



Using Strategic Litigation to Challenge Punitive and Discriminatory Laws Impacting HIV and Health: A Global South Learning Seminar

Courtyard by Marriott, Bangkok – Thailand
8 – 10 October 2019



Empowered lives.
Resilient nations.





Background

The message of the Global Commission on HIV and the Law was, and remains – *a legal environment that respects, protects and fulfils human rights, and promotes overall health and well-being, is an efficient and effective means of reducing the risks and the toll of HIV and other communicable infections on people, communities and resources. While laws alone are insufficient to achieve these objectives, bad laws are serious impediments to health and good laws can contribute to good health.*ⁱ

Punitive and discriminatory laws continue to have grave implications on the HIV response especially for people living with HIV and key populations, who continue to bear a disproportionate burden of the HIV epidemic. In 2018, key populations—including people who inject drugs, gay men and other men who have sex with men, transgender people, sex workers and prisoners—and their sexual partners accounted for 54% of new HIV infections globally, a 15% increase from 2017.ⁱⁱ Key populations accounted for 95% of new HIV infections in Eastern Europe and Central Asia and in the Middle East and North Africa in 2017.ⁱⁱⁱ

In 75 countries, HIV non-disclosure, exposure or transmission, including unintentional transmission is criminalised.^{iv} Most countries criminalise some aspect of drug use or possession for personal and at least 35 countries maintain the death penalty for drug-related crimes.^v 84 out of reporting 110 countries criminalise some aspect of sex work including penalising the clients of sex workers or operators of brothels while not criminalising sex workers *per se*;^{vi} 68 countries criminalise consensual same sex conduct, punishable by death penalty in six of those countries.^{vii}

An estimated 2.3 million people living with HIV are coinfected with hepatitis C virus (HCV) globally, of these, more than half, or 1.3 million, are people who inject drugs (PWID). People living with HIV are on average 6 times more likely to have HCV infection than people who are HIV negative.^{viii} 37% of deaths in people living with HIV are due to HIV co-infection tuberculosis.^{ix} Punitive and discriminatory laws also have dire implications for people with tuberculosis and hepatitis C by limiting access to rights-based services and perpetuating stigma and discrimination against them.^x

The UN Secretary General in his report to the 2016 High-Level Meeting on HIV and AIDS recognized the negative health and human rights impact of criminal law in the following terms:

Misuse of criminal law often negatively impacts health and violates human rights. Overly broad criminalization of HIV exposure, non-disclosure and transmission is contrary to internationally accepted public health recommendations and human rights principles. Criminalization of adult consensual sexual relations is a human rights violation, and legalization can reduce vulnerability to HIV infection and improve treatment access. Decriminalizing possession and use of injecting drugs and developing laws and policies that allow comprehensive harm reduction services have been shown to reduce HIV transmission. Similarly, decriminalization of sex work can reduce violence, harassment and HIV risk. Sex workers should enjoy human rights protections guaranteed to all individuals, including the rights to non-discrimination, health, security and safety.^{xi}

To better understand and explore the role of strategic litigation in challenging the impact of punitive and discriminatory laws on rights-based responses to HIV and health, UNDP, together with Accountability International and UNAIDS organised a strategic litigation seminar in Bangkok, Thailand from 8 – 10 October 2019. The seminar brought together 45 participants from 20 countries representing academia communities affected by HIV, lawyers, activists, judges, representatives of civil society organisation, media, and United Nations entities.



The specific goals of the seminar were –

- a. Exploring the use of strategic litigation in advancing the recommendations of the Global Commission on HIV and the Law, challenging the overreach of criminal law and advancing non-discriminatory, rights-based responses to HIV and health, as well as how to best support it;
- b. Sharing and documenting the process and experience of strategic litigation, the litigation process, actors, outcomes, barriers and enablers of success and lessons with other stakeholders in the Global South;
- c. Building partnerships among various groups who engage in strategic litigation on punitive and discriminatory laws impacting on HIV and health.

Understanding Strategic Litigation

UNDP, together with UNAIDS Secretariat and co-sponsors and other partners, has worked with governments in 89 countries to advance the recommendations of the 2012 report of the Global Commission on HIV and the Law, *Risks, Rights and Health*.^{xii} These include through legal environment assessments that map the legal, regulatory and policy framework in a country and provide an analysis of the extent to which it supports or hinders the HIV response; national dialogues and action planning to reform laws and policies and develop rights-based interventions; dialogues and engagements with national stakeholders including parliamentarians, law enforcement agents and judicial officers; strengthening communities of people living with HIV and key populations to know their rights, legal aid and support to strategic litigation that challenge discriminatory law and policies.^{xiii}

Strategic litigation, also referred to as impact litigation, involves selecting and bringing a case to court with the goal of creating broader legal, policy or social change in society. In this regard, strategic litigation cases are as concerned with the effects that the cases will have on larger populations and governments as they are with the end result of the cases themselves.^{xiv} Strategic litigation has been used successfully in advancing public health outcomes directly resulting in positive change in law and policy as well as protecting the rights of people living with and affected by HIV and other diseases.

