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PROGRAM ON  
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& **HUMAN RIGHTS**  
USC INSTITUTE FOR GLOBAL HEALTH

**Strengthening Regional and National Legislative Environments  
to Support the Human Rights of LGBT People and Women and  
Girls affected by HIV and AIDS in Sub-Saharan Africa**

**A Case Study of the Democratic Republic of the Congo**

Program on Global Health and Human Rights,  
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## Introduction

### Project background

The United Nations Development Programme (UNDP) Regional Centre for Africa designed and implemented a project entitled ‘*Strengthening Regional and National Legislative Environments to Support the Human Rights of LGBT People and Women and Girls affected by HIV and AIDS in Sub-Saharan Africa*’. The project was initially conceptualized as an 11-country project, occurring between 1 January 2013 and 31 December 2015.<sup>1</sup> Within the context of countries’ international human rights commitments, the project’s aim was to provide a comprehensive approach towards strengthening legal environments, with an emphasis on reducing the HIV-related vulnerability of LGBT people and women and girls affected by HIV in Sub-Saharan Africa. Key partners included governments; civil society and community-based organisations; legal experts and members of the judiciary; networks of people living with HIV, and those most at risk of HIV; regional economic communities (e.g. Southern African Development Community - SADC); and the African Union Commission (AUC).

### Case study background

The Program on Global Health and Human Rights at the University of Southern California’s Institute for Global Health conducted a mid-term evaluation (MTE) of this project. The MTE was conducted with attention to UNDP’s theory of change, standard evaluation criteria relating to relevance, effectiveness, and sustainability, and with additional attention to the human rights principles of inclusion, participation, equality, non-discrimination, and accountability.<sup>2</sup> Documents were reviewed using a data extraction tool designed specifically for the MTE and primary qualitative data were collected through semi-structured key informant interviews.<sup>3</sup> Outputs from the document review, data extraction, and qualitative interviews were analysed jointly.

In consultation with UNDP, it was decided that country level case studies would be a useful next step for examining project activities and effects in more depth with a view to learning lessons of relevance to the project and more broadly. The Democratic Republic of the Congo (DRC) was selected as a case study due to the substantial achievements of the project

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<sup>1</sup>For more information on the project, see Mid-term Evaluation – UNDP RSC Africa:

“Strengthening Regional and National Legislative Environments to Support the Human Rights of LGBT People and Women and Girls affected by HIV and AIDS in Sub-Saharan Africa” (A Sida Supported Project), available at: <http://www.hivlawcommission.org/index.php/africa-follow-up-activities/420-mid-term-evaluation-report-strengthening-regional-and-national-legislative-environments-to-support-the-human-rights-of-lgbt-people-and-women-and-girls-affected-by-hiv-and-aids-in-sub-saharan-africa>.

Initial countries were The Democratic Republic of the Congo, Ghana, Kenya, Lesotho, Malawi, Mozambique, Seychelles, South Africa, Swaziland, Tanzania, and Zambia.

<sup>2</sup> Mid-term Evaluation – UNDP RSC Africa: “Strengthening Regional and National Legislative Environments to Support the Human Rights of LGBT People and Women and Girls affected by HIV and AIDS in Sub-Saharan Africa” (A Sida Supported Project), p. 9.

<sup>3</sup> Mid-term Evaluation – UNDP RSC Africa: “Strengthening Regional and National Legislative Environments to Support the Human Rights of LGBT People and Women and Girls affected by HIV and AIDS in Sub-Saharan Africa” (A Sida Supported Project), Annex D.

occurring within a challenging work environment. Although it may constitute only a very small contribution to the very important work happening on the ground, this case study illustrates important changes occurring in the DRC and can serve as a positive model for others doing work in complex environments.

### **Case study methodology**

With a view to understanding project implementation processes and assessing interim project successes, process-oriented gains, higher-level indicators and legal change, this case study presents the lessons learned from the MTE and additional key stakeholder interviews and focus group discussions explicitly relevant to DRC. Summary documents generated as a part of the MTE, and relevant sections of the final MTE report were reviewed alongside key informant interview and focus group discussion transcripts, and documentation from the evaluation team's work in the DRC. Written for an audience working on issues around HIV and the law, and in the interest of maximizing learning and supporting the project's achievements to date, this case study presents numerous achievements which are to be celebrated, as well as some challenges of relevance moving forward.

Several stakeholders, individuals and champions of change in the DRC were extremely generous with their time and willing to share nuanced insight into project content and processes as they occurred, including the larger in-country context. We would like to thank all of those who participated (see Appendix A: DRC Interview Schedule), and in particular George Biock and Serge Tamundele for seamlessly organizing and facilitating the process. This case study could not have happened without the incredible level of engagement of all of these people.

### **Background**

The context of the DRC is particularly complex given its vast geographical span and history of civil conflict. The country contains 11 provinces and 519 health zones, each with their own unique context. The provinces are currently being delineated into 26 smaller provinces, somewhat along the lines of districts. The capital Kinshasa, the focus of this case study, is not representative of the country both in the context of the project or beyond. The size of this country, its diversity and the impact of the conflict make the scale of work needed daunting.

