

RAPID POLICY ASSESSMENT

HPTN 058

Law on the Books

Acknowledgements

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In this part of the RPA, researchers gather and analyze the law relevant to HIV/AIDS among injection drug users.

For purposes of the RPA, “law” consists of:

- Constitutions and any treaties that have the force of law
- Statutes passed by the national or regional legislature
- Ordinance (statutes) passed by local legislative bodies
- Administrative regulations with the force of law, issued by administrative agencies at the national, regional or local level
- Court decisions interpreting laws or regulations
- Executive orders or decrees with some binding effect issued by executive officers at the national, regional or local level
- Internal documents created by agencies to guide their enforcement or interpretation of laws and regulations
- Guidance on the interpretation of laws issued for the public by an agency or executive body
- Standard operating procedures, manuals or other documents defining enforcement practices, agency interpretation of laws or guidelines for public behavior

Purpose:

The information collected will provide a foundation upon which to build the remaining research of the RPA. The laws you collect define the policy issues to be addressed in qualitative research.

Process:

This tool requires standard legal research using the normal methods and resources in the site country. Recording and analyzing the law data for the RPAR requires the following three steps:

Step 1: Identify laws and obtain the complete citation in correct local format.

As you collect data, compare what you find with the domains below to ensure you are finding all that is required. If you find laws not mentioned below, but which you think may be relevant, include those in domains 9.0.

Because you are collecting a broad range of documents that fall within the RPA definition of “law,” there may be more than one provision applicable to a domain or topics within a domain. For example, there may be both national criminal laws and administrative regulations that deal with possession of heroin or other drugs. Be sure to get the full range of relevant laws.

Indicate the type of the provision --a statute/law, an administrative regulation with the force of law, an executive directive from an agency or official (e.g., a presidential decree), a written policy of an agency without the force of law, a written standard operating procedure or other management directive of a law enforcement agency, or a form of legal guidance issued by a law enforcement agency

Step 2: Copy the law.

We expect that virtually all laws will be available for copying. If not, please hand-copy the most important provisions and provide a more detailed summary in Step 3.

If you find an English translation of the statute, please copy that also.

Step 3: Provide a narrative summary and analysis of the law.

You may wish to create more than one summary box for a domain or topic within a domain.

Make sure your narrative addresses all the key topics in each domain. Note any particularly important elements (e.g., methadone is listed as a controlled substance, or possession of up to a gram of heroin is not a crime)

The purpose of the narrative is to succinctly summarize key points for the final report. Because you will have copies of the law, there is no need for lengthy discussion or detailed paraphrasing of the law.

The Domains of Law in the RPA

1.0 Drug use

- Drug control laws
- Syringe laws
- Needle exchange programs
- Drug treatment

2.0 HIV-specific criminal exposure or transmission

3.0 Criminal justice/procedure

4.0 Right to health care/ right to HIV treatment

5.0 Reportability of HIV, AIDS, and STDs

6.0 HIV testing laws

7.0 Privacy of medical information

8.0 Anti-discrimination provisions

9.0 Other laws identified that influence risk or stigma among drug users in a significant way

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COLLECTION INSTRUMENT

1.0 Opiate Drug use

1.1 Drug use, possession and sale

1.1.1 Identify regulated opiate drugs, quantities, and penalties.

1.1.2 Most countries publish a list or “schedule” of prohibited drugs. Find the most recent version of this schedule and identify which opiate drugs are regulated. Determine the status of those drugs that are relevant to the transmission of HIV and other blood-borne diseases among IDUs. Include at least heroin, opium, and local injectable drugs which are commonly associated with opium-based drugs.

1.1.3 For each relevant drug, determine the minimum quantity (usually by weight) that may legally be possessed. For some drugs there will be no minimum, any detectable trace of the drug presents possible criminal penalties. For others, the schedule may set a threshold below which possession is decriminalized.

1.1.4 Determine where there are non-criminal penalties, such as where possession is punishable by a fine or administrative penalty.

