for key populations.

¹⁵ World Bank, "Malaysia's public health policies assisting people who inject drugs to avert new HIV infection according to a new study by the World Bank", 18 December 2013. Available from www.worldbank.org/en/news/press-release/2013/12/18/malaysias-public-health-policies-assisting-people-who-inject-drugs-to-avert-new-hiv-infections-according-to-a-new-study-funded-by-the-world-bank.

¹⁶ Defined by the United Nations as persons between the age of 15 and 24 years.

¹⁷ Fiji, HIV/AIDS Decree 2011 (Decree No. 5 of 2011). Available from www.health.gov.fj/pdfs/Decree%205%20-%20HIV-AIDS%20Decree.pdf.

54. Cambodia has initiated the Police Community Partnership Initiative (PCPI) led by the Ministry of Interior, with support from FHI 360, a non-profit human development organization. PCPI works through teams comprised of community representatives, local authorities, law enforcement officials, health workers, paralegal workers and local civil society organizations to ensure an enabling environment for HIV prevention, treatment, care and support services for “entertainment workers”, men who have sex with men, transgender people and people who use drugs in Cambodia. In HIV hot spot areas where PCPI has been implemented, law enforcement efforts focus on drug sale and supply, rather than on the possession of small quantities of illicit drugs for personal use. Findings from pilot sites indicate that PCPI has reduced the fear of police among key populations.¹⁸

55. The Royal Thai Police, the Ministry of Justice, the Ministry of Public Health, the Foundation for AIDS Rights and UNDP are supporting a police training programme to address HIV-related discrimination in Thailand. The programme aims to build awareness among law enforcement officers on issues concerning human rights and provide general knowledge on HIV, such as modes of transmission and HIV prevention.

C. Improved access to HIV-related legal services

56. In the same vein, several regional and country-level initiatives have contributed to progress in expanding access to justice for people living with HIV and key populations. Examples of country-level initiatives implemented since 2012 are the provision of legal services extended to men who have sex with men and transgender people through a network of volunteer lawyers at the district level through the Bandhu Social Welfare Society in Bangladesh, and the training of lawyers on HIV-related issues and provision of legal aid services to more than 300 people living with HIV and members of key populations in Kunming, Yunnan Province, China by the Yunnan Daytop Drug Treatment Rehabilitation Centre. In Myanmar, the Equal Project was established in 2013 to provide legal aid services to people living with HIV, men who have sex with men, transgender people, and sex workers in Yangon.

D. Effective intellectual property regimes

57. One of the recommendations of the final report of the Global Commission on HIV and the Law was to “develop an effective intellectual property (IP) regime for pharmaceutical products. Such a regime must be consistent with international human rights law and public health needs, while safeguarding the justifiable rights of inventors.” Several national reviews and multisectoral consultation processes have been initiated in the region to develop more effective IP regimes. For example, the Workshop on Trade, Intellectual Property Rights and Access to Medicines in Cambodia, which was held in 2013, improved the understanding, promoted meaningful engagement of stakeholders and informed decision-making on the issue of trade, intellectual property rights and access to generic medicines. The recommendations generated through the workshop serve as a guide to government experts, civil society, development partners and key stakeholders in designing and producing relevant research as part of a collective effort to enhance understanding of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and its impact on the accessibility of

¹⁸ Nick Thomson and others, “The village/commune safety policy and HIV prevention efforts among key affected populations in Cambodia: finding balance”, *Harm Reduction Journal*, vol. 9 (July 2012).

affordable medicines for people living with HIV in Cambodia. They also help identify priority actions needed to safeguard the country's access to generic medicines.

V. Recommendations for moving forward with the national review and the multisectoral consultation process

58. For countries that have already begun the national review and multisectoral consultation process, a key question that remains to be answered is how to maintain the momentum to translate discussions and recommendations emanating from the process into action.

59. The Expert Group Meeting on the Implementation of National Reviews and Consultations on Legal and Policy Barriers to Universal Access to HIV Services was organized by ESCAP in cooperation with UNAIDS and UNDP in Pattaya, Thailand, on 4 and 5 March 2014. It was attended by national-level experts from governments, civil society and the United Nations system involved in the national review and multisectoral consultation process, as well as regional networks of civil society organizations, development partners and representatives of the United Nations Regional Interagency Team on AIDS.

60. In discussing the recommended follow-up actions that should be taken in countries at different stages of the national review and consultation process, several common themes have emerged. These were meant to address the challenges encountered by countries where the national review and multisectoral consultation process was already under way, and to support countries in implementing the recommendations arising from the process in the short, medium and long term. These follow-up actions can be classified as follows:

(a) **Effective dissemination of results and recommendations of national reviews and consultations.** Participants noted that many important stakeholders were unaware of the results and recommendations emanating from the national review and consultation processes. Building awareness of Government officials, judiciary, parliamentarians and national human rights institutions was emphasized. Participants from one country suggested a dialogue on the outcomes of the review and consultation be organized with members of parliament and key decision-makers and that high-level advocacy be directed at Government. It was also felt that national reviews and consultations were ongoing processes and that the momentum associated with them be maintained by initiating key follow-up actions in different sectors, involving different stakeholders.

(b) **Initiate short-term actions as intermediate steps towards the long-term goal of amending legislation.** As amendments to legislation is a long-term objective, participants recommended that focus be placed on immediate changes that can be authorized by executive order. These would serve as concrete steps towards achieving more long-term changes that would be brought about through (i) the drafting of HIV policies to address social justice and legal protection issues and (ii) the drafting of amendments to laws that hinder AIDS responses. This could include, for example, guidance on implementation of laws and workplace policies, as well as on programmes to improve access to justice, such as legal services, legal literacy and stigma reduction, awareness-building and training of health-care workers, police, judges and prosecutors, and programmes to change harmful gender norms and practices.

(c) **Improve national and local AIDS legislation and protections for key populations and people living with HIV.** Recommendations under this heading include revising guidelines for drafting local AIDS regulations to include more operational information on good practices in protecting the rights of key populations and people living with HIV. Participants also highlighted the provision of legal aid services for people living with HIV and key populations as an additional area for consideration.

(d) **Partnerships and community mobilization.** The importance of strengthening partnerships with key stakeholders to address stigma and discrimination was also stressed. These stakeholders included the police, members of the health and educational sectors, faith-based organizations, and the media for creating public awareness. Mobilization and building the capacity of the community through legal literacy and access to justice programmes, and development of strategic information to strengthen the evidence base on HIV and human rights was also emphasized.

(e) **Streamline with other processes.** Most participants stressed that successful review and consultation processes had taken advantage of opportunities to feed into other processes, such as the development of a national social protection strategy, drafting of the concept note for the global fund proposal under the new funding model, the national AIDS spending assessments, reviews of existing national strategic plans on HIV and AIDS, and the development of new national strategic plans.

(f) **Establish and strengthen participatory coordination mechanisms to lead implementation.** Several countries have established or empowered multisectoral coordination mechanisms to follow up on and implement the outcomes of the national reviews and consultations. This process could be replicated in other countries.
