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What have you done for HIV/AIDS Lately? The Role of Human Rights Mechanisms in Advancing the AIDS Response
Kaiser Family Foundation
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JOE: -director of the European agency for fundamental rights here in Vienna, so thank you all for coming and thank you in the audience for coming. This session is also being webcast so for people out looking at us on their computers, welcome as well.

So, we are going to just start with some questions, some really basic things to get us started and I want to actually ask you, Morten, to start with just a basic question about what do you see as the most important human rights issues right now that need to be addressed in the response to HIV/AIDS?

MORTEN KJAERUM: Thank you, Joe. Thanks for taking this initiative and I look very much forward to the discussion. I hope very much that the audience will also participate. Unfortunately, people on the web, it's a bit difficult, but anyhow, what the agency has done up to this conference is that we have made a report that I actually want to share with you, which is very much work in progress, where we are trying to outline some of the major gaps in the present protection regime in Europe, in the 27 EU member states, and of course also some of the needs, what are the challenges, and of course what we see is not surprisingly that there are a number of issues related to people with HIV infection as such.

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And then there's another major issue and that is how we actually target the groups which are most exposed to HIV? And here in particular the ethnic minorities, migrant sex workers, men having sex with men, prisoners, and that sort of group, how do we actually protect the rights of those groups better?

Here we have detected through a number of studies that with some of these groups, with men having sex with men, with ethnic minorities, that there are some considerable barriers for these groups to address, for example the health sector. How are they being treated in the health sector? So, in general there are various, and if you then put on top of that the stigmatization of HIV, then we certainly have multiple barriers for people actually getting access to the health sectors.

So, I would say that one of the prime issues to address in the EU at this stage is actually ensuring the right to health, access to health, the next one for particular groups. The second one I want to point to is the issue of data protection, right to privacy; again, if you do not feel totally sure that the information that you pass on to the relevant authorities, to the health sector are protected, again a barrier to actually address it.

So, these are some of the issues that we have identified as key issues in the 27 member states of the EU and

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that will be addressed, and of course we can dig deeper into it as we go along.

JOE: Great. Thanks for starting us off. Manfred, from your post as UN Special Rapporteur on Torture, what are the issues that you are addressing? What success have you seen? What challenges are you facing?

MANFRED NOWAK: Again, many thanks for organizing this side event. Of course, first of all, if you think Special Rapporteur on Torture has any kind of relevance for versus living with HIV/AIDS, it does, because one of my main activities as Special Rapporteur on Torture and other forms of human degrading [misspelling?] treatment, is to travel around.

I have been in about 20 countries on official missions in order to assess the situation of torture, and most of the time I spent in detention, prisons, pre-trial detention facilities, police custody, psychiatric institutions, and I realize that there is a global crisis of prison, the forgotten prisoners. As soon as you are locked up, society doesn't care anymore about what is happening there.

And if you then analyze the prevalence, HIV prevalence in prisons is in every country higher than in the society at large. In some countries, 10 times, up to 40, 50, 100 times as high, because of course many high risk groups are in a proportion, in a higher manner in prisons, whether it is again

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sex workers, because they are criminalized whether it is men having sex with men, because they are criminalized, but primarily also people who inject drugs.

And we have a very moralistic attitude. Sex is not allowed in prisons, injecting drug use is not allowed in prisons, but I do not know any prison where there is no sex, voluntary or non-voluntary, and where there is no drug use. So, to apply a different policy, countries that did that, where you have the use of condoms in prisons, where you do not segregate people, where you also provide needle and syringe programs and methadone and other harm reduction measures, of course you can reduce the spread of HIV in prison to a very, very much extent.

And again, it is not only for the benefit of the prisoners, it is for the benefit of the society at large, because we have about 10 million prisoners worldwide, but 30 million individuals go out, in and out of prisons every year, so if you have a high risk and in particular in Eastern Europe and the Russian Federation, the percentage of people who infect themselves in prison is much higher than in many other countries.

And then you go out to society, and there of course you are risky, but there are many, many other issues, but just one is in prisons, but in general I deal very much with fighting

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against criminalization of socially unacceptable behavior, whether it is homosexuality, also heterosexual contacts outside marriage, adultery, whether it is sex workers, whether it is people with injecting drugs.

Criminalization always is counter productive, and increases the risk, because people go underground, so there are many areas that are directly relators into my mandate.

JOE: One of the things that we have heard a lot about at this conference has been drug users in Eastern Europe, but another thing has been drug detention centers or rehabilitation centers in Asia, and there have been sessions on China, on Cambodia, we know this is an issue in other countries, in Vietnam, in Lao.

And a number of people have characterized the treatment of drug users in these centers as torture, including Michel Kazatchkine, UNAIDS has called for the closure of these centers, but there has not been a kind of really unified voice by the UN. Certain UN agencies have been slow to really react or to call for the closure of these centers or to defend the rights of people in these centers. How do you get different UN agencies to act, harmonize together as one voice for such an outrageous abuse which is torture?

