
JUDICIAL DIALOGUE ON HIV, HUMAN RIGHTS AND THE LAW IN ASIA AND THE PACIFIC 2-4 JUNE 2013



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Acknowledgments

The Secretariat of the Joint United Nations Programme on HIV/AIDS (UNAIDS Secretariat), the United Nations Development Programme (UNDP) and the International Commission of Jurists (ICJ) – collectively referred to as “the coorganizers” – wish to thank participating justices, judges, representatives of judicial training institutes, civil society resource persons, and representatives of UN agencies, for contributing to the success of the Judicial Dialogue on HIV, Human Rights and Law in Asia and the Pacific (Judicial Dialogue), by sharing their experiences and insights on HIV, human rights and the law. The coorganizers would also like to extend sincere thanks to the representatives of communities of people living with HIV, men who have sex with men, transgender people, sex workers and people who use drugs, who shared their personal experiences and perspectives on how the law and the legal system affect their lives and health. The coorganizers would like to express their special gratitude to Hon. Justice Edwin Cameron of the Constitutional Court of South Africa for sharing his inspiring and compelling experiences as a judge on South Africa’s highest court and a person living with HIV.

The co-organizers would like to thank the International Development Law Organization (IDLO) for their support to the Judicial Dialogue, including through a meeting rapporteur and the development of this report. Finally, the co-organizers would like to thank Ms Brianna Harrison, Human Rights and Law Advisor, UNAIDS Regional Support Team for Asia and the Pacific, for overseeing and facilitating the preparation and effective organization of the Judicial Dialogue.

Disclaimer

This report was commissioned by the Joint United Nations Programme on HIV/AIDS (UNAIDS) as part of the work related to HIV, Human Rights and the Law. The views expressed in the report are those of the meeting participants and do not necessarily represent the view of UNAIDS or its cosponsors.

Executive summary

Recognizing the magnitude of the HIV epidemic in Asia and the Pacific and the importance of an enabling legal environment in the response to HIV, the Secretariat of the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Development Programme (UNDP) and the International Commission of Jurists (ICJ) co-organized a Judicial Dialogue on HIV, Human Rights and the Law in Asia and the Pacific (Judicial Dialogue) from 2-4 June 2013 in Bangkok, Thailand.

The Judicial Dialogue provided a critical opportunity for experience sharing between members of the judiciary and representatives of judicial training institutions from 16 countries across Asia and the Pacific, on the complex legal and human rights issues raised by the HIV epidemic. The Judicial Dialogue also benefited from the perspectives of people living with HIV, representatives of communities of men who have sex with men, transgender people, sex workers and people who use drugs.

The Judicial Dialogue aimed to:

1. provide a critical opportunity for dialogue and experience sharing between members of the judiciary from countries in Asia and the Pacific on the complex legal and human rights issues raised by the HIV epidemic; and
2. provide an opportunity for judges and representatives from judicial training institutions to discuss effective strategies and programmes for judicial education and training, so as to help ensure the judiciary are able to make informed decisions on HIV-related human rights issues.

The Judicial Dialogue also served as the launch of the new UNAIDS resource *Judging the Epidemic - The Judicial Handbook on HIV, Human Rights and the Law* (the *Judicial Handbook*). The *Judicial Handbook* is intended to be a resource for judges, magistrates, arbitrators and other judicial officers throughout the world to help them adjudicate cases involving HIV-related issues.

This report summarizes the presentations, exchanges and learning from the Judicial Dialogue, under the following thematic areas:

- HIV, the law and the judiciary;
- using the law to end HIV-related discrimination and other human rights violations;
- the enabling legal environment in the context of HIV and sex work;
- the enabling legal environment in the context of HIV and sexual orientation and gender identity;
- the enabling legal environment in the context of HIV and drug use;
- access to life-saving treatment; and
- advancing judicial awareness and education on HIV-related legal issues.

The report also sets out participants’ recommendations for advancing judicial awareness and education on HIV-related issues; and summarizes participants’ feedback on the Judicial Dialogue from the evaluation process.

Hon. Justice Shiranee Tilakawardane of the Supreme Court of Sri Lanka presented on **HIV, the law and the judiciary**; outlining the key considerations of the judiciary and calling for a commitment to transformative justice. Justice Tilakawardane also provided an in-depth examination of women’s vulnerability to HIV and the many interconnected legal, social and cultural factors which exacerbate that vulnerability. Dr Mandeep Dhaliwal, Director of UNDP’s HIV, Health and Development Practice, contributed to this discussion, noting the critical role of the law in the response to HIV. Referencing the findings of the Global Commission on HIV and the Law, Dhaliwal explained that stigma, discrimination and punitive approaches against key populations at higher risk (key populations) have been shown to contribute to vulnerability to HIV and limited access to HIV services among these populations. Punitive laws and human rights violations cost lives and stifle the HIV response.

Ms Liu Wei of the Beijing Chengzhihua law firm, contributed to the discussion on using the law to end HIV-related discrimination and other human rights violations; focusing on employment-related discrimination in China. Ms Wei pointed to evidence of discriminatory employment practices against people living with HIV in China, despite social protection. Mr Tim de Meyer, Senior Specialist within International Labour Organization (ILO) Decent Work Technical Advisory Team, presented on national and international norms in relation to HIV-related discrimination in the workforce.

Dame Carol Kidu, DBE, Commissioner on the Global Commission on HIV and the Law, chaired the discussion on **the enabling legal environment in the context of HIV and sex work**, highlighting that criminalization of sex work, compounded by social stigma, makes sex workers’ lives more unstable, less safe and far riskier in terms of HIV. Significantly, there is effectively no legal protection from discrimination and abuse where sex work is criminalized. Hon. Chief Justice Mohit Shah of the Bombay High Court in India, outlined the specific vulnerability of sex workers and described how criminalization of sex work forces sex workers to work in isolation, reduces sex workers’ control over their working conditions and increases the risk of violence.

Hon. Justice Ajit Prakash Shah (retired), Chairperson of the Broadcasting Complaints Council of India, opened the discussion on **the enabling legal environment in the context of HIV and sexual orientation and gender identity**. Justice AP Shah argued for an enabling legal environment, emphasizing that constitutional morality based on the norms and principles of equality and dignity in the constitutions of Asia and Pacific countries, should prevail over considerations of public morality. He referred to the landmark Delhi High Court case of *Naz Foundation v. Government of NCT, Delhi and others*¹ as an example of sound judicial determination based on constitutional morality and legitimacy, public health, and the rights of the person. Hon. Justice Kalayan Shrestha of the Supreme Court of Nepal

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¹ *Naz Foundation (India) Trust v. Government of NCT, Delhi and Others* 160 (2009) DLT 277.

addressed participants on the role of the judiciary in protecting people of diverse sexual orientation and gender identity and supporting access to justice. Justice Shrestha described landmark HIV-related judgments in Nepal and urged his peers to examine scientific evidence in order to ensure that decisions are objective and fair.

Ms Tripti Tandon of the Lawyers Collective of India presented on **the enabling legal environment in the context of HIV and drug use**. Ms Tandon informed participants about the international legal framework on drugs, and highlighted how disproportionate, punitive responses to drug use are a product of varying social prejudices rather than evidence-based analysis. Dr Anne Bergenstrom, Regional Adviser on HIV/AIDS with the United Nations Office of Drugs and Crime (UNODC), presented on the negative impact of compulsory detentions centres on people who use drugs and on the response to HIV.

Mr Jon Ungpakorn, Chair of the Sub-Committee on AIDS Rights, National AIDS Prevention and Control Committee, and Commissioner on the Global Commission on HIV and the Law, spoke on **access to life saving treatment**. Emphasizing the tension between intellectual property rights and the right to health, Mr Ungpakorn argued that the greatest HIV-related discrimination is the price of treatment. Limited access to treatment means that people living with HIV have higher viral loads and suffer greater health consequences; this in turn increases the likelihood of HIV transmission and results in an increase in the number of people living with HIV. The high price of medicines makes medicines inaccessible— with devastating health and social consequences.

Hon. Judge Maria Rowena Modesto-San Pedro, Presiding Judge at the Regional Trial Court of Pasig City in the Philippines, addressed participants on the role of the judiciary in balancing the right to health with intellectual property rights. Judge Modesto-San Pedro highlighted key international jurisprudence on access to medicines, and called on members of the judiciary to strike a balance between intellectual property protection and public health which prioritizes access to medicines (life and death) over economic rights. Ms Kajal Bhardwaj, intellectual property law and legal expert, India, presented on civil society perspectives on the role of courts in ensuring access to medicine.

Mr Ernie Schmatt, Chief Executive of Judicial Commission of New South Wales, shared the developments and initiatives of the Judicial Commission of New South Wales in continuing education programmes for judges, to prompt a discussion on **advancing judicial education on HIV-related legal issues**. Mr Schmatt proposed to use the *Judicial Handbook* to update and support future activities for the Judicial Commission of New South Wales.

During group discussions, participants made specific **recommendations** for advancing judicial education on HIV and related human rights issues at national level. Key recommendations included:

1. increased sensitization initiatives and awareness campaigns on HIV and related human rights for judges and court personnel;
2. integration of HIV and related human rights issues into judicial training curricula;

3. increased engagement of judges with people living with HIV and representatives of key populations;
4. increased dialogue between judges and policy makers on HIV and related human rights issues;
5. improved information sharing between judges on HIV and related human rights and legal issues, including via databases and networking; and
6. judicial collaboration and coordination with relevant UN agencies and government bodies on HIV, human rights and the law.

The Judicial Dialogue achieved the following outcomes:

1. Active engagement of judges and representatives of judicial training institutions in plenary discussion expanded participants' awareness and understanding of the issues and challenges related to HIV. Significant sharing of experiences and frank questions also enhanced participants' insight on the role of the courts in this area.

Through evaluation forms and in-person comments, participants provided positive feedback on the Judicial Dialogue. A self-assessment on the level of knowledge and skills on HIV-related issues relevant to the judiciary before and after the Judicial Dialogue indicates a strong increase in awareness of the complex legal and human rights issues raised by the HIV epidemic in Asia and the Pacific, and the role of the law and the courts in protecting the rights of people living with HIV and key populations.

2. Participant-developed recommendations on judicial education, plenary discussion throughout the Judicial Dialogue, and qualitative feedback from evaluation forms, demonstrate increased understanding of strategies for supporting the development of a new generation of judicial leaders, and the engagement of national judicial training institutions on HIV and human rights.

Judges and representatives of judicial training institutes from a number of countries, including Australia, Nepal and Viet Nam, identified concrete steps and specific opportunities in their countries, where they believed HIV-related issues could be incorporated into judicial education or included in journals and circulars.

3. A session led by Ms Alison Symington, Canadian HIV/AIDS Legal Network and lead author of the *Judicial Handbook*, was designed to familiarize participants with the *Judicial Handbook*. This discussion increased the capacity of members of the judiciary to utilize and refer to the *Judicial Handbook*, a copy of which was provided to all participants.

Judges and representatives of judicial training institutes were provided with additional technical and practical resources to support them to apply knowledge gained during the Judicial Dialogue. These resources included a USB drive containing key Judicial Dialogue documents and copies of presentation and reference materials as well as the UNDP Compendium of Judgments, background materials, Judicial Dialogue on HIV, Human Rights and the Law in Asia and the Pacific (which includes a summary and the full text of judgments on HIV).

In his closing remarks, Hon. Justice Edwin Cameron of the Constitutional Court of South Africa noted the commitment and professionalism of representatives of the judiciary, shown through their active engagement, and expressed his belief that the Judicial Dialogue had enhanced capacity for evidence-based judicial decisions on HIV. Justice Cameron went on to express that the Judicial Dialogue had facilitated significant transfer of knowledge, strong debate, and had greatly expanded insights on vulnerability and what moves the HIV epidemic in Asia and the Pacific. He specifically recognized the invaluable contributions of representatives of people living with HIV and members of key populations in helping other participants to understand the impact of the law on their lives, dignity and vulnerability to HIV.

Hon. Justice Gita Mittal of the Delhi High Court closed the event, with sincere thanks, acknowledging being inspired, informed and sensitized by the Judicial Dialogue. Justice Mittal remarked that she gained a deeper appreciation of how overly broad application of criminal law may negatively impact public health and raises serious questions of human rights. She urged her fellow judges to proceed with a renewed awareness of the rights of people living with HIV and key populations, and to recognize their own capacity for action as judges.

Background

More than thirty years on, the HIV epidemic remains one of the leading causes of death globally.² It has confronted countries the world over with serious health, social, economic and human challenges. In Asia and the Pacific, an estimated 4.9 million people are living with HIV.³ In 2009 alone, an estimated 300 000 people died of HIV-related illnesses in the region.⁴ New HIV infections in the region remain high among key populations at higher risk (key populations), namely people who buy and sell sex, people who inject drugs, men who have sex with men, and transgender people.⁵

KEY POPULATIONS IN ASIA AND THE PACIFIC

People who inject drugs:	Wide variations in HIV prevalence—in some geographical locations, over 50% of people who inject drugs are living with HIV.
Men who have sex with men:	Rising epidemics across Asia—in major cities 7% to 31% of men who have sex with men are living with HIV.
Female sex workers:	Progress in reducing HIV, but high prevalence still found in some geographical hotspots in countries.
Transgender people:	Studies show high prevalence of HIV amongst transgender people. Lack of national data illustrates this population’s marginalization.

