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**Law Reform in the Context of HIV: Are Human Rights  
Protected or Compromised?  
Kaiser Family Foundation  
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**SOFIA GRUSKIN:** To the session on Law Reform in the Context of HIV: Are Human Rights Protected or Compromised? My name is Sofia Gruskin and it seem as though we're going to have a wonderful panel with a great set of talks. Before beginning, I want to say that our third speaker is going to be speaking in Russian and so you need to get headsets unless you speak Russian and the headsets are right outside. So please make sure that you get them as the session is about to begin.

So we're going to begin and just to say a few words of introduction, which is that essentially these presentations ask us to consider two critical questions. What is the nature and purpose of law reform and is law reform always and inherently a good thing? Many of us actually push for law reform when we see laws that by their very nature violate human rights.

But one can ask, is that always the right approach? In some cases, is it better to leave that law on the books if it's not actually being enforced or is it always better to push for change, even if we're not actually sure what directions the changes in the law are going to take.

This is particularly of concern when changes in the law may actually result in something worse than what you started with, worse for women, worse for key populations and this is

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the case in places where there's been no law to begin with as well as in places where bad law just is not being enforced.

The presentations that you're going to hear tackle these sorts of questions with a range of different sorts of examples and what I'd like to highlight before turning it over to the panel is that in places where rights are compromised by the laws that are in place, these restrictions of rights are often justified as being necessary to achieve public health goals.

But the reality is, that beyond their stated justification the law is often used to enforce moral, religious or cultural standards and what is prescribed, how it's defined, how it's written and how it's understood is wildly different across different jurisdictions, even though we tend to talk about law under one rulebook.

For example we talk about sodomy laws, but within that there's great diversity in terms of what's included. And in the context of HIV, even though there may be moral or religious reasons at play for what's really going on, the fact is, is that the law is often being justified as necessary for public health, which can under human rights law, be a valid justification for restricting rights.

So it's a need to be able to ask beyond the public health justification, where's the evidence? Where's the

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evidence from a public health perspective that the law and the direction that it's taking is good and that it's necessary? And in particular, because these laws  and here we're thinking about things like criminalization of sex work or of drug use for example  because these laws often have serious negative impacts on HIV prevention and care efforts.

It's worth keeping in mind that contrary to their stated justification, there's generally no public health evidence to support prescribing the particular behaviors or the activities. And just to highlight the point, that despite any stated justifications, the public health evidence is pretty overwhelming that one needs to ensure that law supports and doesn't hinder the ability of all people to access and use HIV prevention and care services.

And so even in public health terms, law should be about promoting and protecting human rights, not about restricting them. So with that as a backdrop, just to stay this is an incredibly rich session with a range of examples highlighting the good and the bad of law reform in HIV efforts, particularly for the rights of women and for key populations.

In terms of the logistics of the session, each presenter has been given 10 minutes and we've agreed that I'm to be fairly strict about the time in order to ensure that we have plenty of time for discussion afterwards. And again just

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to note for people who've come into the room late, that our third speaker will be speaking in Russian so ensure that people that need headsets that you have the headsets that you need.

So without further ado, can I just introduce our first speaker, Seodi White who will talk about the experience from Malawi and using law reform as a tool to advance women's human rights.

She's a social development lawyer, a social legal researcher and a writer on women's human rights and as an African feminist and director of Women and the Law in Southern Africa Research and Education Trust, she's been influential in achieving groundbreaking law reform to protect women's rights and in promoting women's access to justice in Malawi and throughout Southern Africa.

She is a Commissioner on the Special Law Commission on Gender Related Malawi Law Commission and in 2004, she received the Malawi Human Rights Commission Award for her contribution to the advancement of women's rights and children's rights in Malawi. The floor is yours.

**SEODI WHITE:** Thank you very much, Sofia. As Sofia has said, my name is Seodi White. I'm from Malawi. My presentation today relates to law reform as a tool to advance women's rights in the context of HIV and I would like to share experience from Malawi which is my country, which I love very

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much. I'd first like to tender my sincere gratitude to the organizers of this conference and in particular, the organizers of this session for inviting me to come and present this case study.

This case study is based on the legal challenge in which Women and Law in Southern Africa Research Trust Malawi works in Malawi, the organization that I serve is challenging the current approach to marital property because it violates provisions of Malawi's Constitution which prohibits discrimination on the basis of sex and mandates women's rights to property particularly upon the end of marriage.

I also presented this case study in Washington, D.C. at the Women Deliver Conference in June this year just in case there's someone who was there. Now, in Malawi the current legal position in regards to women's property rights particularly women's property rights in marriage is as follows, Section 241B1 of the Malawi's Constitution provides that women are entitled to a fair disposition of property that is held jointly and that's my emphasis with a husband upon the dissolution of such marriage.

However, the current interpretation of Section 17 of Malawi's Married Woman's Property Act which is a statute of general application, it's an 1882 statute which we inherited directly from the British. The British have done away with it

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but we still use it [applause]. Now this particular law only considers property to be held jointly if a direct financial contribution has been made to reach that position.

This is in respect  I'm still referring to people who are married  and therefore the courts have actually used largely this kind of interpretation of the Constitution using the Married Woman's Property Act.

Now, what is the issue here? Since case law that is the cases from the high court has shown that courts in Malawi do not recognize household and care giving work that women often perform during marriage as an economic activity that contributes the acquisition or maintenance of family assets. Many women return virtually nothing upon the end of a marriage, be it an end through death or divorce.

This is because property is rarely registered in their name or they cannot prove a direct economic contribution to its acquisition or maintenance. Now what is the relationship between property rights and HIV/AIDS. This is their connection.

Now if you look at the interpretation of the courts and if you look at the law as it stands today in Malawi, the approach that the courts have taken to marital property has been criticized for the hardships and injustices that it is

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capable of producing and has many times produced in particular for women.

I have so many clients who come to my office and this is the critical issue, the division of property upon divorce, the division of property upon death. It causes serious hardships for women and equal marital property rights can affect women's economic autonomy, security, dignity and health by enforcing women's dependence on their husbands.

Numerous studies have demonstrated how the fear of poverty and insecurity inhibits women including those who are married from engaging in safe sex or from leaving violent relationships and therefore making them more vulnerable to contracting HIV. Women with access to resources including land and property are better able to negotiate condom use in their sexual relationships to provide for their own and their children's needs and to leave abusive partners.

Upon marriage dissolution, women without access to marital property may face daunting difficulties in terms of securing a place to live, maintaining a basis for survival and accessing economic opportunities. This may drive women to engage in behaviors that put them at increased risk of contracting HIV.

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Now that's the connection. So what are we doing about it as rules of Malawi? Like I said, we have got this legal challenge going on as we speak.