The seminar began with an exploration of the meaning of strategic litigation particularly in the context of advancing the right to health and non-discrimination of vulnerable population. The adjoining image captures the conversation during this session. The important role of advocacy outside of the litigation process, in collaboration with civil society organisation and affected communities was highlighted. Although strategic litigation is often the result of a pro-active process, it often results from an unplanned opportunity presented by a case.



Seminar Methodology

In the past few years, several strategic litigation decisions have resulted in the reform of criminal laws and the expansion of rights of people living with HIV and key populations with positive impact on rights-based HIV responses and broader social change. These include the decisions of – the Supreme Court of India striking down Article 377 of the Indian Penal Code which criminalised consensual same-sex conduct;^{xv} Constitutional Court of Colombia decriminalising the public recreational use of cannabis;^{xvi} and consensual sex between adolescents;^{xvii} Supreme Court of Pakistan ordering the issuance of national identity documents to transgender persons resulting in the Transgender Persons [Protection of Rights Act] 2017;^{xviii} the High Court of Trinidad and Tobago declaring provisions of their Sexual Offence Act unconstitutional to the extent that they criminalised consensual sexual conduct between adults of the same sex;^{xix} and the High Court of Malawi limiting the application of the offence of living off the earnings of sex work.^{xx}

The seminar discussed 21 cases of punitive and discriminatory laws that impact negatively on HIV and health responses, including criminalisation of - HIV non-disclosure, exposure and transmission; same sex conduct among consenting adults; sex workers and/or various aspects of sex work; drug use, possession and cultivation for personal use; transgender identities and expressions; and access to sexual and reproductive health services.

In discussing the process of strategic litigation in these cases, the seminar adopted an approach that explored the role that various stakeholders played in the design, implementation and the outcome of the cases, rather than the linear narrative of the case from the perspective of just the lawyers or the affected communities.

To this end, pre-seminar interviews were conducted with participants to understand as much as possible the ‘eco-system’ that supported the strategic litigation. These interviews not only provided alternative perspectives to the cases than publicly available narratives, but also helped the organisers identify other participants for the seminar. Five of the 21 cases were identified as case studies for more in-depth analysis. A cohort consisting of a representative each of the litigants, the lawyers that handled the case, the communities affected by the issue, activists and other stakeholders who played key roles in the cases, for example journalists, columnist, academics, etc. for each of the identified case studies was invited to the seminar.



The panel discussing the case of the Colombian Constitutional Court and Mexico Supreme Court decisions on criminalisation of drug use, possession and cultivation for personal use.

The seminar also provided an opportunity on the final day for lawyers and community representatives who were considering bringing strategic litigation or had recently filed cases to present them to participants during group workshops. The groups discussed the facts and unique elements of the cases, legal issues, approaches to community mobilisation, etc and provided feedback and critical reflections from participants with a view to strengthening the overall litigation strategies.



Participants providing feedback on a case of forced sterilisation of women living with HIV being considered for strategic litigation. This session also benefited from another on-going case of forced sterilisation which was discussed during the seminar.

The overall result was a seminar that explored various dimensions to use of strategic litigation to challenge punitive and discriminatory laws that negatively impact HIV and health. This report will not attempt to reproduce the rich perspectives and reflections from individual cases discussed during the seminar but will rather summarise key lessons and insights that cut across the various cases.

The Important Leadership Role of Affected Communities

A major theme that came out throughout the seminar was the important role that affected communities must play in the strategic litigation. As the population often most affected by the punitive or discriminatory laws and by the outcome of the cases, their role in designing and supporting the implementation of the litigation strategy cannot be over-emphasised. The cases highlighted the communities' role in - choosing a legal team that understood their lived realities and was respectful and accountable to them; supporting the litigants in the cases; being present at court hearings and bringing human faces to proceedings that were often discussed in the abstract; providing the evidence to support the litigation; disseminating accurate information about the case to members of their communities and the public; engaging the media strategically; undertaking advocacy necessary to advance the litigation; and advocating for the implementation of the positive judgements.

The meeting acknowledged –

- a. that communities affected by a law being challenges in a case are not always organised; some issues more than others have strongly mobilised and organised social movements and civil society organisations with the capacity to fully and meaningfully engage and support the strategic litigation;
- b. the need to ensure that the affected communities are identified, acknowledged, meaningfully engaged and encouraged to participate in the litigation process, whether or not they are organised as social movements or strong civil society organisations;
- c. although the fiduciary duty of the lawyer is first to the client/litigants, the nature of strategic litigation requires some accountability mechanism to the 'communities/movements' impacted by the issue, however constituted, and *vice versa*.