MANFRED NOWAK: That is a very good question. I mean, on the very issue of HIV/AIDS I should say that Geneva based

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human rights mechanisms and the Vienna based mechanisms, UNODC, work already much better together than in other areas.

As far as the drug policy in Vienna is far removed from the human rights policy in Geneva, and one of my aims is actually to bridge the gap, to bring the two approaches together and show that the war on drugs and to much extent, the UN drug control policy is inspired by the idea of the war on drugs, is counter productive in human rights, and of course it also refers to the compulsory treatment centers for drug users in many countries, but in particular Cambodia and others that you mentioned.

Any form of compulsory treatment already is a violation of the principle of informed consent, whether it is mandatory testing, or mandatory treatment, it is counter productive. People should be treated because they want to be treated, but secondly and that is what you raised, in some of those, I would not say in all of them but in many of those places, they do not really receive treatment as they should, care, treatment, support, but they are subjected to all kind of compulsory measures that may also amount to torture in human treatment, as in other detention facilities. It's a detention facility, and that is an issue I am very much concerned and I agree with you, much more needs to be done in order to affect finding and then

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developing a common United Nations approach, both by UNAIDS but also by UNODC.

JOE: And Anand, I think there are about 475 different issues you could take on that relate to the right to health and HIV. How do you prioritize, what are you working on now? What do you think are the issues that are really the most critical?

ANAND GROVER: Well, you know, the right to health, as you rightly say, actually there are so many issues, it is informed legally, internationally, and the human rights law by what are called the underlying conditions, the availability of say potable water, or the social determinants, like for example criminalization.

In the context of HIV, I think it is very important that the strategy is rights based, and this is the first time that it has been clearly put on the table. But, have we really imbibed it or not, it is a different question, but the rights based strategy has actually worked. For example, what Manfred talked about, informed consent, Morten talked about confidentiality, the stigma being responded to by discrimination, this is what I call the core area of rights. Consent, informed consent, confidential depreservation, and antidiscrimination are the core principles and if they are not observed, either by much of an HIV law for instance, or a general law which actually takes them on, you are not going to

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empower people who are HIV positive. Empowerment of HIV positive people is the fulcrum of a rights based approach, and I will just dwell on that.

The second issue is, also touched by Manfred and Morten, is the criminalization of various sections of society, and my last report to the UN Human Rights Council was on criminalization of sex work, HIV transmission, and same sex relations. Criminalization not only of this, but indirect criminalization actually has a very deleterious impact on our fight against HIV, and that has been fairly well established.

The other thing, and we have a bone to pick with the European Union, is access to treatment. Access to treatment, the trade property laws, intellectual property laws which are being pressurized by, including the European Union, on a country like India, which is the generic producer, to have what are called trips [misspelling?] plus standards, are actually impacting adversely on the access to medicine.

And there has been an issue in this conference on how the EU, India, FDA negotiations which are being carried on are actually going to impact adversely, but let me just conclude on this initial remark, by indicating how a rights based strategy actually works positively.

Take for example sex workers. Sex workers in India were able to show, and that is what I work with, we work with

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What have you done for HIV/AIDS Lately? The Role of Human Rights 10
Mechanisms in Advancing the AIDS Response
Kaiser Family Foundation
7/20/10

as a group, sex workers, drug users, gay communities, LGBT communities, sex workers were very critical in India as a response mechanism, as a response group, they were empowered, firstly to understand what is HIV, to respond by actually having safe sex negotiations with clients, and they were empowered, then to ask for their own rights, not only for prevention, it is not injecting drug user only for example, it is drug use.

Are you against drug use? I will come to that, but in a country like India where people are illiterate, poor, no power, we were able to show that once you empower sex workers, you can actually stop the epidemic from growing, and that has been a success.

So, within the confines of a criminalized environment, HIV gave us space, but that space is now limiting, it is limiting because you are only talking about prevention. You are not talking about the rights of sex workers. We are only talking about rights of injecting drug users. We are not talking about rights of drug users. Why should, for example, cannabis, I come from a country, India, where traditionally cannabis has been used. Why alcohol is permitted and why cannabis is not allowed, what are the reasons for that? It is a cultural imposition. And I think it is completely ridiculous

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that countries in the west impose such cultural norms, which have absolutely got nothing to do with health.

I would argue that cannabis is better for health than alcohol or smoking, but none of them are actually criminalized. So these questions have to be opened and we cannot just talk about injecting drug use, because the space is now limiting. Today, sex workers are saying you have done enough for HIV, what about our rights?

