

## *What Works to Strengthen the Enabling Environment*

### **11C. *Strengthening the Enabling Environment: Advancing Human Rights and Access to Justice for Women and Girls***

Respecting, protecting and fulfilling women's rights, particularly the rights of the most marginalized women, is increasingly understood as fundamental to an effective HIV response. Laws reflecting unequal gender norms that discriminate against women may limit their ability to protect themselves from HIV infection. In many countries where women are most at risk for acquiring HIV, laws to protect women are weak (Mukasa and Gathumbi, 2008; Ezer et al., 2006; Ezer et al., 2007). Conversely, when people are able to realize the full range of their human rights, they are better able to protect and preserve their health through increased access to testing, treatment and care services (UN and OHCHR, 2011).

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*The law can be a powerful tool for protecting women and girls and reducing their risk of HIV infection ... Greater efforts to make laws work for women — particularly in the areas of gender based violence and property and inheritance — could dramatically strengthen the AIDS response. (Global Coalition on Women and AIDS, 2006)*

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Therefore, human rights must frame the legal responses to HIV. United Nations (UN) treaties and the *Universal Declaration of Human Rights* are the principle sources of international human rights laws and norms, which are complemented by protocols, declarations, international custom, and decisions and general comments issued by international and regional human rights mechanisms, among other sources. Most States have ratified at least four or more of the principal human rights treaties (OHCHR, ND), each of which outline rights that States have a duty to *respect* (e.g. by refraining from interfering directly or indirectly with the enjoyment of); *protect* (e.g. by preventing third parties from infringing on, and taking steps to investigate and punish such violations when they occur); and *fulfill* (e.g. by adopting whatever measures necessary — legislative, budgetary, judicial, and/or administrative — to achieve the full realization of rights).

However, challenges exist to translating international treaties into effective policies with enforcement (Gruskin et al., 2008c). Moreover, even where good laws are in place, women are often unaware of their existence, or have little access to the justice system. Therefore, adequate attention must be paid to implementation, which can include a

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number of promising legal strategies. This section reviews the legal environment for women and HIV and evidence of effective legal interventions. Unlike biomedical or other evaluated interventions, the evidence for a favorable legal environment relies more on advocacy or descriptive texts of programs than on studies, though there is increasing evidence of advocacy successes.

### **Five Priority Areas Require Legal Strategies to Address Women’s Needs**

This section provides an overview of key legal and human rights issues affecting women and girls that are critical to addressing HIV.

#### *1. HIV-Related Discrimination Hinders HIV Prevention and Treatment Efforts*

Studies have documented discrimination based on HIV status, including in the contexts of health care, employment, education and housing (Mukasa and Gathumbi, 2008). Invariably, HIV-related discrimination is compounded by other marginalized status. In Zimbabwe, for example, where HIV prevalence among sex workers has been reported to be over 60%, openly hostile attitudes and degrading behavior of health care staff has been found to dissuade sex workers living with HIV from engaging in HIV-related treatment and care (Mtetwa et al., 2013). Until very recently, HIV treatment was denied to all non-citizen prisoners in Botswana, leading to a significant deterioration in their health and potentially exposing other prisoners to the risk of contracting HIV (Southern Africa Litigation Centre, 2014).

While the law may be a slow and imperfect tool to respond to HIV-related discrimination, laws prohibiting such discrimination (e.g., broad anti-discrimination laws, constitutional protections against discrimination, HIV laws featuring specific protections against HIV-related discrimination) can create an enabling environment to protect the human rights of people living with HIV and are recommended by international human rights bodies (UNAIDS and OHCHR, 2006: Guideline 5). Notably, the number of countries reporting the existence of laws, regulations or policies protecting people living with HIV from discrimination increased from 56% to 73% among 85 countries between 2006 and 2010, although one-third of countries still do not have such legislation (UNAIDS, 2010e). [For more on stigma, discrimination and programming, see also *Reducing Stigma and Discrimination*]

#### *2. Violence Against Women is a Human Rights Violation*

Violence against women is a severe manifestation of gender inequality, all too often overlooked or diminished by police, the judiciary, community and religious leaders, and other authority figures [See *Addressing Violence Against Women*]. Transgender women and men in particular face significant risk of violence and harassment (Lombardi et al., 2001). [See also *Transgender Women and Men*] Increasingly, however, it is recognized

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that violence against women is a human rights violation that increases women's vulnerability to HIV, that HIV infection in turn increases women's vulnerability to violence, and that violence against women contributes to the conditions fostering the spread of HIV (WHO and UNAIDS, 2013).

Reforming existing laws that address sexual and domestic violence, or adopting new laws where laws are lacking, is one important aspect of governments' response and an obligation under international human rights law (CEDAW Committee, 1993). While nearly 125 countries have laws criminalizing at least some form of violence against women, there continue to be weaknesses in specific provisions, such as definitions of what constitutes violence and requirements for evidence.

### *3. Family and Property Laws Discriminate Against Women and Girls*

Marriage, divorce and child custody laws are areas of particular importance for women in the context of HIV. Marriage is not a protective element for reducing risk of HIV transmission; in fact, in some places marriage is a woman's primary risk factor. [See *Prevention for Women*] The absence of protective marriage laws (e.g., prohibiting forced marriage, child marriage, marital rape), as well as longstanding practices and customs (e.g., widow inheritance) can contribute to situations where women are unable to leave unwanted or abusive relationships or to negotiate safer sex. Correspondingly, women's inability or difficulty to obtain a divorce has serious implications for protection of women from HIV infection, as women whose spouses are living with HIV may stay married and continue to have unprotected sex. Women's lack of legal rights within marriage is often compounded by unfair child custody and maintenance arrangements and lack of property rights upon divorce. Where such discriminatory laws persist, women may perceive the negative economic and social consequences of leaving high-risk relationships to be more serious than the health risks of staying in those relationships.

Closely related to the issue of discriminatory family laws is the issue of women's right to property and inheritance. In many countries, including those most affected by HIV (such as those in sub-Saharan Africa), women's property and inheritance rights are restricted (Izumi et al., 2009), with rights routinely denied either through law or through

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*Without equal rights to acquire and secure property, a woman is effectively the captive of her husband and his family.* (Global Commission on HIV and the Law, 2012: 66)

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practice (Bennett et al., 2006; Ezer, 2006). Some countries do not acknowledge a woman's right to own an equal share of property with her husband during a marriage or when that marriage ends (CEDAW Committee, 1993). At the same time, many inheritance laws and practices continue to disadvantage women. Some women face

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discrimination when they receive a lesser share of a deceased's property by virtue of their gender, when they inherit property but are only considered the owner of that property for their lifetime as opposed to having full ownership, or when they are not given the same powers with respect to administering an estate that a man would be given in the same circumstances. And some women experience a phenomenon referred to as “property grabbing” — where the widow's (and/or children's) house and belongings are illegally taken by relatives of her husband, a form of discrimination particularly common in households affected by HIV (Canadian HIV/AIDS Legal Network, Vol. II: 5, 2009: 5-1 and Global Commission on HIV and the Law, 2012: 67). Not only are these gross violations of women's human rights, but such discriminatory laws and practices render women without access to productive resources, undermine their livelihoods and economic independence, limit their ability to control their sexuality and reproduction, destroy their ability to maintain adequate housing and leave many women almost entirely dependent on the men in their lives for basic economic survival. Women who lose their property also face difficulties in adherence to HIV treatment (Lu et al., 2013). In recognition of the links between women's rights to land and property and their right to health, organizations such as the World Health Organization (WHO), among others, have recommended that governments implement “legal and social measures that protect women's property rights” (WHO, 2009c). [See also Global Commission on HIV and the Law, 2012: Recommendation 4.4; UN Commission on Human Rights, 2005; CEDAW Committee, 1994: 1; Human Rights Committee, 2000: para. 26].

*4. Criminalization of People Living With or Vulnerable to HIV Does Not Protect Women*  
Criminalization of HIV non-disclosure, exposure and/or transmission is widespread. According to the Global Network of People Living with HIV (GNP+), at least 600 people living with HIV in 24 countries have been convicted with HIV-specific or general criminal laws (GNP+, 2010). People living with HIV may be found criminally liable regardless of whether HIV status was disclosed, safer sex was practiced, HIV was actually transmitted or the risk of transmission was very low (UNAIDS, 2013a).