The visual above is from the session *strengthening community leadership and ownership of the litigation strategy*. The session identified the importance of maintaining dialogue among different ‘generations’ of activists as the litigation process may often outlive different leadership of communities and movements. The central role of ‘relationships/the inter-personal’ in the success of strategic litigation was also identified and the importance of agreeing on the overall goal, anticipating conflicts, discussing ways of workings, core values underpinning the engagement among various communities and movements and other stakeholders, etc. Very often, and certainly in the cases discussed during the meeting, strategic litigation has the unintended consequence of strengthening local movements and building cross-movement solidarities. The converse is also often true.

Choosing the Litigation Forum Strategically

The forum to bring the case is one of the most important decisions of strategic litigation. Various factors affect the choice of litigation forum including the kind of relief being sought from the forum – judicial interpretation of a law, declaring a law unconstitutional, overturning a conviction, expanding legal protection to a particular group, requiring a government department or State organ to undertake an action – or the overall goal of the case such as generating public debate, awareness creation and visibility, scoring small wins as part of an incremental approach to strategic litigation.

The seminar discussed cases that had been brought across various judicial and quasi-judicial forums with a view to understanding the opportunities and challenges they individually present. These included cases adjudicated by national courts – magistrates, high courts, constitutional counts and regional courts such as the East African Court of Justice, the Inter-American Court of Human Rights and the European Court of Human Rights, and treaty bodies such as the United Nations Human Rights Committee.

The session - *Know your court: A discussion with judges* provided information from the perspective of the judiciary on what makes for compelling strategic litigation cases – authoritative resources such as the reports of the Global Commission on HIV and the Law, *The Expert Consensus Statement on the Science of HIV*, persuasive regional and international jurisprudence and *amicus curiae*. The challenge of being labelled as ‘liberals’ or ‘NGO judges’ because of their progressive decisions was highlighted. The importance of forums for Judges to interact with their peers was also noted. The session on *Using regional and international courts* noted the challenge of domestic enforcement of judgement and the advantage of political distance from the case that regional courts often provide. The broader regional impact of such decisions was also highlighted.

Engaging the Media and Developing a Communication Strategy

The media plays an important role in shaping public opinion around HIV and other public health issues. Many prosecutions of people living with HIV and key populations have been bolstered by sensational media reporting characterised by distortion of facts and appeal to populist sentiments. The seminar benefited from the experience of media practitioners – journalists, columnist and other participants who harnessed the power of the media to support strategic litigation. The visual below highlights key points from the discussions.



Gender Implications of Punitive and Discriminatory Laws

The gendered impact of punitive and discriminatory laws was obvious across the 21 cases at the seminar, as well as the cases being considered for litigation or recently filed. From forced sterilisation of women living with HIV in Uganda and Kenya, denial of access to sexual and reproductive health services in Ecuador and Peru, to arrest of sex workers in Colombia and Malawi, and denial of services to pregnant women living with HIV in Russia, the cases showed how punitive and discriminatory law and the selective enforcement of these laws disproportionately impact women, transgender and gender-non conforming persons. They also showed how multiple intersecting issues such as indigent, migrant, educational, economic status compound the vulnerability of women and gender non-conforming persons.

The cases highlighted the structural violence against women manifested in coercion by and unilateral decisions of health providers to sterilise women living with HIV without their consent, an denial of sexual and reproductive health service even these are legal within the country, the constant harassment, extortion and arrest of female sex workers and transgender women by law enforcement, and the how the legal system and the nature of legal proceeding further traumatise and violate women litigants.

The meeting acknowledged that patriarchy – the political and socio-cultural system that prioritises masculinity through oppressive gender roles, enforcement of gender binaries and the political and economic subjugation of women - is at the root of the structural violence that women and gender non-conforming persons are subjected to. An understanding of this is critical to developing litigation strategies that accurately reflect and address the impact of the laws and extent of rights violation and denial of services.

Visual summaries of other themes discussed during the seminar are presented below.

Protecting the Litigants' Rights and Balancing Movement Priorities



The Role and Accountability of UN Entities and Development Agencies



In an ideal situation, strategic litigation is pro-active and meticulously planned with careful selection of the litigant in whose name the agenda of challenging the punitive or discriminatory will be deployed. Very often, litigation happens in circumstances in which the litigant is not fully aware of the responsibility they have undertaken. The agenda of 'liberating the community from the oppression of the law' often is prioritised over the rights and welfare of the litigants, including their right to withdraw from the litigation. The seminar discussed strategies to ensure the rights and welfare of the litigants are respected and prioritised in spite of the broader goals of the affected communities for advancing strategic litigation on the issues.

United Nations [UN] entities and development agencies play important roles in strategic litigation some of these are more direct such as joining cases as *amicus curiae* and presenting expert evidence in on-going cases and more indirectly providing training and support to government departments, lawyers and civil society on rights and health issues, to providing resources and meeting spaces for affected communities. Opportunities such as this seminar to convene different stakeholders from various jurisdictions to share experiences and learn was also acknowledged as an important role the UN can play. The participants acknowledged that very often a clear and coherent UN stand on the issues can be the most useful resource to the strategic litigation.

