



International Development Law Organization
Organisation Internationale de Droit du Développement



Promoting Justice to Create Opportunity

HIV and Health Law Program 2009-2012

Protecting and Promoting Health through Law

Program Description and Highlights

August 2009

Contacts

David Patterson
Program Manager
email: dpatterson@idlo.int

Namizata Meite
Program Legal Officer
email: nmeite@idlo.int

Sara Nardicchia
Project Officer
Email: snardicchia@idlo.int

Viale Vaticano, 106
00165 Roma, Italia
Tel + 39 06 40403200
Fax + 39 06 40403232

idlo@idlo.int · www.idlo.int

PROGRAM BACKGROUND

In sub-Saharan Africa, HIV has orphaned 12 million children and has reduced life expectancy in some countries by more than 20 years. The epidemic has slashed economic growth and increased household poverty. In Asia, HIV causes a greater loss in productivity than any other disease. Other regions also have concentrated epidemics among key populations at higher risk.

Unlawful discrimination against people living with HIV increases the burden on families and communities and drives people away from HIV testing. Lawyers, properly trained, can fight discrimination and promote rights. HIV-related legal services are part of comprehensive psychosocial support for people living with HIV. An enabling legal environment can also reduce social vulnerability to HIV infection.

International Context

The international community recognizes that every country's legal and policy environment is of paramount importance to its response to the HIV epidemic. In the Declaration of Commitment on HIV/AIDS (2001), all **UN Member States acknowledged that 'legal factors are hampering awareness, education, prevention, care, treatment and support efforts.'** They therefore agreed to 'enact, strengthen or enforce, as appropriate, legislation and other measures' to eliminate discrimination against people living with HIV (PLHIV) and key populations.¹ Member States stressed the importance of the respect for human rights and fundamental freedoms in the context of HIV, and specifically the rights of women. The importance of human rights monitoring systems was also noted.

Member States welcomed the efforts of countries to promote innovation and the development of domestic industries consistent with international law in order to increase access to medicines, including generic drugs. The importance of enabling legal frameworks was also noted in the context of HIV in the workplace.

National Action

IDLO recommends that national responses to HIV and AIDS should include programs to reduce discrimination and increase access to justice, including legal services for people living with HIV and key populations.

UNAIDS has established a monitoring system to measure States' progress in meeting their commitments. Yet by 2007, few countries had taken steps to reform their legal frameworks consistent with international guidelines and best practice, and 64% of countries responding to a 2007 survey reported that they still have one or more laws in place that impede access to services. In those countries that have appropriate legal frameworks, implementation is generally weak. Legal system actors (police, lawyers, prosecutors, judges) are inadequately trained, and PLHIV and vulnerable groups are often unaware of their rights.

There are isolated examples of emerging good practices (e.g. Philippines, India, South Africa, Venezuela, Vietnam), but these have been inadequately documented and there has been no harmonization of approaches and little sharing of materials. Requests for technical assistance frequently exceed the capacity of agencies to respond and, worse, some technical assistance has been provided which is contrary to UN guidance and international best practice (e.g. law reform in West Africa). Some good work has been done by NGOs and private sector consulting firms, however institutional memory is not guaranteed and opportunities for scale up have not been exploited.

¹ Key populations vary according to the context. In concentrated epidemics they generally include injecting drug users (IDU), sex workers, and men who have sex with men (MSM), and sexual partners of these groups. In generalized epidemics they include sexually active people outside of a monogamous relationship where both persons are HIV negative. See <http://www.unaids.org/en/PolicyAndPractice/KeyPopulations/default.asp>

PROGRAM GOAL AND OBJECTIVES

Goal: To protect and promote health through law by improving the legal and policy environment (laws, policies, practices, implementation), with a focus on HIV.

Objective 1: People living with HIV and key populations receive quality legal services.

After extensive stakeholder consultations, IDLO chose **capacity building to strengthen and expand HIV-related legal services** as a priority program focus. With UNAIDS and UNDP, IDLO will develop a toolkit to strengthen and expand HIV-related legal services. In 2009, activities for legal service capacity building have been launched or are planned in Benin, Burkina Faso, China, Egypt, Indonesia and Papua New Guinea.

Objective 2: Government officials apply HIV-related laws and policies consistent with public health goals.

Needs assessments will be undertaken in Benin, Burkina Faso, Egypt, Indonesia and Papua New Guinea to establish if and how capacity building could be provided. Data collection from the provision of HIV-related legal services (above) will also be key in designing these programs. National counterparts include Ministries of Health and Justice, as well as police, judges and courts.

Objective 3: Opportunities to improve the legislative environment for the response to HIV are identified and appropriate action is initiated.

From 2010, IDLO will seek opportunities to work with UNAIDS, UNDP and international and regional organizations of parliamentarians to build capacity and strengthen networks.

