Needs Assessment of the Legal Needs of People Living with HIV and Vulnerable Populations in Papua New Guinea

February 2011
Acknowledgements

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Financial support was provided by AusAID and by the OPEC Fund for International Development (OFID). OFID is the development finance institution of OPEC member states, established to provide financial support for socio-economic development, particularly in low income countries.

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Published by:

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1. INTRODUCTION

1.1 IDLO in PNG

The International Development Law Organization (IDLO) is a Rome-based, inter-governmental organisation dedicated to promoting the rule of law and good governance in developing countries (www.idlo.int).

In Papua New Guinea (PNG), the IDLO HIV and Health Law Program is working with the Office of the Public Solicitor (OPS) to improve access to legal services for people living with HIV (PLHIV) and populations vulnerable to HIV (vulnerable groups)¹ (HIV Law Project).

The HIV Law Project is supported by AusAID and the OPEC Fund for International Development. The HIV Law Project supports the priorities set out in the National HIV and AIDS Strategy 2011-2015 (NHS) under the strategic direction of PNG’s National AIDS Council (NAC).

1.2 Rational for HIV Related Legal Services

Discrimination against PLHIV and vulnerable groups impedes HIV prevention by discouraging HIV testing and limiting access to HIV prevention, care and treatment services. Legal information and services can empower PLHIV and vulnerable groups to assert their rights, ultimately advocating for social change and the belief that discrimination is unacceptable.

The law can set normative standards which make HIV related discrimination unacceptable. Legal education and interventions can help people living with HIV and from key populations to assert their rights, and social mobilization and publicity can deter discrimination against others.

1.3 Background

In June 2008, IDLO initiated a scoping process with organizations and international agencies working in the HIV sector in PNG, with a view to discussing the context of the epidemic and possible areas of intervention. IDLO met with representatives of the Law and Justice Sector, the United Nations Development Programme (UNDP), the PNG Business Coalition Against HIV & AIDS (BAHA), the University of Papua New Guinea, School of Law (UPNG), and the Department of Justice and Attorney General’s Office. Stakeholders agreed that ensuring the rights of vulnerable groups and PLHIV is critical to effectively addressing the HIV epidemic in PNG.

In early 2009, IDLO initiated the HIV and Health Law Program (2009-2012), with core funds and financial support from the OPEC Fund for International Development (OFID).

In February 2009, IDLO returned to PNG to follow up the 2008 scoping mission and discuss the viability and demand for a HIV related legal services project. IDLO met with the Secretary of the PNG National Department of Health, representatives from UNDP, the PNG-Australia HIV and AIDS Program - Sanap Wantaim and the Correctional Service to garner feedback on the proposal. IDLO also met with the First Secretary of the Law and Justice Sector and HIV/AIDS Advisors to the Law and Justice Sector. IDLO presented

¹ In the context of PNG, and for the purposes of this Needs Assessment Report, vulnerable groups includes men who have sex with men, men and women engaged in selling sex, transgenders and women (particularly women subject to domestic violence).
stakeholders with a summary of the project, outlining objectives and main activities; involved stakeholders expressed their full support for the project.

In March 2010, IDLO received AusAID support to implement a two-year HIV related legal services project in PNG.

1.4  IDLO Partnerships in PNG

IDLO’s early scoping missions and activities (2008-2009) were supported by the UPNG School of Law, led by Professor Dean John Luluaki.

IDLO has worked closely with the national positive people’s network, Igat Hope, throughout 2010. Igat Hope Stigma and Discrimination Officer, Mr Don Liriope led a key consultation activity under the Needs Assessment, the Positive People’s Workshop on HIV and the Law (Positive People’s Workshop) (19 August 2010).

The Save the Children, Poro Sapot Project (Poro Sapot) conducts HIV & STI intervention and provides support to women and men in sex work, transgenders (palopas) and men who have sex with other men. Poro Sapot provided a venue for both the Positive People’s Workshop and the broader Stakeholder Consultation (24 August 2010). Poro Sapot staff and peer counselors have been actively involved in all IDLO consultation activities and have provided valuable inputs for the Needs Assessment.

The implementing partner for the HIV Law Project will be the Office of the Public Solicitor (OPS). Constitutionally established and mandated, OPS is an independent, public legal aid institution with the mission ‘to provide independent, accessible, quality legal assistance for socially and economically disadvantaged persons and minority groups’.

IDLO engaged a national lawyer, Mr Samuel Olewale, to complete an environmental scan to identify legal services for people living with HIV (PLHIV) and groups vulnerable to HIV in PNG. Mr Olewale was introduced to IDLO by a positive person, on the basis of his connections to the positive community. Mr Olewale has been an active contributor to all IDLO project activities to date.

2.  THE NEEDS ASSESSMENT

2.1  Objectives

The objectives of the Needs Assessment were to:

1. Identify existing HIV related legal services in PNG.
2. Investigate gaps in existing legal services in PNG.
3. Identify the legal needs of PLHIV and vulnerable groups in PNG.

This Needs Assessment Report contains the information derived from the Needs Assessment. This critical information was utilized to support and inform the design of the IDLO HIV and Health Law technical assistance project in PNG.

2.2  Needs Assessment Components

The Needs Assessment was comprised of three components:

1. an environmental scan conducted by National Consultant Mr Olewale (August-November 2010); supported by additional informal discussions and research conducted by IDLO Legal Officer, Ms Naomi Burke-Shyne (April-November 2010);  
2. a one-day Positive People’s Workshop, led and facilitated by Igat Hope, co-hosted by Poro Sapot and IDLO (19 August 2010);  
3. a half-day Stakeholder Consultation, co-hosted by Poro Sapot, Igat Hope, UPNG, OPS and IDLO (24 August 2010).