Perhaps born from the country's conflict and tumultuous political history, and derived from the shared experiences of coming together to overcome adversity, there is an air of teamwork and cooperation not often seen in the area of HIV. Collaboration is seen as key because of the scale of work to be done: "Everything is a priority for us". Both government and civil society recognize the additional strength to be derived from joint action, and the need to foster debate where differences exist to lead to collaboration. Additionally, the government has learned to leverage the advantages that civil society can provide (e.g. they are an excellent source of on-the-ground feedback) and civil society works not only to support government but also to hold them accountable. Recognizing the diversity of who is

included, there is a real desire for agreement and cohesion between civil society and government on key HIV-related issues and this is a clear place where progress can be made.

## **Political context**

Attention to HIV-related issues is by its very nature politically sensitive, requiring concerted action from multiple sectors. In order to validly explore the project's performance and understand its successes and challenges to date, the broad political context within which this work takes place must be recalled. The project, with its discrete focus on legislative environments, human rights, and key populations--including LGBT people, women and girls, and others affected by HIV and AIDS--is necessarily impacted by the political context. Therefore, it truly appears the issue of HIV and human rights is not seen as externally imposed. The President, First Lady and Prime Minister are all involved in different aspects of the HIV response; there appears to be strong support for issues relating to HIV and the law from as high up as people closely allied to the President's office, which is important for such work including to foster support for multi-sectoral collaboration across different sectors of government, UN organizations and civil society.

Leadership on HIV and the law lies with the Ministry of Justice (MOJ) – they are central to everything from law reform efforts to sensitisation efforts on the HIV law for the health sector. Success, however, has required concerted efforts on the part of the government, particularly the office of the Focal Point on HIV and the law within the MOJ, civil society, and United Nations organizations who have the mandate and the ability to bring attention to work with key populations, and in particular LGBT populations.

The *Programme National Multisectoriel de Lutte Contre le VIH/SIDA* (Multisectoral National Programme to Fight Against HIV – PNMLS) is strongly supportive of the project, collaborating closely with the MOJ and helping to facilitate this work. The support of the Ministry of Health (MOH) and the *Programme National de Lutte Contre le VIH/SIDA* (National Programme to Fight Against HIV – PNL) is less visible, but the key stakeholders, including the PNMLS, are nonetheless able to do what is needed to move project goals forward.

Overall, there is strong support within national government institutions for attention to legal issues relating to HIV, and within Kinshasa. It is not fully clear how much this level of support and engagement translates to other provinces, but as Kinshasa is central relevant stakeholders help to ensure these issues make it into national priorities.

## **Legal context**

The DRC has developed a vision of what the HIV response should entail that seeks to bring together the medical/health response to HIV with human rights and supportive legal structures. This has created a new, fruitful dynamic and progress in creating an enabling legal environment. The law most relevant to this project was passed in July 2008 with a

focus on the protection of people living with HIV (more on this and work occurring on the legal environment is below). The 2010-2014 National Strategic Plan (NSP) on HIV included aims to create an enabling legal environment and fight stigma and discrimination, but while first stated in 2010, real work only took off around 2014. The 2014-7 NSP has, as a key pillar, supporting an enabling legal environment for people living with or affected by HIV.

### **Legal reform**

There is a recognized surfeit of law in the DRC, some of which is contradictory. There are various ongoing efforts to reform existing legal codes and laws that are relevant to this project; many of these efforts are beyond the project's activities, albeit there is a synergistic relationship between these goals and project activities.

The Penal Code has been of concern for some time. There is a need to bring it up to date and to harmonize laws more generally, for example the criminalisation of voluntary HIV transmission in the Law on Protection of Children. The *Commission Permanente de Reforme* developed revisions that potentially expand the Code from its current 208 provisions to over 1000. The proposed revisions were completed over two years ago but there has been no action from those responsible in government since they were deposited.

With support from UNICEF and the EU, the Family Code of 1987 is also undergoing revisions to address some of the ways in which it is discriminatory. Proposed revisions, which incorporate attention to some issues identified through the project's Legal Environment Assessment (LEA), have been discussed and validated by country-wide stakeholders, and given to Parliament. They have been adopted by the Senate and include increasing the minimum marriage age to 18 (from 14 for girls and 16 for boys) and removing requirements for spousal permission e.g. for women to work. Some proposed revisions remain unresolved (e.g. whether to change from all decisions needing to be made by the husband and head of the family to having all family decisions be made jointly or having all decisions concerning the woman made jointly). The revisions have been given to the lower chamber and discussions have begun in the sub-committee on economic, social and cultural rights. There have been some recent delays that are potentially attributable to forthcoming elections and the resistance of a few prominent people to these changes but stakeholders remain optimistic.

### **Reform of the justice system**

There are currently large-scale efforts to reform governance and legislative frameworks in the DRC, within which the work of this project must, by necessity, be contextualized. The MOJ is leading this work, which includes efforts to reform legal codes, specific laws, as well as prisons, the military, and the police. There is recognition that the system needs to be reformed and in so doing that it will protect people from human rights violations, help people learn how to report violations accurately and put a valid case together, and ensure a functioning court to hear the case, with a justice system and magistrates who are informed etc. It is widely recognized that ongoing efforts are needed to engender confidence among the general population in the legal system.

The aims of the UNDP project are in line with the broader goals and concerns of reform of the justice system, which may have contributed to successes to date. In some ways, HIV can be viewed as an area where fairly easy wins relating to legal reform are possible, which in turn can serve as an example for other areas, sectors, and partners.

## **Cultural and religious context**

HIV-related stigma is rampant within the DRC's society at large. Cultural and religious leaders play vital roles in communicating messages to the general public about HIV and related issues, both positively and negatively.

