

EQUAL RIGHTS, EQUAL TREATMENT, ENDING AIDS: STRENGTHENING AND EXPANDING HIV-RELATED LEGAL SERVICES AND RIGHTS



The contribution of IDLO's HIV
and Health Law Program
(2009–2017) to ending AIDS in
Latin America and the Middle
East / North Africa

“Not all cases need to go to court to be effective. The presence of ... legal services, as well as the ability to mediate cases outside of the court system, is an important redress mechanism. The presence of such services, and the rising publicity around cases, are ultimately a deterrent to HIV-related discrimination and human rights violations.”

Laura Hernandez, Lawyer and Coordinator of the Online Legal Service, Letra S, Mexico

“When we call for ending stigma and discrimination we have to ACCEPT the other person, regardless ... of whether this person is religious, not religious; regardless of their lifestyle; regardless of what their beliefs are. The most important thing is to accept each other, and not to stigmatize and discriminate.”

Mohammed Al Nasser, Lawyer and Founder, HIV and Law Initiative, Jordan

CONTENTS

Acronyms	4
KEY MESSAGES	5
ABOUT THIS REPORT	6
BACKGROUND	7
WHAT WORKS	9
1. Empowering communities and building legal literacy	10
Ecuador	10
Morocco	11
2. Enabling access to legal assistance and seeking redress when discrimination has occurred	12
Mexico	12
Tunisia	13
3. Resourcing strategic litigation	14
Egypt	14
Guatemala	15
4. Advocating to strengthen legal and policy environments	16
Lebanon	16
El Salvador	17
5. Building the capacity of partners in both HIV science and law	18
Jordan	18
6. Supporting dialogues and networking within and between regions	19
Latin America and the Caribbean	19
Middle East / North Africa	19
HIV-RELATED LEGAL SERVICE MODELS	20
Table 1: CSOs supported by IDLO's Program, and the different ways in which HIV-related legal services can be delivered	21
Notes	22
Acknowledgments	23

Acronyms

AIDS	Acquired Immune Deficiency Syndrome
ATL	Tunisian Association for the Fight against Sexually Transmitted Diseases and AIDS
CSO	Civil Society Organization
CEPVVS	Ecuadorian Coalition of People Living with HIV/AIDS
CLADEM	Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer
HIV	Human Immunodeficiency Virus
IDLO	International Development Law Organization
LAC	Latin America and the Caribbean
LEAHN	Law Enforcement and HIV Network
MENA	Middle East and North Africa
MENAHRA	Middle East and North Africa Harm Reduction Association
MENAL	Middle East and North Africa Network for AIDS and Law
OPALS	Pan-African Organization to Fight AIDS
RANAA	Regional Arab Network Against AIDS
REDLACSEL	Latin American and Caribbean Human Rights and HIV-related Legal Services Network
SDG	Sustainable Development Goal
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime

KEY MESSAGES



“One of the main solutions to better respond to HIV, be it at the local, regional or international levels, is to look at HIV-related issues from a ‘rights’ perspective.”

Dr Youssef Awad, Lawyer and Chair, Al Shehab Foundation, Egypt

- 1 International human rights law provides a unifying vision.** A human rights-based approach can help address stigma and discrimination related to a person’s HIV status, sexual orientation, behaviors or gender identity.
- 2 The law has a central role in realizing the right to health, including in the context of HIV.** An enabling legal environment is essential to the achievement of the 2030 Agenda and the Sustainable Development Goals, including SDG3.
- 3 Empowering people and communities to know their rights, building legal literacy, and providing quality legal services are essential components of an enabling legal environment.** They must be part of the essential services package, along with HIV awareness, testing, treatment, and support services.
- 4 Positive legal frameworks can also address stigma and build acceptance and respect.** Changes in personal attitudes and values can be triggered by strategic litigation, media coverage and social debates. In turn, advocacy is needed to develop positive legal frameworks.
- 5 Context is important – every country has a different epidemic and legal environment.** However, much can be learned by sharing information and good practices between countries with similar cultures and legal systems, and between regions.

ABOUT THIS REPORT

This report is for government health and justice sector advisors, policy makers, representatives of civil society organizations (CSOs), program managers in international organizations, and donors who would like to know more about what works in creating positive legal environments in national HIV responses.

The IDLO HIV and Health Law Program strengthened and expanded HIV-related legal services and rights in 11 countries in Latin America and the Middle East / North Africa over the period 2009–2017. The report describes six approaches to strengthening these legal services, and gives examples from different countries to illustrate how the approaches worked in a real-life setting.

The varied legal contexts and the complexity of the issues mean that several approaches were often used in each country – just one aspect has been highlighted here. Table 1 lists the organizations supported by the Program, and describes the different ways in which these organizations delivered HIV-related legal services.



FIGURE 1: PARTICIPATING COUNTRIES IN THE IDLO HIV AND HEALTH LAW PROGRAM

BACKGROUND

The international community has recognized the central role of law in enabling national responses to HIV.

In 2001, all United Nations Member States resolved in the 'Declaration of Commitment on HIV/AIDS' to address the legal factors that are hampering HIV awareness, education, prevention, care, treatment and support.¹ In 2016, UN Member States again committed to '[p]romoting laws, policies and practices to enable access to services and end HIV-related stigma and discrimination'.² Such 'enabling legal environments' are essential for realizing the human right to health for all.

Working together, we can "end AIDS" by 2030. A key component of the global response is encouraging everyone who is at risk of HIV infection to take an HIV test, and then providing people who test HIV positive with anti-retroviral therapy and other care, treatment and support. This will both prolong their lives and reduce to near-zero the risk of further HIV transmission.³ However, in many countries people living with HIV and key populations are marginalized by criminal laws, social norms, and internalized beliefs and practices that exacerbate social exclusion. As long as stigma and discrimination persist, they will be deterred from seeking essential health services. Therefore, in order to end AIDS by 2030, human and financial resources must be invested in addressing stigma and discrimination.

WHY FOCUS ON KEY POPULATIONS?

In 2015, members of **key populations**, including sex workers, people who inject drugs, transgender people, prisoners and gay men and other men who have sex with men, and their sexual partners accounted for **45%** of all new HIV infections.⁵

Empowering people and communities to know their rights, build legal literacy, and provide access to quality legal support

are all components of an enabling legal environment. The United Nations has provided specific guidance on the role of the law in response to HIV, including in the application of human rights treaties and conventions to HIV and AIDS,⁶ specific guidance to legislators,⁷ and national legal frameworks.⁸ This guidance emphasizes that available, accessible, acceptable and quality legal services are central to addressing HIV-related stigma and discrimination.

LAWYERS AND PARALEGALS HELP PEOPLE IN MANY WAYS

Often people are too intimidated, because of their social status as well as their HIV status, to ask a government office for assistance, even if they are aware of their health service and other entitlements. In Egypt, the Al Shehab Foundation has assisted women engaged in sex work to replace lost identity cards which are needed to access government social services. This helped them to move out of sex work if they wanted to, and reduced the risk of HIV infection to them and their partners.

