



Supreme Court
of the Republic of Tajikistan



UN
DP

SECOND EASTERN EUROPE AND CENTRAL ASIA REGIONAL JUDGES' FORUM ON HIV, HUMAN RIGHTS AND THE LAW

15–16 OCTOBER 2020



THEMATIC BACKGROUND

The rate of new HIV infections is decreasing globally, however in Eastern Europe and Central Asia (EECA), the HIV epidemic continues to grow; it is also one of only two regions in the world where the annual number of AIDS-related deaths has increased since 2010. According to UNAIDS, there are approximately 1.7 million people living with HIV in the region.¹ Most new infections in the region are among key populations,² who must contend with punitive legal environments, social ostracization and discrimination.

High rates of co-infections are prominent, with tuberculosis (TB) increasingly linked to HIV infection and drug use, while hepatitis C infection is approaching 80 percent prevalence amongst people who use drugs. Nine of the world's 30 countries with a high burden of multidrug-resistant TB (MDR-TB) and extensively drug-resistant TB (XDR-TB) are within the EECA region.³

CONTEXT

In its flagship “Risks, Rights & Health” report of 2012⁵ and subsequent 2018 Supplement,⁶ the Global Commission on HIV and the Law recognized that the law alone cannot stop HIV transmission, nor can the law alone be blamed when HIV responses are inadequate. However, the Global Commission found that legal environments can play a powerful role in the well-being of people living with or vulnerable to HIV.⁷ Without the contribution of judicial members in combatting HIV and related conditions, it is unlikely that significant change in how HIV is comprehended on a societal, legal and medical level will be actualized.

In response to the Global Commission's recommendation, the United Nations Development Programme (UNDP) has been facilitating the work of the African

While there have been significant improvements in the legal environment relevant to HIV and TB in the region, legal barriers persist. The rights of people living with HIV, key populations at risk of HIV, and of people with TB are not sufficiently and effectively protected. Additionally, the legal, policy and regulatory frameworks that govern national efforts in prevention, treatment, care and support need significant strengthening. Some key obstacles include: criminalization of HIV transmission, exposure and non-disclosure; criminalization of sex work or introduction of increased punitive measures against sex workers; criminalization of drug use and/or possession for personal use; criminalization of same sex relationships; forced and coerced HIV testing, and others.⁴

Functional and effective judicial systems are imperative to ensure the protection of the rights of key populations. In this regard, the judiciary in a number of the EECA countries has been quite progressive also through important enabling court decisions.

Regional Judges' Forum on HIV and AIDS, which held its sixth meeting in 2019. As the Forum proved to be an important platform for information and experience exchange, raising awareness and sensitizing members of the judiciary on the issues of HIV and key and vulnerable populations, UNDP supported participation of EECA judges in the meetings of the African Judges Forum in 2018 and 2019. Thus far, the meetings were attended by four EECA judges (from Ukraine, Moldova and Tajikistan), creating a clear demand by these judges to replicate the experience in the EECA region.

On 3–4 October 2019, the first meeting of the EECA Judges' Forum on HIV, Human Rights and the Law (hereinafter, the Forum) took place in Chisinau, Moldova. It gathered over sixty participants, including

1 UNAIDS, *Communities at the Centre—Global AIDS Update 2019*, https://www.unaids.org/sites/default/files/media_asset/2019-global-AIDS-update_en.pdf.

2 UNAIDS considers gay men and other men who have sex with men, sex workers and their clients, transgender people, people who inject drugs and prisoners and other incarcerated people as the main key population groups. These populations often suffer from punitive laws or stigmatizing policies, and they are among the most likely to be exposed to HIV. Their engagement is critical to a successful HIV response everywhere—they are key to the epidemic and key to the response (UNAIDS Terminology Guidelines, 2015, https://www.unaids.org/sites/default/files/media_asset/2015_terminology_guidelines_en.pdf).

3 Stop TB Partnership, *High Burden Countries*, <http://www.stoptb.org/countries/tbdata.asp>.

4 Global Commission on HIV and the Law, *Supplement, 2018*, <https://hivlawcommission.org/supplement/>.

5 Global Commission on HIV and the Law, *Risks, Rights and Health, 2012*, <https://hivlawcommission.org/report/>.

6 Global Commission on HIV and the Law, *Supplement, 2018*, <https://hivlawcommission.org/supplement/>.

7 Global Commission on HIV and the Law, *Risks, Rights and Health, 2012*, <https://hivlawcommission.org/report/>.

members of the judiciary, representatives of national judicial training institutes, officers of UN country offices, and civil society and community activists from 11 countries of EECA, as well as representatives of headquarters and regional offices of UN agencies. It was agreed that the Forum should also go beyond a one-off event and become a sustainable platform for information and experience exchange among judges of EECA countries on matters related to HIV, TB, Hepatitis C and key and vulnerable populations. It was also agreed to form a Steering Committee to coordinate the process of organizing a second meeting of the Forum, to take place in May/June 2020 in Dushanbe, Tajikistan.

Due to the COVID-19 pandemic and response measures taken by countries, it was no longer realistic to follow the agreements of the first Forum regarding the date and format of the second Forum meeting. As to the meeting format, the Steering Committee considered three possibilities (face-to-face; fully virtual; hybrid). Taking into account epidemiological

trends and restrictions imposed, it was decided to go forward with the hybrid format, whereby participants in Tajikistan gathered in one venue, and participants from other countries connected via Zoom. Because of specificity of the format, it was agreed that the meeting would be organized over the course of two half-days, also taking into account the time zones of the participants.

The second meeting of the EECA Judges' Forum on HIV, Human Rights and the Law took place on 15 and 16 October 2020. It gathered 88 participants, including members of the judiciary, representatives of national judicial training institutes, officers of UN country offices, and civil society and community activists from eight countries of EECA, as well as representatives of headquarters and regional offices of UN agencies (full list of participants is provided in Annex 1). The meeting, devoted to the issue of criminalization of HIV transmission, exposure and non-disclosure, was moderated by the members of the Forum Steering Committee.

