

6-10-05

RAPID POLICY ASSESSMENT: PROJECT PARIVARTAN



Module II: Existing Data

***Law on the Books
Tools***

RAPID POLICY ASSESSMENT

Module II

Laws

This version of the Rapid Policy Assessment and Response Module has been created by Scott Burris, Tyler Crone, Kavita Misra, Sarah Hanck and Leo Beletsky as a “first draft” in the collaboration between Project Parivartan and the Lawyer’s Collective. The next step will be review and discussion among the collaborators leading to a final draft to be deployed in East Godavari.

In this part of the RPA, researchers gather and analyze the law relevant to HIV/AIDS among sex workers.

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 help define the policy issues to be addressed in qualitative research.

Process:

This tool requires standard legal research using the normal methods and resources in India, East Godavari and Rajamundry. Recording and analyzing the law data for the RPA requires the following five steps:

Step 1: Briefly describe the structure of the legal system, including the types of legal instruments recognized in the legal system and their relationships with each other.

This step serves as an introduction allowing the user of the data to put the legal data in its structural context. Identify the basic legal institutions as the national, provincial and local level. Set out the types of legal provisions (constitutions, treaty, statute, administrative regulation, provincial statute, executive decree etc.) and their hierarchical legal relationships. (for example, “the Constitution is the Supreme law; all statutes must conform to it. Provincial laws may not conflict with national laws”).

Step 2: 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 13.0 or 14.0.

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.

Step 3: 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 4.

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

Step 4: Enter information about the law into the box provided in this section, including: citation, type of provision, text of law if brief (otherwise include full text in an appendix), narrative summary and questions for practice.

Citation: *The correct way the provision is identified in national, regional or local codes usually includes the name of the law (e.g., “Narcotics Control Act”), name of the source (e.g., Criminal Code), volume, page, year, and other locating information.*

Type of provision: Distinguish whether the rule is 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.

Text of law: Include all the relevant text.

Narrative summary: in your own words, give a brief description of what the law says relevant to the domains in question. Do not include speculation about the application or enforcement of the law in this section. 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 your later work with the CAB and final report. Because you will have copies of the law, there is no need for lengthy discussion or detailed paraphrasing of the law.

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

Questions for practice: include any questions about how the law is applied that are particularly relevant. For example, if harm reduction is not prohibited by any law (therefore there would be no text to prohibit needle exchanges) however, there is a concern among outreach workers that distributing needles will be seen as the crime of “facilitating drug use” which is very vaguely defined. Your comments about the possible use of this law belong in the questions for practice section.

Step 5: Important note: research in Module III may lead to more areas of relevant law being identified, and require additional legal research.

For each new area of law identified, repeat steps 2-4.

The Domains of Law in the RPAR

1.0 [Reserved]

2.0 Commercial sex work

3.0 Homosexuality and homosexual behavior

4.0 HIV-specific criminal exposure or transmission

5.0 Criminal justice/procedure

6.0 Right to health care/ right to HIV treatment

7.0 Reportability of HIV, AIDS, HCV, HBV, TB, Syphilis, and STDs

8.0 HIV testing laws

9.0 Privacy of medical information

10.0 Anti-discrimination provisions

11.0 National provisions related to international human rights norms

12.0 [Reserved]

13.0 Relevant law applicable to minors

14.0 Other laws identified by qualitative research or otherwise that influence risk or stigma among commercial sex workers in a significant way

15.0 Other laws that influence the work of HIV prevention organizations in a significant way

RAPID POLICY ASSESSMENT AND RESPONSE

Module II

Law on the Books

COLLECTION INSTRUMENT

Structure of the Legal System

Legal Institutions	
Types of Legal Provisions and their Hierarchical Relationships	

2.0 Commercial sex work and trafficking

2.0 Commercial sex work

- 2.0.1 Identify any law prohibiting participating in or profiting from commercial sex work including
- offering sex for money
 - being a sex worker
 - owning or operating a brothel
 - pimping
 - living on the earnings of a sex worker
 - soliciting sex for money, patronizing a sex worker or other law aimed at the customer.
- 2.0.2 Identify other laws that are or could be used to prosecute sex workers including
- laws prohibiting sexual activity in public
 - obscenity laws
 - laws governing “immorality,” “lewdness,” etc.
- 2.0.3 Identify any law prohibiting the possession or sale of condoms.
- 2.0.4 Identify any provisions authorizing or requiring mandatory STD examination or treatment for people arrested or convicted of crimes related to sex work.
- 2.0.5 Identify the penalties for violating these laws.
- 2.0.6 Identify any form of civil disability (e.g., right to vote, right to education) imposed upon people convicted of offenses related to sex work.
- 2.0.7 Does the law related to sex work apply differently to male and female sex workers, and if so, how?
- 2.0.8 Does the law related to sex work apply differently to underage sex workers, and if so, how?
- 2.0.9 Does the law set out alternatives to trial and/or incarceration for those arrested/convicted for sex-work crimes (e.g., mandatory drug treatment, community service, vocational training).