So, drug users are also saying are we not going to be treated with dignity? Why are we sent to compulsory detention centers? And it is not only the issue of compulsory detention centers in, for example, Southeast Asia, in a country like India, the treatment is not regulated, so we have non-evidence based treatment. As a result of that, drug users, not only injecting drug users, are actually sent to these centers, not compulsory detention centers mind you, and they end up dying. That is the result of the complete stigma that we have on account of various international drug conventions, which have criminalized these groups.

Lastly, on the UN, unfortunately the UN is a very conservative body. My last report faced a lot of criticism, but we are in this conference where we can talk about these issues, without any opposition, but when you go into the real world, Manfred can tell you better than I would, what hostile

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reception that you get, but it is our duty as human rights activists to put them on the agenda. It is our duty to convince states that it is very important to see this, how are your people, how are the rights of your people, your citizens, being affected adversely? Should we be inclusive?

So, one of the good examples was the last judgement that we got, which I argued for on decriminalization of homosexual sex in India, and that was the basis of it. We cannot treat our own human beings because there are certain practices in a criminalized manner. I think that is the starting point.

JOE: Good. Well, let me first see if you have convinced Morten. Are you going to go back to work and fight for the rights of individuals to use cannabis and fight against intellectual property? Are those issues going to be on your agenda?

MORTEN KJAERUM: Well, I mean, we are always open to look at new issues. I think unfortunately I would say that there are so many key issues within the established human rights agenda in the EU for the moment. As I mentioned in my opening remarks, I mean the whole issue of addressing marginalization, discrimination in the European societies—

JOE: Let me ask you—

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MORTEN KJAERUM: -and some of the others, and this is I think where the EU level probably should move on, because we have already a number of important initiatives and in my view this is the key to really address these issues on a long-term basis.

JOE: Let me ask you, I mean just following up on the issue of drug users, I mean, poor treatment of drug users in prisons is not unique to Eastern Europe or to Asia, there are issues of access to adequate substitution therapy in European prisons, and harm reduction measures in prisons, what process would it take for your agency to get involved and to work with EU countries to improve the situation in those settings?

MORTEN KJAERUM: I mean, first of all not being too so to say legalistic but at the EU level, as you know we just adopted the Lisbon Treaty which now opens up for a much closer collaboration between the member states, the 27 member states, on criminal law issues including issues related to prisons and so on.

So, we are still in the very early days of an EU collaboration, so these issues at this stage, should first and foremost be addressed at the national level, and this is again an issue where let us say the agency plays in, and that is to, we see a development these days that we need to create a much higher level of accountability with the frontline workers.

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And here I would mention for example prison warders, people in charge of the prisons, but also nurses, doctors, etc, that they start to see themselves as human rights defenders, as defenders of the rights of people living with HIV in prisons, that nurses and the doctors ask themselves seriously what can we do to bring down the barriers?

I think we managed to sort of bring human rights 10, 20 years ago to the national level, so we have a national level dynamic discussion I think in most countries in the world where we need to go as the next steps to also address this issue is to bring it to the frontline workers, actually see them as the future human rights defenders, the nurse, the prison warders, and the others, this is I suppose where we should begin.

JOE: Let me follow up on that and the idea of accountability because I think if you look at past AIDS conferences, there has been a lot of focus on solidarity, on universal action now, there has not been a lot of focus on accountability, and I wanted both Manfred and Anand, how do you get accountability for someone whose rights have been abused? And sometimes it is actually the frontline health care workers that are doing the abuse, if it comes to forced sterilization for example.

If someone's rights are abused, what are the mechanisms that accountability really can work?

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MANFRED NOWAK: Well may I first still add to what Morten has said about the European Union Country, just to give you one example, in 1988, in some prisons in Spain, you had about 50-percent of all the prisoners being HIV positive. And Spain did react with harm reduction, clean needle and syringe exchange programs, condoms, all kinds of course, also methadone, et cetera, and they reduced significantly the number of persons with HIV in prisons. It is just something that—there are best practices and others can learn.

Moreover, recently in the last five, six years, did quite a lot, because again they were fairly high in introducing these kinds of measures, but still also in the European Union, we still face many authorities, prison directors who say but how can I provide for condoms if sex is prohibited in prison, to not actually invite them to have sex? Or needle and syringe programs, I mean, we are a prison that is drug-free. Whenever I hear that, I do not believe it. And if it is not others, families and whoever is smuggling them in, it is prison staff. I mean, I have in so many prisons, [inaudible] for instance, they have really the most terrible strip searches of all the wives and other family members coming in, in order to prevent them to bring drugs into, it is the biggest [inaudible] prison in Uruguay, and then I sit down with the prison director and he says I know most of the drugs are brought in by my own staff.

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So, again, from a moralistic point of view, you can say you should not invite them to actually inject drugs and to have sex, but this is the reality, so let us forget about laws, be pragmatic, if you want to prevent the spread of HIV, and of course other bloodborne diseases, it is not only HIV, it is hepatitis C, it is other diseases as well.