### **Stigma**

One of the biggest issues that presents a barrier to the success of this project is stigma: it exists at all levels, and is blocking progress, making it difficult to talk about supportive environments in the context of HIV or the rights of LGBT populations in many fora across the country. Negative stereotypes of PLHIV remain prevalent: the predominant image of PLHIV is negative and imbued with judgment.

With respect to LGBT populations, such stigma is highlighted by the fact that there are only two clinics in Kinshasa that provide LGBT-friendly services even as 13% of PLHIV in Kinshasa are known to be LGBT. People generally do not want to be tested for HIV at health facilities citing stigma as a primary reason, and it is not clear how massive street-based testing campaigns will reduce stigma let alone result in people accessing and using facilities for treatment. This is a potential area to be explored even in Kinshasa where things are more progressive than in other parts of the country.

In December 2013, there was an attempt to introduce anti-homosexuality legislation (that also criminalized organisations working with LGBT populations). Petitions were circulated and there was some initial popular support due to 'preconceptions and lack of knowledge'. But civil society, with help from UNDP and UNAIDS, managed to counter the bill and it did not pass. There is one deputy who is still trying to circulate an anti-homosexuality petition; while there is no real concern that the bill will pass, the fact that this attempt is ongoing illustrates how strong the stigma is that remains.

Despite an ostensibly supportive legal environment, stigma around sexual violence is still a concern. With implications for HIV and for physical and mental health more generally, women who are raped do not want people to know for fear of being thrown out of the family.

The Stigma Index has really opened people's eyes in the DRC as to the daily reality for people living with HIV. Striking findings from the Stigma Index include very high stigma within churches (82% of PLHIV felt excluded) and in health facilities (including non-voluntary HIV testing). The high stigma in health care settings is of particular concern as this is where people may first learn their HIV status and this experience has a huge impact on whether or not they are likely to come back for treatment. Self-stigma is also perceived



as a big problem, especially where people fear blame, often associated with religion, being assigned to them for having become infected with HIV.

The Stigma Index has been used not only as a general awareness raising tool but it is helping to raise awareness about what sorts of programs ought to be funded by providing concrete evidence of the types of stigma that are prevalent. There is insufficient information and education on all of these issues but providing the right information can be a powerful catalyst for change.

## **Religion**

The findings of the Stigma Index attracted the attention of religious leaders and helped stimulate the involvement of some key leaders in the HIV response. Key to their collaboration is the fact that the religious groups are ostensibly not political or affiliated in any way with the political parties and their organization of leaders is meant to be non-denominational and non-hierarchical.

Some pastors are willing to work on LGBT issues, mostly as a result of training and sensitization, and these individuals should be identified and engaged moving forward. Although the project has had some success with religious and cultural leaders and there are some churches that are potential allies to provide positive examples of how religion can have a positive influence on HIV and rights issues, many challenges remain. These challenges are ones that must be addressed given the importance of religious leaders in the DRC. Even as several respondents noted that culture in the DRC is not hostile to LGBT populations, all recognize that some politicians and churches have tried to foment homophobia. More than 60% of the population is Christian, so churches are a potent place for improving the lives of LGBT and other key populations or for sowing the seeds of homophobia. In one informant's words, "In the DRC, the words of a pastor and like the words of God", highlighting the importance of their involvement in this work.

At a minimum, work is required with pastors who tell people to stop taking antiretrovirals or tell parishioners that HIV is a disease of witchcraft. This pervasive misinformation being spread by religious leaders is an area for focus moving forward, even as there is an active debate within civil society as to whether it is better to try to inform such religious leaders or discredit them. It is nonetheless critical that religious leaders and parishioners be aware of the law and the sanctions within it as regards discrimination as this can avoid debates about what religion says about HIV and anchor actions in the law.

The awareness of the law by religious and cultural leaders, as well as the sanctions within it, is generally low but ought to be addressed as a matter of priority. Equipped with the necessary knowledge, religious leaders can choose how best to use this information e.g. initiating open conversations about sexuality and condom use or making condoms available in church restrooms without ever talking about them. It might be useful to showcase the work of churches that are good allies as examples of how they can have a positive influence on HIV and rights.



## Key populations

'Key populations' as a term was used often by interview respondents in discussing HIV-related project activities. However, with probing it seems often that what was actually meant was 'LGBT' and, within that, many people seem actually to mean only men who have sex with men. Other key populations, particularly those who are women and girls, as well as those engaged in sex work, have not been a focus of work relating to HIV and the law in Kinshasa. Highlighting regional differences, this is reportedly less the case in north and south Kivu, for example, where there appears to be a particular focus on women and girls, including sex workers. It is important to note the differences in how populations are vulnerable across provinces and therefore how their particular issues are addressed in project activities. For example, in some mining communities transactional sex with very young girls and boys is reportedly an issue even as data on the extent of these behaviours is lacking.

Evidence suggests that, at least in Kinshasa, space is opening up to discuss LGBT issues and there is increasing comfort with discussion of sexual orientation specifically, which has the possibility of facilitating collaborations going forward. This increased openness in government and civil society organizations around LGBT issues in Kinshasa, as well as in working with people who identify as gay or with their organizational representatives is a major and recent shift of relevance to work going forward.

Despite this openness, the LGBT civil society is still a movement that needs strengthening in multiple ways. Social media has been an important avenue for creating and maintaining an LGBT community; it has been used a safe space in which LGBT people can come together and discuss issues around sexuality and gender identity as well as a means of organizing the community for social events and demonstrations against trans/homophobia.