The essence of the legal challenge is that we are requesting the Constitutional Court of Malawi to declare Section 17 of the Married Woman's Property act invalid or in the alternative, to declare that Section 17 be interpreted in a manner that recognizes women's contributions to marital property and guarantees women receive half the marital assets upon the end of a marriage.

What we are hoping, that is the desirable outcome is that we hope that the Constitutional Court will rise to the occasion and use this opportunity to clarify the guarantees that the Constitution of Republic of Malawi has in place to protect women's marital property rights.

In our opinion, the Court can do this by recognizing the household and care giving work that women often perform during a marriage as an important and valuable activity that contributes to the acquisition or maintenance of family assets.

Therefore unless a couple contracts out of this approach, that a couple chooses not to be bound by this approach that we hope the Court will arrive at, marital property shall be deemed to be owned and controlled equally by parties to the marriage. Therefore, in the long run, we hope

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that women's property rights will be protected and in turn because women have the security of property, they have the security of economic prowess, they can negotiate a better relationship, they can leave a violent marriage and they can in effect avoid or take measures to protect themselves from contracting HIV.

I thank you very much [applause].

**SOFIA GRUSKIN:** Thank you very for that case study and good luck on the case [laughter]. Our next speaker is Nandinee Bandyopathy who's an independent consultant working on issues of class sexuality and gender with a particular focus on community engagement and political mobilization of marginalized populations.

Since 1995, she's worked closely with sex worker organizations and afterwards with men who have sex with men, with transgender people and with people who use drugs. She has expertise in participatory research and capacity building in a developing dialog based interpersonal communications methods and tools for assessing and addressing HIV vulnerabilities amongst key populations and she's currently a member of the UN AIDS Advisory Group on HIV and Sex Work. The floor is yours [applause].

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**NANDINEE BANDYOHPATHY:** Good afternoon and thank you everybody for coming and thank you to the organizers for having this session and having me on the session.

I'll speak from here because I'm not speaking to PowerPoint and what I'd like to do is raise three questions. I've worked with sex workers mostly in India and Bangladesh and through my work I've had the opportunity to interact with sex worker leaders from across the world. So my questions are being formed by my experience and the interactions I've had.

My first question is why it is often right and strategic to frame sex workers rights and rights of other key populations to legal equality and enfranchisement within the context of public health? Is it enough? After all, sex workers like everybody else and their rights are absolute, indivisible and universal. So how long do we have to justify their rights in terms of delivering public good? Why are they not enough in themselves?

Sometimes it's quite right as Sofia just said that ensuring rights of sex workers and other key populations is good for public health. There are many examples, there's good evidence now to show that empowering sex workers with legal rights and empowering them to have social access or inclusion reduces their risk to HIV. So now a key project of sex workers

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in India is an example I know particularly closely but there are other examples across the world.

So it's quite right that protecting rights of key populations particularly the sex workers leads to good public health results. Sometimes it's not strategic to argue for key population's rights, argue for sex workers' rights in particular within using the language, coaching it in the language of public health. In many contexts in many countries it is the only platform available to sex workers to do so with a relative degree of safety and with the chance of being heard at all.

So sometimes with sex workers' organizations it's the strategic route to take. But what makes me apprehensive of that particular strategy is that often the logic of public health can infringe on those rights.

In India for example, there's a drive to scale up what we call prevention of parent to child transmission, PMTCT, and so in the attempt to scale PMTCT, all women who come to international [misspelled?] in private and public facilities including sex workers are routinely and compulsory tested for HIV without any appropriate counseling and consent.

So while scaling up PMTCT is an obviously good public health strategy, it can lead to gross violations of rights of sex workers. The global environment which encourages provider

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initiated counseling and treatment is another case in point where rights of vulnerable populations, marginalized populations, populations which are perceived to be at risk of HIV would be routinely and necessarily abused through provider initiated counseling and testing in countries like India for example.

To give another kind of example where public health logic may act against the interest of sex workers rights when the report of the Commission on AIDS in Asia came out it clearly identified that key populations including sex workers are most at risk of HIV so that is where the investment should be in HIV response.

While many of sex workers' groups in Asia and their allies rejoiced, many donors considered withdrawing funding from HIV in Asia because in the absence of a potential generalized epidemic there would not be enough bang for the buck.

So my question and probably my answer is that probably we have to talk about sex workers' right to health and a universal entitlement are not merely instrumentally as serving public health goals. The second question is about where punitive laws, practices and enforcement of those laws actually infringes on sex workers' rights. What should we do?

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Obviously when those laws actively and routinely harasses sex workers, those laws have to be removed. But within the punitive environment decriminalizing one aspect of sex work can leave open the possibility of penalizing other aspects of sex work which can still violate sex workers' rights and challenge their well being.

I'll give it in an example again. Sex workers have long fought for decriminalization of sex work and recently, it's a couple of years back, it seemed as if the government is paying heed to their demands.

So there was a proposal to amend the Immoral Trafficking Prevention Act, that is the Act under the Penal Code which regulates trafficking and by default sex work and what they did listening to the demand of sex workers, they proposed to decriminalize soliciting for example. But at the same time in the name of protecting sex workers, they proposed to criminalize clients.

So sex workers across the country rallied together and mobilized against that proposed bill and with the legal activist allies, managed to stall and eventually kill the bill.

But the fact remains for example in Argentina now, there is a similar proposal afoot for criminalizing clients again in the name of promoting and protecting sex workers' rights. And often sex workers are arbitrarily harassed,

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arrested and put in jail under a range of laws which has nothing to do with sex work per se so it's about loitering or creating public nuisance or vagrancy or something or the other.

So removing the punitive laws in themselves are not enough. More often sex workers are arrested and sort of extorted for money and so on without recourse to any law so law enforcers, whether they're public law enforcers or whether they're private ones, vigilantes and moral police and so on, religious police and so on, they don't need to cite any law to harass sex workers. So there removing punitive laws is obviously not going to work.

So here probably again is where our focus should be on creating and enabling legal and policy environment and more broadly ensuring sex workers' access to justice rather than creating, removing, reforming laws, restricting our attempt and efforts to that.

Finally the question of decriminalization. Decriminalization yes, but to what extent? What sex worker organizations and activists as right sectors are saying is that decriminalizing to work for sex workers, sex work has to be decriminalized in all its aspects. It cannot be a piecemeal halfway attempt.

Selling and buying of sexual services, facilitating that such sexual transactions, sex workers ultimately over

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using the income from sex work, all of that needs to be decriminalized.

That is, we need to accept the underlying principle that sex work, like any other work, leads to right of organized labor and labor rights of sex workers have to be protected. In any other business, no other business, agents are penalized.

In no other business, manager of the business are penalized. So if a sex worker decides to use an agent or a pimp to help her contract a client, or if she chooses to work with a brothel manager rather than trying it out on her own, all of that needs to be legally protected, therefore decriminalized.