JOE: Let me ask you the accountability question, Anand.

ANAND GROVER: In the international mechanism, Manfred and I work as special rapporteurs, so there is a procedure that you can make a complaint if it actually impacts either the right to health or the right say against torture, so you can write to us, then we actually forward that complaint in a proper form to the governments. That is one accountability mechanism internationally.

We also, as Special Rapporteurs, make visits to countries and write reports on the issues, but at the domestic level, which is very, very important, you have to have a functioning legal system or you must have heard about sterilization [inaudible].

Now, if there is a functioning legal system, you can take a matter to court and get accountability through that route, but there is a certain legal right and a legally enforceable mechanism for those substantive rights, but there

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are countries where those legal mechanisms do not actually work in practice. We do not have to list those countries, we know them, and that is the real issue, when we are talking about HIV, are we just going to limit ourselves to HIV?

Are we not going to talk about other issues, how rights are actually exercised by people? I do not think you can ignore them. HIV only exposes fault lines in society, and unless you in the ultimate sense not go to rectify them, this problem will not be solved in the long run. It will still exist.

JOE: Let me ask you, in the case of high burden HIV countries, I am thinking specifically Lesotho, which has one of the highest rates of HIV prevalence in the world, there is sometimes a rationale given that this is such an emergency that rights have to be abridged, and on Sunday the Minister of Health from Lesotho said that she believes in the right for adolescents to have comprehensive sex education, but she also believes that the government has the right to test all pregnant women and children, regardless of consent.

ANAND GROVER: Well, I think that is a misconception and I do not think data supports that. I will not go into the data just exemplify this, from the point of view of treatment and testing. Today we know very well, and we have data to show that if a person who is HIV positive is on the borderline and

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treatment has to be started, ARB treatment, the most important thing is treatment literacy, that you have to take the pill, one or two, whatever it is, every day. That requires the person to be empowered.

Now, if you have a policy where you test mandatorially, basically, and without the consent of the person, where the person is not empowered, and then go on to say now for treatment you have to get literacy, it is not going to work. And that is what has happened in India. We have not had that policy of mandatory testing.

There is some amount of routine testing, but generally speaking treatment literacy is the heart of the ARB rollout program, and we see that there has to be countenance between testing, which has to be informed consent testing, and the treatment literacy, so there has to be harmony between them. You cannot one day say okay, I am going to test you irrespective of whether you agree or not, then the next day, but you need to know about this and that. It does not work. That is my point.

JOE: Great. I'd love for people to line up at the microphones and we will get some questions from the field. Why do we not start on microphone #2?

ALLEN LEATHER: Yes, my name is Allen Leather. I am from the Global Union AIDS Program. As the majority of people

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who are HIV positive are in work, and recent studies show there are very high violations in the workplace, discrimination, stigmatization, people losing their jobs or not being able to get jobs because of their HIV status, I would like to know what the panel's view is on the new instrument produced by the ILO Conference in June on HIV and AIDS in the workplace. I get a bit concerned when Morten says that health workers should be the custodians of human rights, when the rights of those health workers, doctors, nurses, and paramedics and many others in the social service including prison warders and all the social services do not have their rights secured, so I would like to know what the panel thinks of the new recommendation and how that recommendation will secure rights in the workplace for the HIV positive community?

JOE: Thank you for the question. Morten, do you want to take the first chance to reply?

MORTEN KJAERUM: For the second part on the rights of the health workers and prison warders and others, I completely agree that of course the rights of these workers should be secured, and I guess we have only a number of systems, I must frankly admit I am not aware, sufficiently aware of the most recent ILO recommendation. I have noticed that it was there, but I have not familiarized myself completely with it.

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But, the whole issue of workplace ethics and it is impossible to install human rights in any society, if we do not ensure that in the key institutions which are there to protect human rights, that human rights are protected. That is one of the reasons why I never believed in GMO's human rights education, in police or in hospitals or elsewhere if you did not look at the structural system in place in that particular area. So, yes I can only agree but still that accountability on the frontline workers is at least a place to start that discussion.

If I just could add one word to the issue of mechanism which is also partly linked to this, I think there is a tremendous untapped resource in all this, and that is the link that we see exactly as the man said with the Special Rapporteurs, treaty bodies and others, and then the National Human Rights Institutions, those working at the very local level with the institutions, also the frontline institutions, getting that link between the national, regional, and national, local level. We need to work on that much more focused in order to move some of these issues.

JOE: Thank you. Anand?

ANAND GROVER: As I said earlier and I indicated this, the core is informed consent to testing and treatment, confidentiality and non-discrimination. Non-discrimination has

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to be holistic, all pervasive, and comprehensive. It includes non-discrimination in jobs, in medical services, et cetera, and there is a wealth of body of law now which actually talks about that.