There are serious concerns that criminalization undermines HIV prevention efforts (Jürgens et al., 2009c). An overly broad use of the criminal law contributes to misconceptions around HIV and its transmission and undermines the relationship between patients, physicians and other service providers because people might avoid honestly communicating about their risky behaviours and disclosure practices for fear that this information may be used against them in an investigation (Mykhalovskiy, 2011). Criminalization also creates a disincentive for HIV testing, since ignorance of one's HIV status may be the safest way to avoid being accused of deliberately trying to transmit the virus (Forbes, 2010).

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Closer analysis also reveals that criminalization does not reduce women's vulnerability to HIV or support women living with HIV, who may not be able to disclose their HIV status because of a risk of violence or because they are economically dependent on their partners (Csete et al., 2009). [See also *Addressing Violence Against Women*) Cases have also been brought against women, as in Burkina Faso (Sanon et. al, 2009) and Zimbabwe (Mhofu, 2012). For pregnant women and mothers living with HIV, criminalization acts as a direct barrier to these women accessing care

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*“Governments that criminalise the transmission of HIV may do so with the best of intentions, but the solution of criminal law does not fit the complex problems of vertical transmission of HIV. Scaling up PMTCT services and ensuring that they are affordable, accessible, welcoming and of good quality is the most effective strategy for reducing vertical transmission of HIV...”* (Csete et al., 2009: 160)

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for themselves or their children. Laws may penalize vertical transmission, regardless of whether precautions are taken or available to women.

The criminalization of “key populations” (including but not limited to female sex workers, women who use drugs, trans women and women who have sex with women) also exacerbates stigma and discrimination against already marginalized communities and drives people away from HIV testing, prevention, care, treatment and support. [See also *Prevention for Key Affected Populations and Reducing Stigma and Discrimination*]

The criminalization of sex work, for example, exposes sex workers to stigma, discrimination and physical and sexual violence, limits their access to essential HIV, sexual health and harm reduction services, diminishes the control sex workers

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*“HIV has always been an epidemic of the vulnerable and legally disenfranchised.”* (Cameron, 2011: 103)

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have over their working conditions (including negotiating power to insist on condom use) and increases their risk of HIV. [See also *Female Sex Workers*] In the context of drug use, punitive laws enforced against people who use drugs, including compulsory drug treatment, fuel the spread of HIV and keep users from accessing services for HIV and health care, including harm reduction services (Global Commission on HIV and the Law, 2012). Policing that targets women who inject drugs, in particular, exacerbates the risk of HIV infection, particularly for female sex workers who inject drugs who experience coerced sex and police abuse (Burris and Chiu, 2011). Where sex work is criminalized, transgender women, who are commonly profiled as engaging in sex work, have reported

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harassment and violence, including police extortion of sex or money in exchange for release from custody, and routine police confiscation of condoms or arrest based solely on condom possession, which is sometimes submitted as “evidence” of criminal activity. In view of the public health impact of such laws, international health and human rights bodies have increasingly called on States to decriminalize sex work, same-sex conduct and drug use in order to meet core obligations of the right to health and to create an environment enabling full enjoyment of that right (Global Commission on HIV and the Law, 2012; UNAIDS and OHCHR, 2006; UN General Assembly, 2010).

*5. Human Rights Abuses in Health Care Impede Access to HIV Prevention and Treatment*  
As the International Community of Women Living with HIV/AIDS (ICW) has noted, “Being both women and HIV positive renders positive women especially vulnerable to human rights violations.... These include forced and coerced sterilization, refusal to provide services, hostile attitudes towards HIV positive women who seek to have children, stigmatization at hospitals by hospital staff, breaches of confidentiality, and testing for HIV without informed consent. Many of these violations occur during the provision of health services and are perpetrated by health service personnel” (ICW, 2009: 4). Marginalized communities such as sex workers, transgender people and people who use drugs are also subject to rampant human rights abuses in health care, ranging from inadequate or inappropriate health care services to denial of health care, to discriminatory treatment, harassment and violence from health care providers (Baral et al., 2011). [See also *Women Who Use Drugs and Female Partners of Men Who Use Drugs*] These abuses constitute violations of the right to the highest attainable standard of health, a right protected in the *International Covenant of Economic, Social and Cultural Rights* (ICESCR, 1966; Article 12) and the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW, 1979; Article 12).

Yet, some governments flout human rights in the name of public health. Forced HIV testing violates the right to security of the person, while the disclosure of one’s confidential health information violates the right to privacy, rights guaranteed under the *International Covenant on*

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*“I feel like half a woman all the time. I can identify with other women but I know that I’m different in a very sort of unusual way.”* (South African woman living with HIV describing the emotional impact of being involuntarily sterilized, cited in Essack and Strode, 2012: p. 28)

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*Civil and Political Rights*, the ICESCR and other regional human rights instruments. UNAIDS and the Office of the High Commissioner for Human Rights (OHCHR) recommend that States “prohibit mandatory HIV-testing of targeted groups, including vulnerable groups” and “ensure that no testing occurs without informed consent, that

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confidentiality is protected, particularly in health and social welfare settings, and that information on HIV status is not disclosed to third parties without the consent of the individual” (UNAIDS and the OHCHR, 2006: Guideline 5, s. 22(j) and s. 12). [See also *HIV Testing and Counseling for Women*]

Forced sterilization is another egregious human rights violation in health care settings. Since 2001, when forced sterilizations and coerced abortion among women living with HIV were first documented, reports have emerged from Chile, Venezuela, Mexico, Dominican Republic, Indonesia, Kenya, Namibia, South Africa, Tanzania, Thailand, Uganda and Zambia, with some women reporting being denied access to HIV and health services unless they agree to abortion or sterilization (Global Commission on HIV and the Law, 2012: 66). According to the CEDAW Committee, “Compulsory sterilization or abortion adversely affects women’s physical and mental health, and infringes the right of women to decide on the number and spacing of their children” (CEDAW Committee, 1993: s. 22). UNAIDS and the OHCHR have similarly held that “forced abortions or sterilization of HIV-infected women violates the human right to found a family, as well as the right to liberty and integrity of the person” (UNAIDS and OHCHR, 2006: s. 118) and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the UN Human Rights Committee have recognized forced sterilization as a violation of the right to be free from torture, and cruel, inhuman, or degrading treatment or punishment (UN General Assembly, 2013; UN Human Rights Committee, 2000).

### **A Number of Legal Strategies Can Protect Women’s Rights**

Strengthening the enabling environment for women requires rights to be protected in both law and practice. While legal strategies are no panacea for human rights abuses, law has a critical role to play and in some cases, legal strategies can be the catalyst for powerful social change. The following are legal strategies that have been deployed by activists to promote women’s rights on some of the key issues identified in the previous section.

#### *1. Law Reform*

Efforts to promote women’s legal rights should ensure laws address the underlying gender imbalances that keep women from realizing their rights (Kim et al., 2008; ARASA, 2009). Many countries have made progress. Advocacy and activism by women’s rights organizations in Latin and Central American countries have been instrumental in bringing about reforms on legislation related to violence against women in the past 15 years, including, for example, changing the status of sex crimes and spousal violence to public offences and broadening the definitions and sanctions for rape (WHO and UNAIDS, 2013: 65). In the area of family law, Ethiopia has reformed its laws to make child marriage under age 18 illegal (Ezer et al., 2006). In Lesotho, the Parliament

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enacted a bill providing married women — who up to then were considered minors — with status equal to their spouses, with rights to own land, the right to inheritance, and the right to have a bank account or to take out a loan without their husband’s permission (Braun and Dreiling, 2010). And in Malawi, the 2011 *Deceased Estates (Wills, Inheritance and Protection Act)* protects widows from property grabbing (Symington, 2012).