Most LGBT organizations are not legally registered out of fear of repercussions, which impedes accessing resources. *Si Jeunesse Savait* has been a useful conduit for accessing resources that would otherwise have been inaccessible, and *Platform Dyanmique Kinshasa* is trying to get legal recognition. They are also collaborating with the MOJ and the national human rights commission as well as other national and international NGOs to get support for their activities. The communities have been very hidden but the organisations are beginning to come together to carry out joint advocacy and capacity building activities. One of the primary advocacy strategies to date has been using HIV as an entry point for addressing broader LGBT issues. National capacity for addressing LGBT issues remains low despite recent donor interest and must remain an area of focus now that this work has begun.

## Access to HIV-related services

One of the greatest challenges for access to HIV services is how hidden key populations remain, making it hard to offer services to the people who most need them. Key populations, including people who inject drugs, do not feel safe in mainstream health

services due to discrimination. This is reported to be a problem particularly outside of Kinshasa. For example, when seeking VCT they may be told that the tests are out of stock, or are only for blood safety or only for the prevention of mother-to-child HIV transmission. Quality of care is such an issue for key populations that some men who have sex with men reportedly go to other countries e.g. Burundi to get care and treatment despite ostensible protection in the law.

There is currently no legal support for addressing HIV prevention or treatment in prisons. In fact, the law proscribes condom distribution in prisons. As a result key actors, including the MOJ Focal Point on HIV and the law, have created a strategy for condom distribution in prisons which is not against the law but circumvents it. This is being tried out in a few places. There are also plans to establish services to ensure antiretroviral provision in select prisons in Kinshasa. This will include capacity building of prisoners, judges and people working in prisons and detention centres on the HIV law, increasing access to VCT and, ultimately, access to antiretrovirals. Ideally these strategies could be expanded to additional prisons in Kinshasa and the rest of the country.

### **Testing**

There is a particular emphasis on HIV testing in the DRC, and the implications of this remain to be explored. Outreach voluntary counselling and testing (VCT) services (e.g. in mining areas and conflict-ridden areas) as well as mass testing campaigns have been successful in reaching many people but the links to treatment services remain under-emphasized with little information available on linkage to care for people who test positive for HIV. This is likely a particularly acute problem for key populations whose behaviours are stigmatized, and would appear to be an important area for exploration going forward.

There is also ambiguity in the testing provision of the law which even as it is intended to support voluntariness can be interpreted to support mandatory testing, which is not explicitly penalized by the law. Some employers insist that employees be tested for HIV and fire them if they test HIV-positive, suggesting that education about existing legal protections is required for both employers and employees.

It may be useful to link offers of VCT to training sessions around HIV and the law as the training appears to stimulate demand for testing. Where this has been done by UNDP, UCOP+ has always been there to help with post-test counselling and linkage to care and treatment services. With antiretroviral drugs increasingly available, there is a move from VCT to provider-initiated testing and counselling but also a lack of clarity around what this means with regard to voluntariness, 'routine' testing etc.

### **Treatment**

The goal moving forward is free immediate treatment for all who test positive. Everyone who tests positive is meant to be referred to a health facility; counter-referral slips are provided. But uptake remains a problem, especially outside Kinshasa, and, even as antiretrovirals are available, it is not clear how effective linkage to sustained treatment is.

Pervasive stigma and discrimination make many people reluctant to attend nearby health facilities or to access antiretroviral drugs for fear of being identified as living positively.

There is also concern about stockouts of antiretrovirals and, in light of the current emphasis on mass testing campaigns, ensuring the availability of these drugs is critical. There is a need to understand the treatment cascade and reasons underlying attrition, noting that there may be substantial differences across provinces. Greater collaboration between community and health systems, with due attention to the law, may be helpful in these efforts.

## **Key project activities**

Review of both the Legal Environment Assessment (LEA) and the National Dialogue (ND) reveal successes, in terms of concrete actions produced as a result of these activities, as well as the commitment and openness they generated.

### **Implementing the LEA and ND**

The LEA was a huge piece of work that was undertaken with intensive research to identify relevant laws that impacted HIV and human rights. There was representation from all the provinces, bringing together a very diverse set of actors. Parliamentarians who had never before been involved in discussions on these issues were brought in and made instrumental to the process. To make the LEA valid for the country it was validated by the Attorney General's office. This was extremely important in terms of all actors taking it seriously as a road map for efforts going forward.

The ND was seen as a turning point in the DRC because of the inclusive atmosphere and participants' ability to express themselves freely, including on sex work and LGBT issues. Hearing directly from the sex workers and the LGBT community in the ND gave many stakeholders a different mind-set about engaging on these issues; key populations involved were extremely open, and the perceived safety of the space encouraged more and more people to speak out in unprecedented ways.

A concrete product of this openness and collaboration between actors was the agreement that one of the priorities to be addressed moving forward had to be revising the HIV law, particularly the article on criminalization of transmission of HIV. Despite initial scepticism from the Minister of Justice and others, the ND was able to shift mind-sets through working groups and open dialogue. Having had the judges and parliamentarians reach the conclusion that legal change was necessary has proved pivotal to the legal reform process.

Both the LEA report and the ND report are considered key documents. The ND was held in 2011, and led to a set of concrete recommendations, also referred to as a roadmap, that is now being implemented. 5000 copies were printed and there are plans to print many more next year.

