

# INFORMATION NOTE

## Global Commission on HIV and the Law

2010

United Nations Development Programme

HIV/AIDS

*"I urge all countries to remove punitive laws, policies and practices that hamper the AIDS response... Successful AIDS responses do not punish people; they protect them... We must ensure that AIDS responses are based on evidence, not ideology, and reach those most in need and most affected."*

Ban Ki-moon  
Secretary General  
United Nations  
World AIDS Day, 2009

The Global Commission on HIV and the Law was established in 2010 to develop actionable, evidence-informed and human rights-based recommendations to enable effective HIV responses and realize the human rights of people living and most vulnerable to HIV. To this end, the Commission focuses on some of the most challenging legal and human rights issues in the context of HIV, including criminalization of HIV transmission and behaviors and practices such as drug use, sex work and adult consensual same sex sexual relations.

The Commission comprises eminent leaders from public life who will provide global leadership on HIV-related legal and human rights issues by: (1) synthesizing what is known about the interaction between the legal environment and HIV; (2) fostering evidence-informed public dialogue on the need for rights-based law and policy reform in the context of HIV and; (3) identifying clear and actionable recommendations with a concrete plan for follow-up.

Building on the UNAIDS Outcome Framework 2009-2011, the work of the Commission is constructed along three mutually reinforcing axes – findings and recommendations, a Technical Advisory Group to help generate and build consensus around the evidence base, and Regional Hearings to ensure participation and inclusion of affected communities and law and policy makers. The work of the Global Commission on HIV and the Law will be linked to the Global Commission on HIV Prevention, to be convened by the UNAIDS Secretariat. These two Commissions will ensure that law, human rights and HIV prevention will receive the interrogation and exposition necessary to facilitate the achievement of universal access and the Millennium Development Goals (MDGs).

## Context

*"In countries without laws to protect sex workers, drug users and men who have sex with men, only a fraction of the population has access to prevention. Conversely, in countries with legal protection and the protection of human rights for these people, many more have access to services. As a result, there are fewer infections, less demand for antiretroviral treatment and fewer deaths. Not only is it unethical not to protect these groups; it makes no sense from a health perspective. It hurts all of us."*

Ban Ki-moon  
Secretary General  
United Nations  
XVII International AIDS Conference,  
Mexico City, 2008

The law can have a profound impact on the lives of people – especially those who are vulnerable and marginalized. The true test of a humane society is reflected in its commitment to protecting the rights of minorities. Indeed, in recent years the law has been a positive force for change in advancing an effective HIV response, on issues ranging from access to life-saving treatment for people living with HIV to anti-discrimination measures to protect people living with HIV. Where the law has guaranteed equal inheritance and property for women and girls, it has helped to mitigate the social and economic burden caused by HIV and AIDS. Even though enabling legal frameworks have been found to contribute to promoting access to HIV-related information and services and to mitigating the causes and consequences of HIV, to date there has been limited adoption and implementation of such frameworks. For example, while the number of countries with laws to protect people living with HIV from discrimination has increased since 2003, one third of countries still lack HIV-specific legal protections. Moreover, the degree to which existing anti-discrimination laws are enforced is unclear, and in some countries favourable legal frameworks are being undermined by the criminalization of HIV transmission and exposure, sex work, adult consensual same sex sexual relations, and drug use.

The United Nations Secretary General has reminded the world of the heavy toll of the HIV epidemic in the last three decades, particularly in relation to people who find themselves in social contexts that are unpopular and stigmatized. This articulation re-emphasizes what has been known for several years – the necessary and mutually-reinforcing link between human rights and public health, which demonstrates that to effectively control HIV transmission and mitigate the impact of HIV, it is crucial to address the human rights concerns of those most vulnerable to HIV or affected by it through a rights-based approach. Unfortunately, this has not been translated into reality in many parts of the world, despite Member States signing the Declaration of Commitment on HIV/AIDS in 2001

and the Political Declaration in 2006. In recognition of the importance of scaling up rights-based approaches in order to achieve universal access and many of the MDGs, UNAIDS, under the leadership of Michel Sidibé, committed to the removal of punitive laws, policies, practices, stigma and discrimination blocking effective HIV responses as a key priority.