HIV poses challenges that make traditional public health approaches, such as quarantine, inappropriate. Because only behaviour change and access to evidence-informed and rights-based HIV prevention, treatment, care, and support services can halt the spread of HIV, it is now broadly recognized that protection of the human rights of people living with HIV and key populations is the most effective response to the epidemic. This is commonly referred to as the “AIDS paradox”, a term coined by Hon. Justice Michael Kirby, AC CMG, former Justice of the High Court of Australia. This human rights-based approach is regarded as the most feasible way to ensure people are informed of how to prevent HIV transmission, and the most effective approach to ensure behaviour change.⁶

The HIV epidemic has, from the start, raised complex legal and human rights issues that challenge all arms of Government. The judiciary in particular, has a critical role to play in upholding the human rights, entitlements of all citizens, and ensuring a rights-based response to HIV. Through interpretation of national constitutions, legislation, international human rights treaties, the judiciary has developed jurisprudence that has had a transformative and beneficial impact on the national response to HIV and on public perception of HIV.

Courts in many countries in Asia and the Pacific have passed significant judgments improving legal protections and contributing to enabling legal and social environments on a range of HIV-related issues, such as non-discrimination, access to affordable medicines, confidentiality, same-sex relations, and the

² HIV is the sixth leading cause of death in the world, with 1.78 million deaths considered to be due to AIDS-related illnesses in 2008.

See: The top 10 causes of death. [Fact Sheet No. 310]. Geneva: World Health Organization; 2011

(<http://www.who.int/mediacentre/factsheets/fs310/en/index.html>, accessed 26 June 2013).

³ HIV in Asia and the Pacific: Getting to zero. Bangkok: Joint United Nations Programme for HIV/AIDS Regional Support Team for Asia and the Pacific; 2011

(http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/20110826_APGettingToZero_en.pdf, accessed 26 June 2013).

⁴ Ibid., p18.

⁵ Ibid., p18.

⁶ Kirby M. Never-ending paradoxes of HIV/AIDS and human rights. African Human Rights Law Journal. 2004;4.

rights of prisoners and sex workers. Some of these decisions have had significance and impact at a global level. Beyond the courts, members of the judiciary are leaders in their communities and societies. Their stance, attitudes and behaviour towards HIV-related issues, people living with HIV and members of key populations can help shape social attitudes towards these groups. Members of the judiciary can challenge stigma, and discriminatory practices against people living with HIV and members of key populations inside the court and within the community at large.⁷

In the face of HIV and AIDS, judicial officers everywhere must give a measure of leadership. The epidemic presents many problems of a legal character, but still more problems of prejudice, ignorance and discriminatory attitudes.

Hon. Justice Michael Kirby, AC CMG, Justice of the High Court of Australia (retired)

Introduction: the Judicial Dialogue

In the quickly-evolving area of scientific, medical and legal issues related to HIV, there has been limited opportunity for members of the judiciary in the region to take stock of epidemiological developments, as well as the evolving roles of the law and the judiciary in the response to HIV. In this context, the moral and societal role of members of the judiciary as agents of justice and protectors of human rights is yet to be fully explored or used to address vulnerability to HIV and ensure human rights protection for all. Moreover, judges from this region who have contributed to enabling legal environments for effective HIV responses and upheld the rights of people living with HIV and key populations have not had the opportunity to share among themselves the lessons learnt from these experiences, or to provide guidance on supporting and sustaining judicial excellence on HIV and the law.⁸

In response to these factors, the UNAIDS Secretariat, UNDP and the ICJ partnered to convene a Judicial Dialogue on HIV, Human Rights and the Law in Asia and the Pacific (Judicial Dialogue) from 2-4 June 2013 in Bangkok, Thailand. The agenda of the Judicial Dialogue is included in Annex 1.

The Judicial Dialogue provided a critical opportunity for experience-sharing between members of the judiciary and representatives of judicial training institutions from 16 countries across Asia and the Pacific on the complex legal and human rights issues raised by the HIV epidemic.⁹ Participants also included resource people from affected communities, including those living with HIV and members of key populations, as well as experts from the UN, ICJ, the Canadian HIV/AIDS Legal Network, the International Development Law Organization (IDLO), the Lawyers Collective, Beijing Chengzhihua law firm, and the International Association of Women Judges. Hon. Justice Edwin Cameron of the Constitutional Court of South Africa also took part in the Judicial Dialogue, bringing to the meeting his inspiring and compelling experiences as a judge on South Africa's highest court and a person openly living with HIV. A list of participants is included in Annex 2.

⁷ The UNDP-hosted Asia Pacific Dialogue of the Global Commission on HIV and the Law (February 2011) and the IDLO-hosted Asia Pacific Regional Consultation on HIV-related Legal Services (February 2012) reiterated the critical role of the judiciary in eliminating stigma and discrimination and supporting access to HIV services.

⁸ This was recognized at the 2011 South Asian Roundtable Dialogue on Legal and Policy Barriers to the HIV Response, hosted by IDLO, UNDP, the World Bank, UNAIDS and SAARCLAW (SAARCLAW is the legal apex body of the South Asian Association for Regional Cooperation (SAARC)). The Roundtable Dialogue called for greater efforts to support judicial sensitization and dialogue on the HIV epidemic.

⁹ Judges and representatives of judicial training institutions from the following countries participated in the Judicial Dialogue: Australia, Bangladesh, Bhutan, China, Fiji, India, Indonesia, the Maldives, Myanmar, Nepal, Pakistan, Papua New Guinea, the Philippines, Sri Lanka, Thailand and Viet Nam.

Aims of the Judicial Dialogue

The Judicial Dialogue aimed to:

1. provide a critical opportunity for dialogue and experience sharing between members of the judiciary from countries in Asia and the Pacific on the complex legal and human rights issues raised by the HIV epidemic; and
2. provide an opportunity for judges and representatives from judicial training institutions to discuss effective strategies and programmes for judicial education and training, so as to help ensure the judiciary are able to make informed decisions on HIV-related human rights issues.

Outcomes of the Judicial Dialogue

The Judicial Dialogue endeavoured to achieve the following outcomes:

1. Increase awareness among members of the judiciary and representatives of judicial training institutions on:
 - a. the role of the law and the courts in protecting the rights of people living with HIV and members of key populations;
 - b. the complex legal and human rights issues raised by the HIV epidemic in Asia and the Pacific; and
 - c. limitations to access to justice for people living with HIV and members of key populations and possible responses to them.
2. Increase understanding among participants of effective strategies for supporting the development of a new generation of judicial leaders, and engagement from representatives of national judicial training institutions to undertake follow-up activities at national level; such as sensitization and experience-sharing workshops for members of the judiciary, and the integration of modules on HIV and the law into the formal training provided by judicial training institutions.
3. Awareness of and increase capacity to use/apply guidance, principles and information materials contained in the Judicial Handbook.

This report summarizes the presentations, exchanges and learning from the Judicial Dialogue, under following thematic areas:

- HIV, the law and the judiciary;
- using the law to end HIV-related discrimination and other human rights violations;
- the enabling legal environment in the context of HIV and sex work;
- the enabling legal environment in the context of HIV and sexual orientation and gender identity;
- the enabling legal environment in the context of HIV and drug use;
- access to life-saving treatment; and
- advancing judicial awareness and education on HIV-related legal issues.

The report sets out participants' recommendations on advancing judicial awareness and education on HIV-related issues; and summarizes participant feedback from the evaluation process. The Judicial Dialogue resource list is included in Annex 3.

Setting the scene: the reception dinner

Participants heard keynote addresses from Hon. Justice Edwin Cameron, of the Constitutional Court of South Africa and Mr Shiba Phurailatpam, Regional Coordinator and Director of the Asia Pacific Network of People Living with HIV (APN+) at the Judicial Dialogue reception dinner. Proceedings were chaired by Hon. Pimnapa Naigowit Lauhaband, Judge of the Office of the President of the Supreme Court of Thailand.

Justice Cameron spoke of his experience of the HIV epidemic in South Africa, from the unique position of a respected jurist, a gay man and a person living with HIV. Notably, 14 years after Justice Cameron publicly disclosed his living with HIV, he remains the only person holding high public office in Africa who has spoken openly about his status.¹⁰ Justice Cameron emphasized the discrimination and tremendous stigma faced by people living with HIV—not only external stigma, but an internalized stigma and shame. Globally, prevailing stigma and discrimination are blocking the response to HIV. In this context, Justice Cameron noted the law’s critical role in creating an environment which does not tolerate stigma and discrimination. Focusing on the role of the judiciary in supporting an effective response, Justice Cameron stated: “We as judges carry an important flame; we are bearers of political power. Our authority is based on reason and evidence and this is the strongest ally we have in addressing the HIV epidemic and what we need for just and fair outcomes.”

Mr Phurailatpam described his personal experiences as a person living with HIV, from his promising youth, to his challenges with drugs, to his leadership of APN+ and present happy family life. Mr Phurailatpam emphasized the importance of access to medicines in his own life and the lives of all people living with HIV. He also highlighted the new impetus for eliminating social and legal barriers to access testing and treatment for those who need it, in light of evidence that effective treatment of HIV is also prevention.

Opening remarks from Mr Steve Kraus, Regional Director, UNAIDS Regional Support Team for Asia and the Pacific and Mr Saman Zia-Zarifi, International Commission of Jurists, Regional Director Asia & Pacific, reiterated the significance of the Judicial Dialogue and the role of judges as leaders in the law and justice sector and community.

Ms Susan Timberlake, Chief, Human Rights and Law Division, UNAIDS Secretariat, formally launched the Judicial Handbook. The Judicial Handbook is a resource for judges, magistrates, arbitrators and other judicial officers throughout the world to help them adjudicate cases involving HIV-related issues. Ms Timberlake recognized the work of the Canadian HIV/AIDS Legal Network in developing the Judicial Handbook, in particular the leadership of Ms Alison Symington.

¹⁰ Justice Cameron announced his status before the national judicial commission while making a case for his candidature for a position on South Africa’s Constitutional Court (the highest court in South Africa). Justice Cameron was prompted by the death of Ms Gugu Dlamini in South Africa in 1998 (who was killed by a mob in public after disclosing her HIV-positive status on the radio).

Chapter 1: HIV, the law and the judiciary

Hon. Justice Naima Haider

Hon. Justice Naima Haider, High Court Division of the Supreme Court of Bangladesh, chaired the session on HIV, the law and the judiciary.

The session was opened by Ms Jan Beagle, Deputy Executive Director, Management and Governance, UNAIDS Secretariat. Ms Beagle stressed that an enabling legal environment is critical to the HIV response and highlighted the crucial role of the courts and members of the judiciary in upholding rights, hearing claims and ordering redress. Speaking to judges and representatives of judicial institutions, Ms Beagle stated: “Your presence is a powerful testimony to your commitment to the HIV response. HIV is much more than a health issue, it is a key development and rights issue.” She highlighted the fact that the Judicial Dialogue was taking place at a time of great possibility, both regionally and globally, thanks to increased understanding of HIV and new evidence regarding HIV prevention and treatment.

Mr Steve Kraus

Mr Steve Kraus, Director, UNAIDS Regional Support Team for Asia and the Pacific, introduced participants to the HIV epidemic, emphasizing that in Asia and the Pacific, key populations are central to the epidemic but face barriers to access critical services. These barriers include limited availability of services (lower quality services and poorer coverage of HIV and health services), as well as social and legal factors that deter people from accessing services (influences which contribute to a hostile environment). Significantly, the implications of these barriers to services are:

- over two thirds of men who have sex with men and people who inject drugs surveyed do not know their HIV status;
- more than half the female sex workers surveyed do not know their HIV status;¹¹ and
- regionally, only half the men who have sex with men and sex workers have been reached by prevention programmes.¹²

Mr Kraus discussed the important role of the law in creating and maintaining social relationships of equality and inequality. The law is also a mechanism through which social determinants are transformed into health and development outcomes. On this basis, it is important to consider the effect of sex and gender norms, inequalities amongst racial and ethnic groups, the marginalized status of communities and other social, political and economic factors, when assessing how the application of the law can have a disparate impact on particular groups. Mr Kraus concluded by noting that today, we *do* have the science and tools to end AIDS, but that biomedical tools and behavioural approaches alone will not be enough. Accordingly, the creation of an enabling legal environment is essential for addressing the social and structural inequalities which drive HIV.

Hon. Justice Shiranee Tilakawardane

Hon. Justice Shiranee Tilakawardane, of the Supreme Court of Sri Lanka, presented on the key considerations of the judiciary and called for a commitment to transformative justice. Justice Tilakawardane also provided an in-depth examination of women’s vulnerability to HIV and the many interconnected legal, social and cultural factors that exacerbate this vulnerability.

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¹¹ If a person does not know that they are HIV-positive, they will not access the life-saving medicine required to keep them healthy, and will be less likely to take all necessary measures to prevent transmission.

¹² Global Report: UNAIDS Report on the Global AIDS Epidemic 2012. Geneva: Joint United Nations Programme on HIV/AIDS; 2012.