2.0	Commercial sex work
Citation	
Type of	

provision	
Text of law	
Narrative summary	
Question for practice	

2.1 Trafficking

- 2.1.1 Identify any law prohibiting trafficking in human beings.
- 2.1.2 Identify any provisions that specifically address trafficking in human beings for sex work.
- 2.1.3 Does the law applicable to trafficking apply differently to men or women?
- 2.1.4 Does the law applicable to trafficking apply differently to minors?
- 2.1.5 What are the penalties for the various trafficking offenses?
- 2.1.6 Do people trafficked for sex work have any civil recourse to recover damages from those responsible for trafficking?

2.1	Trafficking
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

2.2 Immigration status and sex work

- 2.2.1 Identify any law that addresses the consequences of a criminal arrest or conviction of a non-citizen.
- 2.2.2 Identify any provision of law under which being a sex worker would influence the eligibility of a non-citizen for permanent residency status or naturalization.

2.2	Immigration
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

2.3 Rape and sexual violence

2.3.1 Identify criminal laws prohibiting rape and note whether the definition explicitly or by judicial interpretation exempts sex workers, married women or others from coverage under some circumstances.

2.3.2. Identify criminal laws governing sexual conduct between minors and between minors and adults (e.g., statutory rape). Indicate the age at which minors may legally consent to sexual intercourse, if specified by law.

2.3.2 Identify criminal laws prohibiting intimate partner violence and note whether the definition explicitly or by judicial interpretation exempts sex workers, married women or others from coverage under some circumstances.

2.3	Rape and sexual violence
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

3.0 Criminal or other penalties for homosexual identity or behavior

3.0.1 Does the law prohibit homosexual conduct (acts) or status (identity)?

3.0.2 Identify the penalties for violating these laws.

3.0.3 Do these provisions apply differently to men, women, or transgendered persons?

3.0	Criminal or other penalties for homosexual identity or behavior
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

4.0 Criminal provisions specific to people with HIV

- 4.0.1 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
- 4.0.2 What is the penalty for each?
- 4.0.3 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

4.0	Criminal penalties for knowing exposure to HIV
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

4.1 Additional penalties for crimes committed by persons with HIV

- 4.1.1 Identify any law imposing additional penalties for engaging in sex work while infected, purchasing sex while infected, assault while infected, or other criminal activities?

4.1	Additional penalties for crimes committed by persons with HIV
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

4.2 Other HIV-specific criminal laws

4.2.1 Identify any other HIV-specific criminal laws.

4.2	Other HIV-specific criminal laws
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

5.0 Criminal justice/procedure

5.0 Criminal procedure

5.0.1 Identify any law that regulates criminal justice, including police searches and arrests, pre-trial detention, bail, and conditions of confinement.

5.0.2 Identify any law that regulates criminal procedure, including time to trial, right to an attorney (court-appointed or otherwise), and appeal.

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

5.0	Criminal procedure
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

5.1 Structure of the courts and legal system

5.1.1 Describe the structure of your country's court system.

5.1.2 Describe the structure of your city's court system.

5.1	Structure of the courts and legal system
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

5.2 Enforcement of defendant rights

5.2.1 Where and how can a defendant enforce the criminal justice/procedural rights described above.

5.2	Enforcement of defendant rights
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

6.0 Right to health care/HIV treatment

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

6.0	Right to health care
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

6.1 Right to treatment for HIV/AIDS

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

6.1.2 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)?

6.1	Right to treatment for HIV/AIDS
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

7.0 Reportability of HIV/AIDS and other communicable diseases

7.0 Reporting and registries

7.0.1 Determine whether the law requires reporting of AIDS, HIV, Hepatitis (B or C), TB, and/or syphilis to health authorities.

7.0.2 Who must report cases of infection or disease?

7.0.2 What agency or agencies maintain the registries?

7.0	Reportability of HIV/AIDS and other communicable diseases
Citation	
Type of provision	
Text of law	
Narrative summary	Or use table below
Question for practice	

[Reportability Table]

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

7.1 Permitted uses of HIV-status information in registries

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

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

7.1 .3 Is registry information also covered by general privacy laws collected in domain 9, below?

