



# Asia Pacific Community of Practice on HIV/AIDS, Gender and Human Rights

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Summary of E-discussion;

## HIV and the Law

17 February to 11 March 2011

a partnership initiative with



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Photos by Reuters.

## Introduction

The Global Commission on HIV and the Law was launched in June 2010 to develop actionable, evidence-informed and human rights-based recommendations for effective HIV responses that promote and protect the human rights of people living with and most vulnerable to HIV. To this end, the Commission focuses on some of the most challenging legal and human rights issues in the context of HIV. These may include: (1) laws and practices that effectively criminalise people living with and vulnerable to HIV; (2) laws and practices that mitigate or sustain violence and discrimination as lived by women; and (3) laws and practices that facilitate or impede treatment access. Building on the UNAIDS Outcome Framework 2009-2011, the work of the Commission is constructed along three mutually reinforcing axes – findings and recommendations, a Technical Advisory Group to help generate and build consensus around the evidence base, and Regional Dialogues to ensure participation and inclusion of affected communities and law and policy makers.

In order to learn from individuals, communities, policy and law makers and law enforcement agencies in the region, the Commission hosted a regional dialogue in Asia and the Pacific on 16 and 17 February 2011. It gave a chance to those profoundly and directly impacted by and vulnerable to HIV, including those whose voices are silenced by restrictive legal environment, to be heard. Over 22 countries from the region including 6 from the Pacific attended the Commission.

This e-discussion conducted on the Asia Pacific Community of Practice on HIV, Gender, and Human Rights (HIV-APCoP) built on the regional dialogue of the Commission on HIV and the Law<sup>1</sup>. The discussion titled, **HIV and the Law** gave an opportunity for network members to participate and inform the Global Commission on HIV and the Law.

The discussion ran from 17 February to 11 March 2011. We received over 30 contributions from regional and national civil society organizations, public health departments, parliamentarians, academic institutions and UN staff in the Asia Pacific region. We also received from Solution Exchange AIDS Community – India, a summary report of a national e-discussion linked to the Global Commission on HIV and the Law, which took place in December 2010. The content of this report includes key points raised by the e-discussion in India.

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1 The HIV-APCoP is an interactive knowledge network jointly established by UNDP, UNAIDS, UN Women, UNOHCHR and Asia Pacific Network of People Living with HIV/AIDS (APN+)

## Message from the Guest Moderator

**Dame Carol Kidu**

**Minister for Community Development, Papua New Guinea**

The Global Commission on HIV and the Law was launched in June 2010 to develop actionable, evidence-informed and human rights-based recommendations for effective HIV responses that promote and protect the human rights of people living with and most vulnerable to HIV.

The work of the Commission is constructed along three mutually reinforcing axes including findings and recommendations, a Technical Advisory Group to help generate and build consensus around the evidence base, and Regional Dialogues to ensure participation and inclusion of affected communities and law and policy makers.

Needless to say, laws and policies can have a profound impact on our lives, especially those living with HIV. It can enhance access to life saving treatment, support the prevention of mother to child transmission, and protect people living with HIV from discriminatory practices. It can also play a pivotal role in bringing marginalized groups to the mainstream so that they can freely access prevention, treatment and care services.

However, despite significant work done in the Asia and Pacific region to provide a conducive legal environment to mitigate the causes and consequences of HIV, reports from the Commission on AIDS in Asia and the Commission on AIDS in the Pacific note that punitive laws and criminalization related to most at risk groups are a major challenge to effective HIV responses in the region.

Submissions made to the Global Commission on HIV and the Law, in the context of the Asia Pacific Regional Dialogue, highlight the plight of women and girls living with HIV, due to laws that criminalize people and practices, inadequate enforcement of existing laws, proactive discrimination against them by law enforcement officials, and inadequate legal protection for their social, economic and human rights.

The submissions highlight the following issues:

- Criminalization of people living with HIV, especially through statutory acts for the control of 'contagious' diseases, which can be employed to incarcerate or isolate those living with HIV;
- Inadequate enforcement of existing laws related to violence against women;
- The use of ambiguous laws, such as those against public indecency, pornography, vagrancy and even trafficking, to harass marginalized women, especially female sex workers;
- Criminalization of sex workers on the basis of who they are and what they do;
- Mandatory screening practices employed by migrant receiving countries with negative consequences for a positive test result for migrant workers;

- Poor enforcement of laws that aim to address economically grounded gender inequalities including wage discrimination, differential access to fulfilling employment, inheritance and property rights; and
- Poor access to legal services for women living with HIV, including female sex workers.