### **Concrete outcomes of the LEA and ND**

Follow-up really took off in 2012 when the MOJ as the representative of the government became engaged. Their work on HIV and the law is very much informed by the recommendations from the ND. Support from senior management at the national level has been key, for example fostering the support of provincial level ministers in the work.

In 2013, actions were developed for the promotion of an enabling legal environment, including eight fora on HIV and the law, five Parliamentary fora at national level and five at provincial level. The same year, for the first time, local financial resources were mobilized for work on HIV and the law, which took place in Katanga. In 2014-2015, the roadmap from the ND set priorities for action including advocacy to change the HIV law, capacity building and VCT campaigns in a number of places.

The National Human Rights Commission, established in May 2015, can rightly be considered another project success. The Commission comprises five male and four female members (including one PLHIV), all of whom were nominated by civil society and then selected by the government. Even as its work has yet to begin in earnest, the Commission's establishment is considered a real triumph and all commissioners have received training on HIV.

Some additional major project achievements stemming from the LEA and ND processes are highlighted below:

- The MOJ became truly involved in work around HIV and the law after the ND. A Focal Point for HIV and the law was appointed within the MOJ, who has truly spearheaded work in this area. This has increased accountability for work relating to HIV and the law within the government and increased government efforts to build the capacity of LGBT communities.
- Out of the ND came increased recognition of human rights and general awareness of the law. For example, judges got to know more about relevant laws so they could intervene appropriately in relevant cases.
- There is increased recognition of the importance of LGBT issues in the HIV response, particularly in the context of MSM. Following the ND, there was a national consultation for sexual minorities and human rights, including two training sessions in which the Minister of Justice was involved.
- Significant progress has been made in that people now talk about HIV and demand for testing has increased. There is also an increase in discrimination cases suggesting that people are more aware of their rights and the possibilities for redress.
- The inclusion of an enabling legal environment as a central axis of the national strategic plan was the result of the hard work of many champions, building on the awareness raising that occurred through the ND. Similarly, LGBT issues, including capacity building around human rights and the need for legal harmonization, were included in the latest funding application to the Global Fund.



- The LEA highlighted that the penal code contained a provision for criminalizing voluntary transmission of incurable diseases and thus the superfluity of a similar clause in the HIV law.
- Lubricant was put on the list of essential medicines thanks to community advocacy around a request that originated out of the ND. MSM who were participating openly stated that this was a priority item, and this was also included in the recommendations for follow up. With lubricants being added to the Essential Medicines List people in the DRC have started to realize that condoms should be there too, and this is potential momentum to capitalize on.
- Perceptions that many ND participants held in relation to PLHIV or LGBT populations were changed from negative moral judgments to recognition of their equal rights. Although less tangible, these significant shifts in attitude are understood to be fundamental to effecting change in the law and in society more broadly.

## Working across sectors

The ability to work across sectors can rightly be seen as the key to the successes the project has seen to date. Human rights are a cross-cutting issue. As noted earlier, leadership lies with the MOJ, with the Focal Point driving multi-sectoral action. The strongest example of this collaboration is the Working Group on the Law and HIV, which merits a separate, detailed discussion below. As noted by several respondents, the interactions and collaborations between the MOJ, civil society and UN organizations has been key: “if you take away one of these three it will all collapse like a house of cards”.

While work at the intersection of HIV, law and human rights has been in play for a number of years, the individuals involved have changed over time. And it is really in the last few years as these individuals have come into their roles and their relationships have become cemented that project work has truly advanced. The Focal Point has been a key support in every way and her multiple hats have made her a particularly effective champion. For example, she represents the Minister of Justice but is also a Senior Magistrate. Therefore even as magistrates have their own administrative structure (Conseil Supérieure de la Magistrature) and are not a part of the MOJ she has been able to make the links to ensure work and training with the magistrates could happen. With respect to the HIV cases that are heard, the composition of the magistrates is important. The Focal Point has made sure that the only judges in these cases are the ones who have been trained, so they are knowledgeable and hence sympathetic. She also has a wonderful lawyer in her office working very closely with UNDP and it is the strength of their working relationship and strategic thinking which has been key to mobilizing senior management across sectors. All recognize the incredible importance of the UNDP representative: her management skills and good humour are recognized as the glue to the work of the last several years.

## Working Group

The Working Group (WG) has been central to the advancement of HIV, law and human rights in the country. They reflect on issues, offer training and support to government and



civil society institutions, work to influence laws, policies, strategies and resource mobilization at the national level, and help the Focal Point and her office to act as needed. They wield a great deal of influence in terms of law, policy and strategy but are clear their work is to coordinate, provide tools, and try to catalyse and harmonize actions. Part of their dynamism is attributed to effective leadership. It was suggested in a number of interviews, however, that perhaps the key factor to their success is that they are open and inclusive—they are always looking for allies. There are about 50 members of the group, and participation is voluntary and ostensibly open to anyone in the country. While for logistical reasons primarily Kinshasa based, a number of people/organizations from the provinces are loosely affiliated. The group represents a diversity of organizations, including various parts of the MOJ and other government sectors, the UN system, academics, and a range of civil society organizations. It is an extremely dynamic group and members generally feel that their collective commitment is important for the country.