MEETING REPORT

The first day of the Forum commenced with the **Opening session**, moderated by **Sharof Alanazarzoda**, Judge of the Supreme Court of the Republic of Tajikistan and a member of the Forum Steering Committee. During the opening, participants were welcomed by **Azizzoda Zafar Nusrat**, Judge of the Supreme Court of the Republic of Tajikistan, Chair of the Judicial Chamber for Criminal Cases; **Agi Veres**, Deputy Regional Director, UNDP Regional Bureau for Europe and Central Asia—RBEC; **Pratibha Mehta**, UNDP Resident Representative, Republic of Tajikistan; **Tahmina Haydarova**, Director, Network of Women Living with HIV in Tajikistan; and **Prof. Michel Kazatchkine**, Special Advisor to the Joint United Nations Programme on AIDS (UNAIDS) in Eastern Europe and Central Asia, who highlighted the importance of the Forum and outlined major challenges related to HIV and the law faced by the region.

Session 1: HIV epidemic in EECA and criminalization of HIV transmission, exposure and non-disclosure, moderated by **Olena Volkova**, Judge of the Yuzhnoukrainsk city court of the Nikolaev region (Ukraine) and a member of the Forum Steering Com-

mittee, started with **Introduction and expectations for the meeting**, whereby **Amitrajit Saha**, Team Leader of the HIV, Health and Development Team for Africa (UNDP IRH) made linkages with the African Judges' Forum, held annually since 2015, and the first meeting of the EECA Judges Forum that took place in October 2019. Dr. Saha also spoke briefly about the expectations and the agenda of the second meeting.

Next speaker, **Ainura Bekkoenova**, Human Rights Advisor, Governance and Peace Building a.i. (UNDP RBEC), in her presentation **Overview of the linkages between law, access to justice, HIV, health and development** reviewed regional trends related to the Sustainable Development Goals (SDGs), governance and the rule of law in EECA, paying particular attention to the impact of the emerging COVID-19 pandemic and responses implemented by countries.

The following segment of the session, **Brief overview of HIV and the Law in Eastern Europe and Central Asia**, featured two presentations. **Konstantin Voytsekhovich**, Advocacy and Management Adviser (UNAIDS RST) spoke about HIV epidemiological

trends, highlighting a continued increase of HIV incidence and the failure to achieve the 90-90-90 targets⁸ by the end of 2020 with the region only reaching 70-44-41. The speaker also made an overview of the HIV legal environment globally and in the region; speaking about and laws criminalizing HIV transmission, exposure and non-disclosure where, again, the situation in EECA is considerably worse compared to the rest of the world.

The topic was further explored by **Timur Abdullaev**, UNDP International Consultant, who focused specifically on the history and current state of criminalization of HIV transmission and exposure globally and in EECA countries. He highlighted that in spite of solid scientific evidence and international recommendations, almost every single country of the region has laws criminalizing HIV transmission and exposure; moreover, these laws remained intact for decades in spite of significant progress made in HIV science and response. The only positive change happened in Belarus, Kazakhstan, Kyrgyzstan, Moldova and the Russian Federation, where a provision was added exempting HIV-positive people from criminal liability when their HIV-negative partner was informed and consented to the risk. However, some countries of the region are actively enforcing their criminal laws, and even the mentioned exempting provisions have not prevented Belarus and the Russian Federation from being in the world's top-four in terms of rates of HIV criminalization. The speaker also highlighted the role of the judiciary in this respect, and emphasized the importance of Supreme Courts of the region monitoring judicial practice on HIV criminalization, and through adopting Plenum resolutions in providing guidance to judges in terms of correctly interpreting and applying laws and mitigating the negative impact on people living with and affected by HIV.

This topic was further explored during the next segment of the session, **Assessment of the law and practice in relation to criminalization of HIV transmission, exposure and non-disclosure in the Republic of Ta-**

jikistan. Judge **Sharof Alanazarzoda** provided an overview of the legislation and judicial practice in Tajikistan, highlighting existing challenges (such as the quick increase in the number of cases on HIV exposure and transmission since 2018), and emerging opportunities (such as recently completed review of HIV-related jurisprudence and the ongoing criminal law reform, which envisions positive changes regarding HIV criminalization). Also, on a positive note, the speaker highlighted the work on awareness raising on HIV and human rights among police officers, prosecutors and judges, as well as the fact that the Supreme Court of the Republic of Tajikistan is considering the development and adoption of a Plenum resolution on HIV criminalization.

Zavkizoda Soleh Amin, Director of the Judges Training Center under the Supreme Court of the Republic of Tajikistan, addressed various dimensions of HIV criminalization, including from the international law perspective, reiterated that HIV criminalization is justified when HIV transmission and exposure is intentional and malicious and stressed that laws have to follow science and protect people living with HIV, only prosecuting those who intentionally expose and transmit the virus.

Alexandra Volgina, Programme Manager (GNP+), opened next segment of the session, **Issues related to criminalization of HIV transmission, exposure and non-disclosure: Impacts on people living with HIV and key populations**, stressing the danger of outdated laws and the need to change the approach to HIV criminalization. Speaking from her own lived experience of HIV and from the point of view of latest scientific evidence, Alexandra presented evidence-based arguments against HIV criminalization and debunked some of the widespread myths used to justify HIV criminalization. The speaker called the participants to rely on science, as formulated in international recommendations⁹ and Expert Consensus Statement on the Science of HIV in the Context of Criminal Law,¹⁰ and to consider these in order to

8 90-90-90 targets mean that, by the end of 2020, 90% of all people living with HIV will know their HIV status; 90% of all people with diagnosed HIV infection will receive sustained antiretroviral therapy, and 90% of all people receiving antiretroviral therapy will have viral suppression.