It is my pleasure to launch this e-discussion today coinciding with the Regional Dialogue in Asia and the Pacific. The discussion will run for 3 weeks and will focus on the key areas outlined by the Commission, as they relate to women and girls.

They will include:

- i) Laws and practices that effectively criminalize people living with and vulnerable to HIV;
- ii) Laws and practices that mitigate or sustain violence and discrimination as lived by women; and
- iii) Laws and practices that facilitate or impede treatment access.

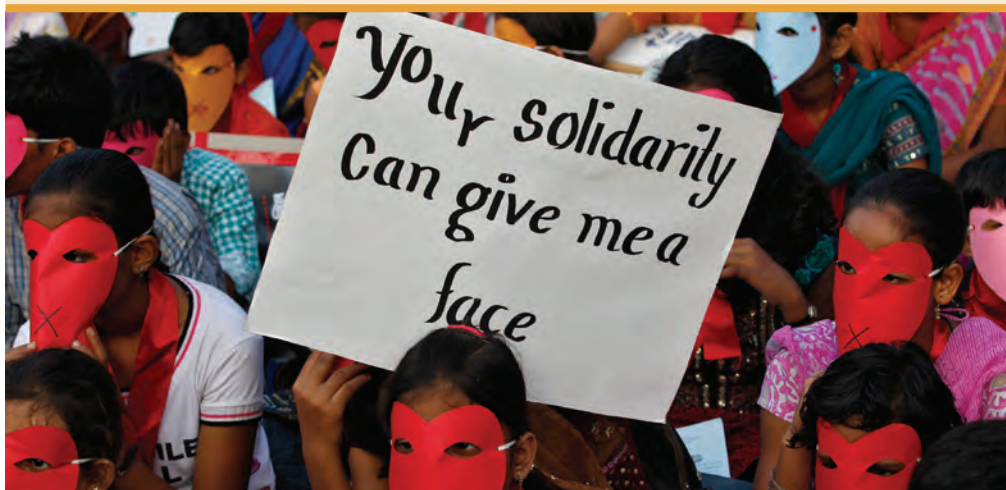
I look forward to your contributions; it will no doubt strengthen the work of this Commission.



## Contributors

The HIV-APCOP received responses from:

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## Background

The e-discussion was launched, coinciding with the Regional Dialogue in Asia and the Pacific, to leverage on across-the-board expertise to identify innovative solutions for the above challenges. The findings from the e-discussion are summarised below.

## Summary of Responses to Questions

### Part 1: Laws and Practices that effectively criminalise people living with and vulnerable to HIV

- (a) How can multi-stakeholder partnerships (involving governments, civil society groups and those living with or vulnerable to HIV) be formed and sustained to enact rights-based legislation and repeal discriminatory laws?
- (b) What steps can be taken to prevent women living with or vulnerable to HIV from falling victims to a discretionary application of such laws?

There was a clear consensus among participants that a reform of the legal framework, to enshrine a rights based approach to law, in several countries was urgently needed. It was also emphasised that the success of legal reform depended critically on the ability of the executive and judicial wings of the government to enforce these laws. Acknowledging that identifying discriminatory policies and practices constituted a key first step on the road to legal reform, participants identified several instances of discrimination against women living with or vulnerable to HIV in their respective countries. These are summarised below.

