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**TUSY03: The Global Commission on HIV and the Law:  
A Movement for HIV Law Reform  
Kaiser Family Foundation  
July 24, 2012**

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**MANDEEP DHALIWAL:** For the United States it is urgent to repeal laws that criminalize HIV transmission and exposure as those laws are undermining public health efforts to promote early testing and treatment. In South Africa, stronger legal responses to gender based violence, including rape, are urgently needed.

In all cases, beyond the most urgent action issue, a more comprehensive and humane approach to law reform will ensure a more effective and sustainable response to the epidemic. Through the Commission's regional dialog and research process, the Commission has built constituencies and partnership for law reform. The self-self learning and mobilization on issues of law reform is already starting to take root, and I wanted to share with you just some of the examples over the last year or so that we've seen where countries are taking action. I know Shereen said these are complex and they're difficult issues, but we're starting to see some kind of momentum, I think; and I think we should be optimistic about it and encourage it and foster it.

We heard about the bills in the United States. There was also another bill on expanding sex education in schools. Finland, Norway and Denmark are reviewing public health law; criminalizing HIV transmission and exposure. Guyana and Fiji

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have altogether rejected criminalization of HIV as bad public health policy. Law review and reform is being discussed in a number of countries and strategic litigation is under way challenging Jamaica's archaic anti-sodomy law and forced sterilization of women living with HIV in Namibia.

There's judicial sensitization on HIV and the law underway in the Caribbean. Changes to municipal law in China have resulted in the removal of forced labor as a form of punishment for sex workers and their clients. The Vietnamese National Assembly has adopted a provision abolishing administrative detention for sex workers; we hope that this will be extended to drug users as well. African leaders, such as President Mohai and others, are calling for decriminalization of sex work and homosexuality. I'd like to quote President Mohai in a speech that he gave to SANAC leaders earlier this week saying, "These are issues that we can no longer afford to sweep under the carpet". It's too urgent a public health matter now that these issues have to be addressed.

The Kenya High Court recently recognized that intellectual property protections cannot take precedence over the right to health of their citizens. [Applause]. But what will this all take? It's not as simple as taking the Commission's recommendations and going country by country and

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changing the laws. We know that there are many other factors that play an important role.

One of the main things is that there needs to be an investment, a clear investment, of financial and human resources in evidence and rights based laws, law enforcement and access to justice. These need to be seen as critical enablers which increase the efficiency and effectiveness of health and HIV investments.

Political leaders need to move beyond rhetoric. They need to challenge hypocrisy and deliver on their human rights and HIV commitments. I'd like to point your attention to an op-ed by the Chair of the Commission, President Fernando Henrique Cardoso, and Helen Clark, the administrator of U.N.D.P., that appears on the front page of the Commission website, which basically says there's a new prescription for the AIDS response and it's called courage.

Legislatures must act on evidence and apply human rights standards. They also have a role to play in educating their constituencies, and they mustn't pander to political populism. There needs to be a significant investment in strengthening the capacity of legal and public health institutions. One of the main things we can do here which will make a big difference is to really invest in implementing - robustly implementing - the good laws that are already on the

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books which could make a big difference in the context of HIV. There needs to be an immediate stop to state sponsored and community violence against those most marginalized.

Law reform is a complex and politically challenging task, but it can and must be done. This means that leaders must challenge societal values and personal beliefs rooted in fear and discrimination. Quoting President Mohai and Steven Lewis in an op-ed that they recently published in a number of African journals, "It may cause shock and anger, but this approach is critical to slowing the spread of HIV and to protecting human rights".

One of the big challenges are issues of culture; where cultural traditions, religious doctrine and national sovereignty are used as excuses to violate human rights. That hinders public health responses. This has to be challenged. There are many good examples of where cultural practices and religious doctrine have adapted to be more in line with international human rights commitments and standards. I'll give you one which is very powerful, and that's on female genital mutilation. This is a long standing traditional practice in many, many countries, yet in the past three years 8,000 communities across the world, including 15 African countries, have banned genital mutilation. I'd like to submit to you that all cultures [applause], from every community,

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across the world respect the right to privacy, to respect human dignity, and culture, religion and national sovereignty can no longer be an acceptable defense for homophobia, trans-phobia, gender inequality and inciting hatred. [Applause].