Justice Tilakawardane commenced by stating that determined leadership was required to respond to HIV, called on her fellow judges to challenge stigma and discriminatory practices and to be proactive in their decision-making. She made a strong case for greater sensitization of judges on HIV-related issues, arguing that judges are influential leaders both inside the court and within the community at large and can affect critical attitude change through this leadership. Additionally, Justice Tilakawardane explained that time is often of the essence in cases involving people living with HIV; judges' ability to understand this, and ensure expeditious hearing of cases, will make justice more accessible for people living with HIV.

Focusing on the unique and distinctive way that HIV affects women, Justice Tilakawardane detailed women's subordination in traditional and cultural roles, women's role in the family and as care-givers, women's lack of empowerment, weak negotiating power in relation to sex and vulnerability to violence. She further explained how the justice sector tends not to be sensitized to women and accordingly, has the potential to be intimidating to women and act as a barrier to women's access to justice. For example, from the initial lodgment of a police report (in the case of criminal matters) to trial, processes are male-dominated. This needs to be changed. These factors all contribute to women's vulnerability to HIV.

Justice Tilakawardane closed by noting that women play a crucial role in the economies of the region. In light of women's vulnerability to HIV, HIV has the potential to cripple whole communities. Accordingly, the response to HIV needs to be inclusive and needs to effectively address women's vulnerability.

Plenary discussion

The plenary discussion touched upon the challenges faced by judges: operating in accordance with procedure and rules with the responsibility of applying the law, interpreting the law, and the capacity of judges to make proactive decisions.

The discussion also further examined women's vulnerability. Ms Beagle reiterated the barriers to accessing justice described by Justice Tilakawardane, telling the story of her interaction of a women living with HIV who stated: "The courts are not for me." Justice Cameron pointed out that women are vulnerable for the same reasons that key populations are vulnerable—the same attitudes and stigma that subordinate women subordinate key populations.

Hon. Justice Gita Mittal of the Delhi High Court agreed that sensitization of judges to HIV-related issues and women's vulnerability was critical. Given the extent to which women are vulnerable and silenced, members of the judiciary need greater capacity to respond to rights violations experienced by women. Ms Laxminarayan Chandradev Tripathi, founder, trustee and chairperson of Astitva,¹³ drew attention to the fact that transgender women are often excluded from the system, not protected by the law and not recognized by the Government. Ms Tripathi took the opportunity to commend the courts of Pakistan and Nepal for judicial recognition of transgender women in recent years.

The session chair, Justice Haider, concluded by emphasizing that tackling the HIV epidemic requires frank and honest discussion across sectors and reiterating the critical role of judges in courageously addressing stigma and discrimination. Justice Haider also highlighted that an effective response to the HIV epidemic required concentrated efforts to focus resources where they are needed. Justice Haider reminded participants that HIV has far reaching social, economic and legal impact and that an effective response to HIV has health, social and development outcomes.

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¹³ Astitva is an organization for the support and development of sexual minorities in India.

Chapter 2: Using the law to end HIV-related discrimination and other human rights violations

Hon. Justice Mian Saqib Nisar

Hon. Justice Mian Saqib Nisar, of the Supreme Court of Pakistan, chaired the session on using the law to end HIV-related discrimination and other human rights violations.

Justice Nisar stated that it is the duty of the courts to ensure that the rights of key populations are upheld and enforced. Justice Nisar highlighted his point by describing the recent landmark judgment of the Supreme Court in Pakistan, which confirms the inalienable right of citizens of Pakistan to enjoy the protection of law and to be treated in accordance with law.¹⁴ In 2009, the Supreme Court of Pakistan recognized the citizenship rights and entitlements of eunuchs and ordered that all eunuchs be awarded identity cards.¹⁵ Justice Nisar remarked that it is his hope that this significant contribution to jurisprudence will be a lead for other countries to follow.

Dr Mandeep Dhaliwal

Dr Mandeep Dhaliwal, Director, HIV, Health and Development Practice, UNDP, discussed the critical role of law in the response to HIV.

Dr Dhaliwal began by emphasizing that stigma and discrimination against key populations have been shown to increase HIV prevalence. Evidence gathered and analysed by the Global Commission on HIV and the Law¹⁶ shows that punitive laws and human rights violations cost lives and stifle the HIV response. Accordingly, it is critical that laws and judicial decisions are evidence-based.

Dr Dhaliwal further discussed the advantages and disadvantages associated with omnibus HIV laws. While there are examples of strong, protective omnibus HIV laws, there is huge potential for such laws to include punitive or harmful provisions. It is widely acknowledged that multisectoral processes and consultations are a key part of the legislative process and result in stronger, more effective laws. Dr Dhaliwal directed participants to the new UNDP publication *Legal Protections against HIV-related Human Rights Violations – Experiences and Lessons Learned from National HIV Laws in Asia and the Pacific* (Legal Protections publication).¹⁷ The Legal Protections publication reviews the laws in Asia and

¹⁴ The inalienable right of citizens of Pakistan to enjoy the protection of law and to be treated in accordance with law is enshrined at Article 4 of the Constitution of the Islamic Republic of Pakistan.

¹⁵ The Court used the term “eunuch” in its judgment, as opposed to the widely used south-Asian term “hijra” or the word “transgender”. Broad or narrow interpretation of “eunuch” in this judgment has not yet been publicly debated. *Dr Mohammad Aslam Khaki & Another v. Senior Superintendent of Police (Operation) Rawalpindi & Others*, Supreme Court, Constitutional Petition No. 43 of 2009.

¹⁶ The Global Commission on HIV and the Law is an independent body, established at the request of UNAIDS and supported by a secretariat based at UNDP. The Commission’s objectives were to: (1) analyse existing evidence and generate new evidence on rights and law in the context of HIV and develop rights-based and evidence-informed recommendations; and (2) increase awareness amongst key constituencies on issues of rights and law in the context of HIV and engage with civil society and strengthen their ability to campaign, advocate and lobby. The outcomes of the Commission included: (1) consolidated, coherent and compelling evidence base on human rights and legal issues relating to HIV; (2) greater awareness among key stakeholders and leadership of law- and policy-makers; and (3) public dialogue and civil society engagement on social attitudes, human rights and legal issues relating to HIV.

¹⁷ Experiences and Lessons Learned from National HIV Laws in Asia and the Pacific. New York: United Nations Development Programme; 2013 (<http://www.hivlawcommission.org/index.php/follow-up-stories/175-undp-report-on-experiences-and-lessons-learned-from-national-hiv-laws-in-asia-and-the-pacific>, accessed 20 June 2013).

the Pacific that provide protection against HIV-related human rights violations and sets out lessons learnt from the implementation and enforcement of these laws.¹⁸

Notably, the Legal Protections publication emphasizes the gap between the laws on the books and the laws on the streets, explaining that even where there are protective laws in place, people living with HIV still confront significant obstacles in accessing justice. Further, many people who experience rights abuses do not attempt to seek legal redress. Reasons for this include lack of access to legal aid and the cost of legal proceedings; fear that mounting a legal challenge will result in disclosure of identity; weak knowledge of the law and rights; and the limited capacity and resources of legal systems. Dr Dhaliwal closed by calling for greater investment in legal systems to ensure accessible and functional laws; initiatives for the legal empowerment of people living with HIV and key populations; and capacity building for legal institutions.

Plenary Discussion

In plenary discussion, Hon. Justice Sushila Karki of the Supreme Court of Nepal raised the question of the intended effect of laws, focusing on their effectiveness and impact in practice. Participants discussed the unintended negative impact of overly broad laws that criminalize non-disclosure, exposure and transmission of HIV, namely, deterring HIV testing and uptake of treatment and prevention and the limited effectiveness of laws intended to reduce sex work (the criminalization of sex work has not been effective in reducing sex work).

Justice Mittal asked participants to contemplate proactive measures designed to support implementation of protective laws in the courts and measures to encourage people from key populations to approach the courts. One example of such a measure is a mechanism to protect the anonymity of vulnerable claimants throughout court proceedings. Justice Mittal further called for “positive discrimination” to support people living with HIV and key populations to claim their rights and emphasized the importance of a robust legal aid system.

Hon. Judge Shri BK Patel, Orissa High Court, India, urged participants to consider the root causes of stigma. The courts can respond to discrimination, but greater change needs to come at a societal level to end stigma and discrimination.

Ms Liu Wei

Ms Liu Wei, a lawyer at the Beijing Chengzhuhua law firm, presented on HIV-related discrimination in the workforce. Ms Liu brought the first HIV-related case to court in China in 1999.

Ms Liu informed participants that there are protective laws in China with respect to employment-related discrimination, but that in practice, rights have been abused and low-level regulations are discriminatory. Ms Liu described a study conducted by the ILO and the Chinese Center for Disease Control and Prevention (Chinese CDC) that demonstrated pervasive discriminatory employment practices against people living with HIV in China. The study, involving 729 people living with HIV, found that 49% had to change jobs after their HIV status was diagnosed and 61% were unable to get employment.

The ILO and Chinese CDC study also found that despite social protection, many general hospitals deny surgery and treatment to people living with HIV. Of the respondents interviewed under this study, 42% were refused treatment by the outpatient departments of general hospitals and 37% were denied surgery

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¹⁸ The Legal Protections publication reviews omnibus national HIV laws, protections enshrined in national constitutions and rights under general laws such as laws relating to employment, disability and health.

by general hospitals. Ambiguities in the Chinese Ministry of Health policy exacerbate the discriminatory practices of general hospitals towards people living with HIV.

Highlighting the work of Yirenping Legal Aid Center, Ms Liu advocated that policy change, law reform and legal aid are all essential to protecting the rights of people living with HIV.

Mr Tim de Meyer

Mr Tim de Meyer, Senior Specialist on International Labour Standards & Labour Law, ILO, Decent Work Technical Advisory Team for East Asia, Southeast Asia and the Pacific, presented on national and international obligations related to discrimination in the workforce.

Mr de Meyer outlined discrimination-related commitments enshrined in the *Declaration of Fundamental Principles and Rights at Work*, 1998 (the ILO Constitution), pointing out that this Convention is widely ratified across Asia. A fundamental principle of the ILO Constitution is the elimination of workplace discrimination based on grounds irrelevant to inherent requirements of the job. A further critical international commitment is the *Discrimination (Employment and Occupation) Convention*, 1958 (No. 111) (ILO Convention 111), which requires member states to adopt a national policy to eliminate discrimination based on race, colour, sex, religion, political opinion, national extraction, or social origin and any other ground nationally determined. Health status is not specifically proscribed by the ILO Convention 111 but can be included via national law under “any other ground nationally determined.”

Mr de Meyer detailed how discrimination impacts upon workers’ rights and access to employment, including coerced pre-employment HIV testing, disclosure of test results representing breach of confidentiality, denial of employment on the basis of HIV status and termination of employment on the basis of HIV status.¹⁹

Mr de Meyer emphasized the role of the judiciary in addressing HIV-related employment discrimination, detailing landmark jurisprudence, noting that proactive national courts have ordered the development and implementation of workplace policies on HIV.²⁰ In conclusion, Mr de Meyer informed participants of the upcoming ILO publication *HIV and AIDS and Labour Rights: A Handbook on HIV and AIDS for Judges and Legal Professionals* (ILO Handbook). The ILO Handbook sets out case law on the protection of human rights and the facilitation of access to HIV-related services in and through the workplace.²¹

Plenary discussion

In plenary discussion, participants considered the application of ILO Convention 111 to state agencies and the military. Mr de Meyer asserted that governments have a greater duty to comply than the private sector on the basis of state ratification and that governments should be expected to lead by example.

Ms Baby Rivona Nasution, National Coordinator of Ikatan Perempuan Positif Indonesia, brought participants’ attention to the gap between law and practice in Indonesia for migrant workers. Notwithstanding the protective provisions of national law and Indonesia’s ratification of ILO Convention

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¹⁹ Related to this, Mr de Meyer highlighted the commitments of the International Labour Conference (ILC) under Recommendation No. 200: Concerning HIV and AIDS and the World of Work. This Recommendation (specifically, paragraph 3c) is intended to offer protection for workers during three stages of employment: before employment, during employment and after employment.

²⁰ *Hoffmann v. South African Airways* 2000 (2) SA 628; 2001 (10) BHR 571 of South Africa; (2000) 3 CHRLD 146 of South Africa; *XX v. Gun Club Corporation et al.*, Constitutional Court, Judgment No. SU-256/96 (1996) of Colombia; *Gary Shane Allpass v. Mooikloof Estates (Pty) Ltd.* (Case No. JS178/09) of South Africa; *Fontaine v. Canadian Pacific Ltd.* [27 October 1989], Canadian Human Rights Tribunal.

²¹ The ILO Handbook will be posted online from August 2013 on the ILO/AIDS website at: <http://www.ilo.org/aids/lang--en/index.htm> (accessed 26 June 2013).

111, migrant workers continue to face considerable HIV-related discrimination in the form of mandatory HIV testing. Participants discussed the interaction between HIV-related stigma and discrimination and the reluctance of migrant-receiving countries to take measures that allow migrant workers to become part of society, concluding that the judiciary plays an important role in implementing ILO Convention 111.