- In many countries in the region, there is no dedicated legislation to protect the rights of people living with HIV. Where such legislation exists (for example, the HAMP act in PNG), awareness of it is limited, even among law enforcement officers. The lack of legislation and/or a lack of awareness has contributed towards a routine flouting of the established protocol surrounding testing and counselling practices. Evidence from Laos, Thailand and India was cited to suggest that, in their zeal to meet donor specified and country specific VCT targets, testing programmes might force sex workers – sometimes with the aid of the police/army – into undergoing HIV/STI tests. In addition, sex workers are often not informed during pre- and post-test counselling of their rights to refuse such tests.
- In several countries in the region, sex work continues to remain a criminal offence. Even in jurisdictions where sex work has been decriminalised, laws exist that criminalise the running of brothels, living off a sex workers earnings, soliciting in public places etc. Participants suggest that, while the intent of these laws might be to prevent trafficking and abuse, the lack of specificity in the letter of the law, especially in common law traditions, leave them open to interpretation. Discretionary interpretation and implementation of these laws is often counterproductive to the

Less than 24 hours after the Regional Dialogue on HIV and the Law in Bangkok, we are raising concerns amidst fears of mass detention and force treatment of people who use drugs in Thailand.... We will be very grateful for the support of members of this community and would welcome any advice you may have on how we should address the issue.

- Dean Lewis, ANPUD

We from the Tonga Leitis' Association are proud to say that we fully support the cause and may God be praise with all our work.

**- Joey Joleen Siosaia W.C.A  
Mataele, Pacific Sexual Diversity  
Network/ Tonga Leitis' Association**

interests of female sex workers. On account of these laws, female sex workers fail to put their children through formal education systems; are forced to move the practise of their profession under ground; and, are vulnerable to systematic and routine abuse by law enforcement officers. In Sri Lanka, for example, while involvement in sex work is a criminal offence for female sex workers, brokers, traffickers and clients alike, it is the female sex workers who bear the brunt of law enforcement.

- In some countries in the region, including Malaysia and PNG, there is inadequate legal recognition of the rights of transgender persons and ineffective legal protection against abuse and harassment. Often, the harassment is perpetrated by law enforcement officials themselves; to make matters worse, traditional religious beliefs can contribute to maintaining a social environment that is overtly hostile towards and alienates transgender identities.
- In many countries of the region, law enforcement officers routinely and systematically enforce a version of the law that derives from social conventions and personal moral codes, and which bears little resemblance to the actual civil and criminal code of the land. Such extra-legal practices that consequence in the harassment and abuse of marginalised sections of society – including FSWs and transgender persons – are sustained by, both, social mores against certain groups of people and practices, as well as by a blatant lack of awareness among ordinary people and law enforcement officers alike about constitutionally guaranteed rights and remedies. More importantly, this highlights how legal reform can be irrelevant unless it is complemented by increased awareness and attitude change at the social grassroot level.

Based on the problems discussed above, participants made the following recommendations while identifying key corrective initiatives that have been/are being undertaken.

- Intensification of efforts by civil society organisations, in partnerships with lawyers' organisations, community leaders and victims to enhance the information available at grassroots level about the legal and constitutional guarantees available to marginalised and stigmatised groups and foster mindset change.
- Sensitisation programmes for legislators and law enforcement officials modelled along the lines of UNDP's newly instituted cross-practice programming; such initiatives include induction programmes for parliamentarians, which integrate MDG-related information and emphasise the role that can be played by ministries and government departments in enhancing awareness of HIV-related legislation within the private sector. A key feature of cross-practice programming is the emphasis laid on multi-stakeholder participation, including CSOs, NGOs and community leaders. Experiences shared by the Indian police, with organisations like 'Disha' and the Society for Community Interventions and Research (SCIR), show how strong leadership, will and partnership can build an environment where law enforcers can act as "change agents" in favourably influencing social attitudes towards drug users and sex workers.
- Systematic and comprehensive national level audits of legal statutes and procedures needs to be undertaken throughout the region to identify gaps in the legal environment. A UNAIDS initiative, entitled 'Making the Law Work for the HIV Response',

is a crucial step in the right direction as it provides a quick and comprehensive guide to laws in various countries that support/hinder universal access to HIV prevention, treatment, care and support, as well as serving as a baseline against which progress towards an enabling legal environment can be measured.

- Close cooperation between donor agencies and recipient countries is essential to draw up testing targets and institutional mandatory protocols governing testing/counselling procedures in order to reduce the harassment of FSWs, among other MARPs, and the incidence of forced testing. In addition, a monitoring mechanism must be established to ensure compliance by various national HIV organisations across the region.

## Part 2: Laws and Practices that Mitigate or Sustain Violence and Discrimination as Lived by Women

- (a) How can we best combat gender based violence through legal reform?
- (b) How can enforcement of laws against gender based violence be improved?