In the area of criminal law, New Zealand passed a law in 2003 decriminalizing sex work in order to create a framework that “safeguards the human rights of sex workers,” “promotes the welfare and occupational health and safety of sex workers” and “is conducive to public health” (*Prostitution Reform Act, 2003*: s. 3). A number of countries have also revoked provisions criminalizing HIV non-disclosure, exposure and/or transmission to improve their HIV response. In April 2012, for example, the East African Legislative Assembly passed a bill applicable to the East African region protecting the rights of people living with HIV, prohibiting HIV-related discrimination, and requiring governments to ensure that women and girls have access to “women-specific and youth-friendly sexual and reproductive health services,” “are protected from all forms of violence, rape and other forms of coerced sex, sexual and economic exploitation and traditional practices that may negatively affect their health” and “have equal legal rights in all areas including in matters such as marriage, divorce, inheritance, child custody, property and employment...” Importantly, the bill does not criminalize transmission under any circumstance, which could alter the domestic criminal law in the countries in the region where HIV exposure or transmission is criminalized (*The East African Community HIV and AIDS Prevention and Management Act, 2012*). In a review based on 18 months of research and testimony from 700 people most affected by HIV-related legal environments from 140 countries, the Global Commission on HIV and the Law found that the repeal of punitive laws created a more effective response to HIV prevention, treatment and care.

Recognition of transgender persons is another important recent development. Argentina, India, Nepal, Uruguay, Mexico and South Africa have created national legislation recognizing the rights of transgender persons to identify as such, enabling transgender people to use national health services and expect protection from violence — “all ways of reducing HIV risk...” (Global Commission on HIV and the Law, 2012: 53; WP © no. 7455/2001/High Court of New Delhi cited in Maleche and Day, 2011). Significantly, Argentina has the first law globally that does not have requirements to change or assert gender identity, such as hormonal treatment, sex change operations, etc. The 2012 law states that gender identity is based on the person’s volition (Argentina Gender Identity Law, 2012).

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## 2. Strategic Litigation

Laws can also be reformed to protect the rights of women and girls via strategic litigation, which involves taking carefully-selected cases to court — often those that create legal precedent and can bring about social, legal and political change by using an individual case of a human rights violation. As Pieterse concludes, rights-based litigation in South Africa, including in relation to HIV, may contribute to transformation by providing tangible relief to individual litigants and lending momentum to the overarching political struggles of social movements (Pieterse, 2008). As a tool for change, litigation has made great strides in promoting women’s rights around the world by advancing marriage equality in Guatemala (ICHR, 2001a), protecting women from sexual harassment (Indian Supreme Court, 1997) and recognizing transgender identity in India (*National Legal Services Authority v. Union of India & Ors.*, 2012]), protecting women from domestic violence in Brazil (ICHR, 2001b) and holding men accountable for marital rape in Uganda and the Solomon Islands (*Uganda v. Hamidu, et al.*, 2004; *R. v. Gua*, 2012).

Most recently, there have been a number of successful cases in the context of property and inheritance rights. In 2007, for example, Law Advocacy for Women in Uganda challenged Uganda’s *Succession Act*, which discriminated against women by granting a widow a significantly smaller proportion of the estate than a widower and removing a widow’s right to live in the marital home upon remarriage. The Constitutional Court found these provisions to be inconsistent with the sections of Uganda’s constitution addressing human rights and invalidated them (*Law Advocacy for Women in Uganda v. Attorney General*, 2007). In 2008, the Kenyan High Court applied international human rights law to reject the argument that customary law revokes the right of daughters to inherit the estate of a father, thus upholding the right of the daughters in the case to inherit equally from the assets of their father’s estate (*In Re The Estate Of Lerionka Ole Ntutu (deceased)*, 2008). In Botswana, the Court of Appeal unanimously ruled in favor of four sisters in 2013 in *Ramantele v. Mmusi and Others*, by holding that the customary law of inheritance did not prohibit female or elder children from inheriting their deceased parents’ family homestead. As a result, women in Botswana have the same rights, under customary law, to inheritance as men (Botswana Court of Appeal, 2013).

## 3. Engaging with Customary Legal Structures

In many countries, particularly in Asia and Africa, the situation for women is complicated by plural legal systems involving general laws that apply to matters in the public domain and customary/religious laws mostly concerning private and family life (Global Commission on HIV and the Law, 2012). Because of the prominence of customary or religious laws and practices in some environments, advocacy aimed at religious and customary leaders is essential, particularly on issues related to family and

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property. As the Global Commission on HIV and the Law has observed, “Perhaps the most promising route to change is adaptation of traditional legal systems to promote equality for women and their children, and recruitment of respected community members to mediate inheritance disputes between widows and their in-laws” (p. 68).

In Kenya, for example, the Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN) worked with customary legal structures to help reconstruct community-based mediation systems so that they respect Kenyan law and human rights in an effort to promote access to justice for widows and their children. By holding community dialogues with widows, elders and government officials and conducting training for elders and widows on the human rights provisions of Kenyan laws relating to property, customary structures such as councils of elders now mediate family disputes and help reinstate widows and children in their homes and family land (KELIN, 2012, update 2013).

#### *4. Ensuring Access to Legal Services*

Women’s access to legal services is critical to successfully addressing the HIV response (Mukasa and Gathumbi, 2008; Acord et al., 2012). Yet all too often, laws that uphold women’s rights are inadequately enforced because women lack access to legal services, a result of the high cost of legal services and court fees, long and inefficient court processes, inaccessible court locations and language barriers, among other barriers (Canadian HIV/AIDS Legal Network, 2009).

Accessible legal services can take a diversity of forms, such as legal aid, or the provision of legal services at no cost to people who would otherwise be unable to afford it. Legal aid can be delivered through specialized clinics serving people living with HIV (e.g., Uganda Network on Law, Ethics, and HIV/AIDS (UGANET), Uganda; KELIN, Christian Health Association of Kenya (CHAK) and Legal Aid Centre of Eldoret (LACE), Kenya) or other marginalized communities, such as sex workers or people who use drugs (e.g., Women’s Legal Centre, South Africa). Paralegal programs are another means to promote greater access to legal services, and paralegal programs directed at people living with HIV and run by “peers” have been carried out with documented success, particularly in sub-Saharan Africa (Open Society Foundations, 2013). In contrast to the traditional “lawyer-client” relationship, community-based paralegals equip community members to use the law to their benefit. Engaging with customary legal structures can also serve the broader aim of promoting access to justice by furnishing culturally accepted and often simpler and more affordable dispute resolution services.

#### *5. Human Rights Education and Legal Empowerment Programs*

Good laws and policies are but one step for meaningful change. Advocacy, awareness-raising and training for women to know their rights is critical if women are to realize and

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secure their rights (ICASO, 2010; IDLO and UNAIDS, 2010). In particular, legal empowerment projects can equip people with information about their rights and with the tools they can use to improve their social condition (*Open Society Foundations, 2013*). In Uganda, for example, a program to support women's property rights by training community members as paralegals helped increase awareness of (and reduced resistance to) women's property rights among community members and helped to empower women to enforce their property rights (Patel et al., 2014). Similarly, in South Africa, sex workers who had been trained on human rights and the law reported feeling more empowered and more confident to directly challenge the human rights violations they endured because of the legal information they had received (*Open Society Foundations, 2013*).

#### *6. International and Regional Human Rights Advocacy*

Regional and international human rights advocacy can complement domestic human rights advocacy or offer a venue to continue efforts to protect and promote women's rights. Governments are bound by the treaties that they have ratified and for each human rights treaty, there is an enforcement mechanism to ensure governments comply with their obligations. Enforcement generally takes place through individual complaints, inquiries into grave and systematic human rights violations or periodic government reports. The Human Rights Council is another UN entity responsible for strengthening the promotion and protection of human rights, including through the "Universal Periodic Review" (UPR) of Member States of their human rights obligations and commitments. Civil society can participate in the UPR process by submitting information about the human rights situation in their country and by making statements at the regular session of the Human Rights Council when the outcome of the State reviews is considered.

Other forms of international human rights advocacy involve engagement with "Special Procedures" or temporary thematic or state mechanisms to draw attention to specific issues. These could be Special Rapporteurs, Working Groups or Independent Experts who are mandated to receive complaints and act on the basis of communications disclosing human rights violations. Of particular relevance to the issue of women and HIV are Special Procedures on violence against women, discrimination against women in law and practice, the right to health, the right to adequate housing, and torture. In 2010, for example, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health examined the relationship between the right to health and the criminalization of same-sex conduct and sexual orientation, sex work and HIV transmission (UN General Assembly, 2010).