The ILO conference document, or the workplace document, is a good step. It is sort of a blueprint but it is not an enforceable mechanism. I would prefer, like we have done in India, to have a law. Unfortunately, most of the countries are happy with having guidelines, which are not enforceable and then it is left to courts to decide that. It is good to have that kind of document which courts can use, but they are not enforceable mechanisms or documents which are creating substantive rights, so you have to create substantive rights at the domestic level where you have all these issues tackled in a comprehensive manner. That is what we have tried to do in India. That's what we have tried to do in India and a number of other countries.

But I think it's a good thing that there is the ILO document which actually helps people and guide them, but I would be pleased as having that as a blueprint because then you do not have local communities being mobilized to ask for a law. I'm against modern laws because you do not involve communities. One of the greatest lessons of HIV/AIDS that the communities have started taking a hold of, their lives and their destiny

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and if that is reversed by experts doing documents I don't think that it's a good idea. But it's a good idea thing that these governments know that this is a sort of a guideline in terms of rights.

JOE: Okay, microphone number three.

RYAN RIVERSTEAN: Ryan Riverstean [misspelling?], Center for Public Health and Human Rights at Johns Hopkins University. This is many of conferences we have sessions on programs and funding on a global fund, on PEPFAR, increases in resources and then we have sessions like those on human rights mechanisms, but there is rarely a connection between the two, and I'd like to ask the panel what you think of the funding streams as potential human rights mechanisms, those funding programs have all kinds of evaluation criteria about corruption, about effectiveness, about competence, but very rarely do they contain any binding criteria concerning human rights in terms of equity, in terms of nondiscrimination. So I'd like your views on the degree to which human rights criteria should be built into a funding and reporting for the Global Fund, PEPFAR and other sources of funding.

JOE: Anand, do you want to respond to that first?

ANAND GROVER: Well I think it's a very important question. I think there is a dissonance in a lot of conferences between the funding mechanisms, the streams, and

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the human rights criteria. Well, I think that is partly to do with the fact that funding comes from various sources, they are not dictated by human rights mechanisms. Even the Human Rights Council is funded by states which do not necessarily believe in the human rights mechanisms. So there is a major problem. But I think that one of the most important things that happened in terms of the Global Fund was the community was able to secure a different type of funding mechanism, not the best one, but not the bilateral fund which actually allowed governments to use money for paying back debts.

So the money was supposed to be for HIV would never go to HIV. It would used for paying debt. The Global Fund is a big change and an advance on that. Within the Global Fund there is a scheme mechanism for participation and you would sit on it, most people sit on it and I think it's the bigger ones, it's still not enough. I think we have to go a long way and that's the challenge that we have to take.

I think it's a very important issue. It is being debated, but as you know today the debate is again twisted in another way in two fronts. Firstly on the issue of resource constraints, the data shows that not everybody is putting back but there is a resource constraint. I don't think it's going to last for a long time. That is one.

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And secondly HIV specific funding. There is a big debate about that why should HIV funding be specific? Why can't we go onto increase health info structure, et cetera?

So those are also issues. But the good thing is the community itself is participating in this debate. I think those are advances. We can't have everything and I think the process of getting there is also very important. I would not like experts and academics and people like me decide these issues. It should come from the community and that is the great thing about HIV. It's not perfect but the community is a big voice in it as you know.

JOE: Manfred, let me ask you to get more specific on this. For the issue of drug detention centers, there's a real debate about whether institutions should fund different aspects of activities in these centers, whether they should pull out as a way of trying to put pressure on the centers to be shut down entirely, whether they should fund alternatives like voluntary community based programs. Can agencies fund activities in these centers while torture and forced labor are going on? Can you separate out the activities that you're doing with those outrageous abuses?

MANFRED NOWAK: Actually I just last week on the occasion of the World AIDS Conference, we had a training here at United Nations for almost 100 UN ODC HIV staff people all

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around the world. One of these is we hardly discuss because still we are against this compulsory treatment centers for people who use drugs. On the other hand, shouldn't we nevertheless do our best to assist them, and it was split and I think there was no real agreement. But in principal I would say if it is an institution that clearly violates human rights in particular amounting to torture, in human treatment I think UN agencies should stay out in funding but also incorporating with them. But of course it also means that you leave the victims of the worst abusers alone. So that is the other side of the coin.

Give you another example. There was recently in the UNESCO a big discussion because President Obeyong [misspelling?] from Ecuador, was funding and was even named after him UNESCO Fund Prize, and of course we clearly said no. I myself have been in Ecuador New Guinea, it's a country with systematic practice of torture, one of the worst prison conditions. It's a dictatorship where I think any international organization should not accept even if it's rich because offshore oil drilling.

Another example there is a United Nations voluntary fund for victims of torture. They are funding torture rehabilitation centers such as in Copenhagen et cetera and I

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would actually put anything most directly to Len Hobenstein's [misspelling] question.