1.1.5 For each relevant drug, determine whether each of the following is criminalized or otherwise penalized and if the law proscribes different penalties for: possession (of what quantity); sale; or manufacture.

1.1.6 For each relevant drug, does the law proscribe other behavior or provide other penalties, such as special penalties for “trafficking”, or being a “drug kingpin”?

1.1.7 For each relevant drug determine whether repeat offenders face different penalties.

1.1.8 If you have not done so already, identify and summarize any available executive decrees, agency policies or other laws relating to drug possession or the enforcement of drug possession laws.

1.1	Drug use, possession and sale
Citation	
Type of	

provision	
Narrative summary	

1.2 Status crimes related to drug use

- 1.2.1 Does the law formally make it a crime to be a drug user?
- 1.2.2 Being in the company of drug users?
- 1.2.3 Other activities related to status as drug user?
- 1.2.4 If you have not done so already, identify and summarize any available executive decrees, agency policies or other laws relating to the status of being a drug user.

1.2	Status crimes related to drug use
Citation	
Type of provision	
Narrative summary	

1.3 Registration of drug users or “addicts”

- 1.3.1 Identify the circumstances, if any, under which a person must be registered with government as a drug user or “addict.”
- 1.3.2 Identify the officials who are authorized or required to identify people to be placed in such a registry (e.e., police, physicians).
- 1.3.3 Identify the officials who are authorized or required to maintain the registry.
- 1.3.4 Identify those who have access to the registry.

1.3	Registration of drug users or “addicts”
Citation	
Type of provision	
Narrative summary	

1.4 Mandatory drug testing of suspected drug users.

1.4.1 Identify the circumstances, if any, under which a person may be tested for drug use without the person's consent.

1.4.2 Identify the process for legally ordering a drug test and what officials are authorized to conduct such testing.

1.4	Mandatory testing of suspected drug users
Citation	
Type of provision	
Narrative summary	

1.5 Drug paraphernalia

1.5.1 Identify any laws that prohibit possession of drug paraphernalia -- syringes, bleach, cookers or other items that can be used with illegal injection drugs.

1.5.2 What are the penalties for possession of drug paraphernalia by drug users?

1.5.3 What are the penalties for sale of drug paraphernalia to drug users?

1.5	Drug Paraphernalia
Citation	
Type of provision	
Narrative summary	

1.6 Regulation of sale or possession of syringes and needles.

1.6.1 Identify any provision other than drug paraphernalia provisions governing the sale or possession of a hypodermic needle and syringe.

1.6	Regulation of sale or possession of syringes and needles
Citation	
Type of provision	
Narrative summary	

1.7 “Propaganda” about, promotion or facilitation of drug use

1.7.1 Identify any law that addresses activities deemed to promote or facilitate drug use.

1.7.2 Identify any law that explicitly addresses harm reduction activities in terms of promotion or facilitation of drug use.

1.7	“Propaganda” about, promotion or facilitation of drug use
Citation	
Type of provision	
Narrative summary	

1.8 Needle exchange programs (NEPs):

1.8.1 Are NEPs authorized by law, forbidden by law, or neither?

1.8.2 If needle exchanges are allowed, identify all provisions governing their approval, operation or other oversight.

1.8	Needle Exchange Programs (NEPs)
Citation	
Type of provision	
Narrative summary	

1.09 Operation of drug treatment programs generally

1.09.1 Identify any law regulating the establishment and operation of drug treatment programs, including what individuals or organizations may operate programs, what licenses or other approvals are required for such programs, and whether and how these rules differ for different types of programs (detoxification, in-patient treatment, out-patient treatment, buprenorphine, methadone, other opiate replacement therapies, behavioral modification, twelve step, or other modalities).

1.09	Operation of drug treatment programs generally
Citation	

Type of provision	
Narrative summary	

1.10 Opiate replacement:

1.11.1 Determine whether methadone, buprenorphine, and any other drug currently used in opiate replacement therapy are “scheduled drugs” or “controlled substances.”