An illustrative example of international human rights advocacy concerns the sterilization of F.S., a Chilean woman living with HIV, without her informed consent. F.S. filed a

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complaint against the operating surgeon which was ultimately dismissed, and subsequently filed a lawsuit before the Inter-American Commission on Human Rights and made submissions to the CEDAW Committee criticizing the treatment of women living with HIV in Chile. In 2012, the CEDAW Committee issued concluding observations urging the Chilean government to ensure that fully informed consent “is systematically sought by medical personnel before sterilizations are performed, that practitioners performing sterilizations without such consent are sanctioned and that redress and financial compensation are available for women victims of non-consensual sterilization” (CEDAW Committee, 2012: para. 35).

### Resources for Action

Numerous resources exist to assist advocates, policymakers, the judiciary and service providers to enact and uphold laws that respect, protect and fulfill women’s rights on the key issues discussed in this section. A small sampling of key resources includes:

- *HIV and AIDS Good Practice Guide* (2014) ([www.aidsalliance.org/includes/Publication/Alliance\\_GPG\\_HIV\\_and\\_human\\_rights.pdf](http://www.aidsalliance.org/includes/Publication/Alliance_GPG_HIV_and_human_rights.pdf)) was produced by the International HIV/AIDS Alliance and the AIDS and Rights Alliance for Southern Africa (ARASA) and contains information, strategies and resources for programming on HIV and human rights.
- *Effective Laws to End HIV and AIDS: Next Steps for Parliaments* (2014) ([www.ipu.org/PDF/publications/law\\_hiv\\_en.pdf](http://www.ipu.org/PDF/publications/law_hiv_en.pdf)) was published by the Inter-Parliamentary Union and UNDP to inform parliamentarians about the types of laws that are helpful and unhelpful in the AIDS response.
- *Judging the epidemic: A judicial handbook on HIV, human rights and the law* (2013) ([www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2013/201305\\_Judging-epidemic\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2013/201305_Judging-epidemic_en.pdf)) is a UNAIDS resource to help judges, magistrates, arbitrators and other judicial officers throughout the world adjudicate cases involving HIV-related issues.
- *The HIV/AIDS Legal Assessment Tool* (2012) ([www.americanbar.org/content/dam/aba/directories/roli/misc/aba\\_rol\\_i\\_hiv\\_aids\\_legal\\_assessment\\_tool\\_11\\_12.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_i_hiv_aids_legal_assessment_tool_11_12.authcheckdam.pdf)) was produced by the American Bar Association as a mechanism to assess countries’ compliance with international legal standards on the protection of human rights of people living with and affected by HIV.

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- *Respect, Protect and Fulfill: Legislating for Women’s Rights in the context of HIV/AIDS* (2009) ([www.aidslaw.ca/EN/womensrights/english.htm](http://www.aidslaw.ca/EN/womensrights/english.htm)) is a legislative resource produced by the Canadian HIV/AIDS Legal Network outlining legal provisions for women’s rights in the context of HIV.
- *Toolkit: Scaling up HIV-Related Legal Services* (2009) ([www.issuu.com/idlonews/docs/hivtoolkit](http://www.issuu.com/idlonews/docs/hivtoolkit)) was published by the International Development Law Organization, UNAIDS and UNDP to provide a practical resource to help improve the quality and impact of HIV-related legal services.
- The *International Guidelines on HIV/AIDS and Human Rights* (2006) ([www.data.unaids.org/publications/irc-pub07/jc1252-internguidelines\\_en.pdf](http://www.data.unaids.org/publications/irc-pub07/jc1252-internguidelines_en.pdf)) is a joint publication of the OHCHR and UNAIDS providing a framework for a rights-based response to the HIV epidemic.

### **11C. What Works— *Strengthening the Enabling Environment: Advancing Human Rights and Access to Justice for Women and Girls***

1. Community organizing and mobilization, including “know your rights initiatives” and engagement with customary leaders, can help women claim their legal rights and minimize the impact and further spread of HIV.
2. Enacting and enforcing laws and policies that respect, protect and fulfill women’s human rights, including those protecting women’s rights to land, property and inheritance and addressing violence against women, can enhance women’s ability to cope with HIV.
3. Decriminalization of drug possession and drug use and legalized comprehensive harm reduction services can significantly reduce HIV infections among people who use drugs.

#### *Promising Strategies:*

4. Integrating legal education and services into health care settings can help ensure that women are able to secure their rights.
5. Legal challenges to redress rights violations for women can advance women’s human rights.
6. Decriminalization of sex work can promote access to health care and support safer working conditions, including safer sex practices, among sex workers.
7. Repealing laws, policies and practices that criminalize same-sex sexual activity and exacerbate stigma and discrimination against LGBT communities can promote greater

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access to HIV prevention, treatment and care among MSM and, more broadly, LGBT communities.

## 11C. Evidence

### 1. Community organizing and mobilization, including “know your rights” initiatives and engagement with customary leaders, can help women claim their legal rights and minimize the impact and further spread of HIV.

- The International Center for Research on Women (ICRW) and the Uganda Land Alliance (ULA) partnered to establish a program in Luwero District, **Uganda** to support women’s property rights by training community members as paralegals to provide legal advice, mediation services and education about property rights issues to people in their communities. ULA trained two cohorts of paralegals between 2009-2012 and met periodically with them to discuss their work and to provide them with technical assistance on their legal services to clients. An evaluation of the program indicated that targeted sensitization messages help to support the intensity and reach of community education efforts on women’s property rights; both formal, structured trainings on the law and women’s property rights and ongoing, more personalized assistance on handling property rights disputes/cases and delivering sensitization messages is important; strengthening relationships with local leaders and institutions — whether with local council persons, religious leaders, or law enforcement bodies — is critical; and implementing a comprehensive monitoring and evaluation system enabled the program to identify challenges and formulate new approaches to help increase its effectiveness. The evaluation also found that community members and local leaders viewed the paralegals as important resources for legal knowledge about property rights and believed that their work led to fewer land-related conflicts and more peaceful approaches taken to resolve them. It also found that paralegals’ sensitization events and client casework seemed to increase awareness of women’s property rights among community members, helped to empower women and reduced resistance to women’s property rights within communities (Patel et al., 2014). (Gray IIIb) (*training, property rights, Uganda*)
- In 2009, the **Kenya** Legal and Ethical Issues Network on HIV and AIDS (KELIN) pioneered a new approach for obtaining access to justice for widows and their children through an initiative called “Working with Cultural Structures to Ensure Access to Justice by Widows and Orphans.” KELIN has helped to reconstruct community-based mediation systems so that they respect Kenyan law and human rights in Nyanza Province (now Kisumu and Homabay Counties) through community dialogues with widows, elders and government officials to get their buy-in for the project. They then conducted trainings for the elders and widows on the human rights provisions of Kenyan laws relating to property. Customary structures (Luo Council of Elders, Kabondo Elders, and Nyakach Elders) have mediated family disputes to reinstate widows and children in their homes and family land. Since 2009, KELIN has taken on 285 cases involving the disinheritance of widows, with 238 completed successfully in favor of the widow with the others pending as of June 2014 (KELIN, 2012, update 2014; Global Commission on HIV and the Law, 2012). (Gray IIIb) (*community organizing, training, property rights, Kenya*)