7.1.3 Are there penalties for improper use or disclosure?

7.1	Permitted uses of HIV-status information in registries
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

8.0 HIV testing laws

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

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

- Narcological patients
- Drug users
- Commercial sex workers
- Prisoners
- Military recruits
- Law enforcement officers (police)
- Other governments employees
- Health care workers
- Patients with STDs
- Patients with TB
- Pregnant women
- Newborns
- Other groups

8.0	HIV testing laws
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

9.0 Privacy of medical information

9.0 Medical information generally

9.0.1 Does the law protect personally identifiable medical information?

9.0.2 Does the law define personally identifiable medical information?

9.0.3 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)

9.0	Medical information generally
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

9.1. HIV/AIDS information

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

9.1.2 Is there a penalty for unauthorized disclosure?

9.1.3 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.

9.1.4 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.

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

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

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

9.1	Protection of HIV/AIDS information
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

10.0 Anti-discrimination provisions

10. Specific anti-discrimination protection for people with HIV/AIDS

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

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

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

10.0	Specific anti-discrimination protection for people with HIV/AIDS
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

10.1 Discrimination based on disability

10.1.1 Identify any law prohibiting discrimination based on disability.

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

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

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

10.1	Discrimination based on disability
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

10.2 Other anti-discrimination laws

10.2.1 Identify any other anti-discrimination laws that are or could in the future be construed to provide protection to people with HIV, sex workers or drug users against discrimination in housing, access to public services/facilities, access to private services/facilities employment or other areas.

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

10.2	Other anti-discrimination laws
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

10.3 Government agencies enforcing anti-discrimination provisions

10.3.1 Determine whether there is a government agency or body to oversee or enforce anti-discrimination provisions.

10.3.2 Does this agency or body also interpret the law related to anti-discrimination?

10.3	Government agencies enforcing anti-discrimination provisions
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

11.0 International human rights treaties and national law

- 11.0 Identify international human rights conventions and treaties to which the country is a signatory.
- 11.1 Determine whether the country has participated in any bilateral or multilateral agreements on trafficking and describe any agreements.
- 11.2 Identify the provision of law that govern the status of international human rights treaties and conventions in relation to national laws.
- 11.3 Determine to what extent, under these provisions, international human rights conventions take priority over national or local laws, and whether the conventions are enforceable or binding.

11.0	International human rights treaties and national law
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

13.0 Relevant law applicable to minors

13.0 Relevant law applicable to minors in the health care system.

13.0.1 Who as the authority to consent to health care for minors?

13.0. 2 May minors provide legal consent to care for HIV/STD or drug addiction?

13.0	Minors in the health care system
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

13.1 Relevant law applicable to minors in the criminal justice system

13.1.1 Are minors subject to special procedures for:
Arrest or detention?
Trial?
Punishment?

13.1.2 Does the law require that minors be placed in separate facilities for detention before trial or after conviction?

13.1.3 Do minors have a right to an attorney paid for by the government?

13.1.4 Are minors' identities protected or their criminal records treated any differently than adults?

13.1.5 Are minors eligible for substance abuse treatment or other alternatives to incarceration available to other drug users?

13.1	Minors in the criminal justice system
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for	

practice	
-----------------	--

14.0 Other laws identified by qualitative research or otherwise that influence risk or stigma among sex workers

14.0 Access to Social Services

14.0.1 Identify any provision that bars or limits sex workers' access to credit on an equal basis to others.

14.0.2 Identify any provision that bars or limits sex workers' or their children's access to public education.

14.0.3 Identify any provision that bars or limits sex workers' access to welfare services, including the ability to obtain a ration card.

14.0.4 Identify any provision that bars or limits sex workers' access to publicly funded medical care or health insurance.

14.0	Access to Social Services
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

14.1 Housing

14.1.1 Identify laws governing the rental or leasing of residential and commercial property.

14.1.2 Identify any provisions stating the grounds or procedures for eviction of a tenant of residential or commercial property.

14.1.3 Identify any provision of housing or other law that specifically requires or authorizes eviction of a tenant operating or allowing the operation of a brothel or other commercial sex business.

14.1.4 Identify any other provision of law that bars or limits sex workers' access to rental housing or commercial space.

14.1	Housing
Citation	

Type of provision	
Text of law	
Narrative summary	
Question for practice	

14.3 Other relevant provisions

14.3 Document any other laws identified by qualitative research that are applied to target groups in way that influences their risk of HIV or the stigma of HIV or sex work in a significant way.

14.3	Other laws that influence risk or stigma among sex workers
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	

15.0 Other laws that influence the work of HIV prevention organizations

15.0 Document any other laws identified by the CAB or Module III research that significantly influence ability of HIV prevention organizations to do their work (for example, limits on NGO fund-raising, tax law or the registration of non-governmental organizations).

15.0	Other laws that influence the work of HIV prevention organizations
Citation	
Type of provision	
Text of law	
Narrative summary	
Question for practice	