To respond effectively, we need to know the local epidemic, the applicable law, and the way the law is experienced by people living with HIV and other key populations.

Every country has a different HIV epidemic. Similarly, legal contexts vary. It is essential to know how HIV, sexual behavior and drug use are treated in both the 'law on the books' and the 'law on the streets'. Understanding contextual differences, and how the law is experienced in everyday life, including how it is implemented by the police and other justice system actors, is key to designing effective national responses. Learning from others, and hearing what has and hasn't worked in different contexts, can offer inspiration and new ideas to ensure that the legal environment is enabling – rather than hindering – the national response to HIV.

 "There remains a growing need for access to legal assistance and information as the number of people seeking out HIV care and prevention grows; moreover, strategic litigation takes time and resources to be successful ... The many opportunities now available to improve the lives of people living with HIV and to prevent further spread of HIV can only be realized if access to care is consistently available, equitably provided, and of high quality. Continued and enhanced legal protection and oversight is essential to secure these goals."

David Barr, independent consultant, 2015⁴

SUSTAINABLE DEVELOPMENT GOALS

The IDLO HIV and Health Law Program contributes directly to the 2030 Agenda for Sustainable Development and the following Sustainable Development Goals (SDGs):

Goal 3: Good health and well-being



SDG3 target 3.3 is to end AIDS as a public health threat by 2030. IDLO works globally and in program countries to strengthen the enabling legal environment – vital to achieving this goal.

Goal 5: Gender equality



IDLO has supported legal services for female sex workers and drug users, and for women living with HIV. Strategic litigation supported by IDLO has resulted in court decisions to prohibit coerced female sterilization in El Salvador and promote the rights of transgender women in prison in Guatemala.

Goal 10: Reduced inequalities



HIV is both a cause and consequence of poverty and inequality. IDLO’s national partner organizations have advocated for the reform of discriminatory laws, policies and practices. In Guatemala, Fundación Fernando Iturbide successfully advocated to end police use of the possession of condoms as evidence of sex work. In Egypt, strategic litigation to address HIV-related discrimination in employment led to a ground-breaking court ruling on the rights of people living with HIV.

Goal 16: Peace, justice and strong institutions



IDLO has supported dialogues between governments and people living with HIV and other key populations on the reform of discriminatory laws, policies and practices. IDLO has convened national and regional consultations to sensitize and inform law enforcement officials, parliamentarians, and

the judiciary. Following these dialogues in Egypt, the Ministry of Health HIV/AIDS Strategic Framework (2012–2016) included a reference to the enabling environment, and the reduction of stigma and the elimination of discrimination against people living with HIV.

Goal 17: Partnerships for the goals



IDLO has supported multi-sectoral dialogues on HIV, law and rights at national, regional and inter-regional levels. In both Latin America and the Middle East / North Africa, IDLO has supported regional civil society networking to share information and mobilize resources for sustainable legal services and rights advocacy. IDLO works closely with UNAIDS, UNDP, UNODC and other UN system agencies at global, regional and national levels. In 2014, IDLO and UNAIDS signed a cooperation agreement to jointly address HIV discrimination.

WHAT WORKS

IDLO used the following six approaches to strengthen and expand HIV-related legal services and rights in the IDLO HIV and Health Law Program countries:

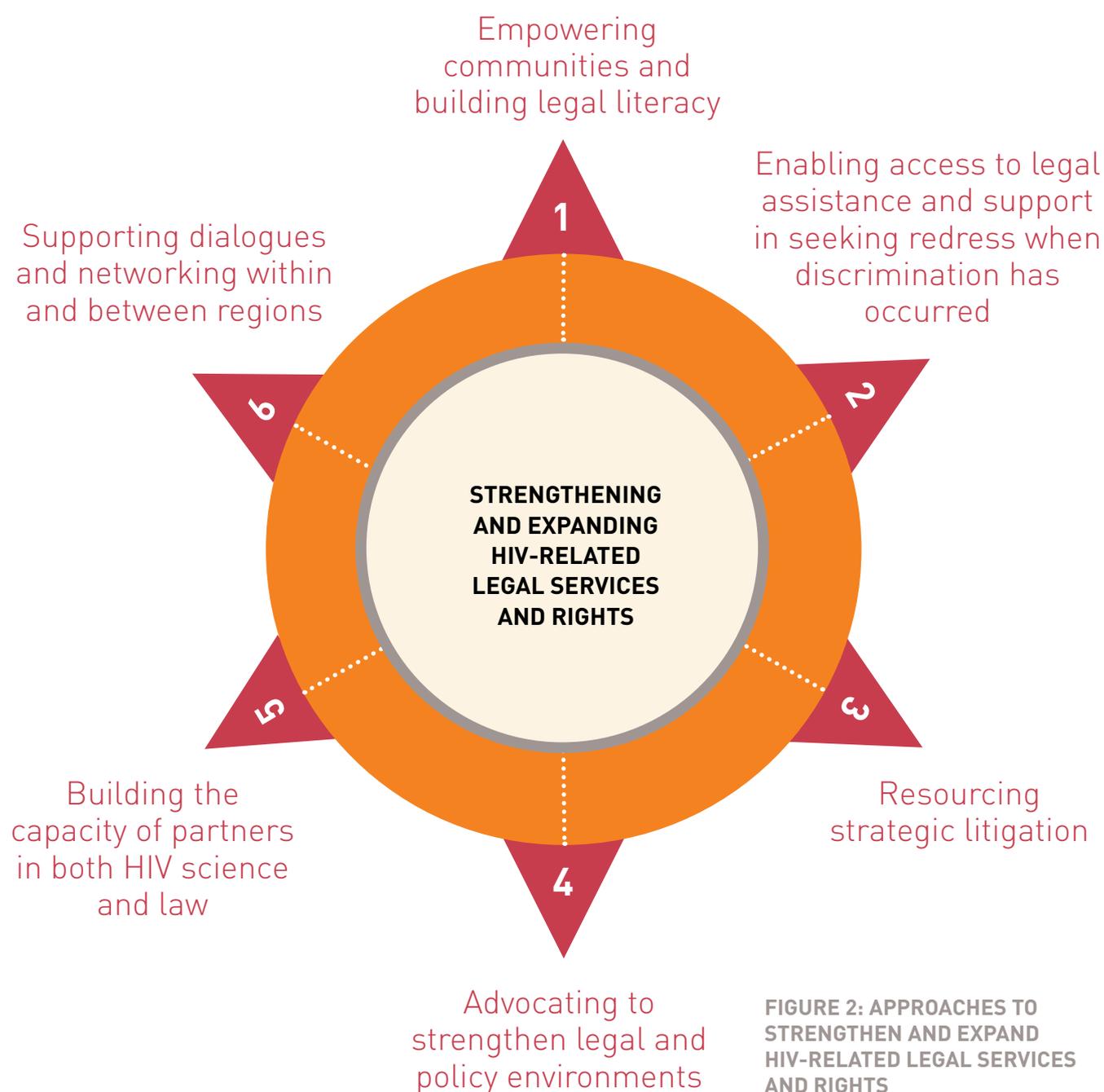


FIGURE 2: APPROACHES TO STRENGTHEN AND EXPAND HIV-RELATED LEGAL SERVICES AND RIGHTS

Note: The epidemiological data in the following case studies are largely drawn from 2016 UNAIDS country reports.⁹ However we recognize that in many cases the figures may not accurately reflect the local situation, particularly regarding key populations. There