I was thinking of when we talk about self determination of nations, self determination of people, I'm going back to Lennon here, it's a little draw, we talked about self determination up to cessation. I was looking for a language which says decriminalization up to sort of something, total autonomy.

So those are the three questions I want to leave you with and I've talked from the context of sex workers and that's the population I've worked most closely with, but I'm sure it will have resonances and relevance for other key populations. Thank you [applause].

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**SOFIA GRUSKIN:** Thank you. Our next speaker is Irina Maslova from St. Petersburg, Russia and she's going to talk on drug use, harm reduction and HIV risk and again she will be speaking in Russian. She's a program coordinator of Humanitarian Action which is based in St. Petersburg and has a longstanding experience in HIV prevention work with sex workers as well as injecting drug users.

Since 2008, she's been involved as a trainer and a consultant with UNFPA focusing on issues of service provision for women engaged in high risk behaviors. She's also the coordinator of Silver Rose, a self help group of sex workers and active member of SWAN, Sex Worker Advocacy Network in Central Eastern Europe and Central Asia. Irina.

**FEMALE SPEAKER:** For five years practically every day I report in St. Petersburg in Russia and then visit the many, many places around each and every day to proper get our program of harm reduction. We want to reduce risks of our clients, of people who visit us, who turn to us for help.

Whoever and we will ride the bus or whoever enters our bus can ask us about mitigating the risks. This is of course exchange of needles, of syringes, there's the possibility of reputation, of OSD and there are many other things, but □ there's a but to it □ all those years we had those problems of harm reduction under this Global Fund.

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They look down its nose, wonderful, beautiful somebody's taking care of them but when the Global Fund then went away because projects ended and all those organizations just started to stop their work, very useful work because there was no funding.

In our country we don't have etiquette of real medical help or treatment for drug dependency or in Russia you are not allowed to speak about OSD and if we have other projects then we are all afraid that the police will just charge against us and we [inaudible] in cases of overdose. It's not allowed. It's illegal.

And all our prophylactic methods are connected with healthcare, with human rights and our harm reduction problem begins. In 2007 our organization was the first to introduce or practically introduce harm reduction programs in Russia.

But it's not a lot with our legislation □ doesn't go well with our legislation and then our government and healthcare institutions don't look at us very positively.

You have to understand, in Russia etiquette a drug user is somebody outside of the law, all the laws that are in Russia, all other acts, normal defects and they are not valid for which HIV positive people and that's where people don't want to come out because then otherwise they won't have any

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legislation and they all say you have to adhere to laws, but about what laws we speak.

If we speak about sex workers, if they take away their condoms and they just stop the possibilities of getting condoms then how can they adhere to laws?

The condoms that we have they are not certified and then I ask the girls from Kurdistan or from the Ukraine and imported of really good condoms but this is called an illegal import and then they are being confiscated 400 piece or 500 items, then they're just confiscated because they are going to a street worker, to sex workers and this is not allowed.

And when the Global Fund left the country then nobody took over. The state didn't want it and I don't know to who to turn. As sex workers and drug users and MSMs who they are [inaudible] risk group who I would really like to slap that person very strongly.

As soon you tell somebody I'm a sex worker then they look at you as oh you are in view as somebody who infect me, but at least half of the sex workers are not infected.

As soon as you know that somebody's a drug user, for all it is logical this is a stigma, a social stigma because he's somehow transmitting the virus and they have many  we could profit our programs effective and they are very good way that evidence based but unfortunately our government does not

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take it □ if they are Russians probably they'll attack me afterwards. In [inaudible] we ask the Global Fund of Russia please come back to Russia, help us.

We thought about our clients and where the people who are already infected, who already are HIV positive and the Global Fund it was like a death sentence for those people and the thing that was so wrong because if a person is just in between living or dying, ten of course he starts to fight for his or her rights.

He wants to remain a human being. He wants to have access to medical care, to medical services, but to care and to prophylactic measures. Unfortunately Russia is a very funny country and a very un-understanding country. The human rights and the law and legislations. We do have laws that are protecting people. Unfortunately again, but we don't have practices to put them to work, to implement them.

This morning we showed a film about violating street sex workers, how they're being violated by drug users. We do not have any practices to implement laws that already exist and that in theory should protect everybody and now the gender part.

This harm reduction program is working in Russia but in very small parts, in some regions and where we don't have the Global Fund it's very difficult for drug users and for sex

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workers. They don't have access to that medical care, to clean needles, to condoms and the drug users and the street workers are discriminated against, they are violated against and they are just discriminated, there's a huge gender gap.

Thank you for your attention. I'll gladly answer your questions if there will be any. We try to go for decriminalization of sex workers and would like to draw from the experience of other countries and we would like adopting a law  we would like to work with it and would like our voices listened to. Thank you. I don't know how it will happen but with your help it might happen [applause].

**SOFIA GRUSKIN:** Thank you very much. Our next speaker is Felicita Hikuam who will be speaking about advocacy efforts to respond to law reform trends in Africa and in particular the current trends towards anti-homosexuality legislation.

She is the program manager at the AIDS and Rights Alliance of Southern Africa, ARASA, and she's also a member of the UNAIDS PCB NGO delegation. She's the alternative delegate for Africa and as a rights advocate she's been actively involved in the development and implementation of advocacy responses to a wide range of law reform trends in Southern Africa and globally. Felicita.

**FELICITA HIKUAM:** Thank you. Thank you very much for that introduction. Good afternoon everybody. My presentation

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this afternoon is on advocacy for law reform on anti-homosexuality legislation in the context of HIV in Africa.

I will begin with a background of the legislative environment with regards to same sex relationships. I will then talk about main arguments for criminalization of same sex relationships and using a case study from Namibia and some lessons learned from the ARASA partnership.

I will reflect on the advocacy initiatives that we've taken for legal reform in Southern Africa when it comes to criminalization of same sex sexual intercourse and relationships.

Although the limit of my presentation was on MSM and men, which is men who have sex with men <sup>1</sup> and excuse me for getting some of the acronyms in there, it's kind of tedious men who have sex with men all the time so I will use the acronym MSM for men who have sex with men and I will use the acronym WSW for women who have sex with women.

Although the limit of my presentation was on MSM, I've taken the liberty to include references to women who have sex with women. We're also affected by this repressive legal environment.

Currently there are 38 countries in Africa that have laws that criminalize same sex behavior. However on May 8th, 1996, which was quite historical on the African continent, South

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Africa became the first country in the world to enshrine lesbian and gay rights in its Constitution.

This has been subsequently allowed for further realization of other rights such as the right to marry.

However there is a trend on the continent to introduce new laws that criminalize same sex behavior or provisions for harsher sentences and I think this goes back to Sofia's question around legal reform and is it always a good thing and I think the recent trends that we've seen in terms of existing legislation that was made harsher is an indication that legal reform is not always a good thing and that we need to be proactive in terms of processes and being on top of processes where legal reform is being discussed.