The outcomes and findings of each of these components is outlined below.
3. HIV IN PNG

Estimates from the PNG National Department of Health and the National AIDS Council Secretariat (NAC) in August 2010, indicate that approximately 0.92% of the adult population in PNG was living with HIV in 2009. This prevalence rate is stands out in the Pacific region, where prevalence rates tend to be below 0.1%.

The epidemic in PNG is generalized, with women accounting for 59% of cases and men accounting for 40% of cases. Transmission occurs primarily through heterosexual transmission; although in more than half of the reported cases (51.4%), there is no information provided on route of transmission. Populations most vulnerable to HIV include women, sex workers, men who have sex with men (MSM) and mobile populations. Injecting drug use accounts for less than 1% of reported infections.

HIV tends to cluster around concentrations of population, transport routes and rural enclave enterprises where there are active markets for the exchange and sale of sex. Ninety three percent of all reported cases are from urban and peri-urban areas, specifically from eight provinces: the National Capital District (40% of all cases), Morobe, Madang, and the five highlands provinces (linked by the Highlands Highway). Recent estimates indicate that the epidemic is increasingly spreading to rural areas, where 85% of the population of PNG lives.

4. THE LEGAL AND POLICY ENVIRONMENT PNG

The legal and policy environment in PNG is, on paper, rights focused; the challenge lies in implementation of laws and policy.

4.1 Constitutional Rights and Legislation

The Constitution of PNG is founded on the principles of equality and participation. Fundamental rights enshrined in the body of the document, include the right to life, liberty, association and conscience, the right to freedom from inhuman treatment, and the right to the protection of the law. PNG has ratified International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child (CRC).

PNG passed HIV specific legislation in 2003, the HIV/AIDS Management and Prevention Act 2003 (HAMP ACT), with a view to supporting prevention initiatives and the spread of HIV/AIDS, and protecting the rights of PLHIV and vulnerable groups. The HAMP Act puts in place provisions to protect the privacy, liberty and mobility rights of ‘persons infected or affected by HIV/AIDS’ and takes steps towards creating a legal enabling environment (a social and legal environment in which where persons are encouraged utilize voluntary testing, counseling and support services).

Importantly, the HAMP Act:

- empowers Courts to impose penalties for breach of the Act (monetary fines, jail terms or both);
- prohibits mandatory HIV testing;

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2 ‘Papua New Guinea releases new HIV prevalence estimates’ 26 August 2010, UNAIDS Feature Story
3 UNGASS 2010, Papua New Guinea Country Progress Report
4 2009 AIDS Epidemic Update; UNAIDS, WHO
5 PNG NACS 2010
6 The HAMP Act was brought into effect in 2004.
• makes it unlawful to stigmatize or discriminate against a person on the grounds that the person is infected or affected by HIV/AIDS;
• safeguards confidentiality; and
• empowers affected persons to seek redress from the Courts.

The HAMP Act also criminalizes transmission.

Notwithstanding the fact the HAMP Act provides important protections and rights for people infected and affected by HIV; general knowledge about the Act is poor and implementation has been limited in the six years since it was enacted into law.

4.2 Policy

The National AIDS Council Secretariat’s National HIV and AIDS Strategy 2011-2015 (NHS) recognizes the relationship between the law and human rights and the HIV epidemic, listing respect for human rights as one of its guiding principles. The NHS sets out three priority areas: prevention; counseling, testing, treatment, care and support; and systems strengthening – the latter of which covers the legal environment, cross cutting issues and stigma and discrimination.

• The Legal Environment: The strategy recognizes the challenges posed by weak enforcement of the HAMP Act and proposes that knowledge and understanding of the relevant legislation be promoted amongst partner organizations, leaders and communities. The NHS also takes a strong stance on criminalization, noting that laws that criminalize sex work and same-sex practices create barriers to people accessing services and reinforce vulnerability, stigma and discrimination, and calls for renewed efforts to support law reform.

• Stigma and Discrimination: the NHS acknowledges the significant adverse affect of stigma and discrimination on the lives of PLHIV and vulnerable groups and argues that reducing stigma and discrimination is essential in controlling the HIV epidemic.

5. NATIONAL CONSULTANT ENVIRONMENTAL SCAN

Mr Olewale was engaged to conduct an environmental scan to:

1. Identify existing legal services for people with HIV and groups vulnerable to HIV in PNG;
2. Identify the most common legal issues faced by PLHIV and vulnerable groups;
3. Identify barriers to access to justice;
4. Assess community knowledge of legal services, access to justice and how communities resolve legal issues.

Mr Olewale’s TOR are contained at Annex 1. Ms Burke-Shyne conducted additional, informal interviews and research in April and May 2010.

7 Stigmatise is defined to mean: to vilify, or to incite hatred, ridicule or contempt against a person or group on the grounds of an attribute of the person or of members of the group, by – (a) the publication, distribution or dissemination to the public of any matter; or (b) the making of any communication to the public, including any action or gesture, that is threatening, abusive, insulting, degrading, demeaning, defamatory, disrespectful, embarrassing, critical, provocative or offensive;

8 The NHS notes devastating consequences of stigma and discrimination, listing job loss, violence, social exclusion, denial of care and emotional support (often from their own families and wantoks), and the additional fears faced by women, of losing their children and homes due to customs related to marriage and land rights.
Methodology
The environmental scan comprised of interviews with representatives from selected organizations and networks operating in the HIV sector. Interview questions were designed by IDLO in consultation with UPNG.