may be geographic variation within countries (e.g. between cities and rural areas), and difficulties in defining, identifying and surveying these populations. This is particularly true when the behavior is criminalized. Most importantly however, the data consistently

indicate that HIV prevalence is much higher in key and other vulnerable populations. It is also important to disaggregate the data – there is often a significant gender variation. Due to space limitations these issues are not explored further in this report.

1. Empowering communities and building legal literacy

To make rights real, people need to understand their rights, recognize when they have been violated, and have the confidence and support to seek legal redress. IDLO enhanced legal literacy by using multiple approaches, including telephone hotlines,

web-based platforms and social media, to share information about rights, communicating with local media and legal professionals to enhance their HIV competency, and expanding access to legal services.

Ecuador



HIV PREVALENCE

 Aged 15 to 49: **0.3%**

Key populations

-  Men who have sex with men: **13%**
-  People who inject drugs: **no data**
-  Sex workers: **0.5%**
-  Transgender people: **32%**



LEGAL FRAMEWORK

- Law criminalizes male homosexual acts** Yes No
- Laws to protect from HIV-related discrimination** Yes No

CASE STUDY

HIV AND HUMAN RIGHTS PROTECTION SYSTEM

Social stigma toward homosexuality and sex work creates barriers to health services and adherence to HIV treatment. Concerns include discrimination and breaches of confidentiality in the workplace and healthcare settings, and discrimination in access to social security benefits. In response, the **Ecuadorian Coalition of People Living with HIV/AIDS (CEPVVS)**, a CSO, recognized the need for a national mechanism to protect human rights relating to HIV. CEPVVS coordinated public

institutions, CSOs, community-based organizations (e.g. of local transgender populations and sex workers), and academia to build HIV-related legal literacy, and a network of human rights defenders to provide advice and services. IDLO provided CEPVVS with technical and financial support to develop the human rights protection system. The system includes lawyers from public institutions, such as the Ministries of Labor, Health, Justice and Human Rights, Economic and Social Inclusion; the Ombudsman’s Office, the Office of the Public Defender, and the Municipalities of Quito and Sucre.



“We empower communities through the provision of legal information and training in human rights and HIV ... We recommend that [organizations] work in coordination with state institutions and that a process of continuous training in human rights and HIV be carried out, a process that includes all the key actors in the national response to HIV.”

Fausto Vargas, Secretary-General, CEPVVS

Morocco



HIV PREVALENCE



Aged 15 to 49: **0.1%**

Key populations



Men who have sex with men: **5.7%**



People who inject drugs: **7.9%**



Sex workers: **1.3%**



Transgender people: **no data**



LEGAL FRAMEWORK

Law criminalizes male homosexual acts

Yes

Laws to protect from HIV-related discrimination

No

CASE STUDY

FIRST NATIONAL HIV AND LAW TELEPHONE HOTLINE

Stigma is the biggest challenge for people living with HIV and other key populations in Morocco. Treatment is available readily, yet stigma causes challenges in accessing health and other services. Because of stigma, people can be afraid to take complaints of discrimination to court.

The **Pan-African Organization to Fight AIDS (OPALS)**, a CSO, established a telephone hotline and volunteers in branches in 18 cities across Morocco, ensuring a HIV-

trained lawyer is present in each branch. OPALS also conducted awareness sessions with judges, lawyers and police officers, as well as for people living with HIV.

IDLO supported OPALS to document HIV-related human rights issues in Morocco. These included refusal to provide medical treatment on the grounds of HIV status or sexual orientation. With IDLO support OPALS also developed an HIV and rights awareness program, provided legal services, and trained lawyers and medical doctors on HIV and human rights.



“We were the first civil society organization to introduce this ‘rights approach’. We conducted workshops which gathered both lawyers and medical doctors in the same sessions. We also worked on sensitizing people living with HIV about their rights, for them to be able to defend themselves whenever their rights are violated.”

Dr Azzouz Ettoussi, Psychologist, OPALS



“One of the biggest problems for people living with HIV in Morocco is not treatment

[medication] – because HIV treatment is available from the Ministry of Health. The biggest problem is stigma. Some medical doctors refuse to provide certain treatments when they realize that the person is living with HIV ... There can also be the rejection of health service provision for homosexuals. We tried to bring together lawyers and medical doctors, for the lawyers to understand the difficult situations people living with HIV face, as well as to explain to them HIV modes of transmission; and for the doctors to understand the rights of people living with HIV, because these individuals are citizens before being unwell or living with HIV.”

Dr Azzouz Ettoussi, Psychologist, OPALS

2. Enabling access to legal assistance and seeking redress when discrimination has occurred

Many people living with HIV and other key populations are socially marginalized. Their sexual behavior and drug use may also breach local criminal laws. Further, they are often unaware of or skeptical about the law and criminal justice processes, and need support to stand up for their rights. Yet, even in a hostile legal environment, lawyers can assure due process and get better results for clients than if they are left to deal with

employers, landlords, health authorities, and the justice sector on their own. IDLO promoted access to legal assistance by supporting online legal information and resource platforms. IDLO helped communities to document and report human rights violations. IDLO also facilitated the use of social media to publicize cases of harassment and discrimination, and the training of lawyers to provide quality HIV-related services.

Mexico

HIV PREVALENCE

Aged 15 to 49: **0.3%**

Key populations

Men who have sex with men: **17.3%**

People who inject drugs: **2.5%**

Sex workers: **7%**

Transgender people: **17.4%**

LEGAL FRAMEWORK

Law criminalizes male homosexual acts Yes¹⁰

Laws to protect from HIV-related discrimination Yes

CASE STUDY

FIRST NATIONAL ONLINE LEGAL INFORMATION AND REFERRAL SERVICE

Letra S, a CSO, developed a national online legal service which provides information and referrals to legal advice and representation for people living with HIV and other key populations (www.letraese-ddhh.com/). It is the first online legal service of its kind in the Latin American region, and serves 12 states of Mexico. The important role that online platforms can play in enabling access to justice was demonstrated in a high-profile case involving four transgender sex workers in Chihuahua.¹¹ After the women were arrested, they were taken to a detention center and verbally harassed by the detention center officers. They were also tested for HIV without their consent,

using the same needle. The women subsequently requested help through the online legal service. The legal service prepared the formal complaints of violations of rights to health, privacy, freedom, life, personal integrity and access to justice, which were then submitted to the National Human Rights Commission. Following an investigation by the Commission, the detention center officers involved were dismissed.