I would put human rights criteria because in fact they are funded by the United States, the European Union, by countries that are not primarily the perpetrators of torture in order to fund torture, rehabilitation centers where people are coming from countries where there is systematic torture. I would say every country that is found systematic and even practice torture should have an obligation to actually invest into the fund so that the victims of this country can be then treated in a rehabilitation center in another country. Funded by these governments. When I made the suggestion to Council of the United Nations, I was kind of ignored, let's put it that way. Or found that I lost my mind.

JOE: What about PEPFAR? Did they reply to this suggestion?

MANFRED NOWAK: Who?

JOE: PEPFAR, the US funding program.

MONFRED: No.

JOE: Let's have a few more questions. I'll go to mic number five and then we'll come up to mic number two.

LAURA STUMPLY: Thank you. Laura Stumply [misspelling?], UCLA Law School. My question follows up on the last one and it's about this issue of accountability. We have

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a problem with the Human Rights regime which is that there is a lack of enforcement and so I'm wondering in addition to this question about whether we should look at funding as a way to get to enforcement and tie funds to various rights requirements whether there are other areas in international law that we could be turning to outside of the Human Rights regime so in Europe for example, trade agreements sometimes write human rights provisions into those agreements. So could we be writing helping human rights agreements into those provisions or looking elsewhere outside of the Human Rights regime for greater enforcement?

JOE: Thank you. Let's get one more question and we'll try and answer them both. So, two.

DAMON BARRET: Damon Barret from the International Harm Reduction Association. It's on funding again this question. My organization—and this is directed to Morton directly—my organization has studied the connection between funding from government via the international drug control system for drug control programs and states that retain the death penalty for drug offenses. And from cursory searches we have been able to find named individuals that were captured with the assistance of the UN extradited to China and executed to mark the UN anti-drug day and the relevant program was funded in large with the European Commission and individual European donors.

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The European Parliament in 2007 adopted a resolution specifically saying that funding should not be used in countries where human rights abuses related to drugs are very likely and specifically related to the death penalty. So I hope that is something that Morton can take back and I'd appreciate your comments on it. Thank you.

JOE: Morton, do you want to start?

MORTON: Thank you, first of all, on the lack of enforcement. Of course, we are well aware of human rights enforcement is still in its early stages. However, I think it is important if we talk about the European level as you mentioned, that with the Lisbon Treaty, we now have a legally binding charter on fundamental rights and a much stronger framework on antidiscrimination and a number of other key human rights areas, so I think things are moving ahead also in relation to enforcement. There is still a long way, we are moving out of the way of the Stone Age in terms of human rights law enforcement. But it is moving and we should note some of these movements. And actually quite a bit happens these years within the EU structures.

When that is said, I fully appreciate what you also mentioned that the funds could be more and should be more human rights oriented and should be more at a higher level of human rights awareness. Again, I would say not to be overly

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optimistic but I see tendencies in that direction. One of the things I've actually noticed just most recently is that what Anand and Manfred are doing as well as treaty bodies and of course our own agency, is increasingly being picked up by some of the big donors and being addressed.

So what was previously human rights funding to human rights organizations then increasingly we see some of the donors using rights based approach to their funding which is partly different. Of course, there is overlap between the two but there are also some different avenues, important different avenues, not that it's either or, but rather both. Of course these funds, also when it's for the third countries should always be scrutinized from the human rights performance.

JOE: Manfred, do you have anything?

MANFRED NOWAK: Of course I agree the big challenges of the 21st century is how to close the gap between the high standards that we have in the field of human rights and their enforcement and practice. How can we use other trade agreements et cetera. Of course, they are used. If you look at the Continued [misspelling?] Agreement or any of the European Union all these bilateral treaties as a human rights clause as an essential element, but it brings us a little bit back to the conditionality which also has a kind of eurocentristic and neocolonialist touch, because it only goes

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one side and not the other side. Still in principal, I think we should think about other ways and mechanisms. I think that the Global Fund is a very good example in order to address HIV, malaria, et cetera but I think there is an agenda for human rights developed by a panel et cetera which is calling for Global Funds for national human rights protection system, because more than four billion human beings in the world have no access to justice, there is no accountability whatsoever.

It's a form of poverty and in getting the corporate sector much more involved, if every transnational corporation that is a member of the global compact could easily be forced, you can say if you want, to become a member of the global compact. You have to invest a certain amount of money into this kind of global funds.

So I think there are various ways and means of assisting enforcement of human rights through contributions by corporate sectors and others, but still it doesn't take away the main problem. I am just coming from the Austrian parliament where we had discussion about criminalization and public health, human rights, and balancing with members of parliament from around the world and the lack of awareness in most of this country is just sure [misspelling?]. Why shouldn't we criminalize men having sex with men and why shouldn't we criminalize deliberate transmission of HIV and to

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tell them that we 30 years of experience of science that should change our minds. In the minds of many parliamentarians and other politicians, it's just not there. So as long as the political will is not there to implement and enforce human rights including HIV related human rights, nothing will change. I think that's where we have to work on.