There was a consensus among participants that while formal legal reform is a necessary component of any intervention against Gender Based Violence (GBV), the efficacy of such reform is contingent on the degree to which it is supplemented by informal but extensive social/cultural reform. Participants, especially from societies where Violence against Women (VAW) is endemic, suggested that it is sustained, primarily, by social and cultural norms that perpetuate gender inequities in access to social and economic resources and pressure the male monopoly over socio-economic decision-making at the level of the family and the community. The role played by social institutions in maintaining this inequitable social order was also highlighted (for instance, it was pointed out that several churches in PNG still deny women the privilege of leading church services). In this context, participants reiterated the pressing need for social reform to precede legal reform in order that laws against VAW or GBV are fully internalized at the level of the community. In addition, this internalization is crucial to effective enforcement of laws.

Specifically, the following obstacles to statutory reform and effective law enforcement were identified.

- In many societies in Asia and the Pacific, there is no conception, at the grassroots level, that individuals – regardless of their gender or their standing on other indicators of socio-economic status – have basic, inalienable human rights. In such societies, the move towards rights based advocacy against VAW might be, at best, ineffective, and, at worst, counterproductive. For example, a Bangladesh-based participant mentioned that the general population is substantially more sympathetic towards the plight of female sex workers when they are portrayed as “poor and vulnerable and victims of violence” than when they were “put on a platform to speak”.

- Relatedly, the notions of GBV and VAW are conceptually intractable for many living in societies that are organised along traditional beliefs. As noted by a PNG participant, this leads to an inability among ordinary citizens, lawmakers and law enforcement officials alike, to internalise the idea that GBV and VAW violate the basic rights of women. Rampant illiteracy, especially at the village level exacerbates the problem by making it harder for CSOs, NGOs and FBOs to communicate effectively with ordinary people about GBV and VAW. This, in turn, neutralises the effect of anti-GBV legislation and reduces the intensity of efforts directed at combating GBV. If there is continued failure to implant values that denormalise GBV, legislation, by itself, will only have nominal impact since “if laws do not mean anything to us, we will not observe them”.
- Participants identified the multiplicity of agendas as a third impediment to effective legal reform and law enforcement. Especially in the context of Bangladesh, but generalisable to other developing countries in the region, it was pointed out that a medley of social and economic problems compete for limited resources. This has the result of relegating legal reform down the order of socio-economic priorities. Similarly, the presence of multiple disadvantaged groups pressing for group-specific privileges contributes towards diluting the need for women’s rights to be recognized and protected.

Based on the problems discussed above, participants made the following recommendations.

- There must be a clear acknowledgment that social reform to address inequitable gender structures in society is key to ensuring the success of legal reform and the effectiveness of law enforcement. In the context of VAW, intervention to denormalise GBV are critical and urgent. These interventions must be designed to make them conceptually accessible to ordinary people at the village level. Further, in order to give them the requisite legitimacy, community leaders must be actively engaged. Examples of such primary prevention strategies include the involvement of ‘Village Facilitators’ in UNDP’s Cambodia Programme to conduct community level conversations on GBV with the primary intention of challenging the normalisation of domestic violence as a private family matter. Attitude change can also be fostered by installing women as community leaders and insisting on model behaviour from holders of public office. For example, a participant from PNG suggested legal reform to bar bigamous/polygamous men from law holding positions as legislators, ministers, judges or law enforcement officers.
- There is a need for scaling up lobbying activity to ensure that legal and social reform to safeguard the rights of women (especially against violence) remains high on the list of government priorities. Civil society groups can play an important role in this regard. However, sustainable progress to eliminate GBV depends ultimately on the ability of a society to make advances on other development objectives, as enshrined in the MDGs.
- Easy and clear provision of legal aid to women who are victims of violence can play a key role in establishing a credible deterrent to GBV. UNDP’s initiatives in Cambodia to ensure women’s access to grievance redressal mechanisms and the UNDP supported establishment of Legal Aid clinics in India are pioneering efforts in making a serious effort to convert the de jure criminality of GBV into a de facto status. Similarly, a UNDP

initiative in Nepal targeted at improving awareness among women of remedies available against GBV and the procedural aspects of seeking them.

