

United Nations  Nations Unies

**United Nations Office on Drugs and Crime
United Nations Division for the Advancement of Women**

**Expert Group Meeting on good practices in legislation on violence against
women**

United Nations Office at Vienna, Austria
26 to 28 May 2008

**Legislating for women's rights in the context of
the HIV pandemic:
Draft legislation project description**

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* *The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.*

Project overview

Legislation can be instrumental in impeding or promoting initiatives to address the HIV pandemic. A considerable number of countries have passed general HIV laws, while various areas of non-HIV specific legislation (such as criminal law, family law and property law amongst others) also have tangible impacts on those affected by the virus as well as on efforts to end the epidemic. However, almost without exception, laws ignore crucial issues – and human rights abuses – that perpetuate the pandemic. Despite its obvious potential value to those engaged in law reform initiatives, rights-promoting model HIV legislation does not exist. Examples of progressive, rights-protecting laws in other areas of legislation are rare.

Nowhere are these observations truer than with respect to issues relating to women's human rights. To help address this gap, the Canadian HIV/AIDS Legal Network is working on a project to develop draft legislation in certain areas of women's rights. This project draws together international human rights law and illustrative examples of national legislation as the basis for developing a draft legal framework to respect, protect and fulfil women's rights in the context of HIV. The package of research and draft legislative provisions is intended as an advocacy resource for developing countries and countries in transition. The project's current focus is on women's rights in sub-Saharan Africa, although at this stage of the project the resource will be designed without targeting one particular jurisdiction. The project will involve strategic partnerships with grassroots civil society activists in Africa. It is hoped that this collaboration will generate the momentum required to push for concrete law reform to empower women in the context of the pandemic and beyond.

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The draft legislation will address four key areas of law which are fundamental with respect to women's vulnerability to HIV infection and the rights of women living with HIV. They are:

- Rape and sexual assault;
- Domestic violence;
- Property law and inheritance rights; and
- Family law (i.e., marriage and divorce).

The strategic decision was made to focus on these four areas because (i) they are areas where the legal framework plays a relatively central role in each jurisdiction's response to these issues, and (ii) the potential impact of positive law reform in each is great. Draft legislative provisions will be developed for each of these areas. The draft legislative provisions will ultimately be published in modules along with prefatory notes and commentaries to support the proposed provisions. These modules will be a unique advocacy resource for community representatives and non-governmental organizations working in HIV and related policy areas.

The Project to Date

At the request of UNAIDS, the Legal Network produced a research paper in 2002 laying out the value of model legislation in the area of HIV, especially if it is "options-based" (that is, if it would allow several ways to prioritize key provisions to enable countries to adopt laws that are suitable to their local contexts). As noted above, the Legal Network's intention is to develop legal frameworks relating to issues and human rights abuses that, almost without exception, general HIV laws ignore. The Legal Network's "model legislation" work began with the development of a comprehensive legal framework with respect to HIV and people who use illegal drugs.¹ The use of this resource is ongoing in specific countries in both the former Soviet Union and south-east Asia.

With respect to draft legislation on women's rights, the Legal Network established a project advisory committee, including several members from civil society groups and government organisations, to provide advice and guidance as the draft legislation on women's rights is developed. In December 2006, some 20 legal experts came together at a consultation meeting in Nairobi to further refine the content of the proposed draft legislation. Participants came from Kenya, Botswana, Zambia, South Africa, Swaziland, Tanzania, Uganda, Ghana, Canada, U.S.A., and Switzerland, representing women's legal groups, AIDS service organizations or organizations of people living with HIV, and human rights organizations. Based on this consultation, the areas of law to be addressed were finalised and the draft legislation was modified in light of the feedback received.

¹ This resource tool of eight-modules is available in both English and Russian at www.aidslaw.ca/modellaw

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On October 18-19, 2007, a consultation meeting took place in Johannesburg with respect to the modules on sexual violence. The 12 participants all had experience and expertise in issues of HIV/AIDS, women's human rights and/or sexual violence. The purpose was to hold a technical discussion targeted towards a careful analysis of the draft legislation in order to further strengthen and refine the resource in preparation for publication. Preliminary versions of the draft legislation on domestic violence, and rape and sexual assault were distributed in advance of the consultation to all participants. The participants were also asked to strategize during the meeting around possible "next steps" and how to ensure that this project makes a tangible contribution to existing or possible law reform efforts. At the consultation, participants provided comments, suggestions and examples from their own jurisdictions as to how the draft legislation could be strengthened, and also explored possibilities for joint advocacy related to law reform on issues of sexual violence. The consultation also strengthened partnerships between the Canadian HIV/AIDS Legal Network and advocates and NGOs working on sexual violence and HIV issues in sub-Saharan Africa.

A second consultation meeting took place on January 16-18, 2008, focusing on the marriage and divorce, and property and inheritance components of the project. Following a similar format as the October 2007 meeting, it brought together 20 experts from sub-Saharan Africa to discuss the draft legislation as well as to consider action and implementation strategies.

After the comments and feedback gathered at the consultation meetings are incorporated into the draft legislation documents, they will be published for wide distribution in Africa and beyond towards the end of 2008.

In collaboration with African-based human rights and AIDS organizations in a number of countries, the Legal Network will adapt and revise the draft legislation resource for specific law reform advocacy in countries where legal reform processes are already under way or may be feasible. The Legal Network intends to support law reform initiatives in a number of countries. Collaboration with BONELA (Botswana Network on Ethics, Law and HIV) has already begun, including a civil society strategy meeting in November 2007 to plan activities related to a domestic violence bill. Other collaborative initiatives are being planned, whereby the Legal Network will be able to provide support and help build capacity where legal reform processes are underway with respect to women's rights related to HIV. These initiatives will involve raising public awareness about women's rights and HIV issues in general, and specific advocacy and technical assistance in the development and adoption of legislation which promotes and protects women's human rights.