9 UNOHCHR, UNAIDS, *International Guidelines on HIV/AIDS and Human Rights*, 2006 Consolidated Version; General Assembly, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*. UN Doc. A/HRC/14/20; UNAIDS, UNDP, Policy Brief: Criminalization of HIV Transmission, 2008.

10 Barré-Sinoussi F, Abdool Karim SS, Albert J, Bekker LG, Beyrer C, Cahn P, Calmy A, Grinsztejn B, Grulich A, Kamarulzaman A, Kumarasamy N, Loutfy MR, El Fitali KM, Mboup S, Montaner JS, Munderi P, Pokrovsky V, Vandamme AM, Young B, Godfrey-Faussett P. *Expert consensus statement on the science of HIV in the context of criminal law*. J Int AIDS Soc. 2018 Jul;21(7):e25161. doi: 10.1002/jia2.25161. PMID: 30044059; PMCID: PMC6058263.

avoid unnecessary criminalization of people living with HIV and key populations and to mitigate the public health harm of the repressive approach.

Tahmina Haydarova made a presentation on the practical experience of the judicial system in Tajikistan. Among the problems faced by people living with HIV in Tajikistan are stigma and discrimination; not knowing ones' rights; fear; little information about HIV; cultural stereotypes; and gaps in the legislation. These contribute to vulnerability of people living with HIV, also when faced with criminal charges. In 2018, Tajikistan started enforcing criminalizing provisions against people living with HIV. This revealed a number of gaps in legal protection for people living with HIV, including those related to the right to privacy and confidentiality of diagnosis, leading to excessive criminalization even in cases where intent and transmission were lacking, the person had undetectable viral load and used prevention.

Timur Abdullaev presented the ongoing work on compiling a compendium of strategic litigation cases on HIV and co-morbidities from EECA. The Compendium will include cases from different areas of law (confidentiality, travel restrictions, criminalization, key populations and other) and will become a useful tool for judges, HIV activists, human rights advocates, lawyers and other legal professionals dealing with HIV-related cases.

Next segment of the session, ***Experience of de-criminalization of HIV transmission, exposure and non-disclosure: lessons learnt and enabling factors***, started with a presentation by **Anatoli Leshenok** and **Tatyana Zhuravskaya**, leaders of NGO "People Plus" (Belarus), who shared their experience of advocacy to de-criminalize HIV exposure and transmission in Belarus, a country with some of the world's highest criminalization rates. The speakers shared details of two cases, one of HIV exposure and one of HIV transmission, in which they engaged as public defenders. In the former case, they provided the court with recommendations of the WHO Validation Committee regarding the need to review criminalization of HIV exposure and transmission, a letter from WHO classifying HIV as a chronic and controllable infection rather than a fatal disease, and filed a motion not to impose a prison term, which then was granted by

the court. In the latter case, they challenged results of the phylogenetic test, used by the prosecution to support the charges, by obtaining expert testimony that concluded that the sub-type of the virus found in both defendant and the victim was actually specific to 90% of the HIV-positive population of the region and therefore could not be used as evidence of transmission. The speakers also emphasized the importance of the 2019 amendment to the Criminal Code waiving liability of people living with HIV when their partner knew about their diagnosis and consented to the risk, which led to a number of investigations discontinued, and some people, who were already sentenced, being discharged with the conviction being deleted from their criminal record.

In her presentation, Justice **Zione Ntaba**, a High Court judge from Malawi, presented the case of a woman, who was convicted for HIV transmission by breastfeeding another person's child. The child did not contract HIV and the evidence indicated that breastfeeding was accidental and unintended. Judge Ntaba, who was adjudicating the case, set aside the woman's conviction and sentence and pointed to international guidelines and stated that "criminal law should not be applied to cases where there is no significant risk of transmission, or where the person did not know that he/she was HIV-positive, did not understand how HIV is transmitted, did not disclose his/her HIV-positive status because of fear of violence or other serious consequences". The court also relied on expert testimony confirming that HIV transmission rate from an HIV-positive mother on ART having suppressed viral load to a child during breastfeeding is as low as 0.3%.

Justice **Mumbi Ngugi**, a High Court judge from Kenya, spoke about legal provisions around HIV and TB. She brought an example of a case she tried, where petitioners challenged involuntary isolation in prison of two men under the Public Health Act on the basis of defaulting in taking their TB medicine. The court ruled that involuntary confinement in prison for purpose of treatment was unconstitutional and was a violation of constitutional rights to liberty and security of person, freedom of movement and human dignity, among others, that it also violated the right to health of other prisoners, and that prison was an inappropriate setting for TB isolation. In this ruling, the court relied on the Constitution and international

standards, such as Siracusa Principles¹¹ and WHO Ethics Guidance.¹² As an outcome of the case, there were no TB patients who were subjected to involuntary detention, precedent was set for subordinate courts, and the Isolation Policy by the Ministry of Health was promulgated. Among the enabling factors for progressive jurisprudence, Justice Ngugi mentioned active civil society, a culture of strategic litigation on public interest issues, and a judicial system well trained in adopting a human rights-based approach to issues related to the right to health.

The second day of the meeting was opened by **Olga Shapovalova**, Head of training of trainer's division at National School of Judges of Ukraine and a member of the Forum Steering Committee, who provided an overview of the first day and invited participants to have a discussion, which did not happen on the first day due to time constraints. To begin with, she mentioned a question, raised by one of the participants in the chat, on confidentiality of HIV-status in judicial proceedings and the sentence. Responses to the question, also posted on the chat, were summarized by **Timur Abdullaev**, who said that the answer depends on the specific circumstances of the case. When HIV diagnosis is being used as a mitigating circumstance (as envisaged in some countries of the region), the sentence does not need to name HIV but rather generally refer to a (serious) health condition. In cases on HIV exposure, transmission and non-disclosure there is no point in hiding the diagnosis, because the diagnosis is disclosed by the Criminal Code itself – which is one of the reasons why international guidelines caution from having HIV-specific articles in the Criminal Code.