Countries must use the Commission's recommendations as a blueprint for legal reviews and law reform. This is a commitment that they made in the United Nations in June, 2011, and this report provides the perfect blueprint for what not to do and what to do in terms of the legal environment. The Commission's report provides specific guidance in this regard, and the U.N. can use this report as a tool to support countries in these reviews and to promote dialog on law reform at the country level.

The United Nations can also offer a range of opportunities for engagement, including country specific support and engage in treating bodies and the Human Rights Council. U.N.D.P., the Office of the High Commissioner for Human Rights and other partners hope to work closely with these United Nations mechanisms and agencies to integrate the Commission's recommendations into their reporting processes and to create more policy levers to influence national and global policy.

The Commission's work has already started affecting and had a positive impact on regional policy discussions. I'm

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hoping Mr. Prasada Rao can give us a little more information on this in the Q and A in terms of the progress that's been made in the ESCAP region in terms of addressing the Commission's recommendations.

I'd just like to close by saying a couple of things which are really important. This is just an example. Given our leadership role within the joint U.N. program on human rights and law and particularly putting an end to punitive and discriminatory laws, this is the range of countries that U.N.D.P. is already working in on issues of law reform, access to justice and improving legal environments. Now, it's a lot of countries - we're a big organization - but it's a lot of countries, but I think looking at this, what's really striking to me is that we really need to be more strategic and targeted and really bring our resources together to try and make a difference in these countries.

I'm sure other co-sponsors and other agencies and partners also have equally long lists of countries where they're working on these issues. I wanted to leave you with a thought that hopefully we can come to in the discussion, which is I think what the Commission's work has shown us is that the law can be a powerful tool in ending the AIDS epidemic. We need to work together to build stronger and more strategic partnerships which can transform punitive and discriminatory

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practices and laws into legal empowerments which empower the most vulnerable and communities more broadly to achieve the social change, which will be the foundation of an AIDS free generation. Thank you. [Applause].

We've got quite a few members of the technical advisory group, we've President Mohai still here, so I'm going to open up the floor to questions, and I'm hoping that, certainly, the technical advisory group will also help us out with questions. Could I ask people to move up to the microphones because I am middle aged and I can't see the microphones right at the back; so if you're going to ask questions, use the microphones at the front please. Please introduce yourself and I think what we'll do is we'll take a couple of questions, maybe three or four questions, and then we'll ask the panel to respond. Please tell us who you are and your organization. Thank you.

**DAMON BARRETT:** Thanks very much; Damon Barrett from Harm Reduction International. I have a question for anyone on the panel that wants to try and answer it. It's about reconciling the U.N.'s position as essentially a guardian for the AIDS response and a guardian for the U.N. drug control system. On the one hand, we have what the commissioners are finding and what U.N.D.P is saying, and many of the U.N. bodies around harm reduction. On the other hand, we've got the International Narcotics Control Board, the U.N. treaty body for

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the drugs conventions which has refused both to fully reduce harm reduction, but also refused to condemn human rights abuses committed against people who use drugs. When asked, in fact, whether there was any atrocity, any atrocity, committed in the name of drug control at the U.N.'s International Narcotics Control Board would condemn, they said 100-percent not, so I wonder how that gets reconciled. Thank you.

**MANDEEP DHALIWAL:** Great, thank you. Okay.

**JERKER EDSTROM:** Thank you. Thank you very much, first of all, Mandeep and the whole panel for a really fascinating discussion. Very encouraging. I'm Jerker Edstrom, by the way. Sorry. I work at the Institute of Development Studies in the U.K., but I'm from Sweden and not particularly proud of my country's laws as it regards human rights and sexuality. My question is encouraged by a lot of what I've heard. Did the Commission have the courage to look at new and coming bad laws; such as laws about the criminalization of clients' of sex workers, such as, in the case of my country, and what that might - implications that might have for sex workers and the response to HIV across the world if it spreads? Thank you.

**MANDEEP DHALIWAL:** Okay.

**PAREEN ARUTNIK:** Hi, Pareen Arutnik [misspelled?

01:11:00], I am from the American Bar Association Rule of Law Initiative and I have, I think, one comment and maybe two

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questions. The first comment is that we have recently developed an HIV/AIDS legal assessment tool, and this tool - it's a methodology to assess countries' compliance with international human rights standards on the protection of people with HIV. So if anyone is interested - it tackles mostly discrimination issues, but it also talks about access to essential services: treatments, privacy and confidentiality issues, so on, so forth. We'll be releasing it very shortly, within a couple of weeks. If anyone is interested you can give me your e-mail address and I'll be happy to send it to you. It's, of course, free of charge.