Making the Most of Negative Judgements: Finding the Silver Lining



Despite deployment of an excellent litigation strategies and presentation of the best evidence, the decision of the court is not guaranteed until it is pronounced. It is important to acknowledge that the process of strategic litigation is fraught with wins and losses – a positive judgement of the High Court, followed by a reversal on appeal and positive review by the Supreme Court as was the case with s.377 of the Indian penal code. Participants shared their experiences of how they *built up* from negative decisions and the opportunities those provided to re-galvanise communities, refocus advocacy and re-strategise in anticipation of an appeal against a positive decision.

Building Alliances and Cross-Movement Solidarities



The importance of cross movement alliances to strategic litigation came across strongly during the seminar. Participants discussed the positive impact that having the public support of non-traditional allies and other social justice movements had on their strategic litigation. Traditional 'know-your-rights' activities should be accompanied with training on using courts to advance the right to health, as a compliment to the work with judges and law enforcement agencies. Investing resources in educating other social movements and civil society groups about the issues at stake in the litigation and making the connections to the issues of concern to them is important.



Conclusion

In the past few years, several strategic litigation decisions have resulted in the reform of criminal laws and the expansion of rights of people living with HIV and key populations with positive impact on their access to HIV and health service. These include the decisions of – the Supreme Court of India striking down Article 377 of the Indian Penal Code which criminalised consensual same-sex conduct; Constitutional Court of Colombia decriminalising the public recreational use of cannabis, and Constitutional Court of South Africa consensual sex between adolescents; Supreme Court of Pakistan ordering the issuance of national identity documents to transgender persons resulting in the Transgender Persons [Protection of Rights Act] 2017; the High Court of Trinidad and Tobago declaring provisions of their Sexual Offence Act unconstitutional to the extent that they criminalised consensual sexual conduct between adults of the same sex; and the High Court of Malawi limiting the application of the offence of living off the earnings of sex work.

Despite the increase in its use to advance HIV, health and human rights outcomes, strategic litigation is still under-utilised as a tool for advancing the rights of marginalised population and expanding access to HIV and health service in the Global South. There has been little sharing of lessons learned among partners. However, countries in the Global South face unique challenges that make the judgements from their courts perhaps more regionally relevant and applicable to other courts in the Global South who may feel an affinity due to shared legal, social, cultural and political realities.

This seminar presented a space for participants to explore these shared realities with colleagues from across the Globe, appreciate how strategic litigation is being used to challenge punitive and discriminatory laws even in challenging political and legal systems and to develop partnerships with others working on strategic litigation.

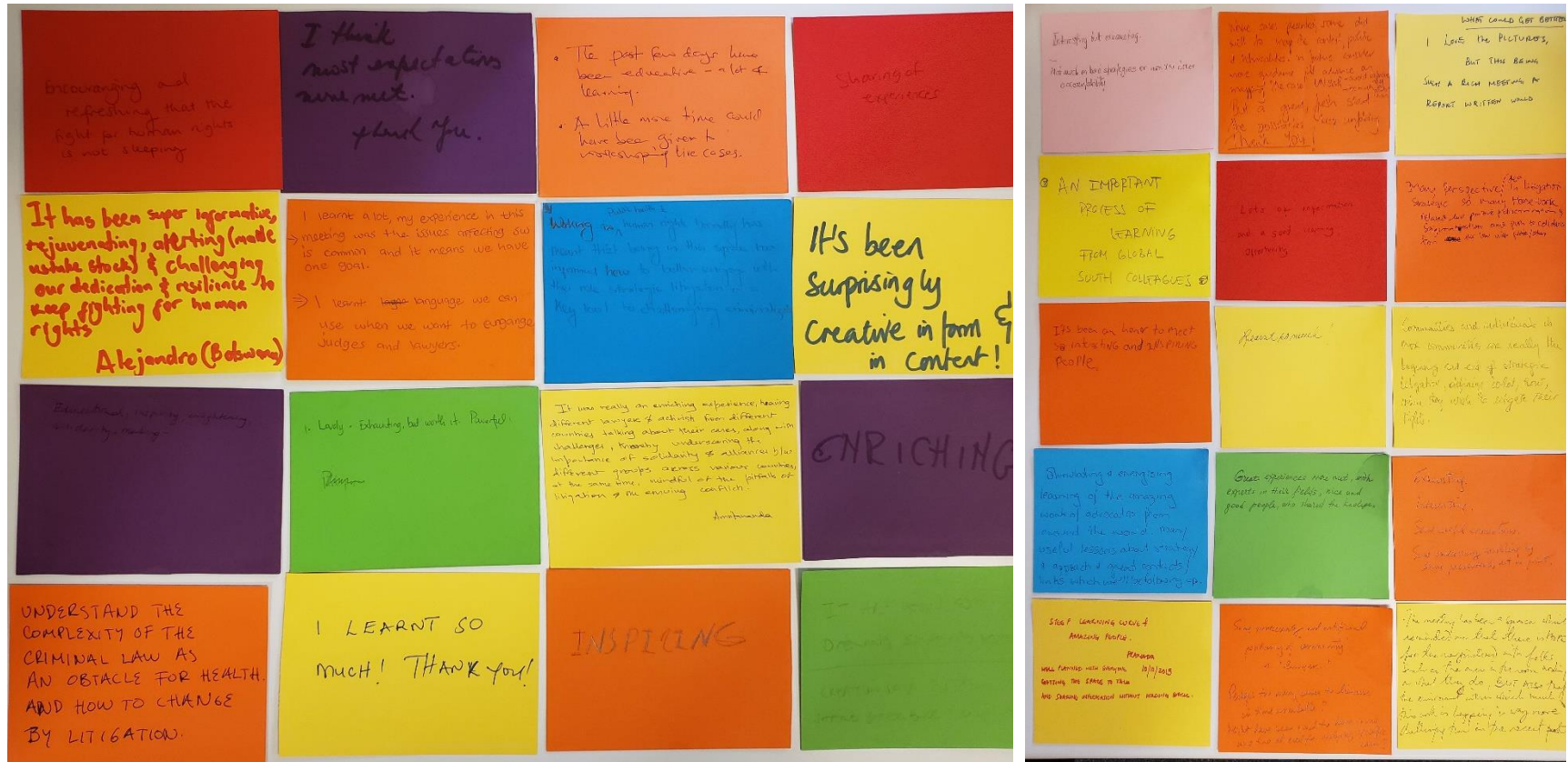
The seminar provided an opportunity for UNDP and UNAIDS -who together with partners have been supporting countries to advance the recommendations of the Global Commission on HIV and the Law by establish enabling legal, policy and regulatory environment for rights-based HIV and health responses - to learn the impact of these efforts and ways to improve them..