Larisa Aleksandrova, Legal Expert from the Human Rights Center (NGO from Tajikistan, advocating for decriminalization of HIV transmission, exposure and non-disclosure) shared that court clerks disclose HIV-status of defendants when inviting hearing participants to the court rooms, which shows the need to build their capacity as well. She also emphasized the importance of claiming moral damages for breach of confidentiality, and they already had several successful cases. Referring to earlier conversation on potential Supreme Court Plenum resolution,

she said that such a document could address some of the gaps in other domains, such as civil law.

Larisa Kovalchuk, Judge of Vinnytsia City Court, Ukraine, commented that it may be problematic to avoid mentioning of HIV-positive status in court rulings, but in such cases, it is important to ensure that none of the participants in the case disclose the diagnosis. In her practice, she saw everyone directly or indirectly involved, including court clerks and convoy officers from the detention facility were aware of the diagnosis of the defendant.

Judge **Olena Volkova** also stressed the importance of capacity building of all personnel working in courts on non-stigmatizing gender-neutral terminology, which also includes press-service of the courts who need to publish reviews without breaking confidentiality, stigmatizing or otherwise violating rights of parties to a case.

Judge **Azizzoda Zafar Nusrat** also commented on the issue of decriminalization of HIV exposure and transmission. He said, that these acts should be seen as part of one criminal act, whereby a person tries to infect another person with HIV; in cases of exposure, the person does not achieve the goal, and in cases of transmission, it is an accomplished crime. Direct intent is therefore key. He also stressed the importance of using scientific evidence in courts. He gave an example of a case against the HIV-positive partner in a serodiscordant couple, where the judge set aside the case based on expert testimony regarding suppressed viral load and thus zero actual risk of HIV transmission even during unprotected sexual contact.

Session 2: The judiciary and justice for people living with HIV and key populations. The first segment of the session, **The important role of judges in the context of protecting the rights of people living with HIV and key populations**, started with a presentation by Judge **Olena Volkova**. She mentioned three aspects of dealing with HIV-related cases: legislative framework, the need to ensure personal data protection of people with HIV, TB and key populations, and specifics of imposing a punishment for people with HIV, TB

11 United Nations, Economic and Social Council, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc. E/CN.4/1985/4, 28 September 1984.

12 WHO, *Ethics guidance for the implementation of the End TB Strategy*, 2017.

and key populations. She also stressed that judges should be actively engaged in legal research and harmonization of domestic legislation in line with international standards. She pointed to the overall lack of agreed understanding of drug addiction as a health condition, and lack of unified standards of medical examination for trial parties with HIV and TB.

Justice **Mumbi Ngugi** shared the African experience of judicial protection of rights of people living with HIV and key populations. She highlighted that the judiciary plays a critical role in safeguarding the rights of vulnerable groups by pronouncing itself on their access to life-saving treatment, prohibiting discrimination, removing legislation that criminalizes or limits the rights of people living with HIV, and requiring the State to enact and implement policies that safeguard rights. To effectively exercise its mandate, it is essential to have robust training of judges and judicial officers on human rights issues, exchange best practices on matters related to the right to health across jurisdictions, and provide multi-sectoral training that incorporates people living with HIV and other vulnerable groups, civil society and medical professionals to ensure full understanding of the circumstances of people living with HIV and the challenges they face in full enjoyment of their rights. The speaker alluded to the importance of the African Regional Judges' Forum, which initially covered a few African countries and grew to include judges from all over the region. The Forum promoted judicial training, specifically in the rights of vulnerable groups, garnered an understanding of factors giving rise to stigma and discrimination of people living with HIV, provided judges with understanding of the science and medicine, and offered access to progressive jurisprudence.

Next segment of the session, ***Application of the latest scientific evidence and efforts to use modern science in court***, opened with a presentation of **Elena Vovc**, Technical Officer of WHO Europe, on key facts about HIV based on scientific evidence. She explained how antiretroviral treatment brings down viral load in HIV-positive people within 1–3 months; with another six months to a confirmatory test, it therefore takes 7 to 10 months for a person living with HIV to pose an effectively zero risk of HIV transmission. The speaker shared a slide with average risk of transmission through different routes, including different types of

sexual intercourses, injecting drug use, blood transfusion, as well as biting and spitting. She also mentioned factors, which reduce the risk of transmission and should be taken into account by courts when hearing cases on HIV exposure; these include use of condom, low or undetectable viral load, and pre- and post-exposure prophylaxis by the HIV-negative partner.

Mikhail Golichenko, Senior Policy Analyst of the Canadian HIV Legal Network, spoke about limitations of phylogenetic test results in HIV transmission cases. He stressed that there is no test that would be able to provide ultimate proof of transition of a virus from the defendant to the victim. However, in practice, judges often consider results of phylogenetic tests as credible evidence, and experts who present the results often neither explain limitations of the results nor caution against their interpretation as proof of transmission. The speaker reminded that if doubts in the guilt of the defendant cannot be eliminated, such doubts have to be interpreted in favor of the defendant, and a phylogenetic test cannot prove the charge beyond reasonable doubt. So, Expert Consensus Statement indicates that phylogenetic analysis may be used in court, can exonerate a defendant when the results rule out the defendant as the source of a victim's HIV infection, but cannot conclusively prove that a defendant has infected a victim with HIV. The speaker gave examples of two cases from the Russian Federation, where phylogenetic analysis was used. He quoted expert testimony from one of them, which said that the results of the analysis *allow to conclude, with a high degree of certainty, a probability* of existence of epidemiological link between the virus strains from the defendant and the victim. In the second case, expert testimony said that the results of the phylogenetic analysis, *coupled with the results of epidemiological investigation*, confirm participation of the defendant as the source of infection. The speaker also asked judges to be very critical when considering confessions of the defendant, presented along with the results of phylogenetic analysis, but to pay attention to information about individual circumstances of the defendant and the victim.