JOE: Great, let's get a couple more questions.

Microphone number six and then microphone number two.

FEMALE SPEAKER: Hello my name is [inaudible] and I represent International Planned Parenthood Federation which is the biggest organization working on sexual reproductive rights and HIV, and here I go with my question. And it's really in relation to the human rights link to sexuality, because we know that this is key for HIV in terms of MSM, sex work, criminalization of transmission, or the rights of people living with HIV. I wanted to ask the panelists, what do you think can be done, not only to ensure effective antidiscrimination policies, but also to promote sexual rights, meaning the ability of every individual to be recognized as sexually active and we heard about the moralistic views held in prisons or in the health system or in society, so we believe that a positive approach is also crucial to change it.

JOE: Thank you. Number two.

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STEVEN YOUNGSON: My name is Steven Youngson from the Danish Institution for Human Rights and my question goes to the two UN Special Rapporteurs and is about how to make the international human rights monitoring system more effective in promoting and protecting the rights of the most affected. At the Institute for Human Rights we have done a study of the human rights treaty bodies looking at every single set of concluding observations and recommendations they've issued since 2005 up until June 2010 to identify the HIV specific recommendations and the findings are quite interesting.

There are 89 countries that have received HIV specific recommendations and a 127 different reports, that's quite a wide engagement. But when you look at the actual content of these recommendations, they mainly deal with the rights of children and women in general. There is not one single mention of men who have sex with men in any of these 127 reports. There is a handful on IDUs and sex workers. They're descriptive, they're not actual recommendations. And then there is five really useful ones on people in detention.

I think the conclusion there is the treaty body system is completely missing the boat in terms of human rights promotion and protection of the key populations. And I'd like to hear your recommendations on how to make that part of the

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monitoring system but also wider, more effective on these issues. Thank you.

JOE: Anand.

[Applause]

ANAND GROVER: I think I did mention that the human rights bodies are very conservative. Last session, in June in the Human Rights Council I raised in my report about decriminalization of sex work, HIV transmission, and men having sex with men and I was actually lambasted by a number of states and the real thing is that most of the mechanisms are actually personneled [misspelling?] by people who are from the states. They don't think like you and me, that's what I was trying to tell you earlier. When we are here, we can very comfortably talk about decriminalization. Go out in the real world, the Human Rights Council, it's a different ball game.

You can't talk the same language. For your information, the word "sex" work was objected to. The word "sex workers" was objected to. It's a very conservative organization. Fortunately, they are mad enough to have mad people like me and Manfred there so we can raise those issues. But that's the real world. I'm glad you've done that and now for the first time and from the last Bali Conference some of the representers of the Human Rights Commissions Office have

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started coming to HIV conferences, and these issues are being taken up.

So I want to say that you're right there is actually just telling us what we know. You're confirming to us what me and Manfred know. We are not being lambasted by the states but even the sponsored state members, but that is the challenge. So there is no point in us sitting here and convincing you. I think we should we be sitting there and talking the same language and that's our challenge.

About sex work, I completely agree. According to me the basic victory certainly in Asia and around the world is primarily because of sex workers. Taking up the issue, becoming empowered and teaching us a lesson or two. I completely agree with my comrade there from the group and I think that's the most important issue that has been thrown up by HIV. We can't ignore it; we can't just talk about prevention. That is what I was trying to tell you earlier. It's not limited to issues of prevention; it actually has to be extended to what are the rights of people autonomy, about sexuality, and about expression. Those are issues. In terms of drug use also, everywhere. You cannot limit the space and say okay talk about prevention and go home. Don't talk about sexuality, that's not on.

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We are going through a different phase now where people are demanding rights like you're talking about and that has to be expanded, even in HIV countries [misspelling?].

MANFRED NOWAK: If I may add, there is a human right to sex. It's part of the right to privacy. In, I think, 1994, the Human Rights Committee which is an independent expert body composed of experts from all regions, all leading systems in the world, monitoring the United Nations covenant and civil and politically wide has said in a unanimous decision against Australia, *Tonin versus Australia*, that criminalizing consensual sex between men adults is a violation of Article 17, the right to privacy. And they say it very, very clearly because also, it was Tasmania they also said we do it in order to prevent HIV/AIDS. And the Human Rights Committee clearly said this is counterproductive. This cannot be used as a justification by the government.

If you look at the global map on states that are criminalizing homosexuality, it's a very, very high number. In Africa, in many countries of the world, many even having the death penalty. It's an obvious human rights violation because also the death penalty can, if at all, only be involved for the most serious crimes. So the point is that again that the human rights bodies arrive at a clear conclusion but it's not implemented.