Recommendations

Participants made the following recommendations -

- a. UNDP and partners should create more opportunities for interaction, experience-sharing and mutual technical support among various stakeholders using strategic litigation to advance the right to health.
- b. Create an online repository of judgements on HIV and health-related strategic litigation.
- c. Continue to promote the use of authoritative resources including the reports of the Global Commission on HIV and the Law, the *Expert Consensus Statement* and UN guidance documents based on scientific evidence/consensus on issues pertinent to HIV and health-related cases.
- d. Noting the critical importance of community leadership, UNDP and partners should support capacity building of communities to engage in strategic litigation and lawyers to work closely with affected communities in litigation especially on the implications of new development in HIV science and digital technologies for HIV and health-related litigation.
- e. The role of the UN in intervening as *amicus curiae* was affirmed by participants in the seminar. The Secretariat of the Global Commission on HIV and the Law should directly support HIV-related litigation particularly through submission of expert affidavit in appropriate cases.

Closing Reflections



Annex 1 – Agenda

Day 1 – Tuesday, 08 October

Sessions / Time	Topics	Moderators / Discussants	Objectives
8:30 - 9:00 am	Registration		
<u>Session 1</u> 9:00 – 9:15 am	Welcome Security briefing	Hakan Bjorkman Regional Health and Development Advisor, UNDP Bangkok Regional Hub	
<u>Session 2</u> 9:15 – 9:30 am	Background to the Global Commission on HIV and the Law	Charles Chauvel Commissioner, Global Commission on HIV and the Law	Introduce the Global Commission on HIV and the Law and the relevance of strategic litigation for advancing its recommendations
<u>Session 3</u> 9:30 – 10:00 am	Setting the scene Meeting objectives Rundown of the agenda	Phillipa Tucker Kene Esom	Provide a background to the issues, the rationale and key objectives of the seminar Introduce the agenda and the format of the various sessions.
<u>Session 4</u> 10:00 – 10:30 am	Introductory video Buzz group discussions Understanding the ‘strategic’ in strategic litigation?	Priti Patel	This session will explore the questions - What is strategic litigation? What other phrases are used interchangeable with it – how similar or dissimilar are they?
10.30 - 11:00 am	Health break / Group photograph		Group photograph