Complaints were also submitted to the Inter-American Commission on Human Rights and the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

IDLO provided financial and technical support to develop the online platform, and built the

“Not all cases need to go to court to be effective. The presence of ... legal services, as well as the ability to mediate cases outside of the court system, is an important redress mechanism. The presence of such services, and the rising publicity around cases, are ultimately a deterrent to HIV-related discrimination and human rights violations.”

Laura Hernandez, Lawyer and Coordinator of the Online Legal Service, Letra S

capacity of Letra S to deliver the legal services. IDLO also strengthened the relationship between Letra S and government institutions. This resulted in expanded services and improved coordination between Letra S, the Condesa Clinic (providing HIV-related medical care), and the National Human Rights Commission.

Tunisia



HIV PREVALENCE

 Aged 15 to 49: **<0.1%**

Key populations



Men who have sex with men: **9.1%**



People who inject drugs: **3.9%**



Sex workers: **0.9%**



Transgender people: **no data**



LEGAL FRAMEWORK

Law criminalizes male homosexual acts

Yes

Laws to protect from HIV-related discrimination

No

CASE STUDY

#SAVEMARWAN

Marwan (not his real name) was arrested on suspicion that he was homosexual. He reports being assaulted while in police custody. He was obliged to undergo a humiliating anal examination to detect evidence of sexual activity. With this 'proof', he was charged with sodomy.¹²

In response, the **Tunisian Association for the Fight against Sexually Transmitted Diseases and AIDS (ATL)**, a CSO, mobilized a group of volunteer lawyers to

defend Marwan and draw attention to the violations of his human rights. Social media played an important role – including a popular Twitter campaign to *#SaveMarwan*. This transformed the case from one about homosexuality to one about human rights – a more popular and less stigmatized cause. Marwan was released with a fine instead of a jail sentence. This ruling has set an example for similar cases. IDLO supported ATL to train lawyers on HIV epidemiology and legal best practices. ATL then established a legal service for people living with HIV and other key populations.



"I consider Marwan's case as an achievement – I'm proud of it because it is a

significant case at all levels ... We cannot fight HIV merely through medication ... the sound solution would be to improve the arsenal of laws and the legal and judicial systems and cleanse them from the impurities of stigma and discrimination."

Nada Riahi, Lawyer, ATL

3. Resourcing strategic litigation

Some legal cases are strategic because they can set important national legal precedents, challenge discriminatory laws and influence legal decisions regionally, and beyond. They can transform the legal and policy environment for whole communities, even without parliamentary legal reform. IDLO provided legal and financial resources that enabled legal representation and decisions in landmark cases involving HIV, human rights and key populations.

COURT ACTION REQUIRES COURAGE

Taking a case to court usually means that it will be open to public scrutiny and requires courage on behalf of the complainant because their HIV status or personal life will be disclosed. This is one reason why the law often remains untested in the context of HIV. Another is that some lawyers refuse to handle HIV-related cases.

Egypt



HIV PREVALENCE

Aged 15 to 49: **<0.1%**

Key populations

Men who have sex with men: **6.2%**

People who inject drugs: **2.4%**

Sex workers: **2.8%**

Transgender people: **no data**



LEGAL FRAMEWORK

Law criminalizes male homosexual acts

Yes

Laws to protect from HIV-related discrimination

No

CASE STUDY

LANDMARK JUDGMENT ON THE RIGHT TO WORK

Stigma and discrimination remain key challenges in the national HIV response, particularly in the workplace and healthcare settings. In 2016 an Egyptian court delivered a landmark judgment concerning a plumber who was dismissed because he was HIV positive. **Al Shehab Foundation**, a legal rights CSO, had filed a complaint with the Government Office of Labor on his behalf for unfair dismissal under the Labor Law (12/2003). Mediation by the Office of Labor failed, and the matter proceeded to the Giza Court of First Instance, Labor Plenary. The Court ruled in the employee's favor, stating that employees cannot be dismissed from their work based

solely on their HIV status. In 2017, the court decision was upheld on appeal. The employer refused to re-employ the complainant (an option provided by Egyptian law), and an application for compensation has been filed.¹³

The case was filed in a very challenging and intimidating social, cultural and legal context. Al Shehab Foundation provided the employee with psychosocial support, including about HIV transmission, prevention, treatment and care; and provided him with the legal representation to help him win the case. This is a ground-breaking ruling for Egypt and for the region. IDLO provided technical and financial support to Al Shehab Foundation throughout the process.¹⁴



"This case is ground-breaking and can lead the way to similar cases which we deal with. This case has

two main components which make it significant. The first point is the role we [Al Shehab Foundation] could play, to support this person, gather the necessary evidence to support his case, and most importantly to support his decision to go to the court and sue the employer, because in this case [disclosure of HIV status] he will be exposed to stigma and discrimination from the society as a whole ... Considering the publicity of court cases, this is not an easy decision to make. The second point is the legal research which we conducted while trying to link HIV-related allegations and other legal texts relating to labor law and constitutional articles which ensure the individual's autonomy and labor rights."

Dr Youssef Awad, Lawyer and Chair, Al Shehab Foundation

Guatemala



HIV PREVALENCE



Aged 15 to 49: **0.5%**

Key populations



Men who have sex with men: **8%**



People who inject drugs: **no data**



Sex workers: **1.6%**



Transgender people: **22.2%**



LEGAL FRAMEWORK

Law criminalizes male homosexual acts



No

Laws to protect from HIV-related discrimination



Yes

CASE STUDY

LANDMARK JUDGMENT ON TRANSGENDER RIGHTS IN PRISONS

HIV prevalence varies across the country, and is considerably higher in Guatemala City. Sex workers face particular challenges because while sex work is legal, procuring sex is illegal. With little protection provided by police, sex workers are vulnerable to violence and extortion. Cultural values and attitudes towards same-sex relations and rigid gender roles for men and women also fuel stigma.

In 2012, the **Fundación Fernando Iturbide** and the **Legal Network**, partnered to pursue several cases in the Constitutional Court involving the systematic violations of the rights of transgender women in prisons. These included being forced to wear male clothing and

cut their hair to correspond to their biological sex. The Court decided that these actions violated the right of prisoners to non-discrimination on the basis of gender identity, and further that the discrimination constituted cruel, inhuman and degrading treatment as well as arbitrary punishment.¹⁵ As a result, the Court recognized the women's right to dignity, identity, equality, integrity, security and non-discrimination, adding that there would be no peace in Guatemala while human rights violations continued to be tolerated.