In conclusion of the segment, Judge **Sharof Al-nazarzoda** pointed to the fact that in criminal law, no matter how small the risk of transmission is, as long as it is higher than 0, it cannot be dismissed. Therefore, in countries where HIV exposure is criminal-

ized, courts have to consider the totality of evidence and decide whether the risk was present or not. He therefore encouraged UNAIDS and the World Health Organization to review their protocols and guidelines so that they clearly support the U=U campaign,¹³ thus allowing judges to dismiss exposure charges when the defendant has undetectable viral load.

In response, **Elena Vovc** said that all risks of HIV transmission have been published and are available. She also responded to an earlier question (whether it is possible for an HIV-positive mother to give birth to an HIV-negative child) by saying that with ART the risk is significantly reduced, and if undetectable viral load has not been achieved by childbirth, breastfeeding can be replaced with formula, which is also available in the region.

Timur Abdullaev echoed that while from the medical perspective the risk of a fraction of a percent is negligible, from the legal point of view, even such a minimal risk is still a risk. He also pointed to limitations of diagnostic tests used for measuring concentration of virus in blood, as they have different minimum thresholds, below which the result is “undetectable”. Another point is that the Expert Consensus Statement was not written for judges, and it is not reflected in latest guidelines of WHO and other UN agencies. The latest UNAIDS document specifically on the issue of criminalization was published in 2013, and was not even translated into Russian; a joint UNAIDS and UNDP Policy Brief,¹⁴ which was also included in the handouts for Forum participants, was published in 2008. With most recent UN guidelines predating the Global Commission on HIV and the Law, the U=U Campaign and the Expert Consensus Statement, it is more challenging for both judges and defense lawyers to use scientific evidence and normative guidance to protect people living with HIV. This highlights the need for technical partners, including WHO, UNAIDS, UNDP and OHCHR to consolidate latest scientific evidence—as well as human rights standards—relating to HIV transmission, exposure and non-disclosure, and present it in a form of guidance, which can be used in the court room.

Mikhail Golichenko commented on the issue of probability of transmission. He agreed that from the legal point of view, indeed, even smallest risk is still a risk. But he gave an example of sporting guns, which are regulated, but allowed in spite of existing statistics of injuries and deaths. And while there is a risk or probability of accidentally inflicting bodily damage or death, owners are not criminalized just because they possess and use sporting guns – unless they intentionally use it to injure or kill another person. Likewise, people living with HIV should not be criminalized for HIV exposure because the risk of transmission is very low – unless there is evidence that the HIV-positive defendant maliciously attempted to infect another person with HIV (i.e. there was direct intent).

Judge **Larisa Kovalchuk** posted on the chat a request to address the issue of medical documents concerning health condition of HIV-positive defendants, which have to be considered by the court when deciding on the punishment. Judge **Olena Volkova** agreed that this issue is very important from the standpoint of human rights, as the person with poor health should not be held in pretrial detention or imprisoned; ignoring health condition of defendants already led to several decisions of the European Court of Human Rights against Ukraine. Even though this question was discussed at the Judges’ Platform in Ukraine, solution was not found. **Mikhail Golichenko** responded that such list of health conditions, which prevent use of pretrial detention, is adopted in the Russian Federation, and it contains Stage IV of HIV-infection.

Judge **Svetlana Muratova** referred to a 2014 regulation on medical assistance to persons sentenced to imprisonment, which lists Stage IV HIV and severe TB disease as grounds for requesting early release. However, this regulation only applies to persons already convicted, and does not cover persons in pretrial detention. She also pointed that the legislation does not envisage mandatory participation of a defense lawyer in cases with HIV-positive defendants.

13 Undetectable equals untransmittable (HIV-positive people with undetectable viral load cannot transmit the virus to others).

14 UNAIDS, UNDP, *Policy Brief: Criminalization of HIV Transmission*, 2008, https://www.unaids.org/sites/default/files/media_asset/jc1601_policy_brief_criminalization_long_en.pdf.

Session 3: Next steps and closing. **Rosemary Kumwenda**, Regional HHD Team Leader UNDP, reiterated the commitment of UNDP, both at the regional and national levels, to support judges to further protect people living with HIV, key and marginalized populations. She then invited ideas about how to sustain the Forum and increase the number of participating

judges. Upon discussion, participants agreed on next steps (below).

The meeting was closed with final remarks of **Rosemary Kumwenda** of UNDP Istanbul Regional Hub and **Azizzoda Zafar Nusrat** of the Supreme Court of the Republic of Tajikistan.

NEXT STEPS

During the session, the following agreements were reached:

- 3rd meeting of the EECA Regional Judges Forum on HIV, Human Rights and the Law will take place in 2021 in Ukraine, possibly with one day devoted to criminal law and a second day on civil law
 - A national Judges Forum on HIV, Human Rights and the Law will take place in 2021 in Tajikistan
 - The [Forum mini-site](#) will be further developed and become an interactive platform for continuous information and experience exchange among judges of the region (feedback/chat form; regular content update and other)
 - Regular (quarterly or more frequent) online trainings/webinars will be organized for judges
- to cover specific topics identified by the Forum Steering Committee
 - As Judge Chiroasca from Moldova could not participate in the Forum, the Steering Committee will seek additional member(s) to fill in the vacancy
 - UNDP Istanbul Regional Hub and respective country offices will support the preparation to and the organization of the 3rd Forum meeting
 - Linkages to National Institutes of Justice and other training institutions for judges will be explored to ensure sustainability of capacity strengthening endeavors.