Research and Publications

IDLO will also undertake research and expert consultations to develop guidelines and identify and document best practices.

PROGRAM HIGHLIGHTS 2009

INTERNATIONAL AND REGIONAL

➤ *Guidelines for States on Public Health Law*

The Guidelines will assist States with identifying and revising outdated legislation and introduce new laws to address emerging threats such as influenza pandemics and diseases associated with changing environments and lifestyles. In April 2009, IDLO, WHO and the O'Neill Institute for National and Global Health Law held the first 'International Expert Consultation on Public Health Law,' in Rome, Italy. The Guidelines will be translated and disseminated after the second international consultation planned for Cairo, Egypt, in early 2010. A capacity building program will follow.

➤ *Toolkit and Capacity Building on HIV-related legal services*

UNAIDS has identified the provision of legal services to people living with HIV and key populations as a priority. In response and with UNAIDS and UNDP support, IDLO has drafted a **HIV-Related Legal Services Toolkit**. The Toolkit examines different models for legal services, capacity building for legal service providers, resource mobilization and monitoring and evaluation of HIV-related legal services. **The Toolkit was reviewed in Rome in May 2009 at the 'International Expert Meeting: 'Strengthened and Expanded Legal Services for People Living with HIV and Vulnerable Groups.'** The revised Toolkit will be reviewed at a seminar on HIV-related legal services in Indonesia in August 2009 (see below), and finalized in December 2009. Translation and dissemination will follow. Another outcome of the meeting is a growing network of lawyers providing HIV-related legal services.

➤ *Building capacity for HIV-related legal services and networking in Asia-Pacific*

On 8 August 2009, IDLO, UNAIDS, UNDP and the Asia Pacific Network of People Living with HIV/AIDS (APN+) will hold a **regional seminar on 'Strengthened and Expanded HIV-Related Legal Services'** prior to the International Congress on AIDS in Asia and the Pacific (ICAAP), in Bali, Indonesia. The seminar will bring together sixty lawyers, paralegals and others from the Asia Pacific region. The seminar will build their capacity to design and implement HIV-related legal services, including civil society engagement, legal sector capacity building, resource mobilization and linkages with law and policy reform. It will also identify the human and material resource needs for comprehensive HIV-related legal services in the region, and opportunities to mobilize them. Another expected outcome is a strengthened network of Asia-Pacific lawyers providing HIV-related legal services. The participants will also review the draft HIV-related legal services Toolkit. Participation in the seminar for fifteen people from developing countries in the region is supported by AusAID.

➤ *Building capacity and Networking on HIV law and policy in Asia-Pacific*

From 7-11 December 2009, IDLO and the AIDS Projects Management Group will host a regional **seminar for up to 30 persons on 'Using the Law and Legal Policy for an Effective Response to HIV and AIDS.'** The seminar will consider the role of the law in the response to HIV/AIDS, outlining the importance of an enabling legal environment for HIV/AIDS policies and frameworks and analysing how the law can constructively be used to strengthen the national response to HIV and AIDS. The seminar will discuss traditional approaches to public health legislation and HIV testing, as well as multi-sectoral approaches to law reform and legal policy and the advantages and disadvantages of these approaches in the response to HIV.

The seminar is primarily for:

- National and provincial government officials funding and managing AIDS programs
- Staff of international and national non-governmental organizations (NGOs) managing AIDS programs
- **Staff of NGO's working on HIV/AIDS projects or with communities vulnerable to HIV**

The seminar will be held at the IDLO Asia-Pacific Regional Centre in Sydney, Australia. Scholarships may be available for participants from developing countries in the Asia Pacific region.

NATIONAL

➤ **Asia Pacific**

China

- Mapping of health law programs in China (joint project with a Chinese academic institution). The result will be better collaboration between programs and sharing of data for law and policy reform. Evaluation and possible documentation and dissemination of the model as a best practice will follow.
- In collaboration with Yunnan University (Kunming) and Research Triangle Institute (RTI), a two year project of support for the student legal aid clinic to provide legal advice and referral for people living with HIV and key populations. Evaluation and possible documentation and dissemination of the model as a best practice will follow.

Papua New Guinea

- In partnership with the School of Law at the University of Papua New Guinea, establishing a free legal information and representation service for people living with HIV and key populations. Based on stakeholder consultations in Port Moresby in February 2009, and in collaboration with the School of Law, IDLO has developed a proposal to support the national response to HIV through improved HIV-related legal services and capacity building. The first step in 2009 will be a needs assessment. Additional donor support is pending.

