

The Global Commission on HIV and the Law: recommendations for legal reform to promote sexual and reproductive health and rights

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Abstract: *The Global Commission on HIV and the Law was established in 2010 to identify and analyse the complex framework of international, national, religious and customary law shaping national responses to HIV and the well-being of people living with HIV and key populations. Two years of deliberation, based on an exhaustive review of international public health and human rights scholarship, as well as almost 700 testimonials from individuals and organizations in more than 130 countries, informed the Commission's recommendations on reform to laws and practices that criminalize those living with and vulnerable to HIV, sustain or mitigate violence and discrimination lived by women, facilitate or impede access to HIV-related treatment, and/or pertain to children and young people in the context of HIV. This paper presents the Commission's findings and recommendations as they relate to sexual and reproductive health and rights, and examines how the Commission's work intersects with strategic litigation on forced sterilization of women living with HIV, legal reform on the status of transgender individuals, initiatives to improve police treatment of female sex workers, and equal property rights for women living with HIV in sub-Saharan Africa and Latin America. © 2014 Reproductive Health Matters*

Next year marks the deadline for the Millennium Development Goals, among whose ambitious targets is to halt, and reverse, the spread of HIV. As countries look to the post-2015 landscape, these goals remain aspirations more than accomplishments. An estimated 35 million people are living with HIV.^{1*} But there has also been significant progress: new HIV infections have fallen by 38% since 2001, and AIDS-related deaths by 35% since

2005. This is largely a result of greater availability of treatment: nearly 13 million people, the vast majority living in low- and middle-income countries, were able to access antiretroviral therapy as of the end of 2013.²

The end of HIV is critically dependent on the means. The past decade has seen an emerging international consensus on the importance of grounding the global response to HIV in a recognition of and respect for fundamental human rights.³ This approach includes sexual and reproductive rights, whose violation not only undermines those living with HIV and key populations at risk of HIV (among them, men-who-have-sex-with-men, sex workers

*UNAIDS estimates there were 33.2–38.8 million people living with HIV in 2013, with 1.9–2.4 million new infections in that same year.¹

and people who inject drugs), but also eases the spread of HIV by impeding disclosure, testing and treatment. There is a growing body of evidence to show that HIV finds fertile ground where stigma, discrimination and violence keep key populations – whose sexual orientation, sexual practices or gender identities cross socially-accepted norms – in the shadows^{4,5}; where gender-based violence undermines a woman's ability to negotiate safer sex⁶; where traditional practices, such as child marriage, leave girls and adolescent women vulnerable to HIV transmission⁷; where young people are denied access to comprehensive sexuality education⁸; where condoms are condemned by authorities, or inculcate those who use them⁹; and where contraception, sterilization and abortion are imposed on women living with HIV.¹⁰

Law – be it legislation on the books, verdicts in the courts or policing on the streets – is central to putting human rights into practice. But can the legal environment which surrounds sexual and reproductive life make an appreciable difference to the global HIV epidemic? What is the impact when India re-instates Section 377, criminalizing “carnal intercourse against the order of nature”,¹¹ or Uganda passes legislation criminalizing sexual transmission of HIV,¹² or China turns a blind eye to police brutality against female sex workers,¹³ or Egypt fails to prosecute health care professionals who refuse to deliver the babies of HIV-positive expectant mothers?¹⁴ In other words: can good laws fight, and bad laws fuel, HIV?

The Global Commission on HIV and the Law was established to consider just this question. Over the course of two years, the Commission set out to assess the landscape of international, domestic, religious and customary law, and law enforcement practices, affecting people living with HIV and those at particular risk; to analyze the impact of the legal environment on HIV stigma and discrimination, prevention and treatment; and to make recommendations for legal reform to enhance the global AIDS response.

Given the vast field of law which touches on HIV, the Commission chose to focus on four main areas: laws, policies and practices which criminalize those living with and vulnerable to HIV, sustain or mitigate violence and discrimination experienced by women, help or hamper access to HIV-related treatment, and/or pertain to children and young people in the context of HIV.¹⁵

This paper discusses the Commission's findings and recommendations concerning punitive laws, policies and practices relating to sexual and reproductive health and rights, with a focus on women and particular key populations in low- and middle-income sub-Saharan Africa and Latin America. We also examine examples of how international bodies, national governments, legal professionals, civil society and other interested parties are translating these findings and recommendations into concrete measures. We conclude with what more must be done to improve the legal environment around HIV and sexual and reproductive health and rights.

Legal remedy? Background, methodology, findings and recommendations of the Global Commission

For all the commitments made by UN Member States in the 2006 Political Declaration on AIDS,³ the past decade has seen a proliferation of punitive laws, policies and practices with regard to HIV in many countries. Against this backdrop, the Joint UN Programme on HIV/AIDS (UNAIDS) Programme Co-ordinating Board (PCB) approved the creation of a Commission to examine the role of the law in facilitating or hindering the AIDS response. In June 2010, the Global Commission on HIV and the Law was formally convened by UNDP on behalf of UNAIDS as an independent body established to examine the relationship between legal responses, human rights and HIV. More specifically, the Commission was tasked with developing action-oriented, evidence-based recommendations for effective responses that mitigate the impact of HIV and promote and protect the rights of people living with and most vulnerable to HIV.

The Commission relied on three mutually re-enforcing axes in undertaking its work. First, its 14 members represented a diverse group of judges, lawyers, politicians, human rights activists and academics from around the world.¹⁶ The Commissioners met in person three times between October 2010 and the release of the Commission's report in July 2012. The first meeting reached consensus on the issues that the Commission would examine within the vast field of law relevant to the HIV response. The second meeting provided an opportunity for agreement among Commissioners on their key principles and findings. The final meeting secured agreement on

the contents of the Commission's final report, including, critically, its conclusions and recommendations. Throughout its tenure, a secretariat housed in UNDP's HIV, Health and Development Practice co-ordinated the Commission's work.

Second, in conducting its research and examination of evidence, the Commission was supported by a Technical Advisory Group (TAG), consisting of 23 experts on law, human rights, HIV and public health. Members of the TAG included representatives of civil society, academia, representatives of communities of people living with HIV and of key populations, as well as staff from UNDP and the UNAIDS Secretariat. The TAG advised and informed the Commission's deliberations on technical issues and aspects of research related to HIV, law and human rights by bringing to the attention of Commissioners evidence on a wide range of issues that the Commission had elected to examine. A number of working papers on specific issues related to HIV and the law were prepared by experts and members of the TAG, thereby grounding the Commission's deliberations in