Chapter 3: The enabling legal environment in the context of HIV and sex work

Dame Carol Kidu

Dame Carol Kidu, DBE, who served as a Commissioner on the Global Commission on HIV and the Law, chaired the session on the enabling legal environment in the context of HIV and sex work.²²

Dame Carol opened the session with a discussion on the Report of the Global Commission on HIV and the Law (Global Commission Report) and its key findings in relation to sex work. She explained that the Global Commission Report provides that criminalization, together with social stigma, makes sex workers' lives less stable, less safe and far riskier in terms of HIV. Significantly, there is effectively no legal protection from discrimination and abuse where sex work is criminalized.

Dame Carol informed participants on the Global Commission Report recommendations, which state that to ensure an effective, sustainable response to HIV that is consistent with human rights obligations, countries must reform their approach towards sex work. Rather than punishing consenting adults involved in sex work, countries must ensure safe working conditions and offer sex workers and their clients, access to effective HIV and health services, and commodities.²³

Dame Carol also drew participants' attention to the common conflation of sex work and sex trafficking. Sex work is defined as consensual, whereas trafficking is coercive. Sex worker organizations understand sex work as a contractual arrangement whereby sexual services are negotiated between consenting adults. In contrast, trafficking in persons, as defined by international and local treaties, is "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."²⁴ Under this broad definition of trafficking in persons, a number of governments have staged violent crackdowns on both sex workers and victims of trafficking—seeing all people in the sex industry as "victims of trafficking". Such crackdowns mean that sex workers are forced to work in less visible ways and cannot muster the collective power to improve their wages or working conditions.²⁵

The Global Commission Report notes the negative health and social consequences that flow from punitive laws, law enforcement and criminalization of sex work, and emphasizes there is no legal protection from discrimination and abuse where sex work is criminalized.²⁶

²² Dame Carol Kidu was the only female Member of Parliament in Papua New Guinea in the 2002-2007 and 2007-2012 National Parliaments. Dame Carol served as Minister for Community Development under Prime Minister Sir Michael Somare from 2002 to 2 August 2011 and as Leader of the Opposition from 15 February 2012 until her retirement from politics in July 2012.

²³ This necessarily involves repealing laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex, such as laws against "immoral" earnings, "living off the earnings" of prostitution and brothel-keeping. See: The Global Commission on HIV and the Law. *Risks, Rights and Health*. New York: United Nations Development Programme; 2012 (<http://hivlawcommission.org/resources/report/FinalReport-Risks.Rights&Health-EN.pdf>, accessed 26 June 2013).

²⁴ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations (2000) Convention against Transnational Organized Crime. (Palermo Protocol).

²⁵ Global Commission on HIV and the Law; *op. cit.*

²⁶ *Ibid.*

Hon. Chief Justice Mohit Shah

Hon. Chief Justice Mohit Shah of the Bombay High Court, India, presented on sex work and the enabling legal environment, outlining the specific vulnerability of sex workers and emphasizing the stigma and marginalization faced by sex workers.

Justice Mohit Shah remarked that prejudice impacts upon a nation’s ability to address HIV and introduced participants to four models of sex work regulation (noting that sex work, soliciting, owning a brothel, and living off the earnings of sex work, are encompassed under these models):

1. Criminalization of sex work.
2. Partial criminalization of sex work.
3. Decriminalization of sex work.
4. Legalization/regulation of sex work.

Justice Mohit Shah highlighted that criminalization of sex work forces sex workers to work in isolation, reduces sex workers’ control over their working conditions and increases the risk of violence. Equally, the criminalization of “living on the earnings or proceeds of sex work” makes family members vulnerable to arrest, thus alienating sex workers from their support networks. Provisions against keeping a brothel force sex workers to work on the street or in client’s homes, rather than in safer, indoor environments.

States should review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV or targeted at vulnerable groups. Criminal law review should include, for example, laws that criminalize certain types of consensual sexual activity, e.g., sex between people of the same sex, sex work.

Consolidated International Guidelines on HIV/AIDS and Human Rights, 2006 (Guideline 4)

Picking up on the issues of conflation of sex work and trafficking, raised by Dame Carol, Justice Mohit Shah outlined the provisions of India’s Immoral Trafficking Prevention Act (ITP Act) 1956, which enables a magistrate to put a women or child in a protective home for up to three weeks following arrest under the ITP Act. If, after this period, the magistrate determines the woman still requires care and protection, the magistrate can order rehabilitation in a detention centre for one to three years. This judicial power effectively treats women as minors, without legal capacity or self-determination.

Notwithstanding such laws, Justice Mohit Shah explained that there are examples of courts in India being proactive in upholding the rights of sex workers. He outlined a number of cases and emphasized the decision of the Supreme Court of India in *Budhadev Karmaskar v State of West Bengal*, which recognizes sex workers as human beings and entitled to a life of dignity.²⁷ The Supreme Court further ordered a panel to review and make recommendations on the rehabilitation of sex workers who voluntarily wish to leave sex work and to make recommendations on the creation of conducive conditions for sex workers who wish to continue working as sex workers with dignity, in accordance with Article 21 of the Constitution of India.

Despite these important initiatives by the Indian courts, in practice, poor conditions at rehabilitation homes or rescue homes, including overcrowding and lack of basic amenities, exacerbate vulnerability and poverty. Justice Mohit Shah provided one example of improved conditions at the Government rescue home in Mumbai, which was strictly monitored for a period, pursuant to court orders.

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²⁷ *Budhadev Karmaskar v. State of West Bengal* (2011) 11 SCC 538.

Ms Khartini Slamah

Ms Khartini Slamah, Representative of the Asia Pacific Network of Sex Workers, presented on the personal experiences of sex workers.

Ms Slamah stated emphatically that many women who willingly engage in sex work consider sex work to be normal work, and do not want to be “saved from sex work”. She argued that policies aimed at saving all women from sex work are misguided. Unfortunately, many countries still do not understand these realities and still view sex work from a moral viewpoint.

In relation to the justice sector, Ms Slamah highlighted that sex workers who are victims of crimes such as rape, violence, harassment, extortion and theft, generally do not lodge complaints with the police, as the police are frequently a source of further rights violations. Ms Slamah called for judges and magistrates to be sensitized. She stressed the commitment of sex workers’ organizations across the region to work with representatives of the judiciary to uphold the rights of all people who sell sex. Ms Slamah called for decriminalization of sex work as a necessary measure to address the negative impact of arrest and human rights violations against sex workers. Decriminalization, she argued, would contribute towards an enabling legal environment, whereby sex workers are able to claim their rights and able to carry condoms and other means of HIV prevention without fear of arrest.

Ms Chantawipa Apisuk – “Noi”

Ms Chantawipa Apisuk (Apisuk), Director of EMPOWER Foundation, Thailand, presented on the positive impact of empowerment and education on sex workers.

Ms Apisuk shared with participants the work of the EMPOWER Foundation in advocating for fair standards and equal rights for sex workers. Ms Apisuk illustrated her presentation with photos and newspaper clips on the sex work sector in Thailand, giving participants a real picture of the lives of sex workers in Thailand. In addition to advocacy, EMPOWER runs a recognized education centre which facilitates learning on human rights, leadership, media, research, public speaking and health for sex workers. Central to the EMPOWER philosophy is the importance of education as a tool that builds self-esteem and creates opportunities; a tool that enables sex workers to assert their preferences and rights and minimize exploitation.

Ms Apisuk used an innovative chart to demonstrate the link between sex work and migration, taking into account the enabling legal environment and economic drivers. The chart showed the multiple factors which influence a person’s decision to migrate to another country to sell sex; including the vast differences in average monthly income for sex workers in different south-east Asian countries, the availability and accessibility of free condoms, law enforcement and the cost of basic goods.

Plenary discussion

In plenary discussion, Hon. Judge Rhona Modesto-San Pedro, thanked speakers for their inspiring presentations and urged communities to bring cases to court. Judge Modesto-San Pedro emphasized that legal aid is essential, in order to support communities to claim their rights in court.

Participants discussed matters of consent in relation to sex work. Notwithstanding cultural and moral perspectives, it was recognized that it is a broad generalization and a presumption that “sex workers do not consent to sex work.”

Participants considered the impact of police raids on sex work establishments (police raids related to the implementation of punitive laws) and the role of the state in determining whether a person needs to be rehabilitated. Participants discussed the fact that police raids on sex work establishments tend to be violent, in breach of rights and, significantly, do not have the (presumably) desired result of stopping sex work. Further, raids are highly disruptive to the community. This means that clients do not come to brothel areas in the period following a raid; forcing both sex workers and clients to take greater risks with their health by pursuing underground transactions. Participants also deliberated on the fact that the possession of condoms is often used as evidence of sex work in a court case or at the police station. Both police raids and practices that deter people from carrying condoms have a devastating impact upon HIV prevention efforts. Participants discussed how prioritizing public health and safety in policy relating to sex work has a positive impact on women’s safety, community security, community stability and livelihoods.

Discussing the role of judges in relation to sex work, participants considered how public interest litigation can be an effective way to challenge the law. Courts are independent and can read the law to minimize harm and promote rights. This may, in turn, prompt reform of laws, policies and practices. Importantly, a judge has the power to restrict the application and interpretation of a law to limit harmful impact on individuals and the community, without changing the legislation itself. In common law countries, subsequent judgments of lower courts are bound to follow this precedent. Conversely, elected representatives tend to be more reluctant to address issues or initiate reform on matters which are controversial amongst voters.²⁸

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²⁸ Dame Carol Kidu illustrated this point with a description of her attempts to decriminalize sex work via law reform in Papua New Guinea. Despite extensive consultation on the topic, when Dame Carol brought the reform proposal to Parliament, she reports “there was a deafening silence.” Politicians generally do not lead on issues that do not win votes. Dame Carol asserted that justice sector sensitization and engagement with communities are the way to prompt attitude change. In closing, Dame Carol reminded participants that sex work cases rarely see higher courts and that, arguably, sensitization was also required at magistrate level to ensure rights-focused interpretation and application of the law.

Chapter 4: The enabling legal environment in the context of HIV and sexual orientation and gender identity

Hon. Justice Tshering Wangchuk, Supreme Court of Bhutan, chaired the session on the enabling legal environment in the context of HIV and sexual orientation and gender identity. Justice Wangchuk urged participants to learn from other jurisdictions, stating that there is no need to reinvent the wheel.

Hon. Justice Ajit Prakash Shah

Hon. Justice Ajit Prakash Shah (retired), Chairperson of the Broadcasting Complaints Council of India, touched on three themes during his presentation: the limits of moral legitimacy, public health and the rights of the person.

Justice Shah opened with a discussion on the overarching issues of public morality versus constitutional morality.²⁹ Referring to American legal scholar Ronald Dworkin, Justice Shah argued that the law should not attempt to regulate public morality. Justice Shah queried whether it is *permissible* for the state to legislate on the grounds of public morality and suggested that legislatures and the judiciary are bound to uphold the morality enshrined in the constitution (constitutional morality).

Justice Shah argued that if the performance of an act is wrong in the context of constitutional morality, there is reason to regulate against it, or attempt to prevent it. Conversely, if the performance of an act is not wrong (in the context of constitutional morality) and does *not* harm others, arguably there is no justifiable reason to regulate against the act or attempt to prevent it. This is particularly true when regulation is driven by public morality. Justice Shah urged his peer judges to break down the private and public spheres of human existence. What is shocking and wrong to one person is that person's idea of morality—this is a subjective perspective, not broader morality.

A related issue is the issue of proportionality. Justice Shah asked judges to consider laws criminalizing sex work and evaluate whether the law and punishment is proportionate to the nature of the offence. Does a contravention of public morality justify action otherwise unacceptable? For example, in some jurisdictions, authorities are permitted to demolish a brothel house without notice to occupants. This action would be unlawful, but is justified by the contravention of public morality associated with sex work.

Justice Shah then turned to the matter of public health and the deliberations of Delhi High Court in the case of *Naz Foundation v. Government of NCT*, in which he was one of the presiding judges.³⁰ In *Naz*

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²⁹ Shah (AJ) described **public morality** as merely a reflection of the normative view of a majority of the population which shapes and changes. An example of this is the notion of it being appropriate for a wife to burn on the pyre of her dead husband. In contemporary usage, **constitutional morality** has come to refer to the substantive content of a constitution. To be governed by a constitutional morality is, on this view, to be governed by the substantive moral entailment any constitution carries and is not limited only to following the constitutional provisions literally, but is vast enough to ensure the ultimate aim of the constitution (a socio-judicial scenario providing an opportunity to unfold the full personhood of every citizen, for whom and by whom the constitution exists). For instance, the principle of non-discrimination is often taken to be an element of modern constitutional morality. The 19th century usage of constitutional morality refers to the conventions and protocols that govern decision-making where the constitution vests discretionary power or is silent. Pratap, Bhanu Mehta, 2010, http://www.india-seminar.com/2010/615/615_pratap_bhanu_mehta.htm, accessed on 24 April 2014.

³⁰ *Naz Foundation (India) Trust v. Government of NCT, Delhi and Others* 160 (2009) DLT 277.

Foundation, the court took into account the public health implications of its ruling. The court had before it evidence of the impact of criminalization of sex between men upon the HIV response. There was no evidence before the court to suggest that criminalization of sex between men had any positive impact upon the HIV response. The court recognized that section 377 of the Indian Penal Code has acted as a serious impediment to HIV response. The decision in *Naz Foundation* was based on the impact of section 377 on the HIV response, and decided on the grounds of constitutionally-enshrined value of public health.