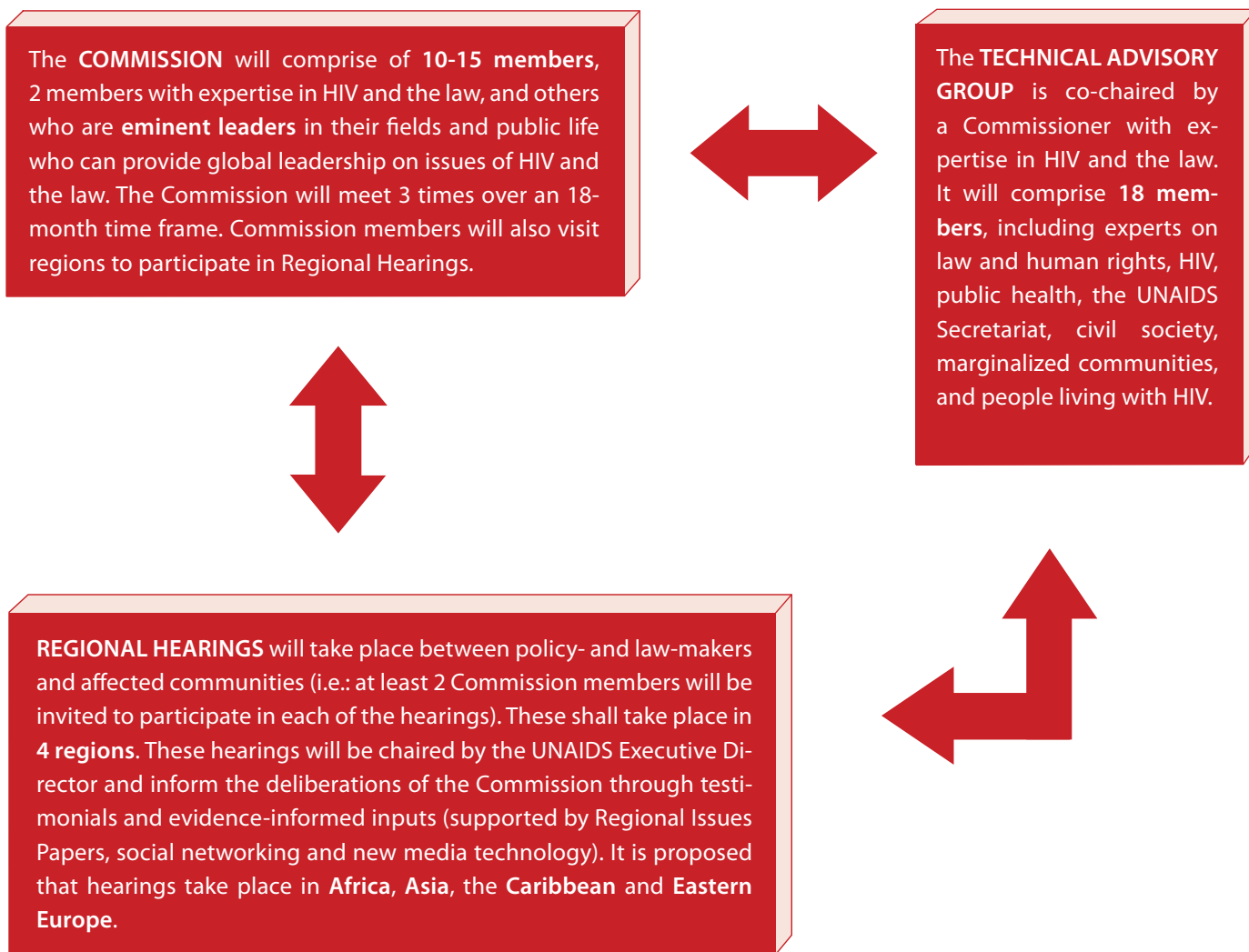
If the full prevention benefits of anti-retroviral treatment are to be realized, health and community systems must be able to meaningfully engage those who are typically marginalized by punitive laws, policies, practices, stigma and discrimination. Sex workers, men who have sex with men, transgendered people and drug users represent a highly ostracized and stigmatized section of all societies, not only rejected socially but further marginalized through legal frameworks that have cast them as criminals. Apart from continued criminalization of individuals who manifest these behaviors and practices, recent times have also borne witness to an increasing propensity to inappropriately criminalize HIV transmission and exposure through specific punitive laws or broader penal statutes. A number of countries have, had such HIV-specific laws for many years. In the last three years, at least fifteen nations have followed suit. Yet there is no compelling evidence to suggest that such laws deter people from transmitting HIV, and there is great concern that they both reinforce HIV-related stigma and discourage people from learning or disclosing their HIV status, consequently impeding effective HIV responses. Such laws have been reported to have a particularly harsh impact on HIV-positive women. Some data indicates the direct correlation between punitive laws and effective HIV prevention, for instance among men who have sex with men in the Caribbean. While there is some evidence and an ever-increasing body of documentation on human rights abuses stemming from punitive laws, policies and practices, plausible evidence on the impact of such laws, policies and practices on HIV and health outcomes, which can be translated into political will to advance effective HIV responses that realize the rights of people living with HIV and those most vulnerable is crucial.