### **History**

The group began as a safe space for reflection and discussion of issues relevant to HIV and rights. The fact that jurists have been in it from the beginning is seen as key to its orientation. It started in 2009/10 as a small group of PLHIV and some human rights NGOs but in about 2011 they began to reach out to others. The MOJ assumed leadership/coordination of the group in 2011, which was a galvanizing moment. Eventually the group has expanded to include government representation (PNMLS, human rights commission etc.), the UN and more human rights NGOs. All of the original members remain. Many noted that in order to bring people together to collaborate as part of the WG there had to be a lot of education and sensitisation. Initial reluctance to take on HIV or to work with key populations was overcome through multiple sensitisation efforts.

### **Structure, organization and funding**

The WG has maintained a flexible structure whereby all member organizations retain their autonomy and there are very few conditions for membership. At various points in time, the group has considered becoming formalized but ultimately prefers to remain open and flexible. It is important to note that because all participation is voluntary even as decisions are made collectively people go back to their organizations and it is up to them how they choose to act on what was decided. There does not seem to be a feedback loop on this, and this seems a deliberate choice.

The group tends to meet monthly, with a group of core members communicating by phone and email in between. The agenda is set by a smaller group representing the diversity of players and circulated in advance for adoption at the beginning of the meeting. Minutes are taken of meetings and fed back to the group for their review and comment. The group often selects smaller groups from within the whole to work on specific issues in between meetings.

There is a notable ease and fluidity in communication between members of the group: everyone appears to be using the same language and working towards the same goal. There genuinely appears to be a flat hierarchy with everyone equally respected. There have been



different waves or ‘generations’ of people involved in the group but there seems to be great respect across generations and people genuinely seem to listen to one another. When together, they work on a variety of issues. In some cases, they use as their starting point the realities on the ground e.g. how is stigma experienced by LGBT populations? What capacity building is needed? At other times the focus is on a specific legal action, case or situation. We saw a good example of the way the group operates in that the issue of stigma at the societal level was raised as a key issue by many people in the room. The UNDP representative suggested perhaps a TV or radio advertisement letting people know about the content of the law could be helpful. The group jumped in and seemed to endorse the idea but importantly raised many suggestions as to its focus and approach. It was a dynamic process to watch and certainly equally engaged all sectors represented around the table.

Funding is an increasing problem, especially as group members are not remunerated for this work. The Focal Point said that she was working to address this but limited funding also impacts the potential reach of their work e.g. they have only trained a small proportion of magistrates in the country; they only work in 2-3 prisons. They want to achieve ‘effective’ coverage in all their activities, including in the provinces but given financial limitations this is very difficult to do.

## **Legal environment**

The legal environment was understandably a main area of focus for the interviews, and key informants discussed a number of critical issues, with a surprising degree of overlap. A primary focus was the need for amendment of the 2008 HIV law, but additional concerns in relation to many problematic provisions in the legal environment for addressing HIV were also discussed. A lot of the actions in this area started from the activities of the Working Group and it is expected that a lot of work will be needed to amend the 2008 law, to harmonize laws, and to ensure implementation and awareness-raising going forward.

### **The 2008 HIV Law**

The country passed its HIV law in July 2008 which was largely intended to support people living with HIV but over time some important concerns about the law came to light. There was a recognized urgent need to amend the law amongst all people interviewed, and a lot of focus on the proposed changes to be discussed during the upcoming session of Parliament. Importantly, some respondents noted that the law was originally intended to be progressive and about the protection of people living with HIV but “somehow it also became about repression”.

The LEA and ND were instrumental in shedding light on particularly problematic provisions in the law and raising awareness amongst key stakeholders. There are concerns about specific provisions in the current law, as well as ambiguity in some of its provisions which risk misinterpretation. All agree the provisions on forced disclosure of HIV status and criminalization of HIV transmission are of concern. These were highlighted in the LEA and an evidence brief has been prepared and submitted to Parliament. Since this initial



work, a third article, about needing parental permission to access services, has been identified as problematic. Interviewees appear divided about whether or not to take this on at the same time as dealing with the other two articles given that there has been less preparation even as MSF has drawn attention to the implications for minors' ability to access antiretroviral drugs without parental consent. A number of ambiguities in the law also raise concerns, such as in relation to testing and to the rights of key populations, but it is unclear if these will be addressed in the upcoming Parliamentary session. The fact that the DRC is a monist system ostensibly would seem to mean if the national law is unclear that the international human rights commitments the country has made could be used to ensure human rights concerns influence how the law is applied. However, it appears that even in this monist system international commitments mean more if they have been introduced into national law, and judgments are most often made on the basis of the penal code.

### **Other laws**

While the HIV law is likely to be amended, there are a number of laws which will remain on the books which were raised by a number of respondents as continuing to pose problems in the context of HIV for rights, health and well-being. In particular there a series of laws that are intended to "protect" women which are very regressive. This problem of harmonization of laws, including legal provisions and penalties, will require real work in particular as concerns the Penal Code and the Family Code as noted above. There are also concerns about the 2006 sexual violence law and the 2009 law intended to protect children. These are long-term projects. As noted by several respondents, before laws can be changed people have to understand why they need to change or nothing will happen. With respect to how this can happen, some interviewed favour creation of a commission to do the initial work while others think this can be done by Parliament.

Whatever happens, it is clear this project has been very important for shedding light on issues that even people concerned with human rights had not previously considered. For example, HIV brought attention to a range of violations occurring in prisons not previously part of the work of human rights advocates, as well as a range of issues around the natalist provisions in the Family Code. That said, beyond the letter of the law, impacting the lives of HIV-positive people are not only the panoply of relevant laws and policies but issues in their implementation, differences at the provincial level, and oversight mechanisms, all of which were noted as requiring ongoing attention.