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If you look at sex workers, again, there are issues that clearly say that having consensual sex that is not trafficking, not exploitive or whatever, as such is protected by the right to privacy. Even in Europe, we have countries that screen, for instance, they do it in relation to the clients, but it's less discriminatory as if it's the sex workers. But in principle it's also drives them underground and produces more unsafe sex. I mean, I would have to go to your question; I would have a lot of answers.

For instance, the first would be a record [misspelling?] of human rights. It's much better than nonbinding as a treaty bodies with nonbinding decisions et cetera I'm educating, I came back from the crime congress in Brazil where we educated actually a convention in the rights of persons in detention versus the right of liberty because they are a very vulnerable group. We had the support of the group of 77 and China, who actually destroyed the whole idea of the United States and the European Union, Germany and [inaudible] because we don't need new treaties et cetera in order to protect those people behind bars.

So there are many ways we would need new standards but again, much more effective implementation mechanisms and the time and the moment is not very conducive to enhancing and improving human rights mechanisms.

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JOE: Let me—we're running out of time.

MANFRED NOWAK: One last point. When dared as a special reporter on also cruel and inhuman degrading treatment to raise the question what is cruel, inhuman punishment. Isn't corporal punishment or capital punishment and again if you look for instance. I recently intervened again with an urgent appeal to Iran in order to prevent women only for adultery has stoned to death, that this moralist all human rights violations that you can imagine. First of all, adultery shouldn't be a crime at all and secondly not with the death penalty and not with an extremely inhuman and discriminatory method of execution. We could save them for the moment but we still don't know what will happen in the long run.

But when I raised this whole question, corporal punishment, we find the [inaudible] code of human rights, the European Court, the Human Rights Committee, the committee constrictor, all have said corporal punishment as such is prohibited under international law, but then you have Malaysia and Singapore and Pakistan, and wherever I was saying, but we are applying Charia [misspelled?] or any other religious law and that's why we don't care about international human made law, and that is the situation where we are in, and that's where we have to change the awareness.

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JOE: We're running out of time. I want to do one more round and give everyone a chance to say a few closing words, and the question I want to ask for you is to think about what has been thought to be impossible. And at a couple of the sessions this week there have been comments made by Michel Sidibe, the head of UNAIDS, and Julio Montaner, the head of the International AIDS society about a Chinese proverb that says, "Those who say it can't be done should get out of the way of those who are doing it." So my question is, thinking about that quote in terms of human rights, what do people say can't be done and what are we going to do to overcome that and to get things done that need to be done?

So I'll give you two seconds to think about it and I'll start with whoever raises their hand first, or I'll call on you.

Anand?

ANAND GROVER: Well, I think there's nothing impossible, that has been my philosophy and I believe that the empowering of the community and by empowering a community like my friend who is representing the sex workers union you can actually build up enough good will, even amongst the conservative members of society. To tell them what they are thinking is not necessarily correct and you can change things. I've seen changes in my lifetime. I'm a leftist but I'm

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prepared to wait to have changes done. The thing is to never give up. Believe in your cause, believe in your cause that is just. If your cause is just, you have to struggle for it forever, never give up. That's my philosophy and it works, I can tell you that.

JOE: Morten?

MORTEN KJAERUM: I would say when we look what has happened in the field of homophobia within very few years. Just last night I was reading an update of a report on the 27 member states of the EU. The first report we released in June 2008 we are now making a report and we see gigantic steps forward by a civil society, national human rights institutions, equality parties, politicians, media, et cetera really focusing on one issue, trying to push it and with success.

I think that is what we should do on this issue as well, getting the different actors together, ensure that there sign collaboration that there is a joint of cooperation between all the different actors, and that would actually be my reply to Steven before, that is ensure, be sure that actually all of the treaty parties get the information. So go back to the equality bodies to the national human rights institution, feed the UN mechanisms, the regional mechanisms with the information, then the conservators mentioned by Anand has its limits and they will be pushed. I have seen it, I was a member

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of the UN Committee on elimination of racial discrimination, and when we get the information we also have the possibility to act.

So I think there is, again, a joint responsibility to get all the different layers to collaborate, to focus. Then we will succeed.

JOE: Manfred?

MANFRED NOWAK: I think this AIDS World Conference is under the model right here, right now. I'm extremely happy, and I appeal to those who say human rights are not very effective. I agree with you but still, let us show in forces. I think this is really an AIDS conference under the human rights based approach, and I do believe that in the long term joining forces of the public health rationale with the human rights based approach will at the end convince those that are still very, very hesitant in applying different policies that scientific evidence based treatment is the only way to successfully fight of the AIDS epidemic.

JOE: Thank you, gentlemen, for joining me. Thank you for coming. We've got a march tonight to demand rights right here, right now. It starts at 8pm and I hope to see everyone out there and thank you for coming.

[Applause]

[END RECORDING]

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