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- In **Malawi**, training for women on their legal rights resulted in 1,000 women gaining title to their land (Acord et al., 2012). (Gray IIIb) (*training, property rights, Malawi*)
- Researchers developed a multi-layered anti-violence intervention for female sex workers that included legal empowerment workshops as part of wider HIV prevention programming involving approximately 60,000 female sex workers in Karnataka state, **India**. Researchers “found strong evidence of a reduction in the proportion of [female sex workers] who reported violence at follow-up compared with baseline,” and that sex workers “who reported experiencing violence in the past year were less likely to report using condoms with their clients, were more likely to be infected with gonorrhoea, and were less likely to have accessed the HIV prevention services than [female sex workers] who did not report violence.” (Beattie et al., 2010: 476). (Gray IIIb) (*legal rights, sex work, India*)
- Ntengwe for Community Development, a non-profit organization, trained women and girls on comprehensive legal rights, resulting in 600 women regaining their property in **Zimbabwe**, where property rights are legally protected. Paralegals and peer educators interacted with community elders in the training to show support from the elders (Welch et al., 2007). (Gray IIIb) (*property rights, peer education, Zimbabwe*)
- An evaluation of GROOTS (Grassroots Organizations Operating Together in Sisterhood) **Kenya**, self-help and community organizations for women in Kenya which formed to strengthen the visibility of women in development and decision-making, found that the intervention resulted in both increased awareness and an increase in the number of women and girls receiving legal support (186 as a result of the intervention compared to 15 in the six months prior to the start of the intervention). The intervention was successful in raising women’s participation in their communities around the issue of HIV and property and inheritance rights for women and girls. GROOTS Kenya focuses on: property rights, community responses to HIV and AIDS, women’s leadership and governance, and community resources and livelihoods. The intervention was evaluated through discussion questions administered pre- and post- radio listening group discussion and community discussions, focus group discussions with project beneficiaries and records of paralegals (GROOTS Kenya, 2007). (Gray IV) (*community organizing, legal rights, Kenya*)
- Training for leaders in **Kenya** responsible for enforcement of customary law reduced gender-based discrimination for women to access and control land and property. Grassroots women were trained to involve leaders responsible for customary law on the topic of taking land and property from widows. The study, based on 20 in-depth interviews with community leaders charged with implementing women’s rights to property, found that these customary leaders transformed the attitudes of other men with respect to women’s rights to land and property (Lu et al., 2013). (Gray V) (*training programs, property rights, Kenya*)
- In **South Africa**, the Women’s Legal Centre (WLC), in collaboration with the Sex Workers Education and Advocacy Taskforce (SWEAT) and Sisonke, South Africa’s national sex worker movement, conducts weekly workshops for sex workers on human rights and the law and employs sex workers as community-based paralegals who provide other sex workers with information and advice, accompany them to medical clinics and to court, and help them with bail applications. WLC also produced a “Know Your Rights” resource for sex workers laying out rights applicable upon arrest or detention, in addition to general labor rights and remedies.

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In addition to a marked improvement in the attitudes of police toward sex work, both WLC and SWEAT have reported increased empowerment of the sex workers they serve thanks to the legal information they have received (Open Society Foundations, 2013, pp. 8-9). (Gray V) (*training, sex work, legal rights, peer support, South Africa*)

- Survivors Self Help Group was formed in 2000 in Busia, **Kenya**, to support and empower female sex workers. Along with providing the sex work community with legal support, the Survivors lawyer trains local sex workers as paralegals, who in turn educate the community about the concerns of sex workers and the relevance of human rights to sex work. After some initial backlash, Survivors noted an improvement in relations between sex workers and law enforcement authorities, and police officers began offering their mobile phone numbers so that sex workers could contact them directly when problems arose with their clients. Survivors has also observed improved access to health care services as a result of the participation of many medical professionals in Survivors' workshops (Open Society Foundations, 2013, pp. 10-13). (Gray V) (*training, sex work, Kenya*)
- In **Indonesia**, lawyers at LBH Masyarakat trained former drug users as paralegals who become community educators, conducting sessions on the specifics of Indonesian law at meetings convened by local AIDS organizations and groups for people who use drugs. They also work to support people who use drugs in detention by visiting them after their arrest, delivering antiretroviral medications, taking their testimony and, where procedural violations have occurred, trying to secure their release. People who use drugs report that having peers as "first responders" at the police station reduces the risk of extortion, as the arrival of a lawyer on the scene could signal that the detainee's family has money. While LBH Masyarakat's paralegals initially encountered resistance from police, they have succeeded over time in developing positive working relationships with police and prison wardens alike (Open Society Foundations, 2013, pp. 17-18). (Gray V) (*training, peer support, drug use, Indonesia*)
- The Omari Project in **Kenya** trained three paralegals, all of them former drug users, to act as an important bridge between the drug-using community and the health care, legal aid and harm reduction services that the Omari Project provides at its drop-in center. Not only can the paralegals refer those facing drug charges to the Omari Project's lawyer, but their interactions with people who use drugs help identify broad community needs that the Omari Project can address directly in its weekly training sessions on topics concerning law, health and drug use. Since the Omari Project has begun challenging the inflated charges faced by people who use drugs, there has been a remarkable shift in police conduct. Officers are increasingly aware of the risks associated with bringing false or exaggerated charges and are now more hesitant to bring charges without compelling evidence. This change has enabled Omari Project staff to shift their focus and work more closely with probation officers to direct those arrested for simple possession to health care and rehabilitation services (Open Society Foundations, 2013, pp. 18-19). (Gray V) (*training, peer support, Kenya*).
- Lawyers at Uganda Network on Law, Ethics and HIV/AIDS (UGANET) have trained more than 100 paralegals in **Uganda**, among them women living with HIV, on basic principles of law enforcement, case assessment, conflict resolution, mediation and negotiation. In addition to ongoing support following their training, UGANET provides its paralegals with bicycles so that they can respond over a large area to legal needs and conduct outreach initiatives at health care centers and community gatherings. UGANET's paralegals not only inform people

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living with HIV about their rights, they also mediate disputes, carry out follow-up consultations with the police, and empower people to engage in community activism and perform simple legal acts like preparing a will. Between November 2011 and April 2012, UGANET took on 171 new clients, two-thirds of whom were women. More than half of these cases concerned property disputes, though a great number of others involved child support disputes for children abandoned because of their HIV status. In the majority of its cases, UGANET promotes the use of alternative dispute resolution methods, and among the small number of cases that are taken to court, UGANET has enjoyed a 90 percent success rate on behalf of its clients (Open Society Foundations, 2013, pp. 32-34). (Gray V) (*training, legal rights, Uganda*)

**2. Enacting and enforcing laws and policies that respect, protect and fulfill women's human rights, including those protecting women's rights to land, property and inheritance and addressing violence against women, can enhance women's ability to cope with HIV.**

- A global review of empirical evidence of efforts in low- and middle-income countries to prevent violence against women by their husbands and other male partners found that where there have been legal reforms to protect women from violence, there is some evidence to show such laws help to redefine the boundaries of acceptable behavior and reduce repeat violence against some victims (Heise, 2011). (Gray IIIb) (*violence against women*)
- A review based on 18 months of research and testimony from 700 people most affected by HIV-related legal environments from 140 countries found that prosecuting perpetrators of sexual violence, including marital rape, as well as rape related to conflict, against women may improve a country's response to HIV (Global Commission on HIV and the Law, 2012). (Gray V) (*violence against women*)
- An overview of 40 organizations working at a national level on property and inheritance rights, based on a survey of 60 community-based organizations in **East and Southern Africa**, suggests that where women's property and inheritance rights are upheld, women acting as heads and/or primary caregivers of HIV- and AIDS- affected households are better able to mitigate the negative economic and social consequences of HIV and AIDS. Conversely, the denial of property and inheritance rights drastically reduces the capacity for households to mitigate the consequences should a member be infected with HIV. Recommended interventions can be categorized as legislation, litigation and education: activities promoting gender sensitive legislation and a legislative framework that protects women's human rights; activities enhancing the judicial sector's capacity to uphold women's rights and provide for effective litigation; and activities that advance public awareness, understanding, and application of women's rights (Strickland, 2004). (Gray V) (*property rights, inheritance, East Africa, Southern Africa*)

**3. Decriminalization of drug possession and drug use and legalized comprehensive harm reduction services can significantly reduce HIV infections among people who use drugs, compared with persistent or growing rates in countries where such services are restricted or blocked by law** (Global Commission on HIV and the Law, 2012:

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29). [See also *Prevention for Key Infected Populations: Women Who Use Drugs and Female Partners of Men Who Use Drugs*]