The second thing, it's sort of alluded to the question that my predecessor asked. It's about - I work on HIV related issues and I also work on human trafficking issues, and I feel - even at this conference sometimes there is a tension between the two worlds, especially when it comes to the issue of criminalization of sex work. I definitely agree that sex workers should never be criminalized, that's out of the question. I do agree with, generally, decriminalization of sex works for sure, but some people ask me how do you address demand - in the human trafficking work - how do you address demand? Many people, men and the human trafficking activists will tell me that you have to punish the clients because there

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is just no other way to address demand. So, I just wanted to see what your thoughts on this are.

One last question is to - I'm sorry, Ms. el-Feki. Your last sentence was about how HIV can affect the law. This is sort of a fascinating concept to me, and if you can elaborate this and maybe give concrete examples. The way I understand it is, for example, there is - I read about a case in Zambia where the spread of HIV was used as a way to ban widow sexual cleansing. Is this something that's within the scope of what you were talking about? Thank you.

**MANDEEP DHALIWAL:** Okay, one more and then we'll stop.

**AIDA ROJAS:** My name is Aida Rojas [misspelled? 01:13:49], I'm the president and founder of an organization called Translast [misspelled? 01:13:53] Foreign Aid Work based in New York. We deal with youth, at risk youth. My question and one small comment; not as big as her. Sometimes it's very difficult for a youth orientated organization to implement education of reforms regarding HIV and sex education because you have to deal with the Department of Education.

We are always calling for law reform and health reform, but we are not calling for education reform, and in many countries there's no way to really create an AIDS free generation if we don't revolutionize the way we are teaching our youth how to learn. Not about HIV because HIV is a

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consequence of a cause. The cause is if you learn how to address yourself in a civic manner by knowing the real issues that are behind HIV, that is poverty, self-esteem, social mobility and community engagement is when you are really going to get that AIDS free generation dream that you talking about in this conference.

So, my question, and it was big, bigger than her, my question is how the Commission can really enforce or can make an education enforcement rather than a law enforcement to bring to accountability the Ministry of Education of each country because that's the beginning of the AIDS free revolution or the AIDS free generation. How can we keep the Minister of Education in each country accountable for the program of sex education they teach to our youth in the schools? Thank you.

**MANDEEP DHALIWAL:** Okay, great. [Applause]. We'll give the - we'll give our panelists an opportunity to respond. Shereen, shall we start with you?

**DR. SHEREEN EL-FEKI:** Yeah.

**MANDEEP DHALIWAL:** Feel free to respond to any -

**DR. SHEREEN EL-FEKI:** I'll just address the question from the lady from the law - law journal? I wasn't - sorry, the acoustics are really bad here, it's a bit hard to tell, but I did hear your question. My statement was based on analogy to the situation for other key populations in the Middle East and

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North Africa. We have concentrated epidemics now in all our countries among injecting drug users, men who have sex with men and, in many countries, among female sex workers as well. Ten years ago, five years ago, it was impossible for us to engage with these populations on any sort of rights based platform. HIV, because of the respectability of public health, allows us now to engage with these populations.

In some countries, for example, in Tunisia in the National AIDS Plan, they've actually proposed the decriminalization of same sex relations and of injecting drug use and of sex work on the grounds of public health. Quite frankly, in the post-Arab Spring situation, this is the best way we have forward. It's very hard for us now, in the region, to advance a rights based discourse around gender sexual rights and reproductive rights.

As I said, it occurred to me that perhaps HIV in this context might be a way that we can actually address some of the existing legal challenges and certainly the challenges of law enforcement around women's economic - certainly economic and family rights as well. It's a little tricky in our region because we don't have a generalized epidemic; we have this concentrated epidemic. It's a little harder to make the case that, I don't know, you need to ban female genital mutilation because of the connection to HIV. But it's certainly a way

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forward and certainly for us, in the Arab region, the key thing we need is evidence. We need evidence to show that, for example, the disadvantages that women face in inheritance might be contributing to their increased vulnerability to HIV. Once we have that evidence, I think perhaps those are going to be quite powerful arguments for us to move forward on legal reform in the current, quite conservative religious climate we have in the region.