Justice Shah also asked members of the judiciary to consider the impact of a punitive law that is not used. Some query if a law is not used or enforced, why is law reform important? Justice Shah argued that the enforcement of a law does not represent the sole impact of a law. For example, section 377 of the Indian Penal Code, while not routinely enforced against men who have sex with men, legitimized discrimination and violence against men who have sex with men and justified homophobia.

Hon. Justice Kalayan Shrestha

Hon. Justice Kalayan Shrestha, Supreme Court of Nepal, focused on the role of the judiciary in protecting people of diverse sexual orientation and gender identity and supporting access to justice.

Acknowledging that science travels faster than the law, Justice Shrestha queried whether this disparity in pace allows injustice to prevail and urged his peers to recognize that the humanization of laws is the responsibility of the judiciary. The judicial community must examine scientific evidence in order to ensure that decisions are objective and fair.

Justice Shrestha moved on to highlight the vulnerability of men who have sex with men and their experience of double discrimination: men who have sex with men are discriminated against both on the basis of their sexuality and their perceived or actual HIV status. This double discrimination means that men who have sex with men are marginalized, excluded from opportunity, comprehensively denied their rights, and are vulnerable to violence—with significant ramifications for the broader community. Justice Shrestha argued that if an act is consensual and between adults, there is no need for the law to intervene to evaluate such acts.

Justice Shrestha highlighted the case of *Sunil Babu Pant v. Government of Nepal*, where the Supreme Court of Nepal examined the rights of people of diverse sexual orientation and gender identity and confirmed the importance of the right to privacy. The court held that no-one has the right to question how two adults engage in sex, or whether such sex is natural or unnatural. The Supreme Court of Nepal further made orders for the creation of a Same Sex Marriage Committee and directed the Government of Nepal to act upon the recommendations of this committee.

In the case of *Sapana Pradhan Malla v. Office of Prime Minister and Council of Minister and Others*, the Supreme Court of Nepal issued guidelines designed to enhance access to justice for vulnerable populations, specifically people living with HIV.³¹ These guidelines set out requirements for confidentiality (from the point of lodging a complaint) in certain cases involving people living with HIV. Justice Shrestha closed by urging the judiciary to confront its own biases and reach out to those who cannot access justice.

We have to begin with ourselves—start with our own understanding and our own response to stigma and new situations.
Hon. Justice Kalayan Shrestha, Supreme Court of Nepal

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³¹ *Sapana Pradhan Malla v. Office of Prime Minister and Council of Minister and Others*, Writ No. 3561 of the year 2063 B.S (2006).

Mr Jonas Bagas

Mr Jonas Bagas, Executive Director of TLF SHARE,³² presented on the vulnerability of men who have sex with men and transgender people; highlighting how the impact of stigma negates the ability of men who have sex with men and transgender people to utilize the justice system.

Mr Bagas explained that while HIV prevalence is broadly dropping across Asia and the Pacific, men who have sex with men and transgender people continue to face a rising HIV epidemic. Mr Bagas identified the key issue to be the fact that stigma still trumps evidence—stigma around sexual orientation and gender identity has blunted and impaired the value of evidence.

Mr Bagas explained that in the Philippines, gay men and transgender people are frequently arrested on the basis of their sexual orientation and/or gender identity. Laws are used in a punitive manner against men who have sex with men and transgender people; both laws that are directly applicable (for example criminalization of sodomy), as well as laws that are indirectly applicable (for example the anti-trafficking law, anti-vagrancy law or public scandal law).

In this environment, few men who have sex with men or transgender people are willing to seek legal remedy. Many victims of rights violations do not come forward to claim justice due to fear of disclosure, retribution, homophobia and transphobia in the justice sector. People are faced with the question: why risk life and reputation if the remote possibility of redress attracts further stigma?

Mr Bagas called for the sensitization of judges, court personnel and prosecutors on HIV and sexual orientation and gender identity. Mr Bagas concluded by advocating for law and policy reform, appealing directly to representatives of the judiciary to be game-changers in the HIV response: to use the weight of the law to restore and uphold human dignity.

Ms Laxminarayan Tripathi

Ms Laxminarayan Chandradev Tripathi, founder, trustee and chairperson of Astitva, detailed the vulnerability of transgender people—“visible but invisible”—and called for the empowerment of the transgender community.

Ms Tripathi describe how transgender people are thrown out of their homes by family members, pushing them into a cycle of poverty, limiting access to education and further limiting opportunity for employment. In countries where transgender people are denied citizenship or identity cards that accurately reflect their identity, access to public services is further inhibited and the cycle of poverty and vulnerability is exacerbated.

Ms Tripathi argued that it is essential for transgender people to be informed of their rights and supported to claim them. Transgender people must be afforded all the opportunities accessible to men and women.

Ms Tripathi concluded by pointing out that change is required both at statutory level and at societal level. These factors are complementary and influence one another, but efforts are required on both fronts in order to achieve a society where transgender people are treated with dignity and equality.

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³² TLF Sexuality, Health and Rights Educators Collective Inc. (TLF SHARE) is a membership organization of peer educators, trainers and advocates. TLF SHARE works on the prevention of sexually transmitted infections, including HIV, among Filipino gay, bisexual males, transgender people and other men who have sex with men. TLF SHARE is committed to the promotion of human rights.

Plenary discussion

In plenary discussion, participants discussed the origin of criminalization of homosexuality (largely colonial laws inherited from the United Kingdom) and the importance of concurrent law reform and social change. Participants noted the impact of silencing certain groups and how marginalization affects a community's ability to demand rights.

Justice Shrestha noted that it is critical that appellate court judges are clear about their role and responsibility in the development of law. It is judicial duty to seek truth and to deliver justice to all regardless of social standing.

Chapter 5: The enabling legal environment in the context of HIV and drug use

Mr Jon Ungpakorn

Mr Jon Ungpakorn, Chair of the Sub-Committee on AIDS Rights, National AIDS Prevention and Control Committee and Commissioner on the Global Commission on HIV and the Law, chaired the session on the enabling legal environment in the context of HIV and drug use.

Mr Ungpakorn opened by explaining that the global war on drugs has been unsuccessful. Within the context of the war on drugs, Thailand stands out in the region as promoting poor practice in response to drug use. Thailand's approach is not evidence-based, not voluntary and frames drug use as a criminal matter. As a result, people who use drugs experience rights violations and HIV prevalence is high.

Ms Tripti Tandon

Ms Tripti Tandon, Lawyers Collective, India, presented on the international legal framework on drugs and highlighted how disproportionate, punitive responses to drug use are a product of various social prejudices rather than evidence-based analysis of the issues and responses.

Ms Tandon explained that people who use drugs often stand accused of violation of the law, rather than acting as claimants of rights. If claims are not being brought before the courts, there is little opportunity for evidence-based judicial response. Ms Tandon postulated that most judges see deterrence of drug use as a worthy public policy objective and the law as a means to achieve this. This thinking does not examine or question why drug use has been deemed to be such a grave offence. Ms Tandon outlined the international conventions and their impact:

1. The Single Convention on Narcotic Drugs, 1954 (as amended by the 1972 Protocol)
2. The Convention on Psychotropic Substances, 1971
3. The Convention against Illicit Traffic in Narcotic Drugs & Psychotropic Substances, 1988

These conventions require Member States to criminalize production, manufacture, export, import, distribution, trade, use and possession of narcotic drugs and psychotropic substances, except in cases of medical and scientific use. Notably, these conventions provide for alternatives to incarceration, including: treatment, education, rehabilitation and social reintegration for minor offences. Ms Tandon noted that many Asian countries exceed the requirements or penalties required by the conventions. For example, many countries criminalize the consumption of drugs, impose stringent punishment on people who use drugs, including for possession for personal use, enforce compulsory detention treatment and rehabilitation, require abstinence, punish relapse and impose the death penalty.³³

Ms Tandon closed by appealing to judges to apply proportionality in sentencing, apply alternatives to incarceration and consider public health implications. Courts are bound to follow constitutional principles; it is appropriate that drug laws are viewed within the principles of constitutionality.

³³ Ms Tandon also outlined the precedent set by *Union of India v. Kuldeep Singh* (2004) 2 SCC 590, which entrenches a disproportionate punitive approach to drug use and has set a precedent that has a negative impact upon the harm reduction approach to drug use. The Kuldeep judgment states: "An offence relating to narcotic drugs or psychotropic substances is more heinous than culpable homicide because the latter affects only an individual while the former affects and leaves its deleterious impact on the society, besides shattering the economy of the nation."

Dr Anne Bergenstrom

Dr Anne Bergenstrom, Regional Adviser HIV/AIDS, UNODC, presented on the negative impact of compulsory detentions centres on the HIV response and the enabling legal environment.

International best practice promotes evidence-based treatment in support of rehabilitation. Conversely, compulsory detention centres do not subscribe to public health or harm reduction approaches and, in many respects, violate the rights of detainees.

Dr Bergenstrom explained that people who use drugs can be distinguished from people who are drug-dependent (drug dependence is a chronic health condition). This is an important distinction for the purposes of treatment, because treatment is only required when a person is dependent on drugs. Notably, even in the case of drug dependency, evidence indicates that in a majority of cases, residential treatment is not required.

Compulsory detention centres frequently:

- do not undertake individual assessments (this means treatment is not based on a person’s needs, whether a person is drug-dependent, or the severity of a person’s drug dependence);
- do not utilize individual treatment plans or use evidence-based drug dependence treatment;
- result in high relapse rates;
- have a profoundly negative psychological impact on people who use drugs;
- people who use drugs often face increased stigma and discrimination from society upon their release from detention; and
- are not cost effective.

From a public health perspective, Dr Bergenstrom explained that compulsory detention centres generally have poor living conditions, provide inadequate nutrition to detainees and cause high rates of depression and suicidal ideation. A lack of access to HIV prevention tools and appropriate treatment lead an increased risk of HIV-related diseases (tuberculosis, hepatitis and other communicable diseases).

From a rule of law perspective, compulsory detention centres often involve arbitrary arrest and detention and do not require the consent of the individual for treatment, violating a person’s right to liberty and right to health (consent to treatment).³⁴ Compulsory detention centres operate outside the rule of law and the practices and procedures of criminal justice frameworks. People are generally denied the right to a hearing, the right to appeal and the right to legal advice and representation. Inside compulsory detention centres, there are generally no independent complaint mechanisms for circumstances of ill-treatment or violations of human rights.³⁵

Dr Bergenstrom concluded by appealing for a health-oriented response to HIV and called attention to the joint statement of the UN on compulsory drug detention and rehabilitation centres, which states: “The United Nations call on all states to close compulsory drug detention and rehabilitation centres and implement voluntary, evidence informed and rights-based, health and social services in the community.”

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³⁴ Treatment in the absence of informed consent is considered to be a breach of the right to health and a breach of medical ethical standards.

³⁵ Dr Bergenstrom explained that pursuant to the 2011 UN Political Declaration on HIV/AIDS, states agreed on interventions for people who use drugs. The World Health Organization (WHO) and UNODC have developed a comprehensive package of interventions for the prevention and care of HIV among people who inject drugs. WHO, UNODC & UNAIDS. Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users. [2012 revision]. Geneva: World Health Organization; 2012.

Ms Baby Rivona Nasution

Ms Baby Rivona Nasution, National Coordinator, Ikatan Perempuan Positif, Indonesia, shared her experiences as a former drug user.

Ms Rivona described the stigma she faced as a female drug user and the additional harassment from police. Ms Rivona explained that in Indonesia, people who use drugs are arrested and detained, subject to abuse and violence and are not treated as humans. Prisons and detention centres exacerbate the vulnerability of people who use drugs. Poor understanding of HIV in prisons and detention centres has significant public health outcomes, with substantially higher rates of HIV, tuberculosis and other communicable diseases inside prisons (in comparison to the non-incarcerated population). Ms Rivona explained there are high rates of drug use and drug trafficking prisons in Indonesia.

Ms Rivona, now a community leader, NGO manager and mother of two healthy children, expressed that she would like people who use drugs to be better understood and provided with rights-based, effective treatment. Ms Rivona also disclosed that her partner remains HIV-negative.

Mr Parashar Bikram Ashikari

Mr Parashar Bikram Ashikari, Project Coordinator at the HIV Young Leaders Fund (HYLF), Nepal, focused his presentation on effective treatment for people who use drugs.

Mr Ashikari urged participants to build their understanding of harm reduction and advocate for adherence to harm reduction approaches in national law and policy. Mr Ashikari highlighted the importance of opiate substitution therapy and clean syringes as part of a harm reduction approach. Noting that methadone has a stabilizing effect on people, Mr Ashikari explained that methadone acts like a pain killer to reduce the pain and symptoms of drug addiction. A second key component of harm reduction is safe access to clean syringes. Clean syringes are critical for public health purposes and HIV prevention.

Mr Ashikari closed by calling on participants to lobby their governments for harm reduction approaches – with harm reduction and opiate substitution therapy people can regain their lives.