- Sensitisation of front line personnel (police officers, for example) is of critical importance in improving law enforcement related practices in the context of GBV. An example of a first step towards developing effective sensitisation techniques is a UNDP supported Baseline Study of the Royal PNG Constabulary that aims to develop an effective training curriculum based on the institution's current responses to GBV, as well as the attitudes of its individual members.

## Part 3: Laws and Practices that Facilitate or Impede Treatment Access

(a) What can be done to enhance access to justice for:

- Women living with HIV;
- Female sex workers and women who inject drugs; and
- Victims of violence against women

(b) How can problems of inequity (in law) be mitigated?

Participants were unanimous in the view that the greatest obstacles to testing/treatment access are constituted by extra legal behaviour by law enforcement agencies, who impose "their own conceptions of morality" on women living with or vulnerable to HIV; by a general social stigma, especially, against HIV and sex work; and laws that push risky behaviour underground by criminalising them, either explicitly or implicitly.

In addition, participants agreed that women's resilience against actual and potential legal and extra-legal exploitation depends to a great extent on their empowerment. This, in turn, depends on guaranteeing their equitable economic rights (especially, with regard to employment, inheritance and property); enhancing their awareness of existing legal provisions; and enabling their access to legal redress. However, in several countries, inheritance and property rights retain a distinctive gender bias. Further, women in many instances are neither aware of their legal rights (as PLHIV or sex workers or victims of VAW), nor have the means to seek recourse to the law.

In this context, participants identified the key impediments to equitable treatment of women living with/vulnerable to HIV to include:

- Existing provisions in the law that compromise the ability of FSWs to be empowered:

A participant highlighted the Indian Immoral Traffic (Prevention) Act (ITPA), whose provisions severely compromise FSWs' ability to negotiate safe, dignified and productive lives and place them at a disadvantage vis-à-vis the law. The provisions of the act include the criminalisation of brothels (which might prevent FSWs from forming a collective organisation); of the 'earnings' of sex workers; of prostitution

... your inputs will greatly help the work of the Commission on HIV and Law. I also look forward to the summary of the discussion which I can take back to other regional dialogues as well as to the next meeting of the Commission.

- J.V.R. Prasada Rao, UNAIDS

around a 'public place'; of solicitation; and the power given to a magistrate to evict sex-workers from their homes. It is clear that such draconian regulations not only endorse and legitimise the general social stigma against sex work, but also push risky behaviour to the margins of society where access to testing and treatment is minimal.

- Lack of standard operating procedures for testing/counselling and treatment:  
As noted in an earlier section, participants identified that the lack of a uniform protocol (backed by statutory guarantees) surrounding testing and treatment practices often lead to donor financed HIV programming to give rise to rights violations in the form of forced testing; illegal detention; and lack of confidentiality in the testing process. Participants also indicated that the lack of periodic review of and standardisation in policies at rehabilitation centres often contribute to abuse of female sex workers/drug users by officials and law enforcement officers.
- The apathy of the public sector, in several countries in the region, towards sensitisation, training and advocacy programmes:  
Participants identified that, often, HIV and GBV related training and advocacy are seen by governments to be the sole responsibility of CSOs, NGOs and FBOs. In addition, public servants are not sufficiently aware either of HIV related legislation, or best practices or of the issues encountered on a routine basis at the grassroots level.
- A lack of awareness of statutory provisions that protect the rights of women living with/vulnerable to HIV (for example, the HAMP Act in PNG) severely compromise women's access to legal redress in the event of a violation of their rights. Gender inequities in terms of the control over economic resources (in part, due to gender biases in property and inheritance rights) compound the problem by making it difficult for women to commit the requisite resources towards seeking recourse from formal legal processes.

Based on the problems discussed above, participants made the following recommendations:

- There is an urgent need to review testing/counselling and treatment practices in all countries around the region in order to identify laws, policies and practices that violate the rights of women living with/vulnerable to HIV. Participants suggested audits along the lines of the UNAIDS 'Snapshot' programme to identify where and how HIV programming leads to routine and systematic rights violations. It might be desirable to have a HIV programming framework where donor agencies might require receiving countries to comply with universally accepted testing protocols by providing statutory guarantees to protect the same.
- Collective efforts by CSOs, lawyers and legislators are urgently needed to lobby for the amendment/repeal of existing legal provisions that discriminate against or criminalise female 'most at risk' populations (like FSWs). While legal reform might not be sufficient to ensuring that these populations are not stigmatised, discriminated against or exploited, it is a critical and desirable first step. In this context, the filing of a Public Interest Litigation (PIL) in India against the provisions of the Indian ITP Act on the behalf of FSWs by an NGO, with the backing of the 'Lawyers Collective', can be considered as an achievement and as a step in the right direction.