Key Findings
Legal services for PLHIV and vulnerable groups
There are limited legal aid services for PLHIV and vulnerable groups currently available in Port Moresby. There are in fact, extremely limited legal aid services available on an overall basis, these legal aid services are:

1. OPS;
2. the Legal Training Institute (LTI) Legal Aid Program (between May and October annually); and
3. UPNG LEAP Program (sporadically, during student’s summer vacation – November to January).

The Office of the Public Solicitor, headquartered in Port Moresby, has eight branch offices and ten regional legal aid desks (manned by paralegal staff). LTI and UPNG services have not reach beyond the capital.

There is no formal non-governmental legal aid service provider in Port Moresby. Some individual lawyers and private practice law firms take on pro bono cases on a limited and ad hoc basis. There is not a strong pro bono culture amongst lawyers in PNG.

Legal issues faced by PLHIV and vulnerable groups;
Stakeholders reported the legal issues most commonly experienced by PLHIV and vulnerable groups were:

- isolation or social exclusion;
- denial of access to health and social facilities by authorities;
- verbal and physical abuse of PLHIV and vulnerable groups;
- police abuse and maltreatment of PLHIV and vulnerable groups;
- pimping and prostitution;
- negligence of wives and children; and
- marital abuse and rape.

Barriers to Access to Justice
Stakeholders indicated the following challenges to accessing legal services:

- they are afraid to approach legal service providers because of their status, for fear of being shamed, abused or discriminated against;
- they cannot afford the excessive fees charged by private law firms; and
- legal aid at OPS is time consuming and a shortage of lawyers at that office causes delays in processing their cases.

Stakeholders indicated that they generally dealt with legal issues by bringing them to the attention of authorities such as the police or community leaders (due to accessibility). However, stakeholders went on to state that police tend to refer people back to their communities for mediation; community mediation tends to be biased or discriminatory when dealing with PLHIV and/or vulnerable groups. Matters are either not addressed or handled to the disadvantage of the claimant.

Community knowledge of legal services and how communities resolve legal issues.
Mr Olewale reported that stakeholder organizations have some knowledge of legal services. OPS was the most frequently identified legal service provider. Some stakeholders named the Ombudsman Commission Anti-Discrimination Unit (ADU) and the Individual and Community Rights Advocacy Forum (ICRAF) (which is no longer in
operation). Notably, the Ombudsman Commission ADU has the power to investigate discrimination and make recommendations but does not represent clients.

The Interim and Final Environmental Scan Reports submitted by Mr Olewale are contained at Annex 2.

**HIV Related Cases and Test Litigation**

Additional research and informal interviews indicated:

- OPS has records (dated May 2010) of managing eight HIV related legal cases since 2006; one commenced in 2006, seven commenced in 2009 and 2010 (data contained at Annex 3).
- LTI managed three HIV-related legal cases in 2010, and has managed a small number in previous years.

Some of these cases were tried in Court and are now awaiting judgment; some cases were resolved out of Court.

**6. POSITIVE PEOPLE’S WORKSHOP**

The Positive People’s Workshop was facilitated and led by Mr Liriope, Igat Hope; co-hosted by IDLO and Poro Sapot (conference room and facilities provided by Poro Sapot).

Thirty participants attended the Workshop (17 men, 9 women, 4 transgender), representing all five of the major positive networks in Port Moresby: Women Affected by HIV/AIDS (WABHA), Positive Care Foundation (PCF), Friends Ministry Association (FMA), ITA Gini Moresby, Palopas (MSM & transgender people); as well as representatives from two key service providers Poro Sapot and Hope Worldwide.

**Methodology**

Mr Liriope selected six suitable individuals from each network, three old members and three new members. The Workshop was comprised of short presentations, plenary discussion and group work, with an emphasis on participation and interaction. Participants were prompted to discuss the following matters throughout the course of the day:

- identify legal issues they faced
- explain how they/their peers/their network dealt with these issues?
- on this occasion did you seek legal advice? if not, why not.
- were you referred to other stakeholders to assist you with the legal assistance?

**Participant Input**

*Legal issues faced by participants*

Networks listed their key legal concerns and issues as follows:

- **Palopa:** rape, verbal abuse, physical abuse, sexual abuse, discrimination in the workplace, healthcare services refused.
- **WABHA:** rejection by families and related housing issues and security issues, lack of space at hostels and drop in centers to house women (women forced to sleep on the street), verbal abuse, stigma against children, discrimination in the workplace, lack of police response to complaints (women referred to community leaders), healthcare services refused and health workers discriminate against positive women.
- **Friends Ministry Association:** rejection by families, stigma and discrimination, violence within the family, discrimination by work colleagues (work colleagues will not share utensils with PLHIV), weak law enforcement, confidentiality and gender inequality.
PCF: discrimination within the family (fewer resources allocated to PLHIV), child labor, verbal abuse, discrimination in the workplace (termination or rejection of job applications, failure to promote or demotion of positive people), lack of response by police to complaints, sexual abuse, bribery, healthcare services refused, confidentiality and disclosure and discrimination in the healthcare sector.

Ita Gini Moresby: rejection by families, discrimination in the workplace (terminated when sick), police abuse, lack of police response to complaints, disclosure (incorrect information about status given), mistreatment within the healthcare system, verbal abuse, vilification and physical assault.