Plenary discussion

Participants discussed the importance of consent, exploring this as a component of the right to health. The group examined consent in the context of mandatory HIV testing, human rights and public health outcomes. Acknowledging that early knowledge of positive HIV status maximizes opportunities for a person to access treatment, thereby greatly reducing HIV-related morbidity and mortality, the group also recognized that coerced or mandatory testing violates rights. Compellingly, there are better public health outcomes when people take responsibility for their own health and take part in voluntary testing and counselling, where they are supported to understand the implications of HIV testing, HIV prevention and living with HIV.

Participants also discussed the role of judges in balancing rights and backlogs in administration of justice for drug offences. Hon. Judge Suntariya Muanpawong, Juvenile and Family Court of Thailand, explained that courts do not know how people who use drugs are treated and do not understand methadone and harm reduction approaches. Dr Dhaliwal described international best practice, which penalizes the drug trafficker rather than the drug user and proposed that governments were not allocating sufficient resources to implement evidence-based treatment.

Participants discussed the use of greater penalties for drug trafficking than for drug use. Participants considered laws which classify all drugs in the same category, meaning the use or sale of one drug incurs the same penalty as another, not necessarily comparable, drug. Ms Tandon explained that the 1951/355(XII) B Single Convention on Narcotic Drugs, based on dated science, places cannabis in the same category as cocaine, notwithstanding the different effects of the drugs. There is now a movement to change this classification. Ms Tandon urged participants to consider the risk factors involved in cannabis use and emphasized that the law around drugs and alcohol is based on evolving social constructs and perceptions. For example, alcohol is banned in some countries and considered to be more harmful than cannabis by the Lancet Medical Journal.³⁶

Emphasizing the matter of costs, Ms Tandon raised the point that millions of dollars have been spent on the war on drugs—with no effect. Ms Tandon urged participants to ask their governments why they do not invest in effective, evidence-based practice. Mr Ungpakorn closed the session reminding participants of the positive public health benefits of an enabling legal environment in relation to people who use drugs. People who use drugs should be treated as individuals with a health problem, not criminals.

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³⁶ Nutt D, King LA, Phillips LD, on behalf of the Independent Scientific Committee on Drugs. Drug harms in the UK: a Multi-criteria Decision Analysis. *Lancet*. 2010;376, 1558-1565.

Chapter 6: Access to life-saving treatment

Hon. Deputy Chief Justice Gibbs Salika

Hon. Deputy Chief Justice Gibbs Salika chaired the session on access to life-saving treatment. Justice Salika emphasized that each country faces its own complex combination of problems in relation to access to essential medicines and that each country must find solutions. Justice Salika noted that although it is broadly acknowledged that access to medicines is a critical matter in preventing HIV, discrimination in relation to access to life-saving antiretroviral drugs remains.

Mr Jon Ungpakorn

Mr Jon Ungpakorn, Chair of the Sub-Committee on AIDS Rights, National AIDS Prevention and Control Committee and a Commissioner on the Global Commission on HIV and the Law, presented on the tension between intellectual property rights and the right to health.

Mr Ungpakorn argued that the greatest HIV-related discrimination is the price of treatment. Accordingly, access to medicines represents the most significant challenge to the HIV response. Limited access to treatment means that people living with HIV have higher viral loads and suffer greater health consequences; this in turn increases the likelihood of HIV transmission and results in an increase in the number of people living with HIV. High prices make medicines inaccessible—with devastating health and social consequences.³⁷

Mr Ungpakorn described the importance of utilizing flexibilities built into the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement to address the high price of medicines and improve access to treatment.³⁸ For example, pursuant to TRIPS flexibilities, Member States have the right to:

- determine the grounds for issuing compulsory licences, and when to order Government use;
- allow for various forms of parallel imports;
- apply general exceptions, such as early working for regulatory approval of generic pharmaceutical products or experimental use exceptions; and
- make use of transition periods for developing countries and a longer, extendable transition period for least developed countries.³⁹

³⁷ Mr Ungpakorn illustrated his point by showing how drug prices are an anomaly in the international market. In Thailand, person can buy a bottle of soft drink for approximately US\$ 0.80; in contrast; in the United Kingdom, a bottle of soft drink costs twice this amount. This price difference reflects cost of production. Medicines do not fit this pattern, as they are often more expensive in developing countries than developed countries, due to the patent system.

³⁸ The 1995 TRIPS Agreement of the World Trade Organization (WTO) established minimum standards of protection that each Government has to give to the intellectual property of fellow WTO members, thus limiting the former scope for flexible national approaches. However, some mechanisms under TRIPS aim to permit developing and least-developed countries to use TRIPS-compatible norms in a manner that enables them to pursue their own public policies (either in specific fields like access to pharmaceutical products or, more generally, in establishing conditions that support economic development). These are referred to as the TRIPS flexibilities. The 2001 Doha Declaration on the TRIPS Agreement and Public Health reaffirmed these flexibilities and stressed that it is important to implement and interpret the TRIPS Agreement in a way that supports public health. See: Advice on Flexibilities under the TRIPS Agreement. [WIPO web page] (http://www.wipo.int/ip-development/en/legislative_assistance/advice_trips.html, accessed 20 June 2013).

³⁹ WHO, UNAIDS & UNDP. Using TRIPS flexibilities to improve access to HIV treatment. [Policy brief]. Geneva: World Health Organization; 2011 (<http://www.undp.org/content/dam/undp/library/hiv/aids/Using%20TRIPS%20Flexibility%20to%20improve%20access%20to%20HIV%20treatment.pdf>, accessed 20 June 2013).

Mr Ungpakorn noted, however, that using such flexibilities has consequences in international trade, with some trade partners retaliating against governments who use TRIPS flexibilities. Additionally, free trade agreements contain provisions that make it harder for developing countries to use TRIPS flexibilities.

Mr Ungpakorn described the Thai case of *AIDS Access Foundation and Others v. Bristol-Myers Squibb* heard by the Central Intellectual Property and International Trade Court of Thailand (IP Court). In this case, the IP Court ruled that: “Because pharmaceutical patents can lead to high prices and limit access to medicines, patients are injured by them and can challenge their legality.”⁴⁰ This ruling has significant global implications, “confirming that patients, whose health and lives can depend on being able to afford a medicine, can be considered as damaged parties and therefore have legal standing to sue.”⁴¹ Mr Ungpakorn noted that, over time, judges will have the opportunity to interpret patent laws. This represents an opportunity to ensure the priority of access to life-saving treatment.

Dr Mandeep Dhaliwal

Dr Mandeep Dhaliwal, Director, HIV, Health and Development Practice, UNDP, presented on the role of the judiciary, intellectual property and access to life-saving treatment.

Dr Dhaliwal described the fact that there are huge numbers of people living with HIV who need treatment for HIV, but do not receive it. This is referred to as the “treatment gap”. Based on evidence of better health outcomes, the 2010 WHO treatment guidelines⁴² state that people living with HIV should start treatment with anti-retroviral medication earlier than previously advised. The 2013 WHO guidelines are expected to recommend even earlier initiation. This means the number of people who are supposed to be on treatment is about to increase, widening the treatment gap.

Dr Dhaliwal moved on to discuss patents, asking participants to consider the big picture. A patent confers a monopoly for 20 years. A major argument for patent protection is that a monopoly on sale allows companies to recoup their research and development costs. Dr Dhaliwal asked participants whether pharmaceutical companies reasonably require 20 years of patent protection, particularly when pharmaceutical companies have typically refused to provide evidence of the research and development costs of new drugs. Evidence shows that competition from generic medicines drastically reduces the price of medicines, therefore increasing the accessibility of life-saving treatment. Hence, the public value of 20 years of patent protection (often extended through new patents registered on different forms of existing drugs) should not be assumed.

Reiterating Mr Ungpakorn’s words, Dr Dhaliwal noted that governments often do not use TRIPS flexibilities to allow production of generic medicines, because trade interests trump public health interests.

Hon. Judge Maria Rowena Modesto-San Pedro

Hon. Judge Maria Rowena Modesto-San Pedro, Presiding Judge, Regional Trial Court, Pasig City, the Philippines, addressed participants on the role of the judiciary in balancing the right to health with intellectual property rights.

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⁴⁰ *AIDS Access Foundation, Mrs Wanida C and Mr Hum R v. Bristol-Myers Squibb Company and the Department of Intellectual Property*. The Central Intellectual Property and International Trade Court, 2002 (10).

⁴¹ [e-drug] Lancet: public health vs commercial interest. [Essential Drugs web page]; 2004 (<http://www.essentialdrugs.org/edrug/archive/200402/msg00041.php>, accessed 26 June 2013).

⁴² Antiretroviral therapy for HIV infection in adults and adolescents: Recommendations for a public health approach (2010 revision). Geneva: World Health Organization; 2010 (<http://www.who.int/hiv/pub/arv/adult2010/en/>, accessed 26 June 2013).

Judge Modesto-San Pedro highlighted key international jurisprudence on access to medicine, illustrating the capacity of judges to interpret and apply law in favour of the right to health.

- *Novartis AG v. Union of India*, India 2013⁴³
The Supreme Court of India denied Novartis a patent for its anti-cancer drug Gleevec, upholding the provisions of the Indian Patent Act which prohibit ever-greening.⁴⁴
- *Patricia Asero Ochieng and Ors. v. Attorney General*, Kenya 2012⁴⁵
In a case that challenged the *Anti-Counterfeiting Act 2008* on the grounds that it severely limited access to affordable medicine, the court held that if a law had the effect of limiting the accessibility and availability of HIV medicines then it would “ipso facto threaten the lives and health” of people living with HIV “in violation of their rights under the Constitution.”
- *State of Rio Grande do Sul v. Silvio André Wottrich*, Brazil 2010⁴⁶
The Supreme Federal Court of Brazil ruled that the State of Rio Grande do Sul has a constitutional obligation to provide free medicines to people living with HIV who cannot afford them. This obligation was derived from the constitutionally guaranteed rights to life and health.

In light of these landmark judgments and others, Judge Modesto-San Pedro proposed that members of the judiciary must strike a balance between intellectual property protection and public health which prioritizes access to medicines (life and death) over economic rights. Judge Modesto-San Pedro further contended that developing countries need only to strive to protect genuine innovations in medicines, not ever-greening.

Ms Kajal Bhardwaj

Ms Kajal Bhardwaj, intellectual property law and legal expert, India, presented on civil society perspectives on the role of courts in ensuring access to medicine.

Ms Bhardwaj introduced the relevant points of the Doha Declaration on the TRIPS Agreement and Public Health, 14 November 2001 (the Doha Declaration), which states: “We affirm that the [TRIPS] Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all.” This represents the first time in trade negotiations that public health concerns were specifically recognized and taken into account (the TRIPS flexibilities).

The Indian Government has demonstrated leadership in utilizing the TRIPS flexibilities and in including key health safeguards in the national patent law, including:

- pre and post grant oppositions: allowing for patent applications to be opposed both before and after a patent is granted;
- strict patentability standards (prohibition of ever-greening); and
- compulsory licensing: broad grounds for compulsory licensing, including: unavailability and unaffordability of drug, national emergency, export, Government use.

Ms Bhardwaj described how free trade agreement negotiations are undermining judicial discretion and emphasized that it is critical that trade negotiations cease to be viewed as economic policy-making,

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⁴³ *Novartis AG v. Union of India (UOI) and Ors.; Natco Pharma Ltd. V. Uol & Ors.; M/S Cancer Patients Aid Association v. Uol & Ors.*, Civil Appeal No. 2706-2716 of 2013.

⁴⁴ At Section 3(d) the Indian patent law prohibits patents for a new form of an existing drug without a change in therapeutic efficacy. This provision is designed to prevent “ever-greening”, a term used to label practices where a small change is made to an existing product and claimed as a new invention. This establishes a higher standard for an inventive step, which means that drugs patentable in other countries won’t necessarily be patentable in India. This provision also prevents companies from gaining patents on modifications to existing drugs, in order to gain indefinite monopolies.

⁴⁵ *Patricia Asero Ochieng and Ors. v. Attorney General* (2012) Petition No. 409 of 2009, High Court of Kenya at Nairobi.

⁴⁶ *State of Rio Grande do Sul v. Silvio André Wottrich* (2010) AI 780709/RS.

beyond the purview of the courts. Ms Bhardwaj explained there are an increasing number of free trade agreement negotiations occurring across the region and these agreements commonly contain a provision that restricts judicial discretion. This is arguably prompted by the involvement of courts in patent disputes. Ms Bhardwaj highlighted how courts are increasingly refusing to give injunctions in patent disputes because the harm to patients who are not able to access affordable generic medicines is irreparable; whereas the harm to patent holders can be compensated.

Ms Bhardwaj noted that investment protection provisions are also escaping judicial scrutiny, with negotiations taking place in private. Ms Bhardwaj closed by emphasizing that it is the courts of the global south that are breaking new ground in this area and hence, these courts at the cutting edge of the balance of public interest and private rights.

Chapter 7: Advancing judicial awareness and education on HIV-related legal issues

Mr Ernie Schmatt

Mr Ernie Schmatt, Chief Executive, Judicial Commission of New South Wales (Judicial Commission), shared the developments and initiatives of the Judicial Commission in continuing education programme for judges.⁴⁷

Mr Schmatt explained that the objective of the Judicial Commission’s Continuing Judicial Education programme is to provide information on law, justice and related disciplines and to develop judicial skills and disposition. Participation is voluntary, all programmes are judge-run with an emphasis on active participation and judicial officers are involved in every aspect of the programme. Programmes include: conferences and seminars, induction and orientation courses, annual and specialist conferences on law and procedure and workshops to develop judicial skills and techniques. The Judicial Commission has published seven bench books, available online, as well as judicial education monographs, research monographs and sentencing trends papers. Mr Schmatt also highlighted the work of the International Organization for Judicial Training (IOJT), comprised of 88 countries. The IOJT meets every two years to share information on judicial education and training.