Where evidence on the impact of punitive laws, policies and practices on HIV and health outcomes has been collated and used to influence law and policy makers, it has contributed to the enactment of rights-based law and policy reform. For example, the Commission on Drugs and Democracy in Latin America developed robust evidence-informed and right-based recommendations on law and policy reform relating to drug use issues in Latin America and subsequently a number of Latin American countries have opted for some form of decriminalization of drug use. Other efforts in this vein include the UNAIDS supported Commission on AIDS in Asia, and the Commission on AIDS in the Pacific.

## Approach

The Commission will lead a participatory process by:

- Encouraging the participation of people living with HIV and representatives of those most impacted by discriminatory laws and practices; government representatives from the Executive branch (including National AIDS Councils and Ministries of Justice and Interior); parliaments and judiciary; donors and relevant international organizations, including UNAIDS Secretariat and Cosponsors.
- Ensuring that the views and perspectives of women, men and transgender people, are heard and reflected in the work of the Commission.
- Making use of existing interactive dialogue mechanisms through websites that record the everyday experiences of people living with HIV and those most vulnerable to HIV, and the impact of legal structures and institutions vis-à-vis their citizenship, health and security.
- Galvanizing high-level leadership and local, national, regional and global action to encourage Member States to adopt and implement the recommendations.



## Partners

The initiative is led by UNDP<sup>1</sup>, on behalf of the Joint UN Programme on HIV/AIDS, working in close collaboration with a range of partners. Partners and supporters include governments, foundations, academia, UN agencies and civil society, including key population groups and networks.

UNDP is one of the Cosponsors of UNAIDS. Building on its core mandate in the area of human rights and access to justice, which has included its work supporting the Commission on Legal Empowerment of the Poor, UNDP serves as the Secretariat for the Commission.

UNAIDS Executive Director Michel Sidibé will chair the Regional Hearings. The UNAIDS Secretariat<sup>2</sup>, within its coordination function, plays a key role in engaging Cosponsors and linking the Commission with country dialogues on universal access.

The World AIDS Campaign<sup>3</sup> plays a key role as a campaigning partner and facilitate effective engagement of civil society and key population groups in the Regional Hearings. The World AIDS Campaign will also play a role in linking the Commission to the UNAIDS Light for Rights Campaign.

### Commissioners

- Justice Edwin Cameron  
(**South Africa**, Constitutional Court Justice)
- Mr. Fernando Cardoso (**Brazil**, former President)
- Ms. Ana Elena Chacon  
(**Costa Rica**, former Congresswoman)
- Mr. Charles Chauvel  
(**New Zealand**, Member of Parliament)
- Dr. Shereen El Feki  
(**Egypt**, academic and author, former journalist  
Al Jazeera & The Economist)
- Dame Carol Kidu (**Papua New Guinea**, Minister of  
Community Development)
- The Hon. Michael Kirby  
(**Australia**, retired judge of the High Court of Australia)
- Honourable Barbara Lee  
(**United States**, Member of Congress)
- Mr. Stephen Lewis  
(**Canada**, Co-Director of AIDS-Free World)
- His Excellency, Mr Festus Mogae  
(**Botswana**, former President)
- Professor Sylvia Tamale (**Uganda**, former Dean, Faculty  
of Law, Makerere University)
- Mr. Jon Ungphakorn (**Thailand**, former Senator)
- Professor Miriam Were  
(**Kenya**, former Head of Kenya's National AIDS Council)
- Mr. JVR Prasada Rao (**India**, former Secretary Health) –  
Member Secretary of the Commission