### **Knowledge of the law**

All think that the law is not sufficiently well known and this needs to be addressed. Television/radio advertisements are seen as a way to address this. In the past few years, there have been a lot of workshops on the HIV law in Kinshasa but also in the provinces. The law is well known in the courts, even if the specificity of its provisions are not understood by many of the magistrates who have not yet been trained, but it is also known by many medical professionals. It is, however, not yet widely known by the general public. What happens in communities is often not driven by law even if the law is there. It is not simply a question of implementation but even more so of awareness raising so people





know what the law says. Once the law is amended many feel efforts should be made to educate the public not only because of the specifics of HIV but because it would be a way to foster trust in the health services more generally, in particular as concerns respect for confidentiality. Outreach to PLHIV and other vulnerable groups will be particularly critical as they have such low awareness of their rights and the services available to them that they rarely come forward. Time and time again people talked about the need for sensitization on the law and real dissemination of its content; this is seen as absolutely critical to moving forward the work. That said, in the past when they have done legal clinics and awareness raising in some communities they did not have the capacity to handle the flood of requests for services that came as a result. Awareness raising of the law (once it is amended) must be done hand in hand with increasing the capacity of service provision organizations and making services available. If this is carried out on a large scale then there is a need to have the capacity to handle the demand for services that might be generated.

## **Training and capacity building**

Training and capacity building have occurred in a number of settings for different constituencies. Numerous interviewees stated that training and increased information and education on HIV, human rights and the law are critical for all sectors. To that end, key informants discussed capacity building that has occurred for magistrates, national and provincial level leadership, police, religious leaders, PLHIV, LGBT and other key populations, people working in prisons and the “community at large”.

Training of magistrates is of particular importance to the project. Some examples exist of judges not convicting people accused of voluntary transmission of HIV, despite the problematic provisions in the current law, which can be traced to the training they received. This is an incredibly important constituency to be prioritized for training. It is heartening to hear of magistrates, including particularly high court magistrates, who were very surprised by what they learned and appreciative of the training. That said, the training of magistrates started at the Supreme Court level but there are 3750 magistrates to be trained in total across the country. Perhaps a third have now been trained and there is recognition that in order to reach the rest they will need to develop some sort of training of trainers (TOT) model. Alternatively, HIV and rights training could be incorporated into the general continuing education curriculum that all magistrates must do. The HIV training is standardized, includes people living with HIV as trainers, and is very time and labour intensive. It includes general medical and biological information, including the impossibility of determining directionality of HIV transmission without extensive resources, substantive information about the law, discussion about current case law and real cases, and it is grounded in the DRC’s international human rights commitments. Its very practical orientation, content, focus and approach will be important to maintain in any TOT or other model going forward.

Obviously it is critical that magistrates understand the law but others also need to know what is proscribed by law and behave appropriately. Most importantly, a number of the key actors in government keep changing and as Ministers and their key staff change there is a



need to ensure they are sensitized. How to keep them trained on these issues has to be a major preoccupation going forward if the momentum of the work is to be sustained. Other constituencies also require training, however, if the rights of people living with HIV are to be protected. For example, to address the discrimination that occurs in health facilities, schools, workplaces etc., and to ensure that pastors are aware of the law, the biological basis of the disease, and that they send out the right messages in terms of the value of taking antiretrovirals if infected. Training of PLHIV is also key, in particular to talk about condoms, and condom use in sero-discordant couples. Capacity building through 'know your rights' campaigns may help to some degree but there is a very strong need for training and capacity building across the country. Even as the country is large, all recognize that training for this range of constituencies needs to happen not only in Kinshasa but throughout the country. Thus, the training and capacity needs across the country are enormous.

On a positive note, it appears across constituencies, the use of HIV as an entry point into the training and sensitization work has opened the door with many groups to discussing vulnerabilities and lived experiences of key populations more generally, leading to a basic understanding of rights and sensitization around relevant issues with potentially positive ramifications beyond HIV.

## **Moving forward**

The final section of this report is based on the findings presented above and outlines several recommendations for strengthening this project moving forward. Emphasis is on those recommendations most likely to inform work on HIV and the law not only in the DRC but in other contexts.

### **Strengthening the legal environment**

- There is an opening within Parliament to effect legal changes. However, this will need to be approached from multiple angles, drawing on champions within government, civil society and the UN system with each actor simultaneously using the entry points that they can to target their advocacy. It is a very political space and as HIV is not necessarily a priority, coordinated strategic advocacy is key to promoting action.
- Building on the successes of incorporating human rights into current HIV efforts, coordinated advocacy should be carried out to ensure equal attention to rights in other plans and strategies relevant to HIV and development more broadly e.g. the new Poverty Reduction Plan.
- Once amended, there is a pressing need to translate the HIV law into something that people at all levels understand and that resonates with them. This would ideally include translation into local languages. Television, radio, music and theatre might all be useful media for bringing attention to the content of the law and its relevance to peoples lives.