This case had a significant impact on practices in Guatemalan prisons. The Legal Network's Observatory on Human Rights, HIV and Vulnerable Populations recorded no complaint of similar human rights violations after the Court decision (to the end of 2016).



"This decision was the first in Guatemala which recognized the human rights

of transgender women and was endorsed by the highest constitutional authority."
Rocio Samayoa, Lawyer with both the Fundación Fernando Iturbide and the Legal Network

Preparations for the case involved national and regional networking between institutions and lawyers from Guatemala, Peru and Colombia.

IDLO provided the Fundación Fernando Iturbide with technical and financial support, and helped facilitate exchanges between lawyers within the region.

4. Advocating to strengthen legal and policy environments

Advocacy efforts leverage the transformative potential of strategic litigation, landmark judgments and other triggers for progressive social change. At the interpersonal level, IDLO facilitated dialogue between police and communities most affected by HIV. At the structural level, IDLO provided financial

and technical support to enhance the impact of strategic litigation through advocacy, coverage in mainstream media and social media, and through capacity building with partners to enhance competency in HIV, law and human rights.

Lebanon

HIV PREVALENCE

Aged 15 to 49: **<0.1%**

Key populations

Men who have sex with men: **27.5%**

People who inject drugs: **0.9%**

Sex workers: **1.0%**

Transgender people: **no data**

LEGAL FRAMEWORK

Law criminalizes male homosexual acts
 Yes No

Laws to protect from HIV-related discrimination
 Yes No

CASE STUDY

COURT REFERRAL TO TREATMENT RATHER THAN PRISON FOR DRUG USERS

Drug use in Lebanon is not criminalized, however non-adherence to court-mandated treatment is an offence. In 1998 the Drugs Act was amended to require courts to refer offenders who request it to rehabilitation rather than prison. However, the 'Addiction Committee', which is by law responsible for the supervision of rehabilitation treatment for offenders, was never convened – hence court referral to treatment was not possible. In 2013, the **Skoun Lebanese Addictions Center**, a CSO, and partners advocated for the activation of the treatment mechanisms provided

by law. They developed and used a 'model defense' brief in all the drug-use cases they handled. As a result, the Supreme Court ruled that rehabilitation must be an option for drug offenders.

Each year, from 2013-2016, there was a 50% increase in the number of cases that were referred to treatment. Despite the victory, many challenges remain. One is that the treatment centers and the Addiction Committee are located only in Beirut and Mount Lebanon. Justice remains inadequate for people who use illegal drugs in other governates. IDLO provided technical and financial support to Skoun, including for the development of the model defense brief.

"In our strategic litigation, we used a 'model defense', adopted by all lawyers handling drug-related cases ... These actions and advocacy work were moving alongside each other ...

The highest judicial authority in Lebanon (the Supreme Court) ruled that 'the judge has a duty to refer the individual to treatment and he has no discretionary power in this regard'.... This case is important because it re-established our trust in the judiciary body as a reliable body that people could refer to, to protect their rights."

Sandy Mteirik, Drug Policy Adviser, Skoun Lebanese Addictions Centre

LAW ENFORCEMENT AND HIV – A REGIONAL RESPONSE IN THE MIDDLE EAST / NORTH AFRICA

Whatever the ‘law on the books’, police attitudes and practices play a major role in determining who gets arrested, what they are charged with, and whether they are convicted. Even in hostile legislative contexts, good working relationships with police can assist with, for example, referral to health and rehabilitation services. In 2013 and 2016 IDLO organized regional meetings to review the role of the police in the Middle East / North Africa in ending AIDS and reducing the harms of drug use. Senior police officers from the

region participated alongside people living with HIV and representatives of key populations – a first for the region. Meeting co-sponsors included UNAIDS, UNODC, UNDP and the Middle East and North Africa Harm Reduction Association (MENAHR). At the 2016 meeting, IDLO invited the Law Enforcement and HIV Network (LEAHN) to share the experience of other regions. These consultations initiated a regional dialogue about engaging police in national HIV responses, and building trust between police and civil society organizations. They also stimulated the expansion of the LEAHN network of police focal points in the MENA region.¹⁶

El Salvador



HIV PREVALENCE

 Aged 15 to 49: **0.6%**

Key populations



Men who have sex with men: **10.3%**



People who inject drugs: **no data**



Sex workers: **2.8%**



Transgender people: **no data**



LEGAL FRAMEWORK

Law criminalizes male homosexual acts

No

Laws to protect from HIV-related discrimination

Yes

CASE STUDY

LANDMARK DECISION ON FORCED STERILIZATION

Forced sterilization was a critical issue facing women living with HIV in El Salvador. In 2014, **Vida Nueva**, a legal rights CSO, pursued a case regarding the forced sterilization of an HIV positive minor when she was hospitalized for a Cesarean-section. Vida Nueva mobilized the Ombudsman’s Office, and women’s rights, legal, HIV and human rights-related CSOs to organize an inter-institutional roundtable discussion and develop the legal action. Vida Nueva also developed the legal claim in collaboration with a former deputy state attorney and the Regional Network CLADEM (Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer). Notably,

the Ombudsman’s Office also supported Vida Nueva throughout this process.

This was the first case of its kind in El Salvador to reach the Supreme Court, which ruled that the National Maternity Hospital had violated rights relating to access to information, reproductive health, reproductive self-determination, and personal integrity. The Court ordered the hospital to provide appropriate, free psychological treatment, and left open the possibility of compensation.¹⁷ This ruling led to changes in the provision of maternal health services ensuring equal treatment for all pregnant women regardless of their HIV status. This was achieved even though the Court decision did not mention



“We chose to support this case because it is an important situation we have been

aware of for some time but have never had the concrete evidence regarding forced sterilization in El Salvador. Once Vida Nueva provided the evidence, it was a priority for us to file the complaint, and support the investigation.”

Jaime Argueta, Head, HIV Department, Ombudsman’s Office

that the forced sterilization was linked to HIV status. The ruling strengthened the law protecting all women’s autonomy, including women living with HIV. IDLO provided financial and technical support to Vida Nueva, including capacity building of staff to undertake strategic litigation.

5. Building the capacity of partners in both HIV science and law

Lawyers need to better understand the links between rights, criminal laws, police practices and health outcomes. Similarly, healthcare workers need to understand the links between health and well-being, and wider social challenges of stigma, discrimination, and marginalization through legal and other social processes.

LEGAL RIGHTS AND HEALTH SERVICE CSOs LEARN FROM EACH OTHER

In Egypt, IDLO supported an innovative ‘twinning’ approach that paired legal rights and health service CSOs to work together to address HIV-related stigma and discrimination, including in the delivery of health services to people living with HIV (Table 1). Through this process, both CSOs

in the partnership benefitted. National consultations of all the CSOs, including representatives of people living with HIV, allowed the sharing and comparing of different approaches. IDLO supported national networking and professional collaboration between multi-disciplinary partners to build coalitions and enhance the capacity of all to respond effectively to HIV in the national context.