Punishment for homosexuality and same sex behavior ranges from imprisonment from about five years to life imprisonment in Kenya, Senegal, Ghana for example. Uganda has life imprisonment to death. In countries such as Mauritania, Sudan and parts of Nigeria.

In countries that have no specific criminal penalties for same sex conduct however, authorities have detained suspects under a variety of laws including public indecency such as in Mali and debauchery in Egypt.

Some of the arguments that we've been hearing lately because there has been a reverberating occurrence and coverage

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of this issues in the newspapers lately with a trend that was started particularly in Uganda at the end of last year when a bill was proposed to introduce the death sentence in certain instances [applause] and some of the arguments that we've been hearing for criminalization of same sex behavior include that homosexualities are natural, that it's definitely un-African and that it's African culture, religion and values.

And some of the advocacy that ARASA, the organization that I work with, the AIDS and Rights Alliance of Southern Africa has been working on recently is a policy brief that tries to debunk all these arguments and that tries to make this information accessible to grass roots organizations when they are having community dialogs on the subject so we're looking at each of these arguments individually and putting forth arguments that anybody can use when they engage in a conversation around same sex relationships and same sex sexual behavior.

But history has also shown that same sex sexual practice in Africa has been recorded even as far as pre-colonial days and criminal laws therefore against homosexuality are the legacy of colonialism and not homosexuality itself.

This legal environment, this repressive legal environment has caused for rates amongst men who have sex with men and women who have sex with women being significantly

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higher than the general population and current HIV interventions being nonexistent or definitely not sufficient.

And some of the arguments for why this HIV response towards key populations particularly women who have sex with women and men who have sex with men has been insufficient is that there's just any data so the argument that we've been hearing a lot is also that there is no homosexuality here so many of the countries are claiming that because it's not visible, because it's not been recorded that there is no homosexuality in their context.

In our advocacy we have recognized the need to repeal and amend the laws prohibiting sexual acts between consenting adults in private, to enforce anti-discrimination legislation, to provide legal services and to promote campaigns that address homophobia because in our context, there is a rampant existence of homophobia and a deeply engrained sense of homophobia across society as a whole.

But we also urge governments to know their epidemics by ensuring proper surveillance so we were very excited to be part of processes such as the Unga's Indicator Review [misspelled?] that looks at particularly whether sufficient indicators and sufficient data is being reported on key populations such as men who have sex with men.

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We also advocate for the establishment and strengthening of networks of lesbian, gay, bisexual, transsexual and intersex people because we believe that instead of having people speak for them they should be at the lead of interventions that respond to their needs in terms of the AIDS response.

We also call for funding of interventions targeted to the needs of MSM in other LGBTI communities and we are very excited to know about the recent Global Fund guidelines and considerations for the next round of the replenishment that would look at the needs of key populations and the funding needs for program for key populations.

In terms of advocacy for law reform, we've realized that it's a very time consuming process, that it's very labor intensive and very resource intensive in terms of financial resources as well, that it's politically complex and it's often fraught with risk and that goes back to the question of is it always a good thing and do you sometimes in the process leave it open for unintended consequences or unintended outcomes.

We also realize that efforts spent may bear very little result if the law is not implemented and not accessible to those who actually need it [applause]. We've also realized that it needs to be based on an expensive legal audit and that the process of legal reform should be as important as the

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content and I'll talk about that a bit later when I reflect on the working group that's been set up in Namibia to address punitive laws.

Some of the lessons that we've learned in the advocacy that ARASA's been doing for legal reform is that we need to get on the same page regarding our commitments and understanding of human rights and this is particularly targeted at civil society groups who engage in this advocacy. It's an opportunity for us to challenge our own internal prejudices and our understanding of what human rights really is and who we think should be entitled to health as a human right.

We come across often that human rights activists would say I'm a human rights activist as long as I don't have to speak up for sex workers or injecting drug users or men who have sex with men.

We also believe and have learned in some of our work in terms of debunking some of the arguments that it's quite important for African civil society groups to be at the forefront of advocacy for law reform on same sex sexual behavior because of this sense that and this argument that it's a wasted agenda and that it's not an agenda that's led by African groups and that there are no homosexuals in our countries.

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But we also realize that much more work needs to be done on working with lawmakers, with judges and with law enforcement and I think that some of my colleagues previously have alluded to that as well. We recognize that more resources are needed to make access to justice achievable for all population groups and that we also need to look out alternative resolution mechanisms such as human rights commissions.

One of the things that we are particularly strong advocates for is that men who have sex with men and women who have sex with women should be empowered to know and claim their rights and that also cuts across other advocacy work that we're doing with other populations such as people living with HIV and AIDS and the general population. We believe strongly in know your rights campaigns and actually getting the community to understand what their rights are where they can seek redress.

But we've also realized that in our context it's very important to work with the media because ever since some of the recent legislative strains have been reported on it's always been sensational and it has in many, many instances continued to fuel homophobia.

In Namibia we have recently towards the end of last year started engaging in a dialog that has led to the establishment of a multi-stakeholder platform that brings together Ministry of Justice, that brings together Ministry of

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Health, civil society and is led and chaired by the groups of affected populations including men who have sex with men and women who have sex with women.

This working group meets on a monthly basis and was formed to look at the existence of a number of laws and regulations that discriminate on the basis of HIV/AIDS status and/or obstruct access to comprehensive services and we realize that it is a very lengthy process but that we are one step ahead because we have started the dialog and some of the key players such as the Ministry of Justice and the Ministry of Health are at the table.

We've also realized that the working group should be based on an attempt to remove all HIV/AIDS discriminatory laws, policies, regulations, guidelines and practices through law reform, supporting an enabling environment and awareness raising.

So those are the three pillars but the activities under those pillars include legal support so offering legal aid to people living with HIV and AIDS and people in same sex couples. Also including legal audits and law reform programs so there's a specific working group that looks at that.

Also rolling out know your rights campaigns, human rights training as well as discrimination reduction programs

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and programs that focus on gender norms and eliminating gender based violence. That is the end of my presentation [applause].

**SOFIA GRUSKIN:** Thank you. Our final speaker is Johanna Kehler who will examine the setbacks and successes of law reform for women in the context of criminalization of HIV transmission. Johanna is the director of the AIDS Legal Network, a South African human rights organization and as a rights activist, researcher and trainer she's worked over the years to highlight the gender barriers to accessing rights and available resources.

She's developed resources and training materials on human rights and HIV and written on many issues in human rights gender and HIV as well as conducting and participating in research projects, exploring women's realities and risks in the context of HIV prevention, testing, treatment, care and support.