Mr Schmatt highlighted the Judicial Commission has engaged in the judicial response to HIV by:

- publishing a booklet of source material on HIV (*HIV Outline*);
- including an information session on HIV-related legal matters at the Magistrates’ Annual Conference; and
- including articles and summaries of important cases in the Judicial Officers’ Bulletin.

Ms Alison Symington

Ms Alison Symington, Senior Policy Analyst at the Canadian HIV/AIDS Legal Network and lead author of the *Judicial Handbook*, guided participants through the *Judicial Handbook*, to prepare participants to use and refer to the *Judicial Handbook* in future. Ms Symington explained that the *Judicial Handbook* is based on international legal and human rights standards and contains examples of decided cases from different jurisdictions, good-practice advice and judicial rulings on HIV-related issues.

The *Judicial Handbook* recognizes the diversity of legal systems, rules of evidence, and procedures that exist in different countries and jurisdictions, but does not attempt to be a detailed reference source with universal applicability. The *Judicial Handbook* aims to provide practical guidance, examples and evidence-informed reasoning, which judges and magistrates can refer to in their work.

⁴⁷ The Judicial Commission’s principal functions are: (1) to organize a scheme of continuing education and training of judicial officers; (2) to assist the courts of New South Wales to achieve consistency in sentencing; and (3) to examine complaints against judicial officers.

Chapter 8: Recommendations on advancing judicial awareness and education on HIV-related issues

Representatives of the judiciary split into working groups to develop recommendations for the legal response to HIV, focusing on advancing judicial education at the national level. While recommendations varied among the groups, the following recommendations were common across all groups:

1. increase sensitization initiatives and awareness campaigns on HIV and related human rights for judges and court personnel;
2. integrate HIV and related human rights issues into judicial training curricula;
3. increase engagement of judges with people living with HIV and representatives of key populations;
4. increase dialogue between judges and policy-makers on HIV and related human rights issues;
5. improve information sharing between judges on HIV and related human rights and legal issues, including via databases and networking; and
6. judicial collaboration and coordination with relevant UN agencies and government bodies on HIV, human rights and the law.

Participants also suggested specific approaches for taking forward recommendations and ensuring that they are pursued and implemented. These approaches included:

Reaching all judges

- Approach judicial sensitization on HIV and related human rights issues with a dual track, by embedding HIV-related issues into ongoing judicial education programmes and by creating specific sensitization and education programmes for newly appointed judges.
- Be confident in engaging senior judges (taking a top-down approach with sensitization of judges), leadership from the top is important for protective and progressive rulings from lower courts and trial court decisions are often appealed.

Resources and information for judges

- Support ongoing education initiatives and access to up-to-date information on HIV and related human rights issues by creating a national HIV database (including both national and international cases); ensure cases and key information are translated into local languages, as relevant.
- Amend or update appropriate bench books to include HIV and related human rights issues; utilize online resources and judicial training institute online resources and circulars to mainstream HIV.

Judicial exchange and sharing

- Establish judicial exchange programmes between comparable jurisdictions, with learning on HIV-related issues; facilitate more dialogues between judges.

Practical Steps to enhance access to justice

- Address components of court procedure that may force disclosure of HIV status or exacerbate stigma, with a view to ensuring justice is accessible to people living with HIV and key populations.
- Establish strong HIV and related human rights information, education and awareness-raising programmes for the general public; focus on overcoming stigma and cultural barriers.

Engaging lawyers and the broader community

- Engage law students and lawyers on HIV-related issues; embed HIV into existing training on human rights, gender, discrimination or health law.
- Facilitate greater engagement between communities of people living with HIV, key populations and the judiciary for the purposes of breaking down barriers and sensitization; conduct field trips and exposure visits.
- Commence transformational change by including information about HIV, stigma and discrimination in school curricula.

Additionally, during the group discussions, a number of delegates identified concrete, country-specific activities for building judicial capacity on HIV, human rights and the law; for example:

- Mr Schmitt proposed using the *Judicial Handbook* to update and support future activities of the Judicial Commission and encouraged other judicial training institutions to do the same.
- Judicial delegates from Viet Nam explained that the Ministry of Justice (the line ministry for judicial education) is in the process of designing a pilot curriculum on human rights. Vietnamese delegates proposed including components on HIV and gender in this pilot curriculum.
- Judicial delegates from Fiji identified regular judicial training courses where the inclusion of HIV-related issues would be appropriate.
- Judicial delegates from the Philippines identified training and education on cross-cutting issues and gender, as well as intellectual property; and noted that these activities represent opportunities for education on HIV-related issues.
- Judicial delegates from Nepal described the work of the Judicial Academy in publishing a circular containing good decisions and proposed this publication may provide an opportunity for specialised discussion on HIV.
- Judicial delegates from Nepal also identified specific judicial training courses where it would be appropriate to incorporate HIV-related issues.
- Finally, judicial delegates agreed that a network of judicial training institutions be created, to discuss further opportunities to mainstream HIV. Delegates remarked that the Judicial Dialogue was a suitable place to initiate such a network, as there were representatives of seven training institutions present.

Civil society representatives also worked in a separate group to develop recommendations aimed at ensuring the engagement of civil society in supporting access to justice and rights-based judicial decisions in the context of HIV. These recommendations are as follows:

1. the establishment and institutionalization of a sensitization programme for the judiciary, involving civil society and including components on sexual orientation and gender identity, drug use, sex work, intellectual property and access to treatment;
2. greater dialogue and engagement between the judiciary and civil society, with the judiciary reaching out to the community to inform them of their rights and rights reporting mechanisms (such as legal aid);
3. a proactive judiciary approach to HIV through judicial review of current practices, rules, laws and sentencing requirements;
4. a judicial focus on upholding constitutional rights;
5. the development and implementation of HIV workplace policies for judiciaries; and
6. improved and stigma-free redress mechanisms for people living with HIV and key populations, for example an ombudsman for HIV within the judiciary.

Conclusion

Closing remarks at the Judicial Dialogue

Ms Jan Beagle, Deputy Executive Director, UNAIDS, welcomed the dialogue and the very powerful and necessary discussions that occurred during it. She reinforced the critical role of the judiciary in getting to zero AIDS-related deaths, zero discrimination and zero new infections. She reiterated the support of UNAIDS for further engagement and leadership by the judiciary in Asia and the Pacific. Dr Mandeep Dhaliwal, Director UNDP HIV, Health and Development Practice, thanked participants for their commitment to open and frank discussion, traversing issues from engagement to sensitization to leadership. Dr Dhaliwal noted that UNAIDS, UNDP and the ICJ look forward to moving ahead at country level.

Hon. Justice Edwin Cameron stated that he felt pride in what had been achieved at the Judicial Dialogue, in particular the exceptional depth of engagement. Justice Cameron noted the commitment and professionalism of the judiciary shown through their active engagement, and expressed his belief that the Judicial Dialogue had enhanced capacity for evidence-based judgment. Justice Cameron also remarked on the pride he felt for leadership and sharing from people living with HIV and members of key populations. He noted the Judicial Dialogue had facilitated significant transfer of knowledge, strong debate and had greatly expanded insights on vulnerability and what moves the HIV epidemic in Asia and the Pacific.

We have been informed, we have been touched, we have been inspired.

Hon. Justice Edwin Cameron, Constitutional Court of South Africa

Hon. Justice Gita Mittal closed the event, with sincere thanks. Justice Mittal remarked that she gained a deeper appreciation of how application of criminal law has far reaching public health ramifications and raises serious questions of human rights. Any criminal law in relation to HIV should be guided by the best available evidence, should uphold legal procedural principles and should protect the rights of people living with HIV and key populations.

Noting the circular link between HIV and human rights; Justice Mittal reiterated that people living with HIV and key populations frequently face stigma, discrimination and rights violations in the public sector, private sector, within families and within the workplace. This is intolerable. This denial of human rights makes key populations more vulnerable to HIV and entrenches their marginalization. Justice Mittal urged her fellow judges to proceed with a renewed awareness of the rights of people living with HIV and key populations and to recognize their own capacity for action as judges.

Participant feedback

Participants completed evaluation forms and provided feedback on the Judicial Dialogue. Participants' main motivations for participating in the Judicial Dialogue were strongly aligned with the objectives of the Judicial Dialogue—namely, to share experiences, build understanding of HIV and human rights—and for the purposes of networking and generating ideas for effective sensitization and training of members of the judiciary on HIV.

Participants indicated they would use the information gained through the Judicial Dialogue in their work in the following ways:

- to improve continuing judicial education programmes, including developing new modules on HIV;
- to enhance interpretation of law in cases related to HIV;
- to enhance perspective and understanding of people living with HIV; and
- to disseminate information to colleagues on the bench and to write articles.

Participants' additional comments indicated demand for similar type events at national level and continuation of such dialogues. Some participants indicated that they believed that public prosecutors and police officers would benefit from similar dialogues.

Advancement of outcomes

The outcomes of the Judicial Dialogue were largely achieved:

1. Through evaluation forms and in person comments, participants provided positive feedback on the Judicial Dialogue. Active engagement of judges and representatives of judicial training institutions in plenary discussion expanded participants' awareness and understanding of the issues and challenges related to HIV. Significant sharing of experiences and frank questioning also enhanced participants' perception of the role of the courts in this area.

A self-assessment on the level of knowledge and skills on HIV-related issues relevant to the judiciary before and after the Judicial Dialogue indicates a strong increase in awareness of the complex legal and human rights issues raised by the HIV epidemic in Asia and the Pacific and the role of the law and the courts in protecting the rights of people living with HIV and key populations.

2. Participant-developed recommendations on judicial education, plenary discussion throughout the Judicial Dialogue and qualitative feedback from evaluation forms demonstrate increased understanding of strategies for supporting the development of a new generation of judicial leaders, as well as the engagement of national judicial training institutions on HIV and human rights.

Judges and representatives of judicial training institutes from a number of countries, including Australia, Nepal, Papua New Guinea and Viet Nam, identified concrete steps and specific opportunities at the national level, where they believed HIV could be incorporated into judicial education or included in journals and circulars.

3. A session led by Ms Alison Symington, Canadian HIV/AIDS Legal Network and lead author of the *Judicial Handbook*, was designed to familiarize participants with the *Judicial Handbook*. This discussion increased the capacity of members of the judiciary to utilize and refer to the *Judicial Handbook*, a copy of which was provided to all participants.

Judges and representatives of judicial training institutes were provided with additional technical and practical resources to support them to apply knowledge gained during the Judicial Dialogue. These resources included a USB drive containing key Judicial Dialogue documents and copies of presentations and reference materials, as well as the UNDP Compendium of Judgments, Background Materials, Judicial Dialogue on HIV, Human Rights and the Law in Asia and the Pacific Bangkok, 2–4 June 2013 (which includes a summary and the full text of judgments on HIV).

Annex 1: Agenda

SUNDAY, 2 June 2013

Benjarong Thai Restaurant, Dusit Thani Hotel

- 19:30 – 21:30 Reception dinner and launch of “Judging the Epidemic - A judicial handbook on HIV, human rights and the law”
Welcome by the Chair – Mrs. Pimnapa Naigowit Lauhaband, Judge of the Office of the President of the Supreme Court, Thailand
Remarks – Steve Kraus, Regional Director, Joint United Nations Programme on HIV and AIDS (UNAIDS) Regional Support Team for Asia and the Pacific, on behalf of UNAIDS and the United Nations Development Programme (UNDP)
Remarks – Saman Zia-Zarifi, Asia-Pacific Regional Director, International Commission of Jurists (ICJ)
Living with HIV in Asia Pacific: a real view – Shiba Phurailatpam, Regional Coordinator and Director of the Asia Pacific Network of People Living with HIV
Introduction to “Judging the Epidemic – A judicial handbook on HIV, human rights and the law” – Hon. Justice Edwin Cameron, Constitutional Court of South Africa and Ms Susan Timberlake, Chief, Human Rights and Law Division, UNAIDS

MONDAY, 3 JUNE 2013

Dusit Thani Hall

- 8:00 – 8:30 Registration
8:30 – 10:00 Session One – HIV, the law and the judiciary: Introducing the issues
Chair: Hon. Justice Naima Haider, High Court Division of Supreme Court of Bangladesh
Keynote address – Jan Beagle, Deputy Executive Director, Management and Governance, UNAIDS
Overview of the agenda – Brianna Harrison, Human Rights and Law Programme Officer, UNAIDS Regional Support Team for Asia and the Pacific
The HIV epidemic in Asia and the Pacific – Steve Kraus, Regional Director, UNAIDS Regional Support Team for Asia and the Pacific (15 mins)
HIV and the law: Key issues and considerations for the judiciary – Hon. Justice Shiranee Tilakawardane, Supreme Court of Sri Lanka (15 mins)
Discussion