Session 5 11:00 am – 12:30 pm	Criminalisation of consensual sex between same sex adults Case: a. <i>Navtej Singh Johar and others v Union of India thr. Secretary Ministry of Law and Justice [India]</i> b. <i>LM v Attorney General of Botswana [Botswana]</i> c. <i>EG v Attorney General of Kenya [Kenya]</i>	Moderator: Priti Patel Discussants: Vivek Divan Amritananda Chakravorty Pramada Menon Caine Youngman Njeri Gateru	This session will explore the experiences and impact of punitive and discriminatory laws on sexual conduct between consenting adults of the same sex. The discussants will share key lessons from strategic litigation cases from their regions and the implication for HIV and health responses. The discussants are encouraged to share the role played by other stakeholders in the process and outcome of the cases.
12:30 – 1:30 pm	Lunch		
Session 6 1:30 – 3:00 pm	Criminalisation of gender non-conformity, transgender identity and expression Cases – a. <i>Sunil Babu Kant v. Government of Nepal [Nepal]</i> b. <i>McEwan & Or v. Attorney General of Guyana [Guyana]</i> c. <i>National Legal Services Authority v. Union of India [India]</i> d. <i>ND v The State [Botswana]</i>	Moderator: Kene Esom Discussants: Amritananda Chakravorty Colin Robinson Dia Yonzon Caine Youngman	This session will explore the experiences and impact of punitive and discriminatory laws on gender non-conformity, transgender identity and expression. The discussants will share key lessons from strategic litigation cases from their regions. The discussants are encouraged to share the role played by other stakeholders in the process and outcome of the cases.
3:00 – 3:30 pm	Health break / Video interviews		Participants will also have an opportunity to also take part in five to seven-minute video interviews exploring key issues around the theme of the seminar.

Session 7 3:30 – 4:30pm	Using regional and international bodies to support national to address punitive and discriminatory laws	Moderator: Mianko Ramaroson Discussants: Catalina Martínez-Coral Richard Elliott Nicholas Opiyo	Lawyers and communities have had to resort to regional and international tribunals and other bodies to address punitive and discriminatory laws impacting on HIV and health. This session will discuss some of these instances.
Session 8 4:30 – 5:15 pm	Group Discussions Topics – a. When is an ideal political moment to bring a strategic litigation? b. Finding the silver lining in a negative judgement and following a progressive judgement c. Building cross-movement solidarities	Facilitators: Bob Mwiinga Munyati Vivek Divan Dawn Cavanagh	The groups will discuss a topic at several tables, with individuals switching tables periodically and getting introduced to the previous discussion at their new table by the facilitator.
Session 9 5:15 – 5:30 pm	Reflections on the highlight and key discussions of the day	Facilitator: Cesar Alejandro	

Day 2 – Wednesday, 09 October

Sessions / Time	Topics	Moderators / Discussants	Objectives
Session 10 9:00 – 9:30 am	Recap Using the Day 1 Graphic Recordings	Moderator: Ian Mungall	Participants will have an opportunity to walk about the display of the Day 1 graphic recordings and share highlights from the illustrations.
Session 11 9:30 – 10:30 am	Discrimination based on health status Cases: a. <i>J.R. versus Orhei District Hospital and Moldovan Ministry of Health [Moldova]</i> b. <i>M. vs Russia [Russian]</i>	Moderator: Mianko Ramaroson Discussants: Kirill Koroteev Allan Maleche Valerian Mamaliga	This session will discuss cases that involving discrimination based on health status. The discussants will share key lessons from strategic litigation cases that they have been involved in and the implication for HIV and health responses. The discussants are encouraged to share the role played by other stakeholders in the process and outcome of the cases.

	c. <i>Daniel Ng’etich & Ors v. The Hon. D.Attorney General & Ors [Kenya]</i>		
10:30 - 11:00 am	Health break / video interviews		Participants will also have an opportunity to also take part in five to seven-minute video interviews exploring key issues around the theme of the seminar.
Session 12 11:00 am – 12:30 pm	<p>Criminalisation of HIV non-disclosure, exposure and transmission</p> <p>Cases:</p> <ul style="list-style-type: none"> a. <i>Komuhangi Sylvia Vs Attorney General of Uganda [Uganda]</i> b. <i>Constitutional Court case 248/19 [Colombia]</i> c. <i>R v. Thompson [Canada]</i> 	<p>Moderator: Kene Esom</p> <p>Discussants: Dora Kiconco Musinguzi Mauricio Albarracin Sally Cameron Richard Elliott</p>	<p>This session will explore the discuss cases based on laws on HIV non-disclosure, exposure and unintentional transmission. The discussants will share key lessons from strategic litigation cases from their regions and the implication for HIV and health responses.</p> <p>The discussants are encouraged to share the role played by other stakeholders in the process and outcome of the cases.</p>
12:30 – 1:30 pm	Lunch		
Session 13 1:30 – 3:00 pm	<p>Criminalisation of drug use, possession and cultivation for personal use</p> <p>Cases:</p> <ul style="list-style-type: none"> a. <i>Constitutional Court Case 253-19 [Colombia]</i> b. <i>Amparo decisions [Mexico]</i> 	<p>Moderator: Juana Cooke</p> <p>Discussants: Alejandro Matta Alejandro Lanz Diana Duran Mauricio Albarracin Julio Salazar Rebecca Schleifer</p>	<p>This session will discuss cases that challenged laws on drug use, possession and cultivation for personal use. The discussants will share key lessons from strategic litigation cases from their regions and the implication for HIV and health responses.</p> <p>The discussants are encouraged to share the role played by other stakeholders in the process and outcome of the cases.</p> <p>The recently published <i>International Guidelines on Human Rights and Drug Policy</i> will also be introduced and its implication for strategic litigation on drug-related cases will be discussed.</p>
3.00 – 3.30 pm	Health break / video interviews		Participants will also have an opportunity to also take part in five to seven-minute video interviews exploring key issues around the theme of the seminar.