1.11.2 Identify any other provisions regulating the use of opium replacement therapies, including what drugs may be used, purposes of which they may be used (e.g., detoxification, long-term maintenance), dosages, time limits, and periodic drug testing of patients.

1.10	Opiate replacement
Citation	
Type of provision	
Narrative summary	

1.11 Access to drug treatment

1.11.1 Is there a legal right to drug treatment?

1.11.2 Identify any law governing the payment of the costs of drug treatment, including any provisions on government-paid treatment, eligibility for aid and time limitations on state-paid treatment.

1.11.3 Identify any law governing the acceptance of voluntary drug treatment as an alternative to arrest, prosecution or incarceration.

1.11.4 Identify the circumstances, if any, under which a person may be required to undergo mandatory drug treatment.

1.11.5 Identify the procedures under which individuals can be required to undergo mandatory drug treatment, and the officials who are authorized to order such treatment,

1.11	Access to drug treatment
Citation	

Type of provision	
Narrative summary	

2.0 Criminal provisions specific to people with HIV

2.1.1 Does the law prohibit any of the following by a person with HIV?

- Any act that could expose another to HIV
- Exposure with intent to infect with HIV
- Actual transmission of HIV
- Sexual intercourse
- Other sexual contact
- Sharing injection equipment

2.1.2 What is the penalty for each?

2.1.3 Are there any affirmative defenses?

- If the person with HIV uses a condom
- If the person with HIV infection discloses his/her status and obtains consent for contact

2.1	Criminal penalties for knowing exposure to HIV
Citation	
Type of provision	
Narrative summary	

2.2	Other HIV-specific criminal laws
Citation	
Type of provision	
Narrative summary	

3.0 Criminal justice/procedure

3.1 Criminal procedure

3.1.1 Identify the major laws that regulate criminal justice in the areas of police searches and arrests (probable cause provisions and the like).

3.1.3 Are there any other important protections or guarantees not included above?

3.1	Criminal procedure
Citation	
Type of provision	
Narrative summary	

4.0 Right to health care/HIV treatment

4.1 Does the law establish a “right to health care”?

4.1	Right to health care
Citation	
Type of provision	
Narrative summary	

4.2 Right to treatment for HIV/AIDS

4.2.1 Does the law establish a right to HIV/AIDS medicines, specifically anti-retrovirals?

4.2.2 Does the law indicate how to allocate scarce HIV/AIDS medicines, such as by setting up criteria for anti-retroviral treatment or setting priorities for types of patients (for example, pregnant women)?

4.2	Right to treatment for HIV/AIDS
Citation	
Type of provision	
Narrative summary	

5.0 Reportability of HIV/AIDS

5.1 Reporting and registries

5.1.1 Determine whether the law requires reporting of AIDS, and HIV to health authorities.

5.1.2 Who must report cases of infection or disease?

5.1.1 What agency or agencies maintain the registries?

5.1	Reportability of HIV/AIDS and other communicable diseases
Citation	
Type of provision	
Narrative summary	Or use table below

[Reportability Table]

Disease/condition	Local health author	National health author	Hospitals	Other gov. entity (list)	Other non-gov. entity (list)
AIDS					
HIV infection					

5.2 Permitted uses of HIV-status information in registries

5.2.1 Who has access to the data (with individually identifiable information)?

5.2.2 For what purpose can health officials or others use the data?

5.2.3 Is registry information also covered by general privacy laws collected in domain 9, below?

5.2.4 Are there penalties for improper use or disclosure?

5.2	Permitted uses of HIV-status information in registries
Citation	
Type of provision	
Narrative summary	

6.0 HIV testing laws

6.1 Determine whether the law requires informed consent for HIV testing.

6.2 Determine whether the law allows HIV testing without consent for any of the following:

- Narcological patients
- Drug users
- Prisoners
- Other governments employees
- Patients with STDs
- Other groups