She has been actively involved in the research and advocacy activities on the legislative trends towards criminalization of HIV transmission and exposure and its impacts on women and she's one of the drafters of the 10 Reasons Why Criminalization of HIV Exposure and Transmission Harms Women. Johanna.

**JOHANNA KEHLER:** Thank you very much. Good afternoon everyone. I will in my intro looking at women and the

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decriminalization of HIV transmission provide a short overview of the legislative trends itself focusing specifically on the African continent, raise some discussions on the implications specifically for women and will conclude by sharing some thoughts as to potential law reform setbacks and successes within the specific context of HIV criminalization.

I would like to think that many of us in this room would agree that laws which criminalize HIV exposure and/or transmission of HIV are fundamentally unjust and ineffective of public health policy are a threat to human rights and have an adverse impact on women and women's risk to both HIV and to rights of users.

Despite growing concerns among many about the impact of these laws on people's lives, public health goals and human rights obligations, legislative trends to criminalize HIV transmission and exposure continue globally and especially on the African continent, with more than 20 countries having passed legislation to this effect and/or are in the process of drafting and passing legislation.

But country specific legislation may differ as to its clause of specifying the so called criminal behavior and/or act, criminalization laws are commonly linked to mandatory and/or HIV compulsory testing.

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For example, the law in Ghana is requiring premarital testing and most of the African countries are requesting mandatory HIV testing of women as part of anti-natal care. Closest legislation in HIV disclosure and a partner notification is another link which is often part and parcel of criminalization legislation.

For example, in Mali there is a legal duty to disclose a positive diagnosis to either a spouse or a regular sex partner within six weeks of the diagnosis whereas Tanzania's law demands immediate disclosure. There are a number of concerns in challenges linked to these trends.

It is important to bear in mind that these legislative trends are often supported by women's rights organizations as well intentioned step to protect women and women's rights from the risk of transmission of HIV from the unfaithful sex partners.

There is also the challenge that once again the debate as to whether or not applying criminal law is an effective response to HIV seems to center around the debate between public health needs and human rights obligations.

In an area of emphasizing the need to develop evidence based responses to HIV and AIDS, the lack of large scale evidence base on the adverse impact these legislative trends have on women is one of the main concerns and challenges. As

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these laws are neither applied in a vacuum nor are they untouched from the society context in which they are to be implemented, it seems crucial to bear in mind women's realities and challenges in the context of HIV as these will influence the impact of these criminalization laws on women and women's lives.

We all know that women continue to be the most at risk of infection with statistics indicating 61-percent of all people living with HIV are women. Inequality and power relations are persistent and continue to define to a large extent women's risks and vulnerabilities. And also gender violence including sexual violence has reached pandemic proportions in many countries impacting both on women's risks and on its impact in the context of criminalization laws.

And last but not least, women are least in the position to control their body, to control the decision making and therefore control conditions of sex. In reality, women are therefore the ones first to know of their HIV status.

Women are the ones of blame for bringing the HIV virus into the relationship. Women are also often forced to test for HIV as part of accessing anti-natal healthcare services and finally women are unable to negotiate safer sex. And all of these factors increase women's risk to HIV related criminalization and potential prosecution.

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Taking these realities and challenges into account, it has to be acknowledged that especially from a human rights and women's rights perspective, these laws are least likely to protect women but instead are most likely to heighten women's risk of HIV and rights abusers, to heighten the risk of violence and abuse women already face, to strengthen prevailing gender inequality, to further promote stigma and discrimination and other violation of rights and to deter women from accessing and subsequently benefiting from available prevention testing, treat care and support services.

Coming back to the question as to whether or not law reform aiming at the criminalization of HIV exposure or transmission has broad successes and/or setbacks. It is argued that thus far there have been no successes.

However an argument could be made that HIV specific legislation aimed at the protection of rights of people living with HIV and not at the further criminalization and violation of people's rights would be and could be an example of how law reform becomes a success.

Successes related to criminalization could therefore be defined as law professors looking or developing HIV specific legislation which do not include specific criminalization clauses and all law reform processes [applause] in which

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criminalization clauses are removed from existing criminalization laws.

And as for setbacks, there seems to be many including the adverse impact of the legislation on women, the impact of the effectiveness of AIDS responses as criminalization laws carry the potential to reverse against progresses made, the impact on the threats to human rights and so therefore we need supportive legislation, not laws that further criminalize women. Thank you.

**SOFIA GRUSKIN:** Thank you [applause]. Thank you. We are now going to open the floor and I would ask people to line up behind the different microphones and we'll be taking several questions at once to talk to each of our speakers.

I'd also like to, as people line up, draw attention to our point person, Jennifer Gatsy [misspelled?] who's sitting up at the front here, who was the person who helped put us all together and I thank you very much for bringing together this excellent set of presentations [applause].

I do think that these presentations really do show that context is everything and really ask as people ask their questions to please introduce yourself and to please to keep your questions and to the point. Thank you. We'll go one, two, three please.

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**ANISTE MAMO:** Okay. I'm the first one. My name is Aniste Mamo [misspelled?]. I'm from National Center [inaudible] Research, the University of New South Wales. I'm a third year student. I am also a lawyer in trying out when I discuss my country's that means China, not all student. I have two questions regarding my understanding is that the theme of this session is rights based approach to HIV, is that right? Yeah, okay.

The first question that we discuss decriminalization of sex work your perspective of public health and human rights. As we all know that in Thailand sex work is criminalized but the law enforcement is very poor and almost unenforced in other countries.

From your perspective we know that of course you are experts in HIV related human rights. Do you think  what's your more real points or comments about criminalization of sex work young people and if decriminalization of sex worker in practice? Will it achieve with the same results in terms of HIV transmission with the criminalization of the sex worker. This is the first one.

The second question is that we discussed sex worker's human rights and the drug user's human rights, women's human rights and MSM human rights like this. As I'm also a researcher, I want to know in the perspective of theory or in

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the theoretical perspective, what are the key elements of rights-based approach to HIV and the human rights?

**SOFIA GRUSKIN:** Thank you very much. Thank you very much. I'll take the question right there in the middle.

**LUCY STACKPOOL-MOORE:** Great, thank you. Lucy Stackpool-Moore from IPPF based in London. Thank you very much for all the presentations. They're all really interesting and Jenny, well done, it's a really nice collection of speakers.

My question is to really pick up on something Johanna said about the need for an evidence base. Something that at IPPF we've been looking at recently is trying to collect some more stories about the real impact of these laws or the lack of these laws, both the punitive ones, but also human rights anti-discrimination type provisions in the real lives of different people, people living with HIV, health care providers, lawyers, prosecutors, judges, those kind of things.

So my question for the panel is are you aware of any really great research bases or projects on at the moment that are really trying to understand the nuances of what these laws mean in different people's lives? Thanks.

