



10

reasons why legal services
must be central to a
rights-based response
to HIV

1

Because informing people of their rights, while failing to provide ways to realize them, can be counterproductive and increase the burden on affected communities.

Many programs include human rights education for people living with HIV and key populations. We also need to offer concrete, practical and affordable ways to address the human rights abuses faced by people living with and vulnerable to HIV.

2

Because law reform is a long-term goal, while legal services can improve peoples' lives right now.

Even in a hostile legal environment, lawyers can get better results for clients than if they are left to deal with employers, landlords, health authorities, and the justice sector on their own. Lawyers can intervene with police and other public authorities to achieve changes in the ways laws are implemented, such as guidelines on the discretion to prosecute.

3

Because taking legal action empowers individuals by affirming their right to recognition everywhere as a person before the law.

Whatever the outcome, legal support empowers individuals and groups to understand the legal context in which they live. Legal empowerment approaches also affirm dignity and self-esteem, which have other positive health and social benefits.

4

Because lawyers and paralegals can use a range of legal and non-legal tools to solve problems, including working with traditional legal systems and community leaders.

Formal justice systems can be slow, expensive and unpredictable. Lawyers and paralegals can use alternative dispute resolution mechanisms and support recourse to traditional legal structures such as community leaders.

5

Because legal action requires all parties to state their case in an open, structured forum.

Many issues such as discrimination in employment and health care are complex. Employers (e.g. restaurants, airlines) complain about customer preference and safety. Medical personnel complain they lack basic resources such as latex gloves and sterilization equipment to prevent workplace infection. Legal action permits an open examination of these claims, and can allow for public policy and public health evidence as well.

6

Because legal services can also provide data on complaints and outcomes which can improve law and policy reforms.

Law and policy reform must be based on local realities as well as international law and best practice. Legal services can collect data on complaints and outcomes and provide these to policy makers, thus assisting the reform process.

7

Because engaging the legal profession and the courts in resolving HIV-related issues and disputes strengthens the rule of law and good governance more generally.

In contexts where the rule of law is weak, public protest may be the only way to bring crucial issues to the attention of governments. Strengthening the ability of the legal profession and the courts to deliver sound decisions on HIV-related issues also contributes to social harmony.

8

Because legal services can be delivered in multiple ways, including by engaging law students, peer counselors, and by using paralegals and other community educators for referral.

The Toolkit: Scaling up HIV-related Legal Services (IDLO,UNAIDS, UNDP, 2009) identifies eight ways in which HIV-related legal services are delivered in different countries and contexts. Working with law students, in particular, builds the capacity of future lawyers and community leaders to address HIV from a rights-based approach.

9

Because the integration of HIV-related legal issues into existing access to justice and legal aid programs mainstreams the response to HIV for long term sustainability.

Although HIV-specific legal clinics may be appropriate in some contexts, scale up can often be achieved through integration of HIV concerns into mainstream legal aid programs.

10

Because legal challenges combined with social mobilization can achieve policy reform and educate communities in ways which can have a huge impact nationally, and even globally.

The revolution in drug pricing for developing countries over the last decade was largely driven by strategic litigation in South Africa. Not only have prices for anti-retroviral therapies dropped, but pricing for medications for other diseases of public health significance in developing countries is now under examination. This is a huge contribution to global health and development.