Defining the Issue

1. Supportive legislation – accompanied by capacity for implementation and enforcement – is recognised as an essential part of effective national responses to HIV,\(^1\) and achievement of universal access to HIV prevention, treatment, care and support. Legislative provisions must reflect human rights commitments and support the realisation of human rights in the context of the epidemic. As noted by Peter Piot, UNAIDS Executive Director, however, “bad law can make for a bad response to HIV.”\(^2\)

2. Law reform can be cumbersome and lengthy, and how to best support it – in ways that are participatory and promote human rights – is a significant challenge. Much more needs to be done to overcome barriers to prevention and treatment, and create a legislative basis for the conditions and the programmes that reduce vulnerability to HIV and its impacts. Furthermore, there are trends (e.g. criminalization of HIV transmission) that suggest law in the context of HIV may be moving toward the punitive and restrictive.

3. Within UNAIDS, UNDP has the lead agency role in the division of labour to provide technical assistance in the area of law, and has a number of law-related activities at regional and country levels. For example, UNDP supported the mapping of national laws in Eastern and Southern Africa.\(^3\) The study examines AIDS and human rights policy documents, legislation and tools from 22 countries and from regional bodies and economic communities in the region. At the end of 2006, UNIFEM and the Open Society Initiative for West Africa (OSIWA) undertook a study in 18 West and Central African countries to assess the extent to which gender equality and human rights are promoted and protected in the HIV legal frameworks of those countries.

4. At present there are a number of ongoing activities related to law and HIV:
   - the N’Djamena law in West Africa
   - the efforts of the Canadian HIV/AIDS Legal Network to develop model legislation that would protect women in the context of HIV
   - the Southern African Development Community Parliamentary Forum (SADC PF) efforts to support the development of model “omnibus” legislation on HIV.

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\(^3\) See “A Review of Regional and National Human Rights Based HIV and AIDS Policies and Frameworks in Eastern and Southern Africa”. 
The N’Djamena HIV legislation in West Africa

5. In late 2006 and early 2007, several civil society organizations expressed concern regarding legislation on HIV developed in N’Djamena, Chad in 2004 by the Forum of African and Arab Parliamentarians for Population & Development, with the support of AWARE-HIV/AIDS and Economic Community of West African States (ECOWAS). A number of countries have adapted elements of this law to their national legislation (Benin, Guinea, Guinea Bissau, Mali, Niger, Sierra Leone and Togo), and others are reportedly in the process of adapting it.

6. While there are a number of positive provisions in the law, there are some provisions that are not in line with human rights-based approaches to HIV. This includes provisions relating to HIV education and information, obligations to disclose HIV status, HIV testing issues, criminalization of HIV transmission and some gender issues. Civil society has urged UNAIDS, UNDP, OHCHR, and UNIFEM to address problematic provisions of the legislation and discourage additional countries from adopting it.

7. UNAIDS and UNDP have committed to working with Parliamentarians, other members of government, regional fora and civil society to improve the N’Djamena law, and support law reform, where necessary, in the region. In July 2007, the UNAIDS Regional Support Team for West and Central Africa, UNDP Regional Office and UNIFEM Regional Office, in collaboration with AWARE/USAID, OSiWA and ECOWAS Health Organization, convened a consultation in Dakar with the participation of several Parliamentarians from the region. The N’Djamena law was discussed extensively during the meeting and recommendations were made on how to improve it.

8. The Francophone Parliamentarian HIV Network organised a meeting in Ouagadougou, 11-12 October 2007. The decisions and recommendations made during the Dakar consultation, including with regard to the N’Djamena law, were presented to this group. The Parliamentarians present expressed their commitment to making sure human rights and gender concerns are taken into account in their national laws, but they indicated that greater technical assistance is required in the area of law reform and its implementation. Meeting participants recommended that the N’Djamena Model Law be revised, and discussions on how to support that process are ongoing.

9. In follow up to the decisions and recommendations of the Dakar and Ouagadougou meetings, the UNAIDS Regional Support Team in Dakar, on behalf of regional partners, provided a set of comments on the N’Djamena law (developed by the Canadian HIV/AIDS Legal Network at request of UNAIDS) to relevant Government authorities in countries that have recently considered or implemented the N’Djamena law. This analysis is intended to help countries to take into account critical human rights and gender issues they should address in their HIV-related law, regulations and policy, and identify and revise problematic elements of their legislation as soon as possible. UNAIDS and UNDP staff have communicated to countries that they are available to facilitate the provision of technical assistance to ensure that laws and regulations are protective of human rights and advance gender equality, and are developed through participatory processes that include people most affected by the epidemic. This includes law
reform to strengthen laws addressing violence against women, and other critical human rights issues that are driving the epidemic.

10. At present, there are preliminary plans to organize a capacity-building workshop for a pool of consultants based in West Africa who can help countries ensure their laws are informed by the International Guidelines on HIV/AIDS and Human Rights, and human rights treaties they have ratified. There are also plans to follow up the Dakar and Ouagadougou meetings with regional workshops which will bring together key Parliamentarians, officials from Ministries of Justice and Interior, and civil society groups to address law and legal enforcement in the context of HIV.

Model legislation on HIV by the Canadian HIV/AIDS Legal Network

11. The Legal Network has already developed model legislation on drug use, harm reduction and HIV. It is currently developing model legislation to be used as a tool to protect women’s rights in the context of HIV. There have been two consultations on this legislation with a third coming up in January. These consultations have involved participation of grassroots civil society activists from across sub-Saharan Africa working on women’s rights issues, as well as UNAIDS. At present, it is envisioned that the legislation will consist of four modules on: rape, domestic violence, property and inheritance rights, marriage and divorce.

Southern African Development Community Parliamentary Forum

12. SADC PF is considering the adoption of model “omnibus” legislation on HIV. The AIDS and Human Rights Research Unit (Centre for Human Rights and Centre for Study of AIDS, University of Pretoria) is providing technical advice and have developed a position paper on draft model law and the draft model law itself. A meeting on various stakeholders, including members of civil society, was held in Tanzania on 10-14 November to consider these documents. UNAIDS has not been involved.

Questions for discussion

- How can UNAIDS more systematically monitor and support law reform processes, and usefully intervene before laws that are inconsistent with human rights norms are enacted?
- How can UNAIDS strengthen its support to civil society, including networks of people living with HIV, and Parliamentarians, so that they can advocate for supportive, human rights-based legislation?
- How do we generate demand for appropriate technical support on appropriate HIV legislation?
- How can the IPU/UNDP/UNAIDS Taking Action against HIV – Handbook for Parliamentarians be used to support greater leadership on human rights and law reform?

Supporting documents

- Report from AWARE-HIV/AIDS Regional Workshop on a Model Law for AIDS
- Canadian HIV/AIDS Legal Network analysis of model legislation on AIDS for Central and West African countries
- Modules 1 and 3 of the Canadian HIV/AIDS Legal Network model law on drug use and HIV/AIDS