CONTACT PERSONS

✉ **Dr Rosemary Kumwenda**
rosemary.kumwenda@undp.org

✉ **John Macauley**
john.macauley@undp.org

ANNEX 1: AGENDA/PROGRAMME

Day 1 — 15 October 2020, Thursday					
Time				Topic	Speakers/Responsible persons
Istanbul, Kyiv, Chisinau	Tbilisi	Dushanbe, Tashkent	Astana, Bishkek		
08:30–09:00 (30 min)	09:30–10:00 (30 min)	10:30–11:00 (30 min)	11:30–12:00 (30 min)	Connection and registration of participants	
				Opening session	Session Moderator: <i>Sharof Alanazarzoda, Judge of the Supreme Court of the Republic of Tajikistan</i> Member of the Steering Committee of the Judges' Forum
09:00–09:40 (40 min)	10:00–10:40 (40 min)	11:00–11:40 (40 min)	12:00–12:40 (40 min)	Opening and welcoming notes	Speakers: Azizzoda Zafar Nusrat , Judge of the Supreme Court of the Republic of Tajikistan, Chair of the Judicial Chamber for Criminal Cases Agi Veres , Deputy Regional Director, UNDP Regional Bureau for Europe and Central Asia—RBEC Pratibha Mehta , UNDP Resident Representative, Republic of Tajikistan Tahmina Haydarova , Director, Network of Women Living with HIV in Tajikistan Prof. Michel Kazatchkine , Special Advisor to the Joint United Nations Program on AIDS (UNAIDS) in Eastern Europe and Central Asia
09:40–10:00 (20 min)	10:40–11:00 (20 min)	11:40–12:00 (20 min)	12:40–13:00 (20 min)	Coffee Break/Group photo	
10:00–13:00	11:00–14:00	12:00–15:00	13:00–16:00	Session 1: HIV epidemic in EECA and criminalization of HIV transmission, exposure and non-disclosure	Session moderator: <i>Olena Volkova, Judge of the Yuzhnoukrainsk city court of the Nikolaev region (Ukraine)</i> Member of the Forum Steering Committee
10:00–10:20 (20 min)	11:00–11:20 (20 min)	12:00–12:20 (20 min)	13:00–13:20 (20 min)	Introduction and expectations for the meeting	Moderator Co-moderator: Amitrajit Saha , Team Leader, HIV, Health and Development Team for Africa, UNDP IRH

10:20–10:40 (20 min)	11:20–11:40 (20 min)	12:20–12:40 (20 min)	13:20–13:40 (20 min)	Overview of the linkages between law, access to justice, HIV, health and development	Speaker: Ainura Bekkoenova , Human Rights Advisor, Governance and Peace Building a.i., UNDP RBEC
10:40–11:00 (20 min)	11:40–12:00 (20 min)	12:40–13:00 (20 min)	13:40–14:00 (20 min)	Brief overview of HIV and the Law in Eastern Europe and Central Asia	Speakers: Konstantin Voytsekhovich , Advocacy and Management Adviser, UNAIDS RST Prof. Michel Kazatchkine , Special Advisor to the Joint United Nations Program on AIDS (UNAIDS) in Eastern Europe and Central Asia
11:00–11:20 (20 min)	12:00–12:20 (20 min)	13:00–13:20 (20 min)	14:00–14:20 (20 min)	Assessment of the law and practice in relation to criminalization of HIV transmission, exposure and non-disclosure in the Republic of Tajikistan	Speaker: Sharof Alanazarzoda , Supreme Court Judge, Republic of Tajikistan Zavkizoda Soleh Amin , Director of the Judges Training Center under the Supreme Court of the Republic of Tajikistan
11:20–12:00 (40 min)	12:20–13:00 (40 min)	13:20–14:00 (40 min)	14:20–15:00 (40 min)	Issues related to criminalization of HIV transmission, exposure and non-disclosure: Impacts on PLHIV and key populations	Speakers: Alexandra Volgina , Programme Manager, GNP+ Tahmina Haydarova , Director, Network of Women Living with HIV in Tajikistan Timur Abdullaev , UNDP International Consultant
12:00–12:40 (40 min)	13:00–13:40 (40 min)	14:00–14:40 (40 min)	15:00–15:40 (40 min)	Experience of decriminalization of HIV transmission, exposure and non-disclosure: lessons learnt and enabling factors	Speakers: Anatoli Leshenok, Tatyana Zhuravskaya , People Plus Belarus, Representatives of civil society groups working on decriminalization of HIV Justice Zione Ntaba , Judge of High Court, Malawi / Justice Mumbi Ngugi , Judge from Kenya
12:40–12:55 (15 min)	13:40–13:55 (15 min)	14:40–14:55 (15 min)	15:40–15:55 (15 min)	Q&A	Moderator
12:55–13:00 (5 min)	13:55–14:00 (5 min)	14:55–15:00 (5 min)	15:55–16:00 (5 min)	Session closing	Moderator

Day 2 — 16 October 2020, Friday					
Time				Topic	Speakers/Responsible persons
Istanbul, Kyiv, Chisinau	Tbilisi	Dushanbe, Tashkent	Astana, Bishkek		
				<i>Session 2: The judiciary and justice for people living with HIV and key populations</i>	<i>Moderator:</i> Olga Shapovalova , National School of Judges of Ukraine <i>Member of the Forum Steering Committee from Ukraine</i>
09:00–09:05 (5 min)	10:00–10:05 (5 min)	11:00–11:05 (5 min)	12:00–12:05 (5 min)	Session opening	Moderator
09:05–09:30 (25 min)	10:05–10:30 (25 min)	11:05–11:30 (25 min)	12:05–12:30 (25 min)	The important role of judges in the context of protecting the rights of people living with HIV and key populations	Speaker: Olena Volkova , District Judge and Steering Committee member, Ukraine Justice Mumbi Ngugi , Judge from Kenya
09:30–10:30 (1 hour)	10:30–11:30 (1 hour)	11:30–12:30 (1 hour)	12:30–13:30 (1 hour)	Application of the latest scientific evidence and efforts to use modern science in court	Speakers: Elena Vovc , Technical Officer, WHO Europe Sharof Alanazarzoda , Supreme Court Judge, Republic of Tajikistan Mikhail Golichenko , Canadian HIV Legal Network
10:30–10:55 (25 min)	11:30–11:55 (25 min)	12:30–12:55 (25 min)	13:30–13:55 (25 min)	Q&A Discussion	Moderator
10:55–11:00 (5 min)	11:55–12:00 (5 min)	12:55–13:00 (5 min)	13:55–14:00 (5 min)	Session closing	Moderator
11:00–11:20 (20 min)	12:00–12:20 (20 min)	13:00–13:20 (20 min)	14:00–14:20 (20 min)	Coffee Break	
				<i>Session 3: Next steps and closing</i>	<i>Session Moderator:</i> Sharof Alanazarzoda , Judge of the Supreme Court of the Republic of Tajikistan <i>Member of the Steering Committee of the Judges' Forum</i>
11:20–11:40 (20 min)	12:20–12:40 (20 min)	13:20–13:40 (20 min)	14:20–14:40 (20 min)	Plenary Discussion: Next Steps and Opportunities	Moderator
11:40–12:00 (20 min)	12:40–13:00 (20 min)	13:40–14:00 (20 min)	14:40–15:00 (20 min)	Concluding remarks Acknowledgments	Rosemary Kumwenda , Regional HHD Team Leader UNDP Sharof Alanazarzoda , Judge of the Supreme Court of the Republic of Tajikistan Olena Volkova , Judge of the Yuzhnoukrainsk city court of the Nikolaev region Olga Shapovalova , National School of Judges of Ukraine