Jordan

HIV PREVALENCE

Aged 15 to 49: **<0.1%**

Key populations

- Men who have sex with men: **7.5%**
- People who inject drugs: **no data**
- Sex workers: **0.5%**
- Transgender people: **no data**

LEGAL FRAMEWORK

- Law criminalizes male homosexual acts**

No
- Laws to protect from HIV-related discrimination**

No

CASE STUDY

INNOVATIVE USE OF SOCIAL MEDIA TO ADDRESS DISCRIMINATION AND PROMOTE RIGHTS

The **HIV and Law Initiative**, a CSO, held workshops with media representatives including journalists, film directors, social media and visual art students to raise awareness about HIV-related human rights. At the end of the workshops, messages, statements, and testimonies (such as “love them before you stigmatize them”) were selected for short videos to raise awareness about HIV-related stigma and discrimination.¹⁸ Artists and well-known media figures collaborated to deliver these messages. With IDLO technical

and financial support, the HIV and Law Initiative formed specialized committees to respond to the medical, social, and legal needs of people living with HIV, trained lawyers, and established a media committee to create a public awareness campaign. Mohammed Al Nasser, a Jordanian lawyer and founder of the HIV and Law Initiative, and his team addressed HIV-related issues in meetings and conferences, through public events, TV shows, TV interviews, social media, newspapers, and elsewhere. His multiple public appearances defending this cause were unconventional and courageous for a member of the Jordanian bar. Although his efforts were generally well-received,

“Responding to stigma and discrimination requires a change in the mindset of the general public of the entire society. So, we realized that the best way to address this issue is to form a media committee to convey our messages through the media ... we started to develop short videos ... All of [the artists] were volunteers and are strong believers of our case to make a social change ... All the achievements we attained over years of hard work was motivated or driven by LOVE.”

Mohammed Al Nasser, Lawyer and Founder, HIV and Law Initiative

they were not welcomed by all. Unfortunately, Mohammad has also received many hate messages, demonstrating that much remains to be done to address HIV-related stigma in Jordan.

6. Supporting dialogues and networking within and between regions

Strengthening and expanding HIV-related legal services and rights is enhanced by learning from others, engaging diverse partners, and enabling regional and inter-regional collaboration between countries.

IDLO hosted three inter-regional meetings: Vienna (2010), Rome (2012) and Harare (2015). A key feature of the inter-regional meetings was simultaneous interpretation in English, Spanish and Arabic. IDLO also hosted online inter-regional and regional dialogues, building on the relationships established through the inter-regional meetings.

LATIN AMERICA AND THE CARIBBEAN

Many countries do not have laws prohibiting HIV-related discrimination, and human rights violations across the region often go unchallenged. Homophobia and *machismo*, a hyper and aggressive masculinity, makes sexual activity between men highly stigmatized.¹⁹ The **Latin American and Caribbean Human Rights and HIV-related Legal Services Network (REDLACSEL)** is a network of HIV-related organizations, health practitioners, lawyers, and activists. The network aims to strengthen HIV-related legal services in the member countries, and is based in **Fundación Huésped** in Argentina. Network members share information

and expertise, and refer cases between organizations to optimize use of diverse competencies across the region. In 2017, REDLACSEL launched an online platform for dialogue and to create a joint referral system for legal advice across the region (<https://derechosvih.org>). At the request of the participating organizations, IDLO provided financial and technical support to establish the regional network, and to develop a regional sustainability strategy.



“The platform allows us all to be updated on key issues and successes across the region, as well as provide opportunities to upskill ourselves and each other.” *Romina Cavallo, Lawyer, Fundación Huésped*



“I was attracted to REDLACSEL because I was interested in protecting and defending the human rights of people living with HIV The network works because you have a complementary and integrated approach between legal perspectives, health, and community organizations.”
Dr Rene Leyva Flores, Public Health Practitioner, REDLACSEL member

MIDDLE EAST / NORTH AFRICA

Non-supportive legal and policy environments are one of the major challenges hindering a comprehensive and effective response to HIV in the Middle East / North Africa. This includes the criminalization of key populations, based on their behavior. Punishment varies from imprisonment to death in some countries.²⁰ The **Regional Arab Network Against AIDS (RANAA)** consists of national CSOs working with people living with HIV and other key populations. RANAA was launched in Tunisia in 2002 and registered in 2016 in Lebanon as an international CSO. IDLO supported RANAA to develop an online platform where CSOs including legal services providers, people living with HIV and other key populations can discuss legal and

rights issues. With IDLO technical and financial support, RANAA also established an online reference repository in Arabic, English and French for HIV-related materials from the region and internationally (www.ranaa.net/repository).

Since 2009, HIV, health and rights CSOs engaged in the HIV response in the MENA region have been working together and meeting annually. In 2016, the **Middle East and North Africa Network for AIDS and Law (MENAL)** was formed, and now includes CSOs from Algeria, Djibouti, Egypt, Jordan, Lebanon, Morocco, Sudan and Tunisia. MENAL members share information and resources on HIV-related legal issues, and plan to use the network to mobilize resources to support their work. MENAL was established

with technical and financial support from IDLO. In 2017, UNDP also provided technical support to MENAL.

“We (as CSOs) always say, we are not against you (meaning against governments), we are your ‘lengthy hand’ – *يد و طول ديلا* – because we can reach places that government employees cannot reach. We can provide services that the government may not provide. ... Let us cooperate with each other. This is one of the biggest challenges today after the new political regimes (post revolutions) emerged.”

Eli Aaraj, Head of the MENA Harm Reduction Association (MENAHR) and the President of the Regional Arab Network Against AIDS (RANAA)

HIV-RELATED LEGAL SERVICE MODELS

IDLO has developed technical guidance to strengthen and expand HIV-related legal services, including the *Toolkit: Scaling Up HIV-related Legal Services*.²¹ The Toolkit identifies eight models for the delivery of HIV-related legal services (see Figure 3).

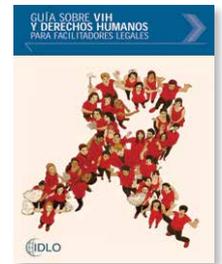
IDLO has since supported additional models to deliver information

and services, including telephone hotlines, online legal services, and through social media.

Other technical guidance includes *Guidelines on HIV and Human Rights for Paralegals* (Spanish),²² case law summaries on HIV-related discrimination and the right to health, and training curricula for lawyers on HIV law and policy.