### Technical Advisory Group

- The Hon. Michael Kirby (Co-Chair)
- Allehone Mulugeta Abebe (Co-Chair)
- JVR Prasada Rao (Member Secretary, Commission)
- Aziza Ahmed
- Chris Beyrer
- Scott Burris
- Joanne Csete
- Mandeep Dhaliwal
- Vivek Divan
- Richard Elliot
- Adila Hassim
- Wendy Isaack
- Rick Lines
- Kevin Moody
- Vitit Muntarbhorn
- Cheryl Overs
- Purna Sen
- Susan Timberlake
- Matthew Weait

<sup>1</sup> **UNDP:** The United Nations Development Programme is the largest development agency in the world, working in 166 countries. UNDP focuses on the development dimension of HIV and health, recognizing that addressing HIV is integral to achieving the Millennium Development Goals. As a Cosponsor of UNAIDS and building on its core mandate on human rights, UNDP focuses on enabling legal environments, stigma reduction, addressing inappropriate criminalization, access to justice, gender – including sexual minorities, and human development.

<sup>2</sup> **UNAIDS:** UNAIDS is an innovative joint venture of the United Nations, bringing together the efforts and resources of the UNAIDS Secretariat and ten UN system organizations to respond to AIDS. The Secretariat headquarters is in Geneva, Switzerland with staff on the ground in more than 80 countries. Coherent action on AIDS by the UN system is coordinated in countries through the UN theme groups, and the joint programmes on AIDS. Cosponsors include UNHCR, UNICEF, WFP, UNDP, UNFPA, UNODC, ILO, UNESCO, WHO and the World Bank.

<sup>3</sup> **World AIDS Campaign:** The World AIDS Campaign is a global coalition of national, regional and international civil society groups united by the call for governments to honour their AIDS commitments under the slogan "Stop AIDS. Keep the Promise". The campaign is governed by a steering committee of global constituency-based networks and supported by a team of support staff based primarily in Cape Town, South Africa and partially in Amsterdam, The Netherlands.

## Milestones in the Commission's Process

The Global Commission on HIV and the Law provides an opportunity to shine a light on the continued human rights travails of those most vulnerable to HIV and build commitment from

Member States to implement rights-based measures that create meaningful citizenship and contribute an effective HIV response. Indicative milestones are listed below:

APRIL-JULY 2010	OCTOBER 2010	JANUARY 2011	FEBRUARY-JUNE 2011	JUNE/JULY 2011	OCTOBER-DECEMBER 2011
<b>Establishment of Commission on HIV and the Law, &amp; Technical Advisory Group (TAG)</b>	<b>1st meeting of Commission:</b> research commissioned, including Regional Issues Papers	<b>2nd meeting of TAG:</b> review and finalization of Regional Issues Papers	<b>4 Regional Hearings</b> held in Asia, Africa, the Caribbean, and Eastern Europe: interface with civil society & law-, policy-makers & Commissioners -dates to be confirmed in consultation with UNAIDS Secretariat	<b>3rd meeting of TAG:</b> sign-off research papers, summarize research & findings to present to Commission	<b>3rd meeting of Commission-Release of Report of Commission on HIV and the Law</b>
<b>1st meeting of TAG:</b> existing evidence reviewed, key research questions identified				<b>2nd meeting of Commission:</b> examine research & deliberations of Regional Hearings; draft recommendations	<b>Translation &amp; dissemination</b> of Commission report
<b>Launch of Commission:</b> Geneva, June 2010, by UNDP and UNAIDS Secretariat					<b>Follow-up</b> to ensure rights-based reform in response to HIV at country-levels (ongoing)