Session 14 3.30 – 4.30pm	Know your court: A discussion with judges	Moderator: Kingsley Abbott Discussants: Judge Zione Ntaba Judge Hari Phuyal	Two judges who have been involved in strategic litigation cases from the bar and the bench will share their experiences on the importance of understanding the court where the strategic litigation case has been/is to be filed.
Session 15 4:30 – 5:15 pm	Group Discussions Topics – a. Roles and accountability of the UN entities and development agencies b. Resourcing SL including strategies for domestic philanthropy c. Protecting the rights of the litigants/balancing litigant priority with SL objective	Facilitators: Quinten Lataire Pramada Menon Julio Salanza	The groups will discuss a topic at several tables, with individuals switching tables periodically and getting introduced to the previous discussion at their new table by the facilitator.
Session 16 5:15 – 5:30 pm	Reflections on the highlight and key discussions of the day	Facilitator: John Macauley	

Day 3 – Thursday, 10 October

Sessions / Time	Topics	Moderators / Discussants	Objectives
Session 17 9:00 – 9:30 am	Recap Table buzz groups: Matters arising so far		In table buzz groups, participants will discuss any nagging issues and questions from previous sessions and any unmet expectations
Session 18 9:30 – 10:30 am	Criminalisation of sex work and sex workers Cases: a. <i>Republic v Pempho Banda and Ors [Malawi]</i> b. <i>Mayeso Gwanda v The State [Malawi]</i>	Moderator: Priti Patel Discussants: Chikondi Chijozi Lucy Majawa Zinenani Alejandro Lanz	This session will explore the discuss cases that challenged laws on sex work or other laws used to violate the rights of sex workers. The discussants will share key lessons from strategic litigation cases from their regions and the implication for HIV and health responses. The discussants are encouraged to share the role played by other stakeholders in the process and outcome of the cases.

	c. <i>Constitutional Court case T-594/2016 [Colombia]</i>		
10:30 - 11:00 am	Health break / video interviews		Participants will also have an opportunity to also take part in five to seven-minute video interviews exploring key issues around the theme of the seminar.
Session 19 11:00 am – 12:30 pm	Sexual and reproduction health and rights Cases: a. <i>KL vs. PERU [Peru]</i> b. <i>Paola va Ecuador [Ecuador]</i> c. <i>SWK & Ors v. MSF France & Ors [Kenya]</i>	Moderator: Phillipa Tucker Discussants: Catalina Martinez-Coral Allan Maleche Dawn Cavanagh	This section will discuss a variety of cases that challenged punitive and discriminatory laws impacting on sexual and reproductive health and rights.
12:30 – 1:30 pm	Lunch		
Session 20 1:30 – 3:00 pm	Engaging the media on social change projects / Developing communication and advocacy strategies to support litigation	Moderator: Kathryn Johnson Discussants: Moowa Masani Diana Duran Colin Robinson Pramada Menon Phillipa Tucker	This session will discuss the important of developing a robust communication and media strategy to support litigation. Many strategic litigation efforts have been hampered by negative media reportage around the issues. What are the most effective strategies for engaging the media and public on the <i>real issues</i> ?
3.00 – 3.30 pm	Health break / video interviews		Participants will also have an opportunity to also take part in five to seven-minute video interviews exploring key issues around the theme of the seminar.
Session 21 3.30 – 4.30pm	Strengthening community leadership and ownership of strategic litigation strategy	Moderator: Deena Patel Discussants: Vivek Divan Njeri Gateru Alejandro Lanz	Communities must live with the outcomes of strategic litigation cases however the need to co-develop the litigation strategy with communities is not always understood by lawyers. This session will discuss successful and not-so-successful models of community leader and ownership of litigation strategy.

		Caine Youngman	
Session 22 4:30 – 5:00 pm	<p>Group Workshop: Upcoming cases</p> <p>Cases –</p> <ul style="list-style-type: none"> a. <i>Petition 447 of 2019 [Kenya]</i> b. <i>Proposed litigation on policy implementation of transgender rights judgement [Nepal]</i> c. <i>Proposed constitutional petition to challenge forced sterilization [Uganda]</i> 	<p>Discussants –</p> <p>Allan Maleche Kashiram Dhungana/ Dia Yonzon Dora Kiconco Musinguzi</p>	In four groups, participants will have an opportunity to hear about strategic litigation cases which have just been filed and or being considered. They will respond to questions from those working on the cases and make recommendations on strategy.
Session 23 5:00 – 5:30	<p>Evaluations</p> <p>Closing formalities</p>	UNDP, Accountability International & UNAIDS	

Annex 2: Summary of participants expectations [based of pre-meeting survey]