Hope World Wide and Poro Sapot: rejection by families, forced marriage, bride price ownership, criminalization of sex between men and sex work, discrimination in the workplace (failure to implement workplace HIV policies) disclosure of status (by police), police abuse (sexual), no legal representatives at police station, mistreatment within the healthcare system (wrong prescriptions given) and physical and verbal abuse in public.

How participants dealt with legal issues

When asked how they dealt with the legal issues, there was a clear indication that peer support is the first (and often the only) port of call for PLHIV experiencing challenges of any kind. Participants shared stories of leading by example, educating family members and communities, and assisting peers with disclosure.

In plenary discussion, there was no clear answer to the question ‘in what circumstances would you go see a lawyer? – participants explained they would revert to peer networks and organizations.

Key Findings

- The major legal issue to emerge from the Workshop was mistreatment within the health care system – including rejection/refusal to treat, discrimination, poor treatment and deliberate malpractice.
- The debilitating impact of stigma and discrimination upon PLHIV was apparent throughout the day – causing family rifts, social isolation, hardship and significant security issues.
- Other key legal issues to emerge included physical and sexual assault; police abuse and misuse of power; breach of confidentiality; discrimination in employment settings including rejection of applications, unlawful termination of employment and discriminatory behaviors; the criminalization of homosexuality; the weak rule of law in PNG; and broader public/social stigma and discrimination.
- Some participants voiced an interest in knowing more about their rights/what the law was in specific situations (e.g. in hospital).
- Participants responded well to the idea of a strong referral network (from peers to networks to lawyers).
- Participants noted a recent reduction in police violence in Port Moresby related to Poro Sapot’s work with police at 45 sites in the National Capital District.

See Annex 4 for a table detailing each network’s priority legal issues. Annex 5 contains Mr Liriope’s Workshop Report, including further examples and details of participant input.

7. STAKEHOLDER CONSULTATION

The Stakeholder Consultation was co-hosted by Igat Hope, Poro Sapot, UPNG and OPS. Twenty one participants attended (10 men; 11 women) including representatives from OPS, AusAID, PNG Business Coalition Against HIV/AIDS, Coalition for Change PNG, the PNG-Australia Law and Justice Sector Program, National Judicial Staff Service, the Legal Training Institute, Poro Sapot, UPNG School of Law and WABHA. Representatives of NACS, Anglicare STOPAIDS and the Family Sexual Violence Action Committee were invited but unable to attend.
Methodology

Stakeholders and presenters from both the Law and Justice Sector and the HIV sector were invited to the Consultation, with a view to generating dialogue and building relationships between these groups. The half-day was broken up into short sessions with allocated group discussion time (and break time) to facilitate maximum interaction amongst participants.

- Poro Sapot presented on HIV related legal issues from the perspective of MSM and sex workers.
- Professor Dean John Luluaki, UPNG; Mr Olewale, National Consultant; Ms Suzanne Unumba, OPS, and Ms Burke-Shyne, IDLO, spoke briefly on the law and HIV related legal issues from a legal perspective.
- Mr Liriope, Igat Hope, reported on the outcomes of the Positive People’s Workshop.

Stakeholder Input

Legal issues- from the perspective of Poro Sapot peer counselors

The Poro Sapot presentation outlined eight legal issues commonly faced by MSM and sex workers: physical and sexual abuse, stigma and discrimination, police abuse, pimping, blackmail, welfare issues, enhanced susceptibility to crime (theft, robbery) and the criminalization of sex between men and sex work. The presentation was broken up, at relevant points, with short real life stories and experiences of the Poro Sapot peer counselors. These stories illustrated the grave impact of stigma, discrimination and HIV related legal issues upon PLHIV and vulnerable populations:

- The story of a man in Goroka was stabbed and reported it to the police, only to be told that the stabbing was the man’s fault because he was gay. The man was later stabbed a second time, but did not return to the police station to report the incident.
- The experience of a positive woman was rejected by her family and forced to live under the family home; these conditions resulted in the death of the women and her baby.
- The story of an older women who was selling a younger girl for sex, keeping the majority of money earned. Poro Sapot provided support for the girl, helped her make arrangements for housing and treated her for multiple STIs at the Poro Sapot clinic. Even with this support, the young girl ran away and lost contact with Poro Sapot.
- The story of two men who agreed to meet, then had consensual sex. One man later used the situation to blackmail the other man.
- An incident which occurred in mid 2010, where a police vehicle took sex workers and clients from a guesthouse to a point outside the city, and forced girls to strip off and climb trees while the police photographed them. The police then forced clients to have sex with the girls in front of them. When Poro Sapot staff encountered the police after the incident; the police said ‘it’s good you’re here – teach these girls about HIV.’ The Poro Sapot formal police report appeared to have had no impact at the time of the Stakeholder Consultation.

Legal issues – from the perspective of lawyers

It was acknowledged that there is a lack of expertise and experience in dealing with HIV related matters on the part of lawyers. Although the HAMP Act has been in place a number of years, there have been relatively few cases brought to trial under its provisions. There is a need for capacity building and sensitization amongst lawyers.

Examples of HIV related cases dealt with by lawyers to date include cases related to:

- stigmatization (within a family) and related claim for compensation (successful on default judgment);
- a request for a restraining order (preventing sex prior to a HIV test);
• an incident where a positive person was held in police custody and sought legal assistance for release on the ground that he was running out of ARV (the application to the police was successful); and
• complaints of police abuse.