6.0	HIV testing laws
Citation	
Type of provision	
Narrative summary	

7.0 Privacy of medical information

7.1 Medical information generally

7.1.1 Does the law protect personally identifiable medical information?

7.1.2 Does the law define personally identifiable medical information?

7.1.3 When may a physician/health care worker disclose personally identifiable health care information to others (such as)

- Health department
- Other health care workers involved in care
- Law enforcement officers who may have been exposed
- Institutional workers who may have been exposed
- Patient's family
- Patient's regular sex partners
- Patient's casual sex partners
- Law enforcement / courts for use as evidence
- Other individuals at risk of infection/exposure
- Researchers
- Others (list)

7.1	Medical information generally
Citation	
Type of provision	
Narrative summary	

7.2. HIV/AIDS information

7.2.1. Identify any law specifically protecting HIV/AIDS information.

7.2.2 Is there a penalty for unauthorized disclosure?

7.2.3 Determine whether and under what circumstances HIV/AIDS information may be disclosed to the health department, health workers involved in care, or law enforcement officers or institutional workers who may have been exposed to infected blood or body fluids.

7.2.4 Determine whether and under what circumstances HIV/AIDS information may be disclosed to the patient’s families, the patients regular or casual sex partners, or other individuals at risk of infection or exposure.

7.2.5 Determine whether and under what circumstances HIV/AIDS information may be disclosed to law enforcement agents or courts for use as evidence.

7.2.6 Determine whether and under what circumstances HIV/AIDS information may be disclosed to researchers.

7.2.7 Identify any other person or agency entitled to receive HIV/AIDS information and the circumstances under which such information may be disclosed to them.

7.2	Protection of HIV/AIDS information
Citation	
Type of provision	
Narrative summary	

7.3 Research data

7.3.1. Identify any law specifically protecting data collected about research participants.

7.3.2 Is there a penalty for unauthorized disclosure?

7.3.3 Determine whether and under what circumstances personal data collected during research may be disclosed to individuals or agencies not participating in the research .

7.3.4 Determine whether and under what circumstances HIV/AIDS information may be disclosed to law enforcement agents or courts for use as evidence.

7.4	Protection of research data
Citation	
Type of provision	
Narrative summary	

8.0 Anti-discrimination provisions

8.1 Specific anti-discrimination protection for people with HIV/AIDS

8.1.1 Does the law specifically prohibit discrimination against persons with HIV/AIDS?

8.1.2 Describe the forms of discrimination prohibited (e.g., employment, public programs, professional services)

8.1.3 What are the enforcement mechanisms and remedies (money damages, fines, etc)?

8.1	Specific anti-discrimination protection for people with HIV/AIDS
Citation	
Type of provision	
Narrative summary	

8.2.1 Discrimination based on disability

8.2.1 Identify any law prohibiting discrimination based on disability.

8.2.2 Describe the forms of discrimination prohibited (e.g., employment, public programs, professional services)

8.2.3 What are the enforcement mechanisms and remedies (money damages, fines, etc)?

8.2.4 Does the definition of disability encompass HIV/AIDS or drug addiction?

8.2	Discrimination based on disability
Citation	
Type of provision	
Narrative summary	

8.2 Other anti-discrimination laws

8.3.1 Identify any other anti-discrimination laws that are or could in the future be construed to provide protection to people with HIV or drug users

8.3.2 Describe the forms of discrimination prohibited (e.g., employment, public programs, professional services)

8.3.3 What are the enforcement mechanisms and remedies (money damages, fines, etc)?

8.3	Other anti-discrimination laws
Citation	
Type of provision	
Narrative summary	

9.0 Other laws that influence risk or stigma among drug users

9.1 Document any other laws identified by research that are applied to target groups in way that influences their risk of HIV or the stigma of HIV or drug use in a significant way.

9.0	Other laws that influence risk or stigma among drug users
Citation	
Type of provision	
Narrative	