Toolkit: Scaling Up HIV-related Legal Services



Guidelines on HIV and Human Rights for Paralegals (Spanish)

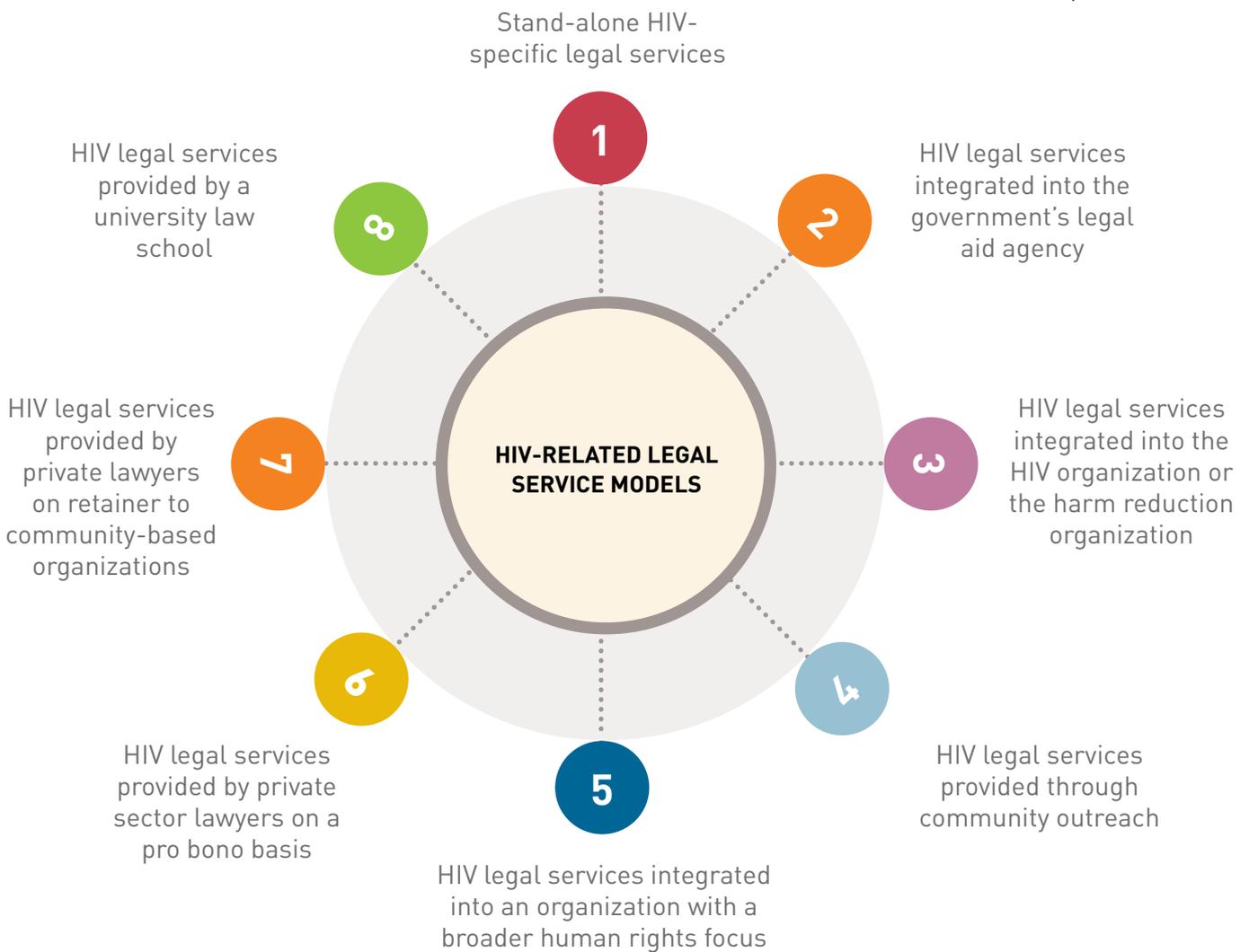


FIGURE 3: HIV-RELATED LEGAL SERVICE MODELS

Table 1: CSOs supported by IDLO's Program, and the different ways in which HIV-related legal services can be delivered

LATIN AMERICA		
COUNTRY	ORGANIZATION	DESCRIPTION OF LEGAL SERVICES
Ecuador	Coalición Ecuatoriana de Personas que Viven con VIH (CEPVVS)	Stand-alone HIV-specific legal services + through community outreach + network of human rights defenders
El Salvador	Vida Nueva	HIV legal services integrated into the HIV organization provided through community outreach
Guatemala	Fundación Fernando Iturbide and Legal Network	HIV organization working in partnership with a legal network (Red Legal) + community outreach
Mexico	Letra S, Sida, Cultura y Vida Cotidiana, AC	HIV legal services integrated into an organization with a broader human rights focus and through community outreach + online legal service
Peru	PROSA and IESSDEH	HIV legal services integrated into the HIV organization provided through community outreach
MIDDLE EAST / NORTH AFRICA		
COUNTRY	ORGANIZATION	DESCRIPTION OF LEGAL SERVICES
Algeria	AIDS Algérie	HIV legal services integrated into an HIV advocacy and rights organization
Egypt	Al-Shehab Foundation for Comprehensive Development Al Shehab	HIV legal services integrated into an organization with a broader human rights focus
	Caritas Egypt <i>Partner²³: Woman and Development Association</i>	HIV legal services integrated into an organization with a broader human rights focus
	Friends Association <i>Partner: Ayadena Comprehensive Development Association</i>	HIV legal services integrated into an HIV advocacy and rights organization
	Magar Center for Development and Legal Services	HIV legal services integrated into a law firm with broader development focus
	The National Council for Justice and Social Peace (MAAN) <i>Partner: Egyptian Center for Civil and Legislative Reform (ECRCL)</i>	HIV legal services integrated into an organization with a broader human rights focus
Jordan	Windows of Blessings Charity (freedom from drugs program)	HIV legal services integrated into an outpatient therapeutic CSO that offers prevention and treatment to drug users
	Jordan Society for Human Rights – Jordan / HIV and Law initiative	HIV legal services integrated into an organization with a broader human rights focus + use of social media
Lebanon	Skoun	HIV legal services integrated into an outpatient therapeutic CSO that offers prevention and treatment to drug users
Morocco	The Pan-African Organization to Fight AIDS – OPALS	HIV legal services integrated into an HIV advocacy and rights organization + telephone hotline
Tunisia	Tunisian Association for the Fight against Sexually Transmitted Diseases and AIDS (ATL)	HIV legal services integrated into an HIV advocacy and rights organization