Lawyers at the stakeholder consultation were not aware of any charges of transmission of HIV (under the HAMP Act) proceeding to trial at the date of the Stakeholder Consultation.

Group Discussion

In group sessions, stakeholders discussed:

• the issue of rape and sexual assault, consent and force, rape within marriage (dealt with outside the Criminal Code) and rape of a man by a man (which is considered to be an offence on both the part of the victim and the perpetrator under the sodomy provisions of the Criminal Code);
• the fact that complex social and family issues are distinct and do not detract from legal rights;
• the fact that female sex workers live in fear of the police; and that complaints made by female sex workers to the police are not treated seriously;
• the issue of respect for rights, which is believed to be improving at higher levels (leadership and government). Notable the response rate to abuses is poor and front line response remains poor;
• the fact that a special police unit, a Family Sexual Violence Unit was created approx two years ago but does not have the capacity to address complaints of the police (stakeholders indicated that the Unit is staffed by approx four people). Stakeholders also noted that not all police officers abuse their power or violate the rights of community member.

Challenges faced by PLHIV and vulnerable populations in accessing justice

Stakeholders stated that vulnerable populations face the following challenges in accessing justice:

• stakeholders have limited knowledge of their legal rights;
• many people do not know where to seek help;
• referral mechanisms between service providers are weak;
• paper work, use of English language and the cost of pursuing legal issues represent significant deterrents;
• cases are often handed out of court and taken over by men (the heads of family units or communities) – often to the detriment of the claimant.
• the shame associated with being part of an illegal group represents a significant barrier.

What motivates people to go to see a lawyer? What do people want from a lawyer?

Stakeholders expressed that people sought justice in order to create safety, respect and fairness and proposed a broad range of reasons and motivations for going to see a lawyer, including: seeking justice; seeking to enforce rights; seeking compensation or punishment; seeking to return a situation to normal; seeking legal assistance to resolve family law issues (child custody and divorce).

People reported they wanted the following things from a lawyer:

• Recognition and acceptance.
• Information and education about legal rights.
• A guide to legal services and processes – what can clients expect?
• Legal advice and representation, in Court and in informal settings/forums.
• More specifically, people want more information about their rights in specific situations – e.g. what are my rights in hospital?
• There was also demand for restraining orders/interim protection orders.
Key Findings

- The issue of police abuse emerged as the primary issue amongst this group, in contrast the Workshop participant’s focus on health care providers.
- Groups highlighted that people did not know their rights.
- Other legal issues identified in group discussion were rape and sexual assault (including rape of men and sodomy), physical assault, verbal abuse and broader mistreatment and abuse by service providers (both police and health service providers).
- The Poro Sapot presentation listed the following legal issues as most commonly faced: physical and sexual abuse, stigma and discrimination, police abuse, pimping, blackmail, welfare issues, enhanced susceptibility to crime (theft, robbery) and the criminalization of MSM and sex work.
- Lawyers emphasized the broad lack of expertise and experience in dealing with HIV related legal issues in PNG.

8. KEY THEMES EMERGING FROM THE ASSESSMENT

Key Themes Emerging from Needs Assessment Activities

The legal issues which are of greatest concern to PLHIV and vulnerable groups include:

- Mistreatment within the health care system – including rejection/refusal to treat, discrimination and poor treatment.
- Police abuse, misuse of power and the law.
- Physical and verbal abuse, rape and sexual assault.
- Stigma and discrimination, broadly.
- Discrimination and stigma within the family and in the community.
- Discrimination in the work place including rejection of applications/termination of employment.
- Breach of confidentiality.
- Criminalization of sex work and sex between men.
- Mistreatment by service providers generally.
- The criminalization of men who have sex with men and sex workers.
- Pimping.
- Blackmail.
- Welfare issues.

Critical challenges to access to justice for PLHIV and vulnerable groups include:

- People do not know their rights.
- People do not know where to go to get legal assistance; referral pathways are weak.
- There are few accessible/affordable legal service options in Port Moresby.
- People, particularly PLHIV and vulnerable groups, experience feelings of hopelessness and fear.
- There is weak enforcement of the law.
- Service providers lack awareness of the law and rights, service providers are not held accountable for their actions and are often not sensitive to the issues faced by PLHIV and vulnerable groups.
- The Court system does not protect confidentiality.
- Lawyers and legal service providers have limited experience dealing with HIV related issues.
- With little knowledge of the law, it is difficult for people to distinguish between what is unfair and what is unlawful/against the law.

What do Stakeholders want from a Lawyer?

Stakeholders at the Stakeholder Consultation expressed that people sought justice in order to create safety, respect and fairness. Stakeholders emphasized that people
wanted the following, from a lawyer: recognition and acceptance, information and education about legal rights, legal advice and representation (noting a demand for restraining orders/interim protection orders).

9. NEXT STEPS
Information gathered during the Needs Assessment informed the design of the HIV Law Project. IDLO and OPS are currently finalizing implementation arrangements and intend to commence work in early 2011.
Annex 1: Environmental Scan – National Consultant Terms of Reference

Terms of Reference

1. Review draft interview questions below:
   a. What are the most common legal issues that your community/your clients face?
   b. Do you/your community/your clients know of law firms or legal services that deal with these issues?
   c. If yes, have you/ your community/your clients used these law firms or legal services? If not, why not?
   d. How do people resolve their legal issues if they don’t use lawyers?