**SOFIA GRUSKIN:** Thank you for your question. I'll take the question in the back, please.

**CAINE YOUNGMAN:** Hi, my name is Caine Youngman from Botswana. I represent an organization called LeGaBiBo,

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lesbians, gays and bisexuals of Botswana. My question is directed to Felicita. We are all aware of late it has been occurring that one country, like the anti-homosexuality address has been hopping form one country to the other. So my question is, what do you suggest we do to get that dress, to stop it from moving from one country to the other?

We all know that we cannot have a standard format to apply to every country because all countries differ. Some people usually will advise you to attack the government, but sometimes when you attack the government, you also experience the wrath of the government. That's when the push everything, like all our full power behind you, and sometimes when you just sit back, you get oppressed. So, it's kind of a hard scale to balance.

In our approach, First of all, what we're doing is awareness through public study. We study awareness through public and offices, like government offices hopping from one office to the other, hoping that maybe with time, we'll reach the legislators and maybe change the whole illegal homosexual thing. Thank you.

**SOFIA GRUSKIN:** Thank you very much. We'll go right down the row, and I'll ask each of the panelists to respond to which of the questions makes the most sense in terms of your own context, please.

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**NANDINNE BANDYOHPATHY:** Thank you. I'll take the first question, I think. You wanted to know when laws that criminalize sex workers are so weakly enforced in any case, what difference would decriminalization make? The context of sex workers and MSM and injecting drug users as well, I think, decriminalization has symbolic value. It's an acceptance of our legitimacy of these key populations legitimacy. So it has value in terms of that political struggle for rights.

Also in practical terms, the existence of the criminal law allows for human rights abuse. Often the law is not used to harass sex workers, the particular law, but the fact that things around sex work is criminalized or sex work itself is criminalized allows for law enforcers to treat sex workers unequally. So that's the difference.

**JOHANNA KEHLER:** Yeah, just to add on that forward because I think a similar dynamic about support towards criminalization of HIV transmission lies in the same moral understanding or at times, even an outcry for help considering that many of HIV prevention efforts over years and decades have not achieved what we all hoped that it would've achieve by now.

So there is a similar misguided moral argument that something needs to happen and then it's often much, or it seems often so much easier to target a narrative meaning of the word actual group itself.

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And maybe just to speak up on the question of the evidence base, I think that the challenge right now is that more and more evidence is collected in the sense of what cases are going to court, where and what other outcomes.

I think where we really still lacking in behind a way I'm not aware of real massive collection of data and research being done is on the actual implications during the preparation of the court case, after the court case and what actually happens in a woman's life, the prosecution and the aftermath of it. I think it's a two-sided effort where we need to collect the evidence before we can really -

At times, it feels like we are taken serious by a particular state court when we say these laws have particular impact, and the question we get asked where's your evidence?

**SOFIA GRUSKIN:** Hold on. Down the panel, was there anything else upon this? We have several questions that were not addressed, and we still have a range of speakers that have asked for the floor.

I just want to ensure that two of the questions that came up, one was whether there are elements of a rights-based approach to HIV that members of the panel think are critical components of a rights-based approach to HIV that if that could be articulated.

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So I just want to open the floor to anybody on the panel who has not yet spoken or who wishes to take the floor again.

**FELICITA HIKUAM:** Maybe I should just put in my five cents worth on that one and also address the question from LeGaBiBo. In terms of an enabling environment, I think for me the key part of a response that is based on sound human rights principles is addressing the underlying root causes of vulnerability.

I think that in terms of vulnerability of women in particular, it's important to look at issues such as gender inequality and put in place legislation and policies that actually enable equality to be achieved between the different genders.

So that's just my five cents on that one. I think it's very important to address, put in place legislation that addresses the root causes of vulnerability. But that's just a certain part of a response that is basis on human rights principles.

In response to the question on the recent trends in anti-homosexuality legislation across Africa, I think that we as ourselves come to a realization that there's – It's not something that's new, but there's been a need for us to stop having conversations only at the policy level, but also to

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engage at the community level, which is where homophobia is entrenched in our societies. That we need to actually begin to have conversations in schools and in churches and in homes that preach tolerance and a respect for human beings based on the principles of just being human.

I think that we've realized that there's been a tendency for us to assume that everybody is on the same page, that we all don't have different arguments for why we are in support of homophobia or against homosexuality.

I think that we need to debunk some of the myths that exist and some of the fears because I think that a lot of it is also based on fears. We also come from a society that's very patriarchal and that is very unequal and that is based on gender norms that support being macho and being the man and what does that actually mean.

I think that we need to start having dialogues and conversations at the community level and looking at particularly schools and sexual education and start to preach tolerance.

Also in our AIDS response, I think we really need to challenge ourselves when we talk about universal access and things like that.

But that's just a long way to answer your question.

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**SEODI WHITE:** Further to that, for me a rights-based approach takes sides with the poor. It takes sides with the marginalized. They're excluded, they're voiceless. For me, that's a right-based approach because in understanding who are the poor and understanding who are the excluded.

So for example, in my area of work, I work in the area of women's rights, that's my area, that's my passion. Now, when you look at some of the laws, for example, in my country which is the country I know best, Malawi, you find out that despite the fact that our constitution guarantees various rights to the poor, like the right to development.

For example, which is enshrined in our constitution and from my understanding, that's the only constitution in Africa which has a right to development, which also guarantees women's rights. You still find out that on the ground, they're somatical myriad of ways in which women are denied those rights.

One of the rights is the right to property. Now, if you look at poverty, which is a critical issue in terms of Malawi, you find that women are over represented among the poor, and some of the things that guarantee that continue to entrench them in poverty is their lack of education.

What does a lack of education mean for most women? It means that as they grow up, they will not have property. When

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they enter into marriage, it'll be most likely their spouses, they are bound to acquire that property. So despite their investment into this relationship called marriage, they're still not guaranteed the right to property. Therefore, poverty remains guaranteed despite what our constitution says.

Now, when you look at what are the side effects, what is the issue here? You find out that some of the side effects, one of which then is the critical issue of making women vulnerable to HIV transmission. The statistics show that if you look at generally, 12-percent of the women in the world among those who are infected, 12-percent of them are women. One of the reasons why is because women are lesser educated, they're poorer.

Now, if you contextualize that within a particular country setting and you pinpoint, if you go right down and identify what is a critical issue here. In the context of my country, the critical issue, one of the critical issues, not the but one, is the issue of poverty.

Poverty meaning that the ways the laws are constructed still means that women would not be guaranteed property rights, they'll still be in poverty. We are trying to change that, among so many other things. Thank you very much.

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**SOFIA GRUSKIN:** Thank you. What I'd like to do is just go right down in terms of each of the people standing in line, please.