ANNEX 2: LIST OF PARTICIPANTS

	Country	Name	Title	Organization
1	Georgia	Temur Gogokhia	Chairman	Criminal Law Panel of the Tbilisi City Court
2	Georgia	Ketevan Meskhishvili	Judge / Professor	Tbilisi Court of Appeals / Free University
3	Kazakhstan	Marina Tokanovna Mussabekova	Judge	Almaty regional court
4	Moldova	Ion Guzun	Judge	Supreme Court of Justice
5	Moldova	Vladimir Timofti	Judge	Supreme Court of Justice
6	Moldova	Igor Manascurta	Judge	Supreme Court of Justice
7	Moldova	Vitalie Budeci	Judge	Supreme Court of Justice
8	Moldova	Ion Chirtoaca	Judge	Supreme Court of Justice
9	Moldova	Irina Padurararu	Judge	Supreme Court of Justice
10	Moldova	Radu Grecu	Judge	Supreme Court of Justice
11	Moldova	Victor Sandu	Judge	Supreme Court of Justice
12	Tajikistan	Zafar Nusrat Aziz-zoda	Chair of the Judicial Chamber for Criminal Cases	Supreme Court of the Republic of Tajikistan
13	Tajikistan	Soleh Amin Zavkizoda	Director of the Judicial Training Center	Supreme Court of the Republic of Tajikistan
14	Tajikistan	Sharof Alanazarzoda	Judge	Supreme Court of the Republic of Tajikistan
15	Tajikistan	Salomat Abdushukur Hakimzoda	Secretary of the Plenum of the Supreme Court	Supreme Court of the Republic of Tajikistan
16	Tajikistan	Gulnora Nasrin Vazirzoda	Judge	Supreme Court of the Republic of Tajikistan
17	Tajikistan	Nasiba Yormad Jurazoda	Judge	Supreme Court of the Republic of Tajikistan
18	Tajikistan	Abdukahor Saidmurod Tagozoda	Judge	Supreme Court of the Republic of Tajikistan
19	Tajikistan	Timur Jamshed Khafizzoda	Judge	Court, Dushanbe city, Republic of Tajikistan
20	Tajikistan	Sarfarozi Mizrob Kabirzoda	The First Deputy Chairman of the Court	Ismoil Somoni district, Dushanbe city, Republic of Tajikistan
21	Tajikistan	Behruz Nazarali Shafo	Judge	Court, Shohmansur district, Dushanbe city, Republic of Tajikistan
22	Tajikistan	Shahriyor Mustafozoda	Judge	Court, Sino district, Dushanbe city, Republic of Tajikistan
23	Tajikistan	Nazrullo Tagaibobo Shukurzod	Deputy Chair of the Court	Court, Firdavsi District of Dushanbe, Republic of Tajikistan
24	Tajikistan	Mavjuda Kosimzoda	Judge	Court, Firdavsi district of Dushanbe city, Republic of Tajikistan
25	Tajikistan	Rahimjon Valizoda	The first deputy chairman of the Court	Court, Tursunzade city, Districts of Republican Subordination, Republic of Tajikistan
26	Tajikistan	Gunchagul Tohirjon Toirzoda	Judge	Court, Vakhdat district, Districts of Republican Subordination, Republic of Tajikistan