2. Conduct interviews with representatives from organizations and networks below.

3. Present/discuss the findings from initial interviews at PNG Stakeholder Consultation on 24 August 2010.

4. Present a written report of the findings of interviews by Monday 2010 September 2010.

List of Stakeholders to be Interviewed:


Subject to time constraints, adapt the interview questions to interview representatives from the following organizations: Law Reform Commission of PNG, Ombudsman Anti-Discrimination Unit, Global Fund to fight AIDS, Tuberculosis and Malaria, PNG Law and Justice Sector and the Department for Community Development, especially its Human Rights Desk.
Annex 2: National Consultant – Environmental Scan Interim Report

Part 1 National Consultant – Environmental Scan Interim Report

Author: Mr Samuel Olewale

I have made contacts with all stakeholder organizations. I have made close contacts with the following stakeholder organizations:

- Anglicare stop aids - Marcia Lalinoe- Manager, Care & Counselling,
- Poro Support Peer Counselors - Christopher Hershey Project Manager, Parker Hou (Project Officer)
- Veronica , Family and Sexual Violence Action Committee,
- National Aids Counsel Secretariat,
- Ombudsman Commission Anti-Discrimination Unit,
- Department for Community Development- Human Rights Desk.

Because of the sensitivity of the issue we are dealing with, it took me at least two days each for me to actually get to speak with representatives of these organizations. I have also written letters to each of these organizations explaining the purpose for the interview.

My general observations from my conversations with individuals to date are:

Q1. The legal issues faced by vulnerable groups include:

Verbal and physical abuse from the community; funny and harsh behavior from the public towards the vulnerable group which discriminates and stigmatizes;

Q2. Knowledge of Stakeholder Organizations or their Clients have of law firms or legal services that deal with these issues:

Vulnerable group seem to have no knowledge of their legal rights. They have no knowledge of law firms and legal services that provide legal services that deal with these issues.

Q3. No knowledge of law firms and legal services that deal with these issues.

They know whether they deal with these issues; because of their status, they are too shy to come out; because it is costly exercise of to go out seeking/engaging lawyers.

Q4. How do they deal with these issues if they don't use lawyers?

These issues are raised and even brought to authorities, the Police being the most easily accessible but then the police refer them back to their communities for mediation; community mediation is non beneficial to the vulnerable group as they are not redressed.

Interim Comments:

The above are the common responses that each of the stakeholder organizations have provided pertaining to their clients/vulnerable group.

Community mediation has been resorted to by the Police and the community as being the forum to address these issues and to redress victims (vulnerable group). However,
this process is not compensatory towards the victims for the fact that they do not enjoy the same rights and the freedom as every other non vulnerable person.

The above being the case, there is now a need for:

1. Enforcement of the HAMP Act; and

2. A permanent legal aid service available to this vulnerable group to deal with the daily legal issues this group faces.

Part 2 National Consultant – Environmental Scan Final Report

Introduction

The HIV epidemic was first discovered in Papua New Guinea (PNG) in the early 1980s. Since then, having being known to the general populace as a new and rare kind of disease, no body, including the State Agencies paid much attention to it.

It was not until the epidemic spread like wild fire across the nation resulting in increased number of deaths. Noting the grave nature of the epidemic and the lack of availability of appropriate treatment and facilities through PNG, it became a cause for concern to the Department of Health and other State Departments.

Over the last twenty five years, the PNG National Government sought and employed measures such as HIV/AIDS awareness and the National Aids Council and other agencies within the Government and Non-Government Organizations to help prevent the spread of the epidemic. When these preventive measures were put in place, new related problems arose by way of social and legal issues.

Today, as a result of the spread of the HIV and AIDS epidemic, people are being marginalized resulting in them being vulnerable to HIV. Social issues such as stigma and discrimination neglect and isolation against the People Living with HIV (PLHIV) is a norm in PNG societies. There are constant verbal and physical abuse against PLHIV, people affected by HIV and the vulnerable group.

Denial to access to health and social services by PNG state agencies is an outright abuse of human rights. The fundamental rights of the people as enshrined in the PNG Constitution are constantly being abused by individuals, organizations and state agencies. The constant abuse of rights of the vulnerable group of people raises legal issues which are not adequately addressed.

As a result of the above issues, in the last ten years, an urgent need for establishment a legal framework to address such legal and social issues. The PNG Government attempted to enact laws such as the HIV and AIDS Management and Prevention Act (HAMP Act) to promote and protect the rights of people living with HIV (PLHIV), people affected by HIV and the key population. However, these legislation and government agencies such as National Aids Council (NAC) are not effective when it comes to security or protection and redress on the part of the PLHIV and people affected by HIV.

There is now, an essential need for establishment of proper or formal legal services that will cater for social and legal needs of the PLHIV, people affected by HIV and the vulnerable.

The preceding paragraphs give an insight into the major legal issues that face organizations both in the government sector and private sector and the non government funded organizations on a daily basis as a result of an environment scan carried out on these organizations.
Processes

In an attempt to complete this report or environment scan, I did my background search to keep my well abreast of International Development Organization (IDLO) and its work. I went into the IDLO website and obtained very valuable information. I was fortunate to have access to the "Toolkit: Scaling Up HIV-Related Legal Services" which provided me with valuable information on my research. In fact, I had the whole tool kit printed out and bound for my purposes.