**Nana Oye:** Thank you very much. My name is Nana Oye and I'm from Guyana. I'm a human rights lawyer and advocate. This is a very interesting thing for me because I have worked on law reform and advocacy for a while. What I can say is that no reform at least in West Africa, will not be an effective tool to advance one sex worker's rights and also to reverse anti-homosexuality legislation. We would have to add more than that.

We would have to add education, behavioral change and point of view. But law reform on its own will not be an effective tool. It will not be an effective tool and haven't had much on morality, African values because these two touch and concern the whole issue of homosexuality and sex workers' rights. Because the act itself is perceived as immoral.

So what leg are you going to stand on, as a human rights lawyer or advocate, to ask for law reform for something that the whole population views as immoral? I haven't heard any such discussion, and that's why I'm very happy about Felicita's proposals and what you have done. Thank you.

**SOFIA GRUSKIN:** Thank you. Please.

**SHAYNA WATER:** Hi, I'm Shayna Water, an independent HIV consultant. I wanted to thank all of you for your

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presentations and particularly, Seodi White, your interesting presentation highlighting women's vulnerability in terms of property rights and assets.

I recently conducted a study in Malawi looking into the proposed HIV and AIDS bill there with Christian Aid, conducting interviews and focus groups with HIV stakeholders including sex workers, people with HIV and other agencies.

The results basically showed that if passed as it stands, this bill could have several negative effects. There are some contentious issues and articles, which could increase women's vulnerability, increase reluctance to test, increase stigma and actually work to drive the epidemic in Malawi underground.

Christian Aid in Malawi is now working with partners in country to try and get some necessary amendments made. But I was just wondering what your awareness of this bill was and what your kind of thoughts on it are, really.

**SOFIA GRUSKIN:** Thank you. Please.

**MOONO NYAMBE:** My name is Moono Nyambe from the Global Network of People living with HIV. Thanks to the panel for a really brilliant presentations. At GNP+, we map the laws of the countries that have laws that criminalize transmission and exposure. It's small of a comment then a question, but maybe the panelists can respond to it.

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There seems to be sort of an assumption, I think, maybe not from all the panelists that we are in agreement on the sort of negative impact of these laws. From my experience of working on the criminalization stand, it seems that maybe we're not because some of these laws are actually, sort of its activists. For instance, the laws around criminalization of HIV transmission is actually women's activists, in some senses, that have pushed for these laws believing them to have on their side also public health benefits.

So I'm wondering if the panel have thought, I think, Felicita, I think you that you started to address it, but to have more comments on how we can sort of plug this disconnect from – It seems we're speaking amongst ourselves as people who agree. How do we speak to the other side and bring the other side to the discussion.

**SOFIA GRUSKIN:** Thank you, and finally in the back, yes?

**CINDY CLAY:** Hi, my name is Cindy Clay with HIPS in Washington, D.C. USA. It was discussed to talk about organizing for sex workers rights from a labor perspective. My question would be in doing so, which I think would definitely improve things for a certain subset of sex workers, how do we ensure that we don't leave behind or not include or not improve the rights of sex workers who are either undocumented or who wouldn't benefit because they're not part of a organized labor movement and how do we move together?

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Because it was also talked about we have to do the laws, you can't just do some. We have to work on criminalization from a broad base perspective. Thank you.

**SOFIA GRUSKIN:** Thank you very much. I'd like to go down the panel the other direction and to start down all the way at the end. If you would start, and we'll just work our way back over this way.

**IRINA MASLOVA:** [Speaks in Russian] To the first question about laws against HIV, we have a practice in Russia families and women – We have a law that prohibits HIV positive women to adopt children.

We started a big campaign and one is of our girls really want to adopt, some of the – she had a brother and she wanted to be a guardian for that brother and thanks for information campaigns and the really good professionals in educates, she could get her right and she could become the guardian of her own brother being HIV positive. The state was forced now to change this law.

So once, if somebody helps us, if we are really trying, we achieve all together. It's the sex workers, it's harm reduction, and everyone together, the gays and whatever, then we force our government to come into the open. They have to change their stance and they really have to, in turn, to the people.

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To the second question, in Russia on Friday, the first sex workers organization was registered officially. The others must help. They saved us sort of, and now we lift up to the moment, we don't have to save us, we're now ready to work with all the other organizations while working with prevention programs. Thank you.

**FELICITA HIKAUM:** I have already addressed some of the comments that Moono had about the disconnect. I'll leave that to the other panelists to respond to. But I wanted to respond to the issue of African values and how you would launch an argument. Unfortunately, the colleague from Guyana has left, so she's not here to hear my response.

But I think that we have certainly began a discussion around what are African values and have challenged the fact that it is un-African, it is not our African value to love somebody of the same sex. By saying that, an African value that we recognize is Ubuntu, which says that a person is a person through persons and through other people, and that recognizes that I am because you are and therefore I am.

This principle, which is an engrained African value and certainly recognized in Southern Africa, preaches humanity, and it preaches respect for other human beings. We argue that that's a value that definitely does not support homophobia and turning against somebody else for the basis of who they are.

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So I just wanted to put that forward as an argument that we view and that we're starting to consider and a recognition that culture is fluid and that we need to be able to challenge this and support this in terms of a responsive nation that preaches tolerance.

**JOHANNA KEHLER:** Now maybe to respond some to what Moono said about that we're often under the assumption that we're all on the same page in the room, and I totally agree. I think that is one of four assumptions we often look in and especially in a context of criminalization of HIV transmission. We have very clear experiences where the support from organizations who call themselves women's rights organization is not forthcoming.

So, yes, potential response has to be an engagement with especially women's rights and other rights organizations to raise more awareness and create much more in-depth understanding of potential implications if these laws are passed and signed off on, especially women's risks. Because this is also the same argument from these supporters of these legislations that these laws will finally protect women to be infected from HIV.

So it is the old advocacy school of raising awareness of engaging, of building alliances, of getting the information and understanding of what these legislations say and what it actually means in their translation into day to day life. Make it in such a way that it is much, much more accessible, not only to us in this

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room but outside in our communities and also the people who are tasked in the end to apply and implement these laws.

**SEODI WHITE:** I'll first deal with the question about whether we are – I mean, the same one that Johanna has dealt with whether we're on the same side. Perhaps not, because the whole issue of criminalization, to me, has always been a very complex one. As the question came to say, this is coming from women's rights activists.

Well, in my country, the whole issue of mandatory testing, it's coming from the government. There's a bill mandatory testing, selective mandatory testing for truck drivers, sex workers and I can't remember the other group. There's been a lot of discussion with the government on how wrong this is and the government is adamant, they sorry. This cannot work. But the discussion goes on.

But within the same bill, you'll find that, in my opinion, there's some progressive elements of criminalization. For example, certain cultures, which have clearly promoted transmission of HIV/AIDS, some harmful cultural practices, which the government is proposing to outlaw.