**J.V.R. PRASADA RAO:** Those two questions about the drug use, the conventions and then also on the Swedish law. Now, so far as drug use is concerned, we think the Commission's - the Commission formed, there is adequate flexibility to enact reforms, and some countries have done it. For example, Portugal has [inaudible 01:19:17] significantly to the Commission. In fact, they have decriminalized possession of small quantities for the drug user. If the government has a political will, and if it can generate popular public opinion, it can do it. That doesn't mean that the conventions can [inaudible 01:19:31]. In fact, the conventions provide them with a straight jacket behind which the governments can hide; saying that, look, there is a convention like this, what can I do?

So there is a need to reform the conventions also, but that is a long, drawn process. Immediately, the governments

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can amend some of the laws that they have to decriminalize individual possession of drugs. So this is something which the Commission found and one of the recommendations is to do that. On the Swedish law, in fact in the report you'll find an entire page devoted to the Swedish law and its consequences. I'll just read this particular sentence that says, "Since its enactment in 1999, the law has not improved. Indeed, it has worsened the lives of sex workers. The law's regard so far is underground trade, more violence, few prosecutions and convictions and criticism and organizing".

So, somebody can just take a look at this and we found that this is not the right prescription for countries. Unfortunately, once the Swedish law has come in, some of the countries [inaudible 01:20:35] have inverted to Sweden to show how great they are doing there. But countries like Cambodia; they went ahead and amended the laws also with disastrous consequences. So, definitely the Commission is not supporting the Swedish law. Thank you.

**MANDEEP DHALIWAL:** Thank you. I'm just going to ask Cheryl Overs, who was our expert on sex work - one of the experts on sex work - on the tag, and particularly well versed in the issues of conflation of sex work in trafficking, to answer the question about trafficking issues. Cheryl.

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CHERYL OVERS: Yes, hello everybody. The whole discussion about sex work and trafficking is fraught, by definition, of fogginess. It's extreme - we can have a discussion and two people use the word trafficking to mean two different things. Trafficking currently, in New York City, can mean a taxi driver taking a sex worker to work, and trafficking on somebody else's analysis can mean kidnapping, imprisonment and rape.

It's worth pointing out that kidnapping, imprisonment and rape of people are all existing crimes. If a sex worker is a victim of those crimes, the best way forward is to use proper criminal law to prosecute those crimes. So that speaks to the first point that Shereen was making about the laws are sitting there, they need to be used.

A sex worker whose having sex against a person's - I'm sorry. A woman who is having sex against her will by somebody who's paying for it with a third party is a woman being raped. It's not special because she's a sex worker or because money's changing hands. Rape is rape is rape; and that's really something that gets lost in this discussion about trafficking.

The question, with the greatest respect, how do we address demand, is a disingenuous question because I understand that question to mean how do we stop men wanting to buy sex. The answer is we don't try. If we want to limit HIV, we need

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to reduce the demand for unprotected sex. We know how to do that, and the start of that is listening to sex workers. We've been doing a very, very good job of that in interventions that involve sex workers and that address clients.

There are some - I won't take up too much time, but there is some technical issues, and that's - my question is where are we going from here because we do have a little bit of a mish-mash in the human rights conventions. The Commission has addressed the Palermo Protocol. We need to have a look at CEDAW. CEDAW Article 6 actually conflates sex work and trafficking by the idea of sexual exploitation; so that needs to be looked at. There's lots of work to go on with, in the future. Certainly, we have - our Swedish colleagues are here from the Sex Worker Rights movement in Sweden and they're more than keen to talk to people to talk about their experience in Sweden. They are absolutely delighted that the Commission has come out so strongly against the criminalization of clients.

I also just particularly want to commend the Commission for facing the fact that sex work is a business. It's a little bit of a no brainer these days that people don't want to see sex workers criminalized. It's obviously silly to grab girls off the street and put them in jail; and everyone kind of agrees with that. The much more difficult thing is that sex businesses have to be decriminalized in order for people to

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sell sex in safe, legal, work places. Now that's a much more difficult political sell. I really admire the Commission for taking that on and we need to be looking really closely at where we go with that in the future because this is an enormous moment where we can face that it's about more than just nice statements, oh, let's not lock up six workers, that seems a bit cruel. It's much more complicated than that and this is where we start. So, congratulations to the Commission and thanks very much for everybody's time.

**MANDEEP DHALIWAL:** Thank you. [Applause]. Okay. I think the question on education is a very good one and we certainly - I don't think the Commission wanted to suggest in any way that the law and the legal approach is the sole solution. I think, clearly, there is a lot of broader development and structural work that needs to be done around reducing the vulnerability of youth.

