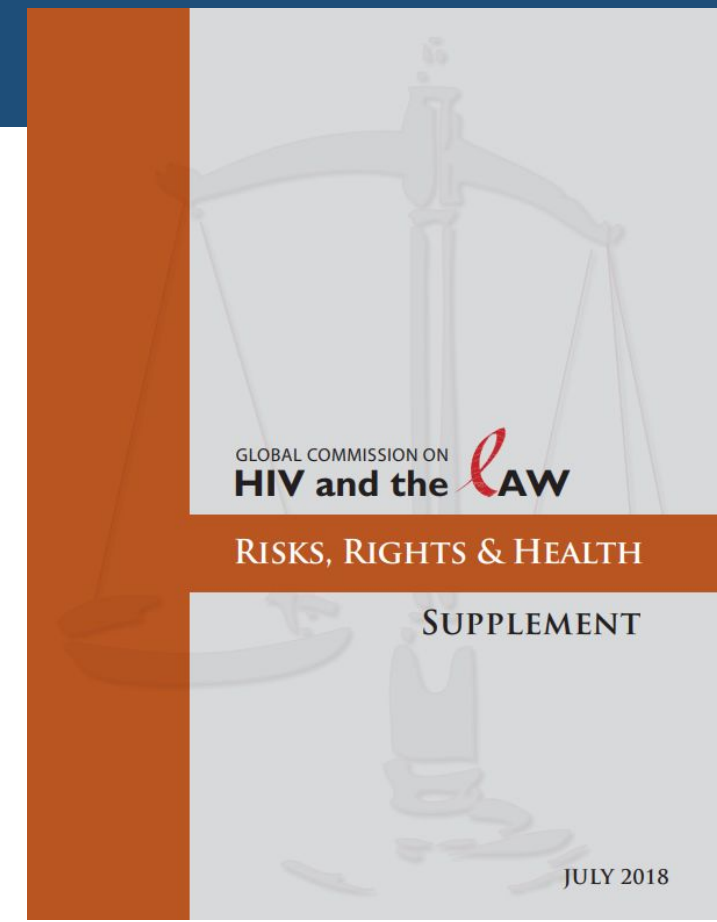


# Analysis of the EECA legislation regarding the criminalization of HIV and key populations

UNDP HHD Istanbul Regional Hub



# Structure of the presentation



- Background and UNDP's mandate
- HIV criminalization and human rights
- Global Review
- Key challenges related to laws, policies, practice in the context of KPs
- Criminalization of HIV transmission and exposure in EECA
- Summary analysis of legislation regarding KPs
- Opportunities moving forward

# Background and UNDP's mandate



- UNDP Strategic plan
- HHD Connecting the Dots Strategy
- Sustainable Development and SDGs
- UNAIDS division of labour
- Supplement Report of the Global Commission on HIV and the Law



# HIV criminalization and human rights



- The **criminalization** of HIV and key populations **affects a range of human rights** enshrined in international instruments, including:
  - *The right to health (Art.12 ICESCR)*
  - *The right to privacy (Art.17 ICCPR)*
  - *The right to freedom from discrimination (Art.2 ICESCR, Art.2 ICCPR)*
- Negative impacts of criminalization on HIV response are highlighted in UN guidelines, reports of Secretary General, High Commissioner for Human Rights, Special Rapporteur, as well as UN human rights treaty bodies
- Inefficiency of criminalization in controlling the epidemic is confirmed by multiple studies, while **decriminalization** – coupled with scale up of prevention, treatment and support programs – **is proven to significantly improve health outcomes** of people living with HIV and key populations

# Global Review



- As of July 2018, **68 countries criminalized transmission, exposure or non-disclosure** of HIV, or allowed using HIV-positive status as a circumstance that aggravates liability or punishment
- As of September 2017, **cases of HIV-related prosecution were reported in 69 countries**, with top four being Belarus, Russia, Canada and the United States
- The number of countries decriminalizing “risky behavior” is slowly reducing, although some countries are restricting their legislation on key populations

## Key challenges:

### Laws, policies, practices in relation to key populations

<b>Criminalization of exposure and transmission</b>	<b>Criminalization of drug use</b>	<b>Criminalization of sex work</b>
<b>STIGMA. DISCRIMINATION. NO SERVICES.</b>		
<b>Travel restrictions</b>	<b>Criminalization of homosexuality</b>	<b>Homophobic laws ("anti-gay propaganda")</b>
<b>Punitive laws targeting NGOs</b>	<b>Punitive laws against PLHIV</b>	<b>Lack of enabling legislation and funding</b>

# Situation in EECA



- All **EECA countries** criminalize HIV transmission
- **Other than Latvia and Estonia**, all EECA countries criminalize HIV exposure
- In **Belarus, Kazakhstan, Kyrgyzstan, Moldova and the Russian Federation**, **Criminal Codes were amended** to include a note or a provision that **exempts HIV-positive people from liability** in case of informed consent of the other person
- In terms of HIV criminalization rate, **Belarus and Russia are among the world's "leaders"**
- **Personal drug use and possession was decriminalized in most countries of the region**, though:
  - There are exceptions (e.g. Georgia)
  - Maximum allowed amount of drugs is inadequately low and does not take into account individual differences
  - "Narcological registration", not being a punishment per se, creates a lot of issues
- Two countries (**Turkmenistan and Uzbekistan**) criminalize consensual sex between adult men
- **Sex work is not criminalized**, but prosecuted under "administrative legislation"; lack of protection leads to abuse of law and rights, physical and mental violence, including by law enforcement

# Summary analysis: Laws and policies scorecard, Eastern Europe and Central Asia



Albania

Criminalization of transgender people

Criminalization of sex work

Criminalization of same-sex sexual acts

Drug use or possession for personal use an offence

Parental consent for adolescents to access HIV testing

Spousal consent for married women to access sexual and reproductive health services

Laws criminalizing the transmission of, non-disclosure of or exposure to HIV

Laws or policies restricting the entry, stay and residence of people living with HIV (a, j)

Mandatory HIV testing for marriage, work or residence permits or for certain groups

	a	a	a	a	a	a
Armenia	a	a	a	a	a	a
Azerbaijan	a	b	a	i	p	a
Belarus	a	a	a	a	a	a
Bosnia and Herzegovina		c	h			
Georgia	a	a	a	a	a	a

a		a
a		a
a		a
a		a
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a		a
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a		a
l		a
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a		a

Source: UNAIDS Report 2019



# Opportunities moving forward



- Build **national coalitions against criminalization** (including CSO initiatives)
- Provide **updated UN Guidance on decriminalization**
- Promote **access to legal aid and monitoring of rights violations**
- Conduct a **legal environment assessment** and implement recommendations
- **Capacity building and sensitization of law enforcement agencies** (police, prosecutors)
  - *Capacity building / training*
  - *Publications*
- **Capacity building and sensitization of judges**
  - *Regional Judges' Forum on HIV, Human Rights and the Law / Interactive platform*
  - *Country level trainings for judges – Albania, Tajikistan, Ukraine*
  - *Capacity building / training – compendium of Strategic litigation cases*
  - *Publications*
- Work with **the Supreme Court**
  - *Strategic litigation & Case law review*
  - *Advocacy for the development and adoption of the Resolution of the Supreme Court Plenum on the judicial practice on cases of HIV transmission, exposure and non-disclosure*
- Work with **the parliament**
- **Media advocacy**



**Thank you!**