- Greater involvement of the government and the public section in HIV (and GBV) related advocacy is required. Participants suggested that there needs to be a mindset change within the public sector that HIV related advocacy is the sole responsibility of the non-state sector. In support of this view, participants provided examples of how strong political leadership can function as a catalyst for changing, both, discriminatory social attitudes and legal frameworks. It was also suggested that formal mechanisms and platforms should be established to facilitate periodic exchange of information about gaps and best practices in law-based HIV intervention strategies between the public and the NGO/FBO sector.

## Final Note

Throughout the discussion, it clearly emerged that law-related responses to HIV is not limited to the domain of legislation and law enforcement. While legal reform and improvements in law enforcement might be necessary conditions for ensuring that the rights of women and girls living with/vulnerable to HIV are recognised and protected, they will remain incomplete without complementary change in social attitudes towards marginalised groups of people and their practices. Thus, the sustainability of a move towards rights based legal climates is contingent on the degree to which the notion of 'human rights' is internalised by populations living in societies that are organised on the basis of traditional codes.

Accordingly, participants recommended legal and procedural audits to identify laws that criminalise marginalised populations and their practices (FSWs, female drug users, transgender persons and women living with HIV/AIDS); multi-stakeholder cooperative mechanisms to share best practice information and catalyse mindset changes; training and sensitisation programmes for lawmakers and enforcers to eliminate or reduce the potential for extra-legal abuse of women; establishment of standard operating HIV testing and counselling procedures for FSWs/female drug users backed by statutory guarantees and compliance monitoring mechanisms; and, dissemination of information on HIV related legislation and legal resource available to victims of discrimination, abuse and GBV at the grassroots level.

Finally, the e-discussion provided an invaluable platform for bringing participants up to date with recent initiatives and developments on law and HIV and sharing information on general and country specific information on gaps in the legal infrastructure and best practices in legal reform. As such, it unlocks potential for future collaboration between individuals and institutions for related research, expertise sharing and cooperation in moving towards more just, equitable and inclusive legal systems based on a recognition of human rights.

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## How can the HIV-APCoP help you?

- Provide access to important publications, presentations, tools, and other materials.
- Provide access to emerging and good practices across the region.
- Provide information on upcoming events related to HIV, gender, and human rights in the region.
- Provide peer-review for your studies and guidance to resources under development.
- Link you to professionals working on issues related to HIV, gender, and human rights.
- Provide technical advice on specific queries.

## How can you contribute?

- Share your organizations work on the HIV-APCoP through publications and best practices.
- Post details of upcoming events relevant to HIV, gender and human rights in the region.
- Respond to member's queries and share your expertise.
- Participate in e-discussions.

Join us at  
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The **Asia Pacific Community of Practice on HIV, Gender, and Human Rights [HIV-APCoP]** is an interactive and dynamic knowledge network jointly established by UNDP, UNAIDS, UN Women, UNOHCHR, and APN+ in response to the challenges faced by the Asia Pacific countries on HIV, gender, and human rights.

This network is open to a broad range of actors working on these issues, including all relevant UN family partners, networks of people living with HIV, national and local governments, key civil society organizations, and academic and research institutions.

Drawing upon member's knowledge, competencies, and experiences, this virtual forum provides the following services:

- An online resource centre for publications, tools, human resources and other materials.
- A database of emerging and good practices across the region.
- A technical group that reviews studies and provides guidance to resources under development.
- Technical advice on specific queries on HIV, gender, and human rights from the countries of the region.

**The HIV-APCoP can be accessed via [www.hivapcop.org](http://www.hivapcop.org)**



UNDP is the UN's global development network, advocating for change and connecting countries to knowledge, experience and resources to help people build a better life.

#### **Regional HIV, Health and Development Programme**

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