

Secretariat & Commissioners  
Global Commission on HIV and the Law  
United Nations Development Programme  
HIV/AIDS Practice  
Bureau for Development Policy  
304 East 45th Street, FF-1180  
New York, NY 10017

14 July 2010

Dear Commissioners and Secretariat staff of the Commission on HIV and the Law,

On 24 June 2010, UNDP Administrator Helen Clark and UNAIDS Executive Director Michel Sidibé launched the Global Commission on HIV and the Law, which will focus on some of the most challenging legal and human rights issues in the context of HIV, including criminalization of HIV transmission and behaviors and practices, such as drug use, sex work and consensual adult same-sex relations.

The launch of this Commission is a welcome development as a step towards highlighting the need to decriminalize personal behaviors and institute law reform related to stigmatized issues such as sexual orientation, sex work, substance use and HIV transmission. These are all issues that affect women and men in countries in all regions of the world.

We hope that the Commission will strengthen its work by also highlighting the criminalization of women's sexuality that leads to negative health impacts, including in the context of HIV/AIDS, and laws that discriminate against women's rights. In this context, we recommend that the Commission's work address laws and regulations prohibiting young women's access to contraception, denying access to safe abortion, permitting FGC/FGM, child marriage and marital rape, and denying women and girls property and inheritance rights. The rationale is as follows:

- When young women are prevented from accessing modern contraceptive methods due to restrictive sexual and reproductive health laws, regulations and policies, they lack the means to prevent unintended and unwanted pregnancies; furthermore, unprotected sex can lead to HIV infection.
- When women must seek access to clandestine unsafe abortions, they could be put at risk for HIV and STIs by practitioners who use unsanitary and unsterilized instruments for multiple patients. Women living with HIV who lack access to safe abortion care moreover may suffer even more serious morbidity and higher risks of mortality due to unsafe abortions than woman who are HIV-negative.<sup>1</sup>
- Women and girls who undergo female genital cutting and mutilation may be exposed to HIV and STIs when practitioners use unsterilized instruments for multiple patients; those who are already living with HIV who have lowered immunity can suffer serious health effects from unsafe procedures.
- Girls who are married in childhood or early adolescence are particularly vulnerable to HIV/STI infection as they are expected to have unprotected sex with their much older male partners; they may also suffer from early pregnancies, which place them at increased risk of maternal mortality and morbidity. In addition, they – and older women – are not protected against marital rape in many countries that have not yet included this form of violence in their rape laws.

- Women and girls who are prevented from inheriting spousal and family property are denied income and resources that can help them avoid risk situations for HIV/STI transmission and help them cope with caring for their own and other family members' health who are affected by HIV.

The most controversial of these issues – safe abortion care – must not be avoided, just as the Commission will not avoid addressing drug use, sex work and consensual sex irrespective of sexual orientation. The UN High Commissioner for Human Rights, Navanethem Pillay, recently stated before the UN Human Rights Council that: “A key result of the human rights-based approach is that ultimately women will be able to exercise their right to participate in decision-making processes, including those affecting their sexual and reproductive health, family planning, contraception, pregnancy, childbirth, and in addressing unsafe abortion.”<sup>2</sup>

Anand Grover, UN Special Rapporteur on the Right to Health, stated before the Council in June this year: “In fact, as my predecessor, Mr. Paul Hunt, and myself have consistently underlined, States have various obligations under international human rights law that include taking legal and policy measures, with the maximum use of their available resources, to address critical issues for the most vulnerable in a society... These policies must be accompanied by access to information, including on sexual and reproductive health, regardless of marital status, age or place of origin; voluntary family planning; legal and safe abortion; special measures to ensure the right to education for women; and addressing multiple forms of discrimination.”<sup>3</sup>

The Office of the High Commissioner on Human Rights and UNAIDS in their guidelines on HIV and human rights stated that: “Laws should also be enacted to ensure women’s reproductive and sexual rights, including the right of independent access to reproductive and STD health information and services and means of contraception, including safe and legal abortion and the freedom to choose among these, the right to determine number and spacing of children, the right to demand safer sex practices and the right to legal protection from sexual violence, outside and inside marriage, including legal provisions for marital rape.”<sup>4</sup>

In addition, Monitoring Committees that monitor State compliance with international human rights treaties for the following conventions have all recommended that laws be reformed to allow safe legal abortion to protect women’s lives and health and in cases of rape: Convention on the Rights of the Child; Covenant on Economic, Social and Cultural Rights; Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.<sup>5</sup>

Again, we welcome establishment of the Commission and look forward to collaborating with the Commissioners and Secretariat to addressing discriminatory laws. We look forward to hearing how the Commission will include discriminatory laws that particularly affect women living with HIV and at risk of HIV infection.

Sincerely,

ABIA

Action Canada for Population and Development (ACPD)

AIDS Committee of Toronto (ACT)

Center for Health and Gender Equity (CHANGE)

Center for Women's Global Leadership (CWGL)

CHOICE, for youth and sexuality  
Development Alternatives with Women for a New Era (DAWN)  
Fundación para Estudio e Investigación de la Mujer (FEIM)  
Gestos  
International Women's Health Coalition (IWHC)  
Ipas  
LACCASO  
Namibia Women's Health Network  
Rutgers Nisso Groep  
Sexuality Policy Watch  
Women for Women's Human Rights (WWHR) – New Ways  
World Population Foundation  
World YWCA  
Youth Coalition for Sexual and Reproductive Rights

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<sup>1</sup> WHO/UNAIDS. 2006. *Sexual and reproductive health of women living with HIV/AIDS: guidelines on care, treatment and support for women living with HIV/AIDS and their children in resource-constrained settings*. Geneva, WHO

<sup>2</sup> Panel on Preventable maternal mortality and morbidity and human rights, 14 June 2010, Geneva, Human Rights Council

<sup>3</sup> Panel on Preventable maternal mortality and morbidity and human rights, 14 June 2010, Geneva, Human Rights Council

<sup>4</sup> Office of the United Nations High Commissioner for Human Rights and Joint United Nations Programme on HIV/AIDS. 1998. *HIV/AIDS and human rights: International guidelines. Second international consultation on HIV/AIDS and human rights: Geneva, 23-25 September 1996*. New York and Geneva, United Nations

<sup>5</sup> OHCHR. April 2010. Report of the Office of the United Nations High Commissioner for Human Rights on

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preventable maternal mortality and morbidity and human rights. Geneva, Human Rights Council