- In 2001, **Portugal** decriminalized possession and use of illicit drugs in small enough amounts to suggest personal use. The number of people on methadone and buprenorphine for drug dependency rose from 6,040 to 14,877 following decriminalization. Lifetime heroin use in ages 16 to 18 dropped from 2.5% to 1.8%. New HIV infections among people who used drugs fell by 17% from 1999 to 2003 (Global Commission on HIV and the Law, 2012: 34). (Gray IIIb) (*drug use, methadone, criminalization, Portugal*).
- Until the 1980s, **Switzerland's** approach to narcotic drugs was based on rigorous criminal sanctions for illicit drug use, the rejection of sterile syringe provision and onerous licensing requirements on any doctor wishing to prescribe methadone for the treatment of heroin dependency, contributing to the highest estimated HIV prevalence (38%) amongst the European countries monitored in the 1980s, driven in large part by drug injection. In response, the Swiss government passed a law providing the legal framework for prescription of narcotics, including heroin and methadone, and endorsed harm reduction as part of a federal drug policy, enabling the provision of heroin-assisted therapy and the dramatic expansion and normalization of low-threshold methadone services and needle and syringe programs, including in prison. This strategy led to a marked reduction in the number of new HIV infections linked to drug injection, from an estimated 68% in 1985 to about 15% in 1997 and about 5% in 2009 (Csete and Grob, 2012). (Gray IIIb) (*drug use, opiate substitution therapy, needle and syringe programs, heroin assisted therapy, Switzerland*)
- Insite, a supervised injection site, was opened in Vancouver, **Canada** in 2003 in response to epidemic levels of infectious diseases and drug overdoses in the neighborhood of the site. The facility enables people who inject drugs to inject pre-obtained drugs under the supervision of health care professionals, and was permitted to operate pursuant to an exemption from Canada's federal drug law, which criminalizes drug possession and trafficking. Extensive research indicates that Insite has facilitated entry into detoxification services and subsequent injection cessation. (DeBeck et al., 2011). (Gray IIIb) (*drug use, supervised injection services, criminalization, Canada*)
- **Estonia** had experienced a concentrated HIV epidemic among people who inject drugs, with the highest per capita HIV prevalence (40–90%) in Eastern Europe. In the capital Tallinn, an increase in the number of syringes exchanged, from 230,000 in 2005 to 770,000 in 2009, coincided with a decrease in HIV infection among new injectors, from 34% to 16% (Uusküla et al., 2011). (Gray IIIb) (*drug use, needle and syringe programs, Estonia*)
- After 1989, the new Czechoslovak Federal Republic reformed its penal code so possession of illicit drugs for one's own personal use was removed as a criminal offense and made a misdemeanor, among other reforms. While there were subsequent amendments to the penal code in relation to drug possession, the **Czech Republic** did not criminalize drug use and the drug policy environment in the Czech Republic enabled the development of low-threshold services for people who use drugs, including relatively high coverage of needle and syringe programs and accessible medication-assisted therapy for people with opiate dependence. As a result, unlike some of its counterparts in Europe and the former Soviet bloc facing fast-growing HIV epidemics, the Czech Republic has achieved low HIV prevalence (below 1%)

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among people who use drugs (Csete, 2012). (Gray V) (*drug use, needle and syringe programs, opiate substitution therapy, Czech Republic*)

- In 2001, up to 66.5% of newly diagnosed HIV infections in **China** were related to drug use, during a period when harm reduction was controversial because it conflicted with laws and regulations on narcotics control. In an effort to address the epidemic among people who inject drugs, harm reduction was eventually introduced as a prevention strategy and a pilot methadone maintenance treatment program was initiated in 2004 across eight sites. In 2006, several important policy and legislative changes supported rapid expansion of the program and by 2009, the program had expanded into a nationwide program encompassing more than 680 clinics covering 27 provinces and serving some 242,000 heroin users. Clinics offer clients a range of ancillary services, including HIV, syphilis and hepatitis C testing, information, education and communication, psychosocial support services and referrals for treatment of HIV, tuberculosis and STIs. Ongoing evaluation has suggested reductions in heroin use, risky injection practices and criminal behaviour among clients (Yin et al., 2010). (Gray V) (*drug use, methadone maintenance treatment, China*)

### ***Promising Strategies:***

#### **4. Integrating legal education and services into health care settings can help ensure that women are able to secure their rights.**

- A study in **Zambia** examined the impact of a video-based motivational intervention promoting future planning (such as will writing) in 1,504 HIV-positive couples in Lusaka, Zambia and found that motivational messaging integrated into HIV voluntary counseling and testing services encouraged future planning. Following a group video session, couples randomized to the motivational arm could choose to write a will, identify a legal guardian for their children and make financial plans. Desirable behaviors modeled in the motivational video were measured at quarterly intervals for a year and compared in intervention and control arms. Demographic measures including age, income and educational status were not associated with planning behaviors. Participation in the intervention was associated with will writing (23% versus 5%) and naming a guardian (32% versus 17%) but not with other planning behaviors. The intervention was noted if a male, a female or both wrote wills. The study points to the need to expand existing HIV and VCT services to meet other non-health needs of those living with HIV (Stephenson et al., 2008). (Gray IIIa) (*property rights, wills, Zambia*)
- After a 2008 needs assessment found an alarming number of clients at the member health centers of The Christian Health Association of **Kenya** (CHAK) that reported unfair dismissal from employment, disinheritance, lack of child support and gender-based violence, CHAK integrated human rights awareness and legal services into 15 of its health care facilities, many of which provide HIV care and treatment services. CHAK's lawyer travels regularly to all 15 sites, training health care providers and "point people" living with HIV on issues related to marriage law, succession law, and gender and its impacts on HIV and teaching community leaders about alternative dispute resolution methods. A subsequent evaluation comparing CHAK clients who had received training on legal and human rights issues to control groups of untrained clients indicated that trained clients appeared to have greater

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awareness of how and where to access legal services to safeguard their rights (Gruskin et al., 2013). (Gray IV) (*HIV-related discrimination, legal assistance, Kenya*)

- In 2007, the Coalition on Violence against Women (COVAW) established a legal integration site at a post-rape care centre at Kenyatta National Hospital, **Kenya**. Services include direct legal aid in cases of sexual violence, referrals to other sources of legal aid and support, paralegal support, and training for clients and service providers on human rights and gender-based violence. Most COVAW clients accessed legal services after presenting for medical care. The legal integration program promoted greater awareness among clients of how and where to access legal services, while trained service providers appeared to be better equipped to provide legal and rights-related information and referrals to clients (Gruskin et al., 2013). (Gray IV) (*violence against women, legal assistance, Kenya*)
- In response to reports of HIV-related discrimination among patients of AMPATH, an HIV outpatient clinic in Eldoret, **Kenya**, the Legal Aid Centre of Eldoret (LACE) set up its head office directly opposite the AMPATH clinic, creating a one-stop center for medical treatment and legal advice. Since its inception, LACE has represented and counseled hundreds of people living with HIV in cases involving child support, workplace discrimination, land and inheritance disputes, gender-based violence, debt collection, family law, criminal charges and defamation claims associated with actual or perceived HIV status. LACE and AMPATH have also collaborated on the design and delivery of human rights workshops for health care providers, people living with HIV and the broader community and on the integration of human rights elements into AMPATH's health education programs. LACE's legal integration program has allowed AMPATH's health care providers to assist their patients with legal documentation, provide them with general human rights information, and recognize legal problems expressed during outreach and counseling. AMPATH health care workers have observed a mounting sense of confidence in their patients to initiate the resolution of legal problems facing them, and patients also appear to have greater awareness of how and where to access legal services to safeguard their rights (Open Society Foundations, 2013; Gruskin et al., 2013). (Gray V) (*HIV-related discrimination, legal assistance, Kenya*)
- In spite of pervasive human rights violations against people who use drugs, few programs in **Ukraine** offer legal services to them. Five organizations in Ukraine have successfully integrated legal services into HIV prevention and treatment programs. The organizations — located in Kyiv, Kherson, Lviv, Nikolaev and Poltava, have increased access to legal services by placing lawyers at locations where drug users already go for needle exchange, counseling, and referrals to drug dependence treatment. The programs have increased access to harm reduction by drawing in new clients who come for the legal services and stay for the HIV prevention services (Carey and Tolopilo, 2008). (Gray V) (*people who use drugs, legal assistance, Ukraine*)
- In **Kenya**, integration of legal assistance for survivors of rape increased access to post-exposure prophylaxis (PEP) (Coalition on Violence against Women and Kenyatta National Hospital, 2008 cited in Csete and Cohen, 2010). (Gray V) (*rape, PEP, legal assistance, Kenya*)

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## 5. Legal challenges to redress rights violations for women can advance women's human rights.