I was tasked to interview about thirteen stakeholder organizations. Eight of whom were non government organizations and they included Anglicare Stop AIDS, Poro Support Peer Counselors, Friends Foundation, Family and Sexual Violence Action Committee, Individual and Community Rights Advocacy Forum, UNICEF and Catholic HIV/AIDS Ministry and Global Fund to fight AIDS, Tuberculosis and Malaria. I was also tasked to interview five government departments and they included Law Reform Commission, Ombudsman Commission Anti-Discrimination Unit, PNG Law and Justice Sector, Department for Community Development- Human Rights Desk (Environment & HIV AIDS section) and the National AIDS Council and its Secretariat.

In order to begin my interviews, I enquired first through telephone and approaching these organizations in person. Due to the sensitivity of the issues involving my interview questionnaires, key people within these organizations were not freely coming out to talk to me. I had to introduce myself and to explain to them why I was there and the need to have the interview with them.

Without any proper identification to show I was representing IDLO, I was forced to write to these organizations explaining the purpose of my interview and what was required of them, in terms of their availability and the responses to my questionnaires. Copies of all letters are attached with this report as required by IDLO.

I was tasked to complete the environment scan within ten days. However, due to non-availability of key people from most of the stake holder organizations, I was not able to complete my report within the required period on September 2010. It took me almost three months to come up with this report.

On the 24th of September 2010, I had the benefit of attending my first Stakeholder Consultation Workshop. It was a learning experience for me. In the course of my attendance, I was able to have most of my interview questionnaires answered. Most representatives of stakeholder organizations were in attendance and I learned a lot from their experiences.

In the last two months, since I was still employed by my current employer [Rimbunan Hijau (PNG) Ltd] I did not have the time to complete my report within time. I made appointments to meet with most key people from stake holder organizations, but some were not available on the day of our meetings and I had to try to meet others but then I realized I had run out of time.

I only verbally spoke with key persons from stakeholder organizations to set appointments but was not able to actually conduct the interviews. Of the listed stakeholder organizations, I have only formally interviewed three key people from three stake holder organizations and they are, Patrick Niebo from Ombudsman Commission’s Anti-Discrimination Unit (Acting Director), Marcia Kalinoe- Manager, Care and Counseling- Anglicare Stop AIDS and Geraldine Paul- Project Officer, Family and Sexual Violence Action Committee.

I briefly had a conference with Poro Support Peer Counselors staff, namely Parker Hou (Project Officer) Veronica Ericho (Police Liaison Officer) as Christopher Hershey, the Project Manager was not available.
I came to learn that most of the key people in the above stake holder organizations are constantly attending conferences and workshops and that it is sometimes difficult to meet them for an interview.

Since the demise of the head of Individual and Community Rights Advocacy Forum, it has not been operational. The office has remained closed even to this day. As such, I was not able to meet with key person from that organization. I was not able to meet with key people from the following organizations:

- National Aids Council (Research meeting this month and I was told by the senior researchers that I would meet with them this month);
- Poro Support- (I was not able to reach the key person);
- Friends Foundation- (I was not able to locate the premises of Tessie Soi);
- UNICEF - (I was not able to reach the key person)
- Law Reform Commission- (I did not have time to reach a key person at that Department);
- Catholic HIV/AIDS Ministry- (I was not able to reach Sister Tarcissius, the Sister in Charge of the Office);
- Global Fund to Fight AIDS, Tuberculosis and Malaria- (I could not locate their office);
- Department for Community Development- Human Rights Desk- (I personally went to see David Hesaboda- Team Leader of Human Rights but he referred me to another section I was not able to reach a key person in that section; and
- PNG Law & Justice Sector- (I was not able to reach a key person from that organization).

**Results of Interviews**

Apart from specific interviews, I have had casual conversation with most people within the stakeholder organizations listed and their responses were very similar. I have concluded that the people and communities these stakeholder organizations deal with face the same legal issues on a daily basis.

The following are the most common legal issues faced by these stakeholder organizations’ communities/clients:

1. Isolation or social exclusion;
2. Pimping and prostitution;
3. Negligence of wives and children;
4. Denial to access to health and social facilities by authorities;
5. Verbal and physical abuse of PLHIV, People affected by HIV and the vulnerable group;
6. Police abuse and maltreatment of PLHIV and people affected by HIV;
7. Marital abuse and rape;
8. Negligence of children and wives forcing them to be vulnerable to HIV.

When it comes to having knowledge of availability of Law Firms and Legal Services, through my interviews and casual conversations with key persons within the stakeholder organizations, the following were their common responses:

Generally, the stakeholder organizations and their communities and clients have some knowledge of legal services being available. The Public Solicitor’s Office is one
Government Legal Service provider that most had knowledge of. They also know about law firms that provide legal services. However, a few do not such legal services are available to them.

Others know about the anti-discrimination unit at the Ombudsman Commission and the Individual and Community Rights Advocacy Forum (when it was operating). However, the Ombudsman Commission Discrimination Unit only brings out awareness and legal advice only to the general public and the Private Sector organizations. However, if there are legal issues arise within the Public Sector, it is their responsibility to make recommendation to the relevant authorities such as the Public Prosecutor’s Office to prosecute the matter.

The stakeholder organizations and their communities and clients are not able to make use of these law firms and legal services for the following reasons:

1. They are afraid to approach these services because of their status for fear of being shamed, abuse and stigma and discrimination;
2. They cannot afford the excessive legal fees charged by private law firms; and
3. Legal Aid at Public Solicitor’s office normally takes longer than expected and that shortage of lawyers at that office causes delays in processing their cases;
4. ICRAF legal services are not available and there are no where previous clients such as clients of Family and Sexual Violence Committee they can access similar services.