1. Learning and sharing –
 - a. Key strategies used to address punitive and discriminatory laws impacting HIV and health
 - b. Experiences of strategic litigation in other jurisdictions and legal systems – success factors and potential obstacles
 - c. Navigating Global South realities, including structural barriers, situation of minorities
 - d. Identifying legal precedents from other regions
 - e. Where strategic litigation has gone wrong and examples of bad strategies
 - f. Limits of strategic litigation
 - g. How to deal with backlash following progressive judgements
 - h. Understanding the impact of strategic litigation on the litigants
2. Collaborations, partnership and network building –
 - a. Opportunity to be acquainted with other lawyers and activists using strategic litigation as a tool for social justice
 - b. Interaction between lawyers and judges on strategic litigation
 - c. Building solidarities across and with other social justice movements
3. Roles, responsibilities and accountability
 - a. Roles of and opportunities for other professionals in supporting strategic litigation
 - b. Understanding the role and responsibility of UN entities especially country offices
 - c. Accountability of donors and development agencies
 - d. Accountability of lawyers to communities and vice versa
4. Technical advice and support
 - a. Opportunity to discuss and receive feedback from participants on on-going cases and those about to be filed.

Annex 3: List of Participants

S/No.	Last Name	First Name	Organisational Affiliation	Country	Email Address
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Endnotes

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- ⁱ Global Commission on HIV and the Law, *HIV and the Law: Risk, Rights and Health*, 2012. Available at: <http://www.hivlawcommission.org/report>.
- ⁱⁱ UNAIDS, *Communities at the centre: Defending rights, breaking barriers, reaching people with HIV services*, 2019. Available at: <https://www.unaids.org/en/resources/documents/2019/2019-global-AIDS-update>. In 2017, key populations and their sexual partners accounted for 47% of new infections.
- ⁱⁱⁱ UNAIDS, *UNAIDS data 2018*. Available at: https://www.unaids.org/sites/default/files/media_asset/unaids-data-2018_en.pdf.
- ^{iv} HIV Justice Network, *Advancing HIV Justice 3: Growing the global movement against HIV criminalisation*, 2019. Available at: <http://www.hivjustice.net/advancing3/>.
- ^v <https://www.undp.org/content/undp/en/home/librarypage/hiv-aids/development-dimensions-of-drug-policy.html>.
- ^{vi} UNAIDS, *Miles to go: Global AIDS update*, 2018. Available at: http://www.unaids.org/sites/default/files/media_asset/miles-to-go_en.pdf. See also ProCon.Org, *100 countries and their prostitution pledge*, 2018. Available at: <https://prostitution.procon.org/view.resource.php?resourceID=000772>.
- ^{vii} ILGA, *State-sponsored homophobia Report*, 2019. Available at: https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf.
- ^{viii} <https://www.who.int/hiv/mediacentre/news/hep-hiv-coinfected/en/>.
- ^{ix} WHO, *Global TB Report*, 2017. Available at: www.who.int/tb/publications/global_report/gtbr2017_main_text.pdf?u%20a=1.
- ^x Global Commission on HIV and the Law, *HIV and the Law: Risk, Rights and Health: Supplement*, 2018. Available at: <http://www.hivlawcommission.org/supplement>.
- ^{xi} UNGA, *Report of the Secretary-General on the fast track to ending the AIDS epidemic*, 2016. Available at: sgreport.unaids.org/pdf/20160423_SGreport_HLM_en.pdf
- ^{xii} Available at: <http://www.hivlawcommission.org/report>.
- ^{xiii} UNDP, *Global Commission on HIV and the Law at five: Reflecting on progress, challenges and opportunities to end AIDS by 2030*, 2017. Background paper prepared for a stocktaking meeting on follow up to the recommendations of the Global Commission on HIV and the Law which held in New York 12 July 2017.
- ^{xiv} <http://www.crin.org/resources/infoDetail.asp?ID=17145>.
- ^{xv} *Navtej Singh Johar & Ors v. Union of India & Ors*, 2018. Available at: https://www.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf.
- ^{xvi} See <https://cannabislaw.report/columbia-constitutional-court-overrules-ban-of-public-consumption-of-cannabis/>
- ^{xvii} *Teddy Bear Clinic v. Minister of Justice and Constitutional Development*, 2013. Available at: <http://www.saflii.org/za/cases/ZACC/2013/35.html>.
- ^{xviii} See <https://www.pakistantoday.com.pk/2018/10/15/sc-urges-to-formulate-policy-for-social-inclusion-of-transgender-persons/>. See also http://www.na.gov.pk/uploads/documents/1502192618_626.pdf.
- ^{xix} *Jason Jones v. Attorney-General of Trinidad and Tobago*, 2018, Claim No. CV2017-00720. Available at: http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/rampersad/2017/cv_17_00720DD12apr2018.pdf
- ^{xx} *Republic v Banda and Others* (Review Order) (Review Case No. 58 of 2016) [2016] MWHC 589 (08 September 2016). Available at: <https://malawilii.org/mw/judgment/high-court-general-division/2016/589>.