- The **Kenyan** National Commission on Human Rights in 2011 launched a public inquiry into sexual and reproductive health in Kenya, following the filing of a complaint in 2009 by the Federation of Women Lawyers in Kenya and the Center for Reproductive Rights, USA. The Inquiry confirmed violations of sexual and reproductive health for Kenyans in violation of the 2010 Kenyan Constitution (Kenya National Commission on Human Rights, 2012). Violations found included lack of services for survivors of sexual violence and lack of awareness that services exist, along with a “burdensome and often humiliating justice system” (Kenya National Commission on Human Rights, 2012: xxi). The Kenyan Constitution mandates the Commission on Human Rights to investigate human rights complaints. (Gray V) (*sexual violence, health services, Kenya*)
- The Inter-American Commission on Human Rights, part of the Regional Human Rights System of the Americas, based on the mandate of the Organization of American States (OAS) is reviewing the case of a **Chilean** woman living with HIV who was sterilized without her consent (Center for Reproductive Rights, 2010; Arango Olaya, 2013). (Gray V) (*sterilization, family planning, Chile*)
- In July 2012, the High Court of Namibia upheld a legal challenge by women living with HIV in **Namibia** who were sterilized without their consent. The Court ruled that consent obtained during labor does not represent informed consent (*High Court of Namibia, HN and others vs. Government of the Republic of Namibia* cited in UNAIDS, 2012a: 11). (Gray V) (*sterilization, family planning, Namibia*)
- In 2012, the High Court of **Solomon Islands** found that a rule exempting husbands from liability for the rape of their wives is no longer applicable. The husband had based his defense on the long standing proposition of law that, since he was legally married to the victim at the time of the alleged rape, it was not possible in law for him to be convicted of rape. In its decision, the Court held that an exemption for marital rape is no longer supported by common law and offensive to modern standards and principles of equality found in international conventions and the Constitution (*Regina v Gua*, 2012). (Gray V) (*marital rape, Solomon Islands*)
- In 2013, the Industrial Court of **Kenya** found that a university had discriminated against a woman on the basis of gender, pregnancy and HIV status by paying her considerably less than her male colleagues; testing her for HIV without her informed consent after she had applied for a promotion to a permanent position; denying her a permanent position on the basis of her HIV status; subjecting her to degrading and dehumanizing conduct by sharing her HIV status with colleagues and superiors without her consent; denying her paid maternity leave contrary to employment law; placing her continuously and deliberately on short contracts solely on the basis of her HIV status and to allow for easy termination; and ultimately terminating her employment based on her HIV status and pregnancy contrary to employment law. The Court consequently ordered the University to pay financial compensation and damages to the woman (*Veronica Muthio Kioka v. Catholic University of Eastern Africa*, 2013). (Gray V) (*HIV-related discrimination, gender discrimination, Kenya*)

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## 6. Decriminalization of sex work can promote access to health care and support safer working conditions, including safer sex practices, among sex workers.

- In order to assess whether the law has an impact on the delivery of health promotion services to sex workers, health promotion programs in three cities in **Australia** with different prostitution laws were compared. In Sydney, where sex work is largely decriminalized (versus Melbourne, where unlicensed brothels are criminalized and Perth, where all sex work is criminalized), more sex workers reported attending a sexual health center as a source of safer sex training and information. Researchers concluded that the legal context appeared to affect the conduct of health promotion programs targeting the sex industry, and that brothel licensing and police-controlled illegal brothels can result in the unlicensed sector being isolated from peer-education and support (Harcourt et al., 2010). (Gray IV) (*sex work, criminalization, Australia*)
- According to the United Nations Development Programme (UNDP), evidence from **New Zealand** and the **Australian state of New South Wales** indicates that decriminalization of sex work empowers sex workers, increases their access to HIV and sexual health services and is associated with very high condom use rates. Very low STI prevalence has been maintained among sex workers in New Zealand and New South Wales, and HIV transmission within the context of sex work is understood to be extremely low or nonexistent (Godwin, 2012). (Gray IV) (*sex work, criminalization, New Zealand, Australia*)
- In an analysis of data from **21 Asian countries** reporting under the UN General Assembly Special Session on HIV in 2010, researchers found a correlation between the legal environment toward sex work and HIV-related outcomes. Using the governments' responses, the researchers found that in most cases, HIV-related knowledge and behaviors among sex workers were poorer in countries that reported an unsupportive regulatory environment, and a general trend of higher knowledge and use of HIV-related services as well as the suggestion of lower HIV prevalence among sex workers in places where laws or policies intended to prevent discrimination are in place. This was particularly marked with regard to the percentage of sex workers reached with HIV prevention programmes. The researchers concluded that not only do legally punitive working environments threaten the rights and health of sex workers, but that they may further exacerbate the HIV epidemics in Asia and in the rest of the world (Gruskin, et al., 2014). (Gray V) (*sex work, criminalization, Asia*)
- A systematic **global review** of research on the prevention and treatment of HIV and other STIs among sex workers and their clients found that laws that directly or indirectly criminalize or penalize sex workers, their clients and third parties, abusive law enforcement practices, and stigma and discrimination related to HIV and sex work can undermine the effectiveness of HIV and sexual health programs, and limit the ability of sex workers and their clients to seek and benefit from these programs. It was thus recommended that all countries work toward decriminalization of sex work and the elimination of the unjust application of non-criminal laws and regulations against sex workers (WHO, UNFPA, UNAIDS and NSWP, 2012). (Gray V) (*sex work, criminalization*)
- In **New Zealand**, after the government decriminalized prostitution in all forms in 2003, sex workers exercised greater power to demand safer sex. Prior to decriminalization, sex workers

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were less willing to disclose their occupation to health workers or to carry condoms or lubrication for fear of it being used as evidence for a conviction. Since decriminalization, sex workers have reported feeling that they have enforceable rights, including the rights to health and security of person, and are increasingly able to refuse particular clients and practices and negotiate safer sex (New Zealand Prostitution Law Review Committee, 2008). (Gray V) (*sex work, criminalization, New Zealand*)

**7. Repealing laws, policies and practices that criminalize same-sex sexual activity and exacerbate stigma and discrimination against LGBT communities can promote greater access to HIV prevention, treatment and care among MSM and, more broadly, LGBT communities.**

- A review based on 18 months of research and testimony from 700 people most affected by HIV-related legal environments from **140 countries** found that criminalization of same-sex sexual activity both causes and boosts HIV among MSM. In **Caribbean countries** where homosexuality is criminalized, almost 1 in 4 MSM is infected with HIV. In the absence of such criminal law the prevalence is only 1 in 15 among MSM (Global Commission on HIV and the Law, 2012:45). (Gray IV) (*criminal law, MSM*)
- While a 2011 review of the available literature on MSM, HIV and the law did not allow for the direct measurement of laws against homosexuality on HIV rates among MSM, there is compelling and consistent data to demonstrate that legal sanctions and stigma and discrimination limit MSM access to HIV prevention, treatment and care and are a barrier to universal access (Beyrer and Baral, 2011). (Gray V) (*criminal law, stigma and discrimination, MSM*)

11C. Gaps in Research and Programming — *Strengthening the Enabling Environment: Advancing Human Rights and Access to Justice for Women and Girls*

1. Interventions to increase the knowledge of people living with HIV — especially women — regarding their rights and provision of resources for them to access and claim these rights need to be scaled up.
2. Laws prohibiting discrimination against those who are living with HIV in employment, housing, health and social services and education need to be implemented and more thoroughly evaluated.
3. Legislation is needed to ensure migrants are not denied access to services, which can increase the risk of acquiring and transmitting HIV.
4. Supportive legal and policy frameworks are needed to prevent and redress all forms of violence against women, particularly women living with HIV, women engaged in sex work and women who have sex with women, including in intimate partner settings.
5. Legislation that allows women the right to refuse forced marriage and to divorce and that

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<p>penalizes marital and non-marital rape is necessary to reduce coercive sex and the risk of HIV transmission.</p> <ol style="list-style-type: none"> <li>6. Laws prohibiting marriage at young age need to be enacted and enforced.</li> <li>7. Women’s right and access to, and control over, an equitable share of marital property and inheritance, including land, needs to be recognized and protected in law and practice.</li> <li>8. Efforts are needed to further research and repeal laws that criminalize HIV non-disclosure, exposure or transmission — including vertical transmission of HIV—, which can discourage people from testing for HIV, and undermine the relationship between patients and physicians and other service providers.</li> <li>9. Laws that criminalize consensual adult sexual behavior, including same-sex conduct and sex work need to be repealed and the impact of such law reform needs to be more thoroughly evaluated.</li> <li>10. Efforts are needed to reform laws that criminalize drug use and/or drug possession for personal use and to eliminate compulsory drug detention and instead, provide people who use drugs with access to HIV and health services, including harm reduction, and voluntary, effective evidence-based drug dependency treatment.</li> <li>11. Measures should be taken to stop abuses in health care, including breaches of medical confidentiality, HIV testing without informed consent and forced and coerced sterilization of women living with HIV.</li> <li>12. Efforts are needed to implement and research interventions to alleviate stigma and discrimination on the basis of HIV status, gender, sexual orientation, gender identity, sex work and drug use in the health care sector, social services, police and the judiciary.</li> </ol>
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**1. Interventions to increase the knowledge of people living with HIV — especially women — regarding their rights and provision of resources for them to access and claim these rights need to be scaled up.** Studies found that women had insufficient knowledge of their legal rights and no resources to claim their legal rights.

