Towards Zero discrimination: Eminent Judges from Asia and the Pacific unite to address HIV, human rights and the law

First-ever Asia Pacific judicial dialogue on HIV addresses critical legal and human rights issues in the region

Bangkok, Tuesday 4 June 2013— Some 30 judges from the highest national courts from 16 countries in Asia and the Pacific joined in Bangkok, Thailand from 2-4 June to discuss the role of the judiciary in the AIDS response. They discussed specific actions that can be taken by Judges to create a more supportive legal and social environment for people living with and vulnerable to HIV, including people who use drugs, sex workers, men who have sex with men, and transgender people.

The meeting, convened by the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Development Programme (UNDP) and the International Commission of Jurists (ICJ), comes as part of efforts to address widespread existence of punitive laws, policies and practice across the region, that dissuade and obstruct access to HIV services by people living with HIV and from key populations at highest risk of infection

Faced with punitive legal environments, many people in need of HIV services for prevention and treatment do not access them for fear of stigma, discrimination, legal reprisals and violence.

Judges and members of the judiciary present affirmed the critical role of the judiciary in ensuring that the application of the law is based on scientific evidence on HIV and upholds the principles of justice for all.

“We as judges carry an important flame; we are bearers of political power. Our authority is based on reason and evidence—this is the strongest ally we have in addressing the HIV epidemic and what we need for just and fair outcomes,” said Hon. Justice Edwin Cameron, Justice of the Constitutional Court of South Africa, attending the Dialogue discuss his experience as a judge on the Constitutional Court of South Africa—a court that issued some of the most significant HIV-related legal decisions—and to share unique perspectives as a judge living with HIV.

Through a series of informative presentations and dialogue sessions at the Bangkok meeting, Judges and representatives of judicial training institutions considered the key issues and principles relevant to judicial decision-making on these issues, and discussed examples of jurisprudence from the region and around the world that has recognised and protected the rights of key populations and reduced legal barriers to their access to HIV services. They also identified effective strategies for supporting the judiciary to make informed and independent decisions.

Discussions were supported by interactions and active involvement of representatives from communities living with HIV and key populations at highest risk including sex workers and

HIV and punitive laws in Asia Pacific

Of 38 United Nations Member States in the region:

- 11 impose some form of restriction on the entry, stay and residence of people living with HIV based on their HIV status,
- 37 criminalize some aspect of sex work;
- 18 criminalize same sex relations;
- 11 impose compulsory detention centres for people who use drugs
- 15 provide the death penalty for drug-related offences.
men who have sex with men, people who use drugs and transgender people, together with the United Nations agencies and partners, who underlined the importance of the judiciary’s active support to the revision and removal of punitive laws in Asia and the Pacific.

“If we don’t deal with these issues, we are not going to end AIDS,” said Mr Shiba Phurailatpam, Regional Coordinator of the Asia Pacific Network of People Living with HIV. Judicial action can affect social views and have an impact on stigma and discrimination—it can save people’s lives,” he added.

“UNAIDS believes in the critical role of the judiciary for advancing ‘Zero discrimination’ in the context of HIV. The law must be a shield that protects, not a sword that punishes and increases vulnerability to abuse, harassment and HIV infection,” said UNAIDS Deputy Executive Director, Ms Jan Beagle who delivered the keynote address at the meeting. “Judges have a powerful opportunity to stand for non-discrimination, access to health care services, and justice for all. Judges can help shape social and community attitudes by stance and attitude toward people living with HIV and members of key populations,” she added.

30 years into the AIDS response, the need for legal environments to be aligned with the latest scientific developments on HIV and treatment was underlined. Some interpretation of the law relevant to HIV in the region is still based on outdated views that were formed prior to the availability of effective HIV treatment. Latest evidence shows that access to HIV treatment not only enables people living with HIV to live long and productive lives but also significantly reduces risk of HIV transmission.

**Transformative jurisprudence**

A number of protective jurisprudence examples showcased at the meeting have had a transformative and beneficial impact on the national AIDS response and on public perception of HIV. These include:

- In 2009, the High Court of Delhi struck down Section 377 of the Indian Penal Code that criminalised consensual same-sex relations between adults on the grounds that it violated fundamental rights to life, equality before the law, freedom from discrimination and personal liberty guaranteed under the Constitution of India.
- Progressive court decisions in Nepal, India, Bangladesh and Taiwan that have recognized that sex workers enjoy human rights as defined under national Constitutions.
- Decisions in Thailand and India that have ensured access to affordable generic medicines.
- Pakistan Supreme Court’s issuance of an Order recognizing the civil rights of transgender persons by including them in population registration under the status of a third gender with a view to ensuring access to government benefits.
- Employment cases in India and China upholding Non-discrimination on grounds of HIV status.

Research and modeling studies reviewed by The Global Commission on HIV and the Law suggest that increased interventions for enhanced legal and policy environments in the context of HIV could cut new adult HIV infections in half over the next 15-20 years. (See figure 1 below, Source: Global Commission on HIV and the Law: Risks, Rights and Health, 2012)

“Getting the legal environment right is essential for addressing the social and structural inequalities which fuel HIV and impede health and development progress. Judicial leadership is an essential component of addressing these inequalities,” said Dr Mandeep Dhaliwal, UNDP’s Director, HIV, Health and Development Practice.

A key component of future action will be efforts to ensure sustained judicial engagement in the HIV response through enhanced judicial education and sensitization. With several judicial training institutions present at the dialogue, judges and participants helped formulate and develop strategies and resources to initiate and expand judicial education and exchange on HIV. As part of these actions, the first-ever developed *Judicial handbook on HIV, Human Rights and the Law* was launched at the meeting by UNAIDS. This handbook provides judges
with updates on the latest scientific developments on HIV as well as key human rights and legal considerations that are critical in the context of HIV.

“An independent, informed judiciary can help protect at-risk populations from discriminatory laws, negative stereotypes, and misguided policies,” said Sam Zarifi, Asia Pacific Regional Director for the International Council of Jurists. “Supporting judicial leadership on HIV is not a one-off task. It has to be sustained through continuing opportunities for exchange, awareness-raising and dialogue on HIV and the law,” he said.

The UNAIDS/UNDP/ICJ Asia Pacific Judicial Dialogue on HIV, Human Rights and the Law is the first of its kind in Asia and the Pacific and one of a series of Dialogues being carried out in other regions of the world including Southern and Western Africa.

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International Council of Jurists (ICJ) is a non-governmental organization devoted to promoting the understanding and observance of the rule of law and the legal protection of human rights throughout the world. It is headquartered in Geneva, Switzerland, and has many national sections and affiliated organizations. It enjoys consultative status in the United Nations Economic and Social Council, UNESCO, the Council of Europe and African Union. The ICJ maintains cooperative relations with various bodies of the Organization of American States. www.icj.org

UNAIDS: The Joint United Nations Programme on HIV/AIDS (UNAIDS) leads and inspires the world to achieve its shared vision of zero new HIV infections, zero discrimination and zero AIDS-related deaths. UNAIDS unites the efforts of 11 UN organizations—UNHCR, UNICEF, WFP, UNDP, UNFPA, UNODC, UN Women, ILO, UNESCO, WHO and the World Bank—and works closely with global and national partners to maximize results for the AIDS response. Learn more at unaid.org and connect with us on Facebook and Twitter.

**Figure 1: Why the law matters**  (Source: Global Commission on HIV and the Law: Risks, Rights and Health, 2012)