27	Tajikistan	Fahriddin Dodomatzoda	Judge	Court, Gissar district, Districts of Republican Subordination, Republic of Tajikistan
28	Tajikistan	Iftihor Kurbon Asrori	Judge	Court, Rudaki district, Districts of Republican Subordination, Republic of Tajikistan
29	Tajikistan	Ismoil Rahmatzoda	Deputy Chair of the Court	Court, Sughd region, Republic of Tajikistan
30	Tajikistan	Zafar Safarali Saidshozoda	The first deputy chairman of the Court	Court of Khujand city, Sughd region, Republic of Tajikistan
31	Tajikistan	Abdurahmon Kholdor Yokubzoda	Chairman of the Court	Court, Bokhtar city, Khatlon region, Republic of Tajikistan
32	Tajikistan	Saidrahmon Davlatzoda	Chairman of the Court	Court, the Kushaniyon district of Khatlon region, Republic of Tajikistan
33	Tajikistan	Sukhrob Safarzoda	Head of Department	Supreme Court of the Republic of Tajikistan
34	Tajikistan	Kamol Mavlonovich Turaev	Head of the Information Sector	Supreme Court of the Republic of Tajikistan
35	Ukraine	Olga Shapovalova	Head of training of trainers division / retired Judge of Supreme Court of Ukraine	National School of Judges, Ukraine
36	Ukraine	Olena Volkova	Judge	South Ukrainian City Court, Nikolaev region, Ukraine
37	Ukraine	Oksana Koval	Judge	Sviatoshyn District Court
38	Ukraine	Mykola Mazur	Judge	Supreme Court of Ukraine
39	Ukraine	Oleksandr Korotkyh	Deputy Head of training of trainers division / retired Judge of Supreme Court of Ukraine	National School of Judges, Ukraine
40	Ukraine	Svitlana Muratova	Judge of Kyiv District Court in Kharkiv	Kyiv District Court in Kharkiv
41	Ukraine	Mykola Todorenko	Assistant to Judge	South Ukrainian City Court, Nikolaev region, Ukraine
42	Ukraine	Larisa Kovalchuk	Judge	Vinnytsia City Court of Vinnytsia Oblast
43	Ukraine	Alevtyna Kosar	Judge	Krasnopolskyi District Court
44	Ukraine	Liubomyr Vynar	Judge	Acting head of the Olevskiy District Court Court of Zhytomyr Oblast
45	Ukraine	Ihor Bobuoik	Judge	Malynivskyi district Court of Odesa
46	Ukraine	Maria-Margaryta Pylaieva	Judge	Pechersk District Court
47	Ukraine	Alexander Kovalchuk	Judge	Vinnytsia Court of Appeal
48	Ukraine	Victoria Buchkivska	Judge	Stryi city court of Lviv oblast
49	Ukraine	Viktor Kharchenko	Judge	Semenivskyi District Court of Poltava oblast
50	Ukraine	Iryna Senyuta	Head of the Department of medical law	Danylo Halytskyi Lviv National Medical University

51	Ukraine	Yuliia Gerus	Trainer	National School of Judges
52	Kenya	Mumbi Ngugi	Judge	High Court, Kenya
53	Malawi	Zione Ntaba	Jugde	High Court, Malawi
54	Switzerland	Michel Kazatchkine	Special Advisor to the Joint United Nations Program on AIDS (UNAIDS) in Eastern Europe and Central Asia	UNAIDS
55	Russia	Konstantin Voytsekhovich	Advocacy and Management Adviser	UNAIDS RST
56	Netherlands	Alexandra Volgina	Programme Manager	GNP+
57	Belarus	Anatolij Leshenok	One of the heads of People PLUS	People Plus
58	Belarus	Tatyana Zhuravskaya	Public defender and HIV specialist in courts	People Plus
59	Canada	Mikhail Golichenko	Lawyer and Senior Policy Analyst	Canadian HIV/AIDS Legal Network
60	Denmark	Elena Vovc	"Technical Officer, TB, HIV and Viral Hepatitis programme "	WHO Regional Office for Europe
61	Tajikistan	Tahmina Haydarova	Director	Tajikistan Network of Women Living with HIV
62	Kyrgyzstan	Ilim Sadykov	Public Health Program Coordinator	Soros Foundation
63	Kyrgyzstan	Baktygul Chalgynchyeva	Coordinator of the program "Public Health" of Soros-Kyrgyzstan Foundation; Curator of the project "Street Lawyers"	Soros Foundation
64	Kyrgyzstan	Cholpon Abdimalipova	Project Specialist of the «Effective HIV and Tuberculosis Control in the Kyrgyz Republic»	Soros Foundation
65	Tajikistan	Mutabara Vohidova	National Project Officer	UNODC
66	Tajikistan	Khalilov Nurmahmad	Director	Human Rights Center
67	Tajikistan	Larisa Alexandrova	Expert Lawyer	Human Rights Centre
68	Tajikistan	Mavjigul Azizulloeva	Adolescent Development Specialist (Health)	UNICEF Tajikistan
69	Tajikistan	Maria Boltaeva	UNAIDS Consultant	UNAIDS Tajikistan
70	Tajikistan	Volter Stampe	Head of Programme	GIZ Tajikistan
71	Belarus	Hanna Zakreyskaya	CCM Project Manager	UNDP Belarus
72	Belarus	Andrei Abramiuk	Programme Officer	UNDP Belarus
73	Kazakhstan	Ryssaldy Demeuova	Coordinator	UNDP Kazakhstan
74	Kyrgyzstan	Svetlana Lim	Expert on implementation of programs to reduce human rights-related barriers to HIV and TB services of the UNDP / GF Project	UNDP Kyrgyzstan
75	Kyrgyzstan	Zhenishbek Arzymbatov	Rule of Law and Access to Justice Advisor/Projects Coordinator	UNDP Kyrgyzstan
76	Ukraine	Dorin Rotaru	Health Programme Manager	UNDP Ukraine

77	Tajikistan	Pratibha Mehta	Resident Representative (RR)	UNDP Tajikistan
78	Tajikistan	Sona Orbelyan	GF Programme Manager	UNDP Tajikistan
79	Tajikistan	Nargiza Saparova	Prevention and Scale up Specialist	UNDP Tajikistan
80	Tajikistan	Jamshed Sharopov	Logistics Assistant UNDP HIV/AIDS, Prevention Programme in Tajikistan	UNDP Tajikistan
81	Ukraine	Svilen Konov	Chief Technical Advisor	UNDP Ukraine
82	Uzbekistan	Azamat Salaev	Manager of Rule of Law Partnership project	UNDP Uzbekistan
83	Turkey	Agi Veres	Deputy Regional Director, RBEC	UNDP Istanbul Regional Hub
84	Turkey	Amitrajit Saha	Regional HHD Team Leader, Africa	UNDP Istanbul Regional Hub
85	Turkey	Rosemary Kumwenda	Regional HHD Team Leader, Eastern Europe and Central Asia	UNDP Istanbul Regional Hub
86	Turkey	Ainura Bekkoenova	Regional Human Rights Specialist	UNDP Istanbul Regional Hub
87	Turkey	John Macauley	Regional HHD Programme Specialist	UNDP Istanbul Regional Hub
88	Uzbekistan	Timur Abdullaev	International Consultant	UNDP Istanbul Regional Hub



www.eurasia.undp.org

All rights reserved © 2020 UNDP