Indonesia

- IDLO will provide financial and technical support to the National AIDS Commission (NAC) to host a stakeholder meeting on HIV and law, to be held in Jakarta in August 2009. A background paper will be prepared which reviews prior initiatives on HIV and law. The meeting will assist IDLO in developing a proposal for support of the implementation of the National Strategic Plan in the area of HIV and law, with a possible focus on HIV-related legal services.
- With the Indonesian Alumni Association, in late 2009 IDLO will host a three day seminar in Jakarta on intellectual property and public health, with a focus on access to treatments. This seminar will assist public health officials and organizations working on health issues to better **understand Indonesia's international commitments and opportunities to improve access to medicines** for HIV and other diseases.

➤ West Africa: (francophone)

Benin and Burkina Faso

- In May 2009, IDLO undertook a mission to Benin to assess opportunities for a pilot project to support the implementation of the National Strategic Plan on HIV/AIDS by strengthening and expanding HIV-related legal services in collaboration with UNAIDS and UNDP. The local Alumni Association, the Benin Association for Law and Development, has been contracted to undertake a needs assessment and develop a project proposal for IDLO.
- In October 2009, IDLO will undertake a similar mission to Burkina Faso.
- Once the agreement of the national partners and other stakeholders in both countries is secured, IDLO will hold a **multi-country policy dialogue on a relevant topic, such as 'Using the law to address HIV-related discrimination'**. The policy dialogue will build the capacity to address HIV-related discrimination in the participating countries by sharing models and experiences.

➤ Middle East North Africa

Egypt

- In July 2009, IDLO met with the National AIDS Program, civil society, United Nations system organizations, and other development partners about the potential direction and scope of the HIV and Health Law Program in Egypt and, eventually, in the Middle East North Africa (MENA) region. A needs assessment will be undertaken with a view to a two year pilot project to strengthen and expand HIV-related legal services from 2010.
- Initial discussions were also held regarding national capacity building on intellectual property law and public health (access to medicines).

➤ Research and Publications

- **'Legal empowerment as a response to HIV' (working title), with the Nossal Institute for Global Health, University of Melbourne, Australia (October 2009);**
- **HIV-related Legal Services Toolkit** (December 2009, with UNAIDS and UNDP), comprising:
 - Guiding principles for HIV-related legal services
 - Models for the provision of legal services, and how to design locally appropriate services
 - Monitoring and evaluating HIV-related legal services
 - Capacity building of legal sector workers, including networking and other support
 - Resource mobilization for scale upThe toolkit will be published in English, with translations to follow in 2010.

HISTORY OF IDLO'S WORK ON HIV

IDLO began examining the legal issues relating to HIV in 2003 with a series of distance learning dialogues that focused on Ethiopia, Tanzania and Uganda. In 2004, IDLO and the World Bank conducted a needs assessment in Uganda, which examined the connection between land rights, gender discrimination, and the situation of PLHIV. In 2007, IDLO commenced a pilot initiative in Yunnan, China: the 'HIV and AIDS Law and Access to Justice Project.' This initiative resulted in the first training workshop specifically for lawyers in China, the publication (in Chinese) of a Guide to HIV/AIDS and the Law, and the establishment of a network of lawyers in Yunnan to provide legal advice to PLHIV and vulnerable groups.

COMPARATIVE ADVANTAGE

IDLO is a non-partisan, intergovernmental organization that promotes legal, regulatory and institutional reform to advance economic and social development in transitional and developing countries.

Founded in 1983 and one of the pioneers of rule of law assistance, IDLO believes that legal reform occurs alongside economic and social development, and that it is driven by societal demand. By involving stakeholders at all levels of society, IDLO helps develop sustainable, equitable solutions that reflect a society's broad needs and desires.

IDLO employs a comprehensive bottom up, top down approach to mobilize stakeholders to drive institutional change. Because IDLO wields no political agenda and has deep expertise in all legal systems and emerging global issues, people and interest groups of differing ideologies trust IDLO. It has direct access to government leaders, institutions and multilateral aid organizations in developing countries, and works with lawyers, jurists, policymakers, regulators, advocates, academics and civil society representatives.

Since its establishment, IDLO has worked with more than 20,000 legal professionals in 175 countries. Its network of forty-four independent national alumni associations --with membership drawn from legal, business, academic, and civil society communities-- gives it a unique ability to create opportunity for those most in need.

IDLO is based in Rome, Italy, with regional centers in Cairo, Egypt and Sydney, Australia. It currently operates project offices in Afghanistan, Indonesia, Kyrgyzstan and Sudan. In 2001, IDLO was granted observer status by the United Nations, leading to the creation of a liaison office at UN headquarters in New York.

IDLO is supported by voluntary contributions from governments, multilateral organizations, private foundations and the private sector. IDLO's Member States are *Australia, Austria, Bulgaria, Burkina Faso, Colombia, Ecuador, Egypt, France, Italy, Kenya, Norway, Paraguay, Philippines, People's Republic of China, Romania, Senegal, Sudan, the Netherlands, Tunisia and the United States.*