10:00 – 10:30 REFRESHMENTS

- 10:30 – 12:30 Session Two – Using the law to end HIV-related discriminations and other human rights violations
Chair: Hon. Justice Mian Saqib Nisar, Supreme Court of Pakistan
Legal protections against HIV-related human rights violations in Asia and the Pacific – Mandeep Dhaliwal, Director, HIV, Health & Development Practice, UNDP (15 mins)

Discussion
HIV-related discrimination in employment and medical treatment in China – Liuwei, Lawyer, Beijing Chengzhihua Law Firm
Judging on workplace issues: key considerations for the judiciary – Tim de Meyer, Sr. Specialist on International Labour Standards and Labour Law, Regional Office for Asia and the Pacific, International Labour Organisation (ILO) (20 mins)

Discussion

12:30 – 14:00 LUNCH

14:00 – 15:15 Session Three – Enabling legal environment in the context of HIV and sex work
Chair: Dame Carol Kidu, Commissioner on the Global Commission on HIV and the Law
The Report of the Global Commission on HIV and the Law on sex work – Dame Carol Kidu, Commissioner on the Global Commission on HIV and the Law
HIV, sex work and the law: key issues and considerations for the judiciary – Hon. Justice Mohit Shah, Chief Justice of the Bombay High Court, India
Perspectives from the sex worker community - Khartini Slamah, Asia Pacific Network of Sex Workers, Malaysia and Chantawipa Apisuk, Director, EMPOWER Foundation, Thailand
Discussion

15:15 – 15:45 REFRESHMENTS

15:45 – 17:00 Session Four – Enabling legal environment in the context of HIV and sexual orientation and gender identity
Chair: Hon. Justice Tshering Wangchuk, Supreme Court of Bhutan
Same sex relations and HIV before the courts: issues and considerations for the judiciary – Hon. Ajit Prakash Shah, Chairperson, Broadcasting Content Complaints Council of India and former Chief Justice of the Delhi High Court, India
Same-sex relations and the courts: perspectives from Nepal – Hon. Justice Kalyan Shrestha, Supreme Court of Nepal
Perspectives from men who have sex with men and transgender community – Jonas Bagas, TLF Share Collective, Philippines and Laxmi Narayan Tripathi, Founder and Chairperson, Astitva – Organisation for Support and Development of Sexual Minorities, India.
Discussion
17:00 Group photo

TUESDAY, 4 JUNE 2013

Dusit Thani Hall

8:30 – 10:00 Session Five – Enabling legal environment in the context of HIV and drug use
Chair: Jon Ungpakorn, Commissioner on the Global Commission on HIV and the Law
HIV, the law and drug use in Asia Pacific: issues and considerations for the judiciary – Tripti Tandon, Lawyers Collective, India
Compulsory drug detention centres: Public health and legal considerations – Anne Bergenstrom, Regional HIV Specialist, Regional Centre for Southeast Asia and the Pacific, United Nations Office of Drugs and Crime (UNODC)
Perspectives from community of people who use drugs - Baby Rivona, National Coordinator, Ikatan Perempuan Positif Indonesia and Parashar Bikram Ashikari, Aavash Youth Chapter, Nepal
Discussion

10:00 – 10:30 REFRESHMENTS

10:30 – 12:00 Session Six – Access to life-saving treatment
Chair: Hon. Deputy Chief Justice Gibbs Salika, Supreme Court of Papua New Guinea
Using the law to ensure and sustain access to treatment in Asia and the Pacific – Jon Ungpakorn, Commissioner on the Global Commission on HIV and the Law
Access to medicines, HIV and the law: issues and considerations for the judiciary – Hon. Judge Rhona Modesto San Pedro, Presiding Judge, Regional Trial Court, Philippines
Perspectives from civil society on the role of the courts - Kajal Bhardwaj, legal expert, India
Discussion

12:00 – 13:30 LUNCH

13:30 – 15:00 Session Seven – Advancing judicial awareness and education on HIV-related issues (Part 1)
Chair and speaker on judicial education in Asia and the Pacific: examples and possible avenues forward: Mr Ernie Schmatt, Chief Executive, Judicial Commission of New South Wales, Australia
Small group discussion: strategies and entry points for strengthening judicial awareness and education on HIV-related issues

15:00 – 15:30 REFRESHMENTS

15:30 – 16:30 Session Eight – Advancing judicial awareness and education on HIV-related issues (Part 2)
Chair: Emerlynne Gil, International Legal Advisor, Southeast Asia, ICJ
Report back from groups and exchange in plenary
(Followed by brief presentation of key materials and resources to support judicial education, including the *Handbook for the Judiciary*)
Discussion

16:30 – 17:00 Wrap-up and Closing
Chairs: Hon. Justice Edwin Cameron, Constitutional Court of South Africa and Hon. Justice Gita Mittal, Delhi High Court, India
Concluding remarks on behalf of the organisers – Mandeep Dhaliwal, Director, HIV, Health & Development Practice, UNDP
Concluding remarks by the Chairs
Closing by the Chairs

Annex 2: Participants list

Name	Title and organization	Country
JUDGES AND REPRESENTATIVES OF JUDICIAL TRAINING INSTITUTES		
Hon. Abdul Halim Amran	Chief Judge Bau-Bau District Court Indonesia	Indonesia
Le Mai Anh	Vice Director Judicial Academy Viet Nam	Viet Nam
Hon. Dr Dol Bunnag	Chief Judge Provincial Court, Samutsakorn Thailand	Thailand
Hon. Justice Edwin Cameron	Justice Constitutional Court of South Africa South Africa	South Africa
Hon. Judge Gregorio V. Dela Pena III	Presiding Judge Regional Trial Court of Zamboanga City The Philippines	Philippines
Lu Fang	Law Professor National Judges College under the Supreme People's Court China	China
H.E. Myint Han	Judge Supreme Court of the Union Myanmar	Myanmar
Hon. Justice Naima Haider	Justice High Court Division of the Supreme Court of Bangladesh Bangladesh	Bangladesh

Pham Nhu Hung	Dean Judge Training Faculty Viet Nam	Viet Nam
Hon. Senior Judge Zhang Jinxian	Senior Judge (DG level) First Division of the Civil Tribunal of the Supreme People's Court China	China
Hon. Justice Sushila Karki	Justice Supreme Court of Nepal Nepal	Nepal
Khalid Amin Khan	Director Federal Judicial Academy Islamabad, Pakistan	Pakistan
Dame Carol Kidu	Commissioner Global Commission on HIV and the Law Papua New Guinea	Papua New Guinea
Hon. Khin Thida Kyaw	Director Supreme Court of the Union Myanmar	Myanmar
Hon.Pimnapa Naigowit Lauhaband	Judge of the Office of the President of the Supreme Court Thailand	Thailand
Hon. Justice Gita Mittal	Justice Delhi High Court India	India
Hon. Judge Suntariya Muanpawong	Judge Juvenile And Family Court Thailand	Thailand
Hon. Judge Aisha Shujune Muhammad	Judge Civil Court Republic of Maldives	Maldives

Hon. Justice Mian Saqib Nisar	Justice Supreme Court Pakistan	Pakistan
Hon. Shri Justice B.K. Patel	Judge Orissa High Court India	India
Hon. Usaia Ratuveli	Chief Magistrate Ba Magistrate's Court Fiji	Fiji
Hon. Deputy Chief Justice Gibbs Salika	Deputy Chief Justice Gibbs Salika, CSM OBE National and Supreme Court Papua New Guinea	Papua New Guinea
Hon. Judge Rhona M. San Pedro	Presiding Judge Regional Trial Court, Pasig City The Philippines	Philippines
Ernie Schmatt	Chief Executive Judicial Commission of New South Wales Australia	Australia
Hon. Justice Ajit Prakash Shah	Chairperson of the Broadcasting Complaints Council of India India	India
Lohit Chandra Shah	National Programme Director, Rule of Law HR Programme/Registrar Supreme Court Nepal	Nepal
Hon. Chief Justice Mohit Shah	Chief Justice Bombay High Court India	India
Hon. Justice Kalayan Shrestha	Justice Supreme Court of Nepal Nepal	Nepal
Hon. Judge Til Prasad Shrestha	Executive Director National Judicial Academy Nepal	Nepal

Hon. Justice Shiranee Tilakawardane	Justice Supreme Court of Sri Lanka Sri Lanka	Sri Lanka
Hon. Justice Anjala Wati	Judge Family Court Fiji	Fiji
Hon. Justice Tshering Wangchuk	Justice The Supreme Court of Bhutan Bhutan	Bhutan
Jon Ungpakorn	Chair Sub-Committee on AIDS Rights under the National AIDS Prevention and Control Committee Thailand	Thailand

RAPPORTEUR

Naomi Burke-Shyne	Programme Manager, HIV and Health Law Initiative International Development Law Organization Nepal	Nepal
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INTERNATIONAL COMMISSION OF JURISTS

Emerlynne Gil	International Legal Adviser, Southeast Asia International Court of Justice (ICJ) Thailand	Thailand
Sam Zarifi	Asia Pacific Regional Director International Court of Justice (ICJ) Thailand	Thailand
Leong Tsu Quin	Legal Consultant International Commission of Jurists (ICJ)	Thailand

CIVIL SOCIETY RESOURCE PERSONS

Parashar Bikram Adhikari	Project coordinator at project (voice of voiceless) HYLF (HIV Young Leaders Fund) Youth Chapter Nepal	Nepal
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Chantawipa Apisuk	Director EMPOWER Foundation Thailand	Thailand
Jonas Bagas	Executive Director TLF SHARE The Philippines	Philippines
Kajal Bhardwaj	Legal expert India	India
Hussein Haroon	Civil society Maldives	Maldives
Allan Maleche	Executive Director KELIN Kenya	Kenya
Baby Rivona Nasution	National Coordinator Ikatan Perempuan Positif Indonesia	Indonesia
Shiba Phurailatpham	Regional Coordinator and Director Asia Pacific Network of People Living with HIV Thailand	Thailand
Khartini Slamah	Asia Pacific Network of Sex Workers Malaysia	Malaysia
Alison Symington	Senior Policy Analyst Canadian HIV/AIDS Legal Network Canada	Canada
Tripti Tandon	Lawyers Collective India	India
Laxminarayan Chandradev Tripathi	Founder Trustee & Chairperson Astitva - Organization for Support & Development of Sexual Minorities India	India
Liu Wei	Lawyer Beijing Chengzhihua Law Firm China	China

Joan D Winship	Executive Director International Association of Women Judges United States of America	United States of America
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UNITED NATIONS AGENCIES

Jan Beagle	Deputy Executive Director, Management and Governance Joint United Nations Programme on AIDS Switzerland	Switzerland
Anne Bergenstrom	Regional Adviser, HIV and AIDS United Nations Office of Drugs and Crime Thailand	Thailand
Manuel Da Quinta	Regional Community Mobilization and Networking Officer, Regional Support Team for Asia and the Pacific Joint United Nations Programme on AIDS Thailand	Thailand
Narmada Acharya Dhakal	Social Mobilisation Advisor Joint United Nations Programme on AIDS Cambodia	Cambodia
Mandeep Dhaliwal	Director, HIV, Health & Development Practice United Nations Development Programme United States of America	United States of America
Patrick Eba	Human Rights and Law Advisor Joint United Nations Programme on AIDS Switzerland	Switzerland
Deni Ahmad Fauzi	Project Manager, HIV ISEAN-HIVOS Multi-country Global Fund Grant United Nations Development Programme Indonesia	Indonesia
Qing Gu	Officer-in-Charge, Poverty, Equity & Governance United Nations Development Programme China	China

Brianna Harrison	Human Rights and Law Programme Officer, Regional Support Team for Asia and the Pacific Joint United Nations Programme on AIDS Thailand	Thailand
Richard Howard	Senior Specialist on HIV and AIDS International Labour Organisation Thailand	Thailand
Steven J. Kraus	Regional Director, Regional Support Team for Asia and the Pacific Joint United Nations Programme on AIDS Thailand	Thailand
Marta Vallejo Mestres	HIV Programme Specialist United Nations Development Programme Asia- Pacific Regional Centre Thailand	Thailand
Tim de Meyer	Senior Specialist ILO Decent Work Technical Advisory Team Thailand	Thailand
Alka Narang	Assistant Country Director, HIV & Development Unit, United Nations Development Programme India	India
Rebecca Nedelko	HIV/AIDS Programme Development Officer United Nations Development Programme Asia- Pacific Regional Centre Thailand	Thailand
Edmund Settle	Policy Specialist HIV, Human Rights and Governance United Nations Development Programme Asia- Pacific Regional Centre Thailand	Thailand
Susan Timberlake	Chief of the Human Rights and Law Division Joint United Nations Programme on AIDS Switzerland	Switzerland

Annex 3: Resources for judges and judicial training institutions in Asia and the Pacific on HIV, human rights and the law

Sources of case law

International databases:

AIDSLEX (the AIDS and Law Exchange): www.aidslex.org

Regional databases:

ESCR-Net case law database: <http://www.escr-net.org/caselaw>

HUDOC European Convention on Human Rights case law database:

<http://www.echr.coe.int/echr/en/hudoc>

National databases of judgments:

- South Africa: <http://www.saflii.org/>
- Hong Kong: http://www.judiciary.gov.hk/en/legal_ref/judgments.htm
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