There is a specific section in the Commission report that speaks to the issues of young people and HIV, which talks about making sure that youth have access to comprehensive sexuality education and really debunks the myth that providing comprehensive sexuality education in any way increases vulnerability of youth. Actually, the Commission goes so far to say that it's an obligation for countries to ensure that young people have access to the best quality comprehensive

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sexuality education in order to prevent them from acquiring HIV. We'll take the final questions here, and there was one question over there, and then we'll wrap up because we've truly got five minutes, so they're going to have to be very fast. Sorry. Over here, there and then Lucy.

**JACKIE POLLAK:** My name is Jackie Pollak [misspelled? 01:26:44] and I work in Thailand with the local Thai N.G.O., working with Burmese migrant workers. My question is about - that is - did the Commission also look into the issues of criminalization of undocumented migrant workers, and also the legal limbo of asylum seekers and the detention of refugees in camps and detention centers? That also has a strong impact on the responses of HIV/AIDS. Thank you.

**JOEL:** Alright, thanks everyone. My name's Joel. There's just sort of a lumping together, I think, between stigma and discrimination and it seems like they're two really different things. Discrimination is really on the legal side, and I can see that, and stigma is obviously much more on the social side. Although there's obviously connections between the two and they're very obvious, there's no short cut and working on discrimination is just not exactly the same thing as working on stigma. So I wondering whether there's going to be a global commission on HIV and stigma - which I think would be

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really interesting - and if that could be brought forward.

Thanks.

**MANDEEP DHALIWAL:** Okay, great. Lucy?

**LUCY STACKPOOL-MOORE:** Lucy Stackpool-Moore from the International Planned Parenthood Federation. A very quick question. This is a global movement for law reform and I think - you've obviously talked to a lot of people, but you have a captive audience here and I think a movement starts with people. My question for the panel is what can we, as individual actors, do to work toward some of those quite lofty principles in there? And then the last one is just a quick plug for a tiny little action. We have a postcard sending to Obama, specifically on the issue of criminalization of HIV transmission, non-disclosure and exposure here in the U.S. with the Positive Justice Project, and there's some at the back near the media guide; please sign and send it to Obama.

**MANDEEP DHALIWAL:** Great. Okay. Mr. Rao on migrants, do you want to say something?

**J.V.R. PRASADA RAO:** Yeah. On migrants, in fact there's a whole chapter on migrants. For want of time we could not make a presentation on that, but I would request you to take a look at the trend. The very important recommendation is in matters relating to [inaudible 01:28:45] of the law, "Countries should offer the same standard of protection to

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migrants, visitors and residents who are not citizens as they do to their own citizens". It is very clearly recommended here, so that part has been taken care of.

**MANDEEP DHALIWAL:** Okay. I'll just say something about discrimination then. The difference between discrimination and law and otherwise. I think one of the main things that's come out of the Commission report is really that the law not only produces stigma, it also - there's a real relationship between law and stigma and discrimination as it's experienced. There's also a chapter on discrimination and discrimination law in the report. I'm not sure about a commission on stigma. I think it's a really important issue and I hope that someone does decide to do a global commission on stigma. It'd be great; we'd be happy to support the process.

I think in terms of what Lucy - Lucy's question about what individuals can do, I think we have a real responsibility now to look at how we bring - the Commission's done a tremendous job of bringing together a range of stakeholders: parliamentarians, the judiciary, lawyers, affected communities, civil society organizations, across a range of countries, the U.N., around this issue. I think we now have to think strategically how we make a difference in countries, building on these partnerships that have been built. This is something

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that we're going to be doing some thinking on as we go forward. I know in the civil society briefings that led up to the launch of the Commission report there were some very good ideas that came up in those calls. We had a meeting this morning with UNAIDS co-sponsors about what the U.N. family does, and some of that was around strategizing about how we - what we do about the review of these conventions that are at the root of some of the problems.

There's lots of ideas underway right now. After we've had a bit of a holiday, we'll be coming back to these ideas, so please do get in touch with us. You can get in touch with us through U.N.D.P. or through the Commission website, and we look forward to looking at how we work together to move this forward globally, but most importantly, at the country level. Thank you for your time and wish you a good conference. Thanks.

[Applause].

One other announcement; there's a blog post on Huffington Post that's just gone out today about HIV laws, and that's written by Shereen el-Feki and you'll find little credit cards on your seats which include the Commission report. We encourage you to read it; it's 90 pages, take your time, but it's a good read. Thank you.

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