- Gap noted, for example, **among female prisoners in Zambia** (Todrys and Amon, 2011); **DRC** (Solhjell, 2009); **Uganda** (Mabumba et al., 2007); **Kenya** (Machera, 2009); **Zambia, Namibia and Uganda** (Steinzor, 2003; Manchester, 2004) and **Bangladesh, Cambodia, India, Indonesia, Nepal and Vietnam** (WAPN+, 2012); **China** (Godwin, 2013).

**2. Laws prohibiting discrimination against those who are living with HIV in employment, housing, health and social services and education need to be implemented and more thoroughly evaluated.** A study found that women feared losing their homes if found to be living with HIV. [See *Reducing Stigma and Discrimination*]

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- Gap noted, for example, in **Burkina Faso** (Obermeyer et al., 2009) and **Uganda** (Twinomugisha et al., 2011).
- 3. Legislation is needed to ensure migrants are not denied access to services, which can increase the risk of acquiring and transmitting HIV.**
- Gap noted in 11 countries of **Eastern Europe and Central Asia** and **globally** (Global Commission on HIV and the Law, 2012).
- 4. Supportive legal and policy frameworks are needed to prevent and redress all forms of violence against women, particularly women living with HIV, women engaged in sex work and women who have sex with women, including in intimate partner settings.** [*See Prevention for Key Affected Populations; Addressing Violence Against Women*]
- Gap noted **globally** (Csete and Cohen, 2010); **Malawi** (Southern Africa Litigation Centre, 2013) and in **sub-Saharan Africa** (UNWomen and OSISA, 2013; Crone et al., 2011)
- 5. Legislation that allows women the right to refuse forced marriage and to divorce and that penalizes marital and non-marital rape is necessary to reduce coercive sex and the risk of HIV transmission.** Studies found that in some countries, particularly in regions where there are generalized epidemics, legislation penalizing marital rape does not exist. For younger women: laws stating that a girl under age 16 cannot consent to sex but also that she cannot claim protection from the law if someone has sex with her against her will must be changed: “By granting her neither agency nor security, the law renders her a non-person” (Global Commission on HIV and the Law, 2012).
- Gap noted, for example, in **sub-Saharan Africa** (Crone et al., 2011; Kilonzo et al., 2009b; HRW, 2003a); **South Africa** (Kehler et al., 2012); **Swaziland** (Global Commission on HIV and the Law, 2012).
- 6. Laws prohibiting marriage at young age need to be enacted and enforced.** Field reports and studies found that child marriage for girls is still common in some countries, including in some countries where child marriage has been made illegal.
- Gap noted **globally** (Malhotra et al., 2011; CHANGE, 2009; Ezer et al., 2006).
- 7. Women’s right and access to, and control over, an equitable share of marital property and inheritance, including land, needs to be recognized and protected in law and practice.**
- Gap noted, for example, in the **Middle East and North Africa** (COHRE, 2006); **Malawi** (Canadian HIV/AIDS Legal Network and WLSA-Malawi, 2011) and **Kenya** (FIDA and IWHRC, 2009 cited in Lu et al., 2013; Lu et al., 2013).

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8. **Efforts are needed to further research and repeal laws that criminalize HIV non-disclosure, exposure or transmission — including vertical transmission of HIV—, which can discourage people from testing for HIV, and undermine the relationship between patients and physicians and other service providers.** Because women are more likely to be tested, legal mandates to disclose HIV-positive serostatus may discourage women from accessing needed services and may lead to increased risk of abandonment and violence (see sections on VAW, HTC, etc).
- Gap noted **globally** (Global Commission on HIV and the Law, 2012; UNAIDS, 2013a); in **Burkina Faso** (Sanon et al., 2009) and **Zimbabwe** (GNP+, 2014).
9. **Laws that criminalize consensual adult sexual behavior, including same-sex conduct and sex work need to be repealed and the impact of such law reform needs to be more thoroughly evaluated.** [*See Prevention for Key Affected Populations*]
- Gap noted **globally** (Global Commission on HIV and the Law, 2012; Beyrer and Baral, 2011; UN General Assembly, 2010).
10. **Efforts are needed to reform laws that criminalize drug use and/or drug possession for personal use and to eliminate compulsory drug detention and instead, provide people who use drugs with access to HIV and health services, including harm reduction, and voluntary, effective evidence-based drug dependency treatment.** Detention centers are administered by police, military or other national government public security authorities and operate outside the formal criminal justice system with detainees held without trial or right of appeal; those detained are not allowed to leave voluntarily (Wolfe, 2012). Studies found that female IDU were not given reproductive health services, including PMTCT services in compulsory detention and/or prison settings. Detoxification programs were substandard and ineffective. Despite high rates of HIV, antiretroviral treatment is largely unavailable in compulsory drug detention centers. IDUs who have started antiretroviral treatment should be able to continue treatment in prison with access to medical supervision. [*See also Prevention for Key Infected Populations: Women Who Use Drugs and Female Partners of Men Who Use Drugs*]
- Gap noted, for example, **globally** (Global Commission on HIV and the Law, 2012, Csete and Cohen, 2010); **Russian Federation, Cambodia, China, Lao PDR, Myanmar, Malaysia, Philippines, Afghanistan, Bangladesh, India, Maldives, Nepal and Pakistan** (Global Commission on HIV and the Law, 2012); **Azerbaijan, Georgia, Kyrgyzstan, Russia and the Ukraine** (OSI, 2009); **Tajikistan, Latvia, Estonia and Georgia** (Iakobishvili, 2012); **Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan** (UNODC, 2010a); **China** (Jia et al., 2010; HRW, 2010b; Sullivan and Wu, 2007: 121, Liu et al., 2006a: 119); **Cambodia** (HRW, 2010a); **Ukraine** (Strathdee et al., 2010); **South Africa** (Parry et al., 2010); **Thailand** (Hayashi et al., 2009); **Vietnam** (Thanh et al., 2009a); and generally (Wolfe et al., 2010; Jürgens et al., 2010; Cowan et al., 2008); **Cambodia, China,**

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**Malaysia and Vietnam** (WHO et al., 2011b); **Russia** (Sarang, 2011); **Russia and Thailand** (Global Commission on HIV and the Law, 2012).

**11. Measures should be taken to stop abuses in health care, including breaches of medical confidentiality, HIV testing without informed consent and forced and coerced sterilization of women living with HIV.** Any mandated HIV-related registration, testing and forced treatment may discourage needed access to testing and treatment and adherence.

- Gap noted **globally** (Global Commission on HIV and the Law, 2012 and Baral et al., 2011); in **Namibia** (UNAIDS, 2012a; ICW, 2009); and **Chile** (Center for Reproductive Rights, 2010).

**12. Efforts are needed to implement and research interventions to alleviate stigma and discrimination on the basis of HIV status, gender, sexual orientation, gender identity, sex work and drug use in the health care sector, social services, police and the judiciary.** [*See Reducing Stigma and Discrimination and Prevention for Key Affected Populations*]

- Gap noted **globally** (UNAIDS, 2012b; Clayton et al., 2012; Caceres et al., 2008; Baral et al., 2011); in **sub-Saharan Africa** (UNWomen and OSISA, 2013; Crone et al., 2011); **Asia and the Pacific** (WAPN+, 2012); **Malawi** (Southern Africa Litigation Centre, 2013) and **Zimbabwe** (Mtetwa et al., 2013).

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*Every effort has been made to ensure that all citations in this chapter are contained in this list and that this list is accurate. If something is missing or inaccurate, please see [www.whatworksforwomen.org](http://www.whatworksforwomen.org) for a complete list. If missing or inaccurate there, please contact us.*

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