Notes

1. UN General Assembly Declaration of Commitment on HIV/AIDS, 2001 UN Doc A/RES/S-26/2. <http://www.un.org/ga/aids/coverage/FinalDeclarationHIVAIDS.html>
2. UN General Assembly Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight Against HIV and to Ending the AIDS Epidemic by 2030, 2016 UN Doc A/RES/70/266. <http://www.unaids.org/en/resources/documents/2016/2016-political-declaration-HIV-AIDS>
3. See generally 'Getting to Zero – UNAIDS Strategy 2011-2015' and 'On the fast track to end AIDS – UNAIDS Strategy 2016-2021'. <http://www.unaids.org>
4. Barr, D. (2015). Improving the Legal Environment for HIV and Sexual and Reproductive Health and Rights in Southern Africa, the Middle East and North Africa, and Latin America: The Ford Foundation's Support of the International Development Law Organization (IDLO) and the Southern Africa Litigation Center (SALC). On file with Ford Foundation and IDLO.
5. UNAIDS Update 1 December 2016 'Key Populations'. http://www.unaids.org/en/resources/presscentre/featurestories/2016/november/20161121_keypopulations
6. International Guidelines on HIV/AIDS and Human Rights (UNAIDS & OHCHR, 2006). http://data.unaids.org/publications/irc-pub07/jc1252-internguidelines_en.pdf
7. Taking Action Against HIV (UNAIDS, IPU, UNDP, 2007) IPU Handbook for Parliamentarians, no.15. http://data.unaids.org/pub/manual/2007/20071128_ipu_handbook_en.pdf
8. Key Programs to Reduce Stigma and Discrimination and Increase Access to Justice in National HIV Responses (UNAIDS, 2012). http://www.unaids.org/sites/default/files/media_asset/Key_Human_Rights_Programmes_en_May2012_0.pdf
9. See generally UNAIDS Country Data <http://www.unaids.org/en/regionscountries/countries/>; Country reports on progress in meeting global commitments <http://www.unaids.org/en/dataanalysis/knownyourresponse/countryprogressreports/2016countries/>; UNAIDS Key Populations Atlas <http://www.aidsinfoonline.org/kpatlas/#/home>; Global Commission on HIV and the Law (2012) <https://hivlawcommission.org/report/>
10. Mexico has a federal system. Laws differ from one state to another.
11. See generally Cornell University Transgender Law Center (2016). Report on Human Rights Conditions on Transgender Women in Mexico. <https://transgenderlawcenter.org/wp-content/uploads/2016/05/CountryConditionsReport-FINAL.pdf>
12. Penal Code art. 230.
13. Case reference details and further information are available from the Al Shehab Foundation.
14. See Egypt's Landmark Court Decision on HIV Discrimination. <http://www.idlo.int/news/highlights/egypts-landmark-court-decision-hiv-discrimination>
15. Constitutional Court of Guatemala Expedientes Acumulados 635-3013 Y 636-2013 (2013).
16. Meeting report on file at IDLO. <http://www.idlo.int/news/highlights/lebanon-meeting-law-enforcement-and-hiv-response>
17. El Salvador Human Rights Ombudsman Expediente SS-0109-2013.
18. See e.g. Stigma Kills Hope. <https://vimeo.com/149182522>
19. UNAIDS (2016) Prevention Gap Report. http://www.unaids.org/sites/default/files/media_asset/2016-prevention-gap-report_en.pdf
20. UNAIDS (2016) Prevention Gap Report. http://www.unaids.org/sites/default/files/media_asset/2016-prevention-gap-report_en.pdf
21. Toolkit: Scaling Up HIV-related Legal Services and Rights (IDLO, UNAIDS, UNDP, 1999) Available in all UN languages. http://data.unaids.org/pub/manual/2010/20100308revisedhivrelatedlegalservicetoolkitwebversion_en.pdf
22. Guia Sobre VIH Y Derechos Humanos: Para Facilitadores Legales (IDLO, 2014). <http://www.idlo.int/publications/guia-sobre-vih-y-derechos-humanos>
23. In some cases, legal rights and health service organizations were twinned to build respective capacity.

“We are aiming towards a stigma and discrimination-free society. Our slogan is ‘Stigma Kills Hope’... This is a cause I believe in. Working on it makes me feel content. ... My main message is accepting each other and ending stigma and discrimination ... Do not punish people only because you have different beliefs. Those who are different from you are not necessarily wrong or criminals. Each and every one of us was raised in a different environment, and we each developed different mindsets and identities, we do not have to be similar, but we must accept the other person because we co-exist in the same society.”

Mohammed Al Nasser, Lawyer and Founder, HIV and Law Initiative, Jordan

Acknowledgments

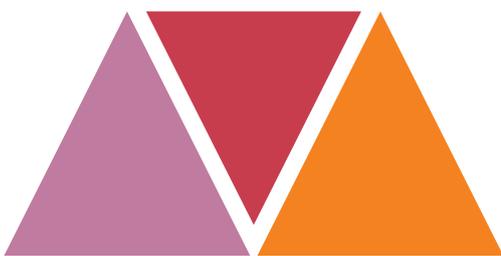
IDLO acknowledges the financial support of the Ford Foundation and of the OPEC Fund for International Development (OFID) for the HIV and Health Law Program. Across eight decades, the Ford Foundation has invested in innovative ideas, visionary individuals, and frontline institutions advancing human dignity around the world. OFID is the development finance institution of OPEC member states, established to provide financial support for socio-economic development, particularly in low income countries.

This report was researched and drafted by Lucy Stackpool-Moore, with the assistance of Taghreed El Hajj and Milena Bacalja Perianes, of Watipa (www.watipa.org).

Further information about the **IDLO HIV and Health Law Program** can be found at www.idlo.int or by writing to healthlaw@idlo.int

The International Development Law Organization (IDLO) is the only intergovernmental organization exclusively devoted to promoting the rule of law.

IDLO works to enable governments and empower people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity. Its programs, research and policy advocacy cover the spectrum of rule of law from peace and institution building to social development and economic recovery in countries emerging from conflict and striving towards democracy.



EQUAL RIGHTS, EQUAL TREATMENT, ENDING AIDS

Published by: International Development Law Organization (IDLO)
Viale Vaticano, 106 00165 | Rome | Italy
Tel: +39 06 40403200 | Fax: +39 06 40403232 | Web: www.idlo.int | Email: idlo@idlo.int | Twitter: @IDLO

United Nations Permanent Representation
Uganda House | 336 East 45th Street | 11th Floor | New York | New York 10017 | USA
Tel: +1 212 867 9707 | Fax: +1 212 867 9719 | Email: NewYork@idlo.int

Report Design: Jane Shepherd e: design@janeshpherd.com

Publication date: December 2017. Copyright © 2017, International Development Law Organization (IDLO). All rights reserved.
The views expressed in this publication are the views of the authors and do not necessarily reflect the views or policies of IDLO or its Member Parties. This material is copyrighted but may be reproduced by any method without fee for any educational purposes, provided that the source is acknowledged. Formal permission is required for all such uses. For copying in other circumstances or for reproduction in other publications, prior written permission must be granted from the copyright owner and a fee may be charged. Requests for commercial reproduction should be directed to the International Development Law Organization.