- There is widespread recognition that additional education on HIV, law and human rights for Parliamentarians and the justice sector will be crucial for generating momentum for action.
- Noting the importance of culture and religion in the DRC, to effect real change, it will be important to increase not only training, but also engagement with cultural and religious leaders.
- Moving recommendations and actions down to community level to be tailored to local realities and evolving priorities will take resources and coordination. An action/advocacy strategy that includes a workplan and an increasing budget for this work over time could help set priorities.
- Ideally, the ND could be replicated at provincial level throughout the country. People who attended the ND from the provinces could be charged with helping to organize this and make them possible in local languages with local actors. This would serve provincially in terms of awareness raising but it could also make the deputies aware of the issues for PLHIV living in their provinces, which might inform their voting and actions on relevant issues.
- Initial efforts have been made to decentralise the Law and HIV Working Group so that it is equally functional at provincial (and sub-provincial) levels. Given the incredibly important role this group has played in advancing this work in the DRC, attention to replicating their methods of work at subnational level could be a crucial step in supporting HIV-related work across the country.
- It would be useful to conduct a broad mapping across the country of those already engaged in this work and those that could usefully be brought in that encompasses key populations, who is working where and doing what (NGOs and health services), what capacity exists for advocacy etc.
- There is high demand to carry forward this work, but funds will need to be mobilized to support it. Strategic use of existing funds to leverage additional donor engagement could be explored. Additional mobilization of national/local resources would also help support ongoing local ownership of this work.

### **Other potential inroads beyond the project**

- It might be useful for UNDP to present some of this work to other UN agencies and teams in-country. Most other national level human rights-related work appears to be centred around civil and political rights with a focus on human rights violations; learning about this project might raise the profile of economic, social and cultural rights as well as the potential for approaching HIV and other health and development work with a view to supporting the realization of rights.
- This work on HIV could be used as an entry point for broader attention to human rights, and in particular the health of women, children, adolescents and key populations. In addition to a wide range of government ministries and civil society partners, this work could also bring in many of the UN agencies and other donors that are active in the country.
- As was the case when the DRC took on the issue of sexual violence, increasing awareness of the successful work that has been undertaken around HIV and the law



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to date might positively raise the profile of the DRC internationally, with potential additional positive ramifications for the work and the country more broadly.



## Appendix A: DRC Interview Schedule

<b>Jour 1 Vendredi 16/10/15</b>	<b>Jour 3 Samedi 17/10/15</b>	<b>Jour 4 Lundi 19/10/15</b>	<b>Jour 5 Mardi 20/10/15</b>	<b>Jour 6 Mercredi 21/10/15</b>
<p>Arrivée à Kinshasa de :</p> <p><b>Dr Sofia GRUSKIN</b> Directeur du Programme Santé Global et Droits Humains Institute for Global Health of the University of Southern California (USA)</p> <p><b>Dr Laura FERGUSON</b> Professeur Assistant Programme Santé Global et Droits Humains Institute for Global Health of the University of Southern California (USA)</p>	<p>Séance de travail avec les structures d'encadrement des LGBTI (SJS) Française <b>9h00 -10h00</b></p>	<p>Briefing avec DP &amp; RR (George) <b>9h00 - 10h00</b></p>	<p>Séance de travail avec les membres de la Commission nationale des Droits de l'Homme (Dr Olivier) <b>9h30 - 10h30</b></p>	<p>-Séance de travail avec les Universitaires (UNIKIN) Consultants Prof Ndomba et Me Fils Angelesi. <b>9h00 - 11h30</b></p>
	<p>Séance de travail avec l'Association FADHUC, les structures d'encadrement des LGBTI (PSSP) et UCOP+ (Me Yamba, Dr Hilaire, Ange) <b>10h15-11h30</b></p>	<p>Séance de travail avec le Point Focal Droits Humains et VIH Ministère de la Justice (Mme Mujinga) <b>10h30 - 11h15</b></p>	<p>Rencontre avec l'équipe Conjointe du SNU George <b>11h00 - 12h00</b></p>	<p>-Séance de travail avec les magistrats Me Serge <b>12h30 - 13h30</b></p> <p>-Débriefing avec le SEN et Mme la PF VIH du Ministère de la Justice et DH <b>13h45 - 14h30</b></p>
	<p>Séance de travail avec les consultants nationaux ayant participé à la mise en œuvre du processus (Me OKAKES, Me CIVAVA, Me TAMUNDELE, Dr Mbwolie, Françoise, Eric MUKAKU) <b>12h00 - 14h00</b></p> <p>Séance de travail avec les leaders religieux (César) <b>14h00 - 15h00</b></p>	<p>-Entretien avec le PNMLS Secrétaire Exécutif National (Yves Obotela) <b>11h30 - 12h00</b></p> <p>-Entretien avec Fondation FEMMES PLUS (Thérèse) <b>12h00 - 12h30</b></p>	<p>Séance de travail avec l'AGR (Etienne MULUMBA) <b>12h30 - 13h15</b></p>	<p>Débriefing avec DP &amp; RR (George) <b>15h00 - 16h00</b></p>
		<p>Séance de travail avec une ONGDH (ASADHO) Me Patrick NSASA <b>13h30 - 14h30</b></p>	<p>Séance de travail du Groupe Droits et VIH <b>14h00 - 16h00</b></p>	<p>Voyage retour USA</p>
	<p>Entretien avec les LGBTI sur site</p>	<p>Audience avec son Excellence le</p>	<p>Rencontre avec les parlementaires de</p>	



	Hilaire	Ministre de la Justice et Droits Humains (Mme Mujinga)	la commission socioculturelle (Dr MOKAKO)	
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