You find that those are some of the areas where they're clear vectors of the virus. So then how do you balance that, because they all come under the auspices of criminalization.

For me, criminalization is a very broad subject that needs to be thoroughly discussed before we actually reach a position

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because some of these harmful cultural practices are really difficult.

But you find out that even some cultural leaders are against that kind of criminalization. So you find that the debate is not closed as far as I'm concerned. I think that the debate is something that really needs to be effectively engaged with.

Now, having said that, there was a question for directly to me, but I didn't understand the actual question. I heard a debate about what Christian Aid is doing in Malawi, but I didn't understand what was the question that was being directed to me. There was a lady.

**SOFIA GRUSKIN:** Perhaps you could follow that up afterwards?

**SEODI WHITE:** But it was a question which I didn't even get. I didn't even get at all, but it was directed to me. I don't know if she's still here.

**SOFIA GRUSKIN:** She is.

**SEODI WHITE:** Oh, okay.

**SOFIA GRUSKIN:** Your thoughts on the law in Malawi, the change of the law in Malawi, the HIV law in Malawi.

**SEODI WHITE:** Oh, the same issue, okay, yeah. If you look at the Human Rights Watch website, you find that there's a contribution from [inaudible] Malawi on that page. We work with Human Rights Watch Canadian Legal AIDS Network on the same issue.

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I'm aware of the current discussion with Christian Aid and a couple of other organizations based in Malawi based on this particular issue and I'm on their email list, et cetera. Although this time around, we didn't make a contribution because the same debate is what we make with Human Rights Watch and Canadian Legal AIDS Network. It hasn't changed.

But, just to let you know, I think there's some top officials in government who feel the same way activists do. It's not everybody. That bill hasn't gone to Cabinet yet. We're [inaudible] very clearly it doesn't go into Cabinet and we've earmarked some members of Cabinet to discuss with them some of these mandatory tests, which is also concerning them. So it's not as if it's a closed discussion. But I'm aware of the discussion. Thank you.

**NANDINNE BANDYOHATHY:** Very quickly, I think in India recently, the law that criminalizes homosexual activity was read down and it meant that same sex behavior, same sex practices between consenting adults is no longer punishable offense.

In reading this judgment, I don't remember it, but one of the arguments that a judge proposed that if the constitution guarantees equality, moral values or public morality cannot compromise the constitution. So that's my response to the question of African values and public morality. If public morality violates rights of people, then that public morality has to be tempered.

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About the specific sex work question, if the recognition of sex workers' rights as workers, whether it will leave some sex workers out of formal organized work.

The idea is that sex workers struggle for recognition of their right to be sex workers, whether they're formally organized or not, whether they're citizens of our country or they're migrants, whether they are undocumented migrants or not, the demand here is to recognize that sex work is work and as workers, certain rights are to be guaranteed for all workers, migrant and otherwise. I hope that answers the response to the question.

**SOFIA GRUSKIN:** Thank you. I'm conscious of the time, and so I realize there are three, so very, very quickly please. I give you 20 seconds each.

**MALE SPEAKER:** For Seodi White, I'm wondering if you can specify what aspects of criminalization you would support. You mentioned cultural practices, can you be specific please?

**LAURA MUMFORD:** Hi, my name is Laura Mumford. I'm a student at the Institute of Social Studies in the Hague. My question is more for Johanna. I was wondering if you were aware of any situations where criminalization has been talked about in international criminal law or international law.

I was wondering if your sentiment about removing criminalization applies in situations where sexual and gender based violence are trying to be charged to individuals in international

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criminal law as crimes of genocide, crimes against humanity or war crimes. Or if you maybe believe that raising awareness at that level and add that type of law would be beneficial to raising awareness to women's situations in conflict affected areas to the risk of HIV.

**SOFIA GRUSKIN:** Thank you. Please.

**PIERRE JACOBSEN:** My name is Pierre Jacobsen and I'm the founder of the Swedish Sex Worker Organization, and I just wanted to make – Well, I guess it's a question because I know shit is going – sorry, my language – it's going on everywhere. But we're sitting in Sweden, and we are the country that invented a law criminalizing the client.

We also have a very punitive AIDS law, or transmission law, which demands immediate information and if you don't do this you can be locked up for three months at a time, and we had sex workers locked up for years because of this. I feel that this is never addressed. We have really big problems being contacted by AIDS organization and I just wanted to ask specifically Nandinne and Johanna whether they are aware of this.

**SOFIA GRUSKIN:** Thank you very much. Can I ask you to please respond quite quickly.

**SEODI WHITE:** I would criminalize harmful cultural practices, that's me.

**MALE SPEAKER:** Specifically what?

**SEODI WHITE:** I beg your pardon?

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**MALE SPEAKER:** Specifically what?

**SEODI WHITE:** There are so many. If I had to tell you know, it's going to take long. If you just Google Malawi and harmful cultural practices, there's a report from the Malawian Human Rights Commission, which actually now rates harmful cultural practices, which have been proved to exacerbate transmission of HIV. So, that's it, yeah.

**JOHANNA KEHLER:** I managed to have five questions in 20 minutes.

**SOFIA GRUSKIN:** 20 seconds.

**JOHANNA KEHLER:** Oh, 20 seconds? Sorry, yes. I have to admit that I do not have enough information on the comparative impact of criminalization law and applying international law in relation to sexual and gender violence. But maybe that's a discussion we can take outside the session because I see some people around me who could much better answer this question.

What was the other question? Are we aware of what's happening in Sweden? [Interposing]

**SOFIA GRUSKIN:** And the HIV law.

**JOHANNA KEHLER:** Yeah, not in the terms but in principal, we're all aware that many countries, not only in the South but also in the global North have criminalization laws in their books and are prosecuting.

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I think that is one that has potential to actually get a voice in saying no and trying to oppose these clauses because it's not an isolated one country situation. It really affects many, many countries all over the world.

**NANDINNE BANDYOHATHY:** Sweden is a horror story for sex workers, first off. But what we need is more evidence because Sweden is thrown at our face all the time, but they have criminalized clients, and they are so brilliant at everything else. So we need more and more stories from Sweden.

**SOFIA GRUSKIN:** Irina? Last word from Irina.

**IRINA MASLOVA:** (Speaks in Russian)

**FEMALE SPEAKER:** Sorry, I was without a microphone.

**SOFIA GRUSKIN:** We would like to thank our panelists for incredible, thought provoking and interesting discussion. This is the beginning of this discussion at this conference, it's absolutely not the end. So thank you to everybody here on the panel. [Applause]

And please everybody just to keep in mind that this is the beginning of these conversations about law reform, what's good about law reform, what's bad about law reform and how is it that we can think about the extent to which public health evidence is used to justify or whether public health is used as a justification with no evidence at all. So thank you very much.

[END RECORDING]

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