In situations where the stakeholder organizations, their communities and clients do not use lawyers to resolve legal issues, they go back to the community and use their community leaders to mediate. Mediation has been the dispute resolution mechanism PLHIV and people affected by HIV have used for a long time.

The mediation process has not always been effective for the fact that victims are not properly redressed and there are no punitive measures taken against parties who have wronged.

**Recommendation**

There is a greater need for an office or an organization in PNG that will specifically deal with legal issues that affect the PLHIV, people affected by HIV, the vulnerable group of people who are affected daily.

Because of the rise in the number of HIV cases in PNG, social and legal issues have increased. As such, there is an urgent need for a legal service that will be sensitive to HIV related cases and other human rights abuse cases associated with HIV and AIDS.

There is also an urgent need for enforcement of the HIV and AIDS Management and Prevention Act (HAMP Act). Currently, I find the HAMP Act to be ineffective. This legislation was enacted for the sole purpose of protecting and managing the rights of PLHIV and the affected people. However, as it is now, we cannot say it serves its purpose.
## OFFICE OF THE PUBLIC SOLICITOR
### DATA ON HIV/AIDS & RELATED CASES
#### AS AT 12.05.2010

<table>
<thead>
<tr>
<th>PS FILE REF</th>
<th>GENDER</th>
<th>ORIGIN OF LEGAL AID</th>
<th>CASE TREND</th>
<th>COMMENTS/OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>1663/06</td>
<td>F</td>
<td>Mt Hagen</td>
<td>Breaches of HAMP Act, forced testing, confidentiality issue, discrimination.</td>
<td>Pending decision in National Court</td>
</tr>
<tr>
<td>2186/09</td>
<td>F</td>
<td>Port Moresby</td>
<td>Defamation &amp; discrimination under HAMP Act.</td>
<td>POM District Court determined matter in November last year</td>
</tr>
<tr>
<td>279/9</td>
<td>F</td>
<td>Mt Hagen</td>
<td>PLWHIV, employment related</td>
<td>To verify instructions.</td>
</tr>
<tr>
<td>2948/09</td>
<td>F</td>
<td>Port Moresby</td>
<td>PLHIV, privacy &amp; discrimination issues.</td>
<td>Attended to client for 1st time on 10.5.10. WS to be drafted.</td>
</tr>
<tr>
<td>313/10</td>
<td>F</td>
<td>Port Moresby</td>
<td>PLHIV, claiming damages for intentional/reckless infection.</td>
<td>Client yet to verify instruction.</td>
</tr>
<tr>
<td>487/10</td>
<td>F(child)</td>
<td>Port Moresby</td>
<td>Related medical negligence.</td>
<td>Legal Opinion on merits required after medical opinion is provided.</td>
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<tr>
<td>686/10</td>
<td>M</td>
<td>Port Moresby</td>
<td>Related, Discrimination</td>
<td>District Court documents to be drafted for client.</td>
</tr>
<tr>
<td>229/10</td>
<td>M</td>
<td>Mt Hagen</td>
<td>PLHIV, related Assault/Employment</td>
<td>New matter. Instructions to be verified.</td>
</tr>
</tbody>
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### Annex 4: Igat Hope Positive People’s Workshop – Priority Legal Issues

<table>
<thead>
<tr>
<th>Group</th>
<th>Priority 1</th>
<th>Priority 2</th>
<th>Priority 3</th>
<th>Priority 4</th>
<th>Priority 5</th>
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</thead>
<tbody>
<tr>
<td>Poro Sapot and Hope Worldwide</td>
<td><em>Mistreatment within the Health Care System</em></td>
<td>Public Abuse/Discrimination</td>
<td>Police Abuse</td>
<td>Confidentiality</td>
<td>Employment Issues (discrimination)</td>
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<td>Palopa</td>
<td>Decriminalization of homosexuality</td>
<td>Customs/Religion (need to change behavior/practice)</td>
<td>Education (include awareness in curriculum)</td>
<td>Family Issues</td>
<td>Mistreatment within the Health Care System</td>
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<tr>
<td>PCF</td>
<td><em>Mistreatment within the Health Care System</em></td>
<td>Police not upholding the law effectively (HAMP Act)</td>
<td>Employment – anti-discrimination policies are not implemented</td>
<td>Family – lack of support due to misunderstanding</td>
<td>Public – lack of information (rated as a low priority as many NGOs already operate in this sector)</td>
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<td>Ita Gini</td>
<td>Family Issues</td>
<td><em>Mistreatment within the Health Care System (doctors)</em></td>
<td>Employment – termination (critical as it affects one’s ability to support oneself)</td>
<td>Police do not respond to complaints (discrimination on the basis of status)</td>
<td>Public Stigma (must address via behavioral change)</td>
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<tr>
<td>WABHA</td>
<td>Family – law and order to be strengthened/ advocate for women (issue of families forcing women children out of home)</td>
<td><em>Mistreatment within the Health Care System (health officers)</em></td>
<td>Police Abuse – Police must apply the law and understand rights of women</td>
<td>Public Issues – service providers and the public to be made aware of the rights of women affected by HIV</td>
<td>Employment (discrimination) – women should have opportunities regardless of status</td>
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<td>Friends Ministry</td>
<td>Strengthen Law and Order – use formal procedures and communication; establish a referral system</td>
<td>Educate youth, communities, peers, leaders</td>
<td>Workplace policy – GIPA needs to be strengthened</td>
<td>Confidentiality</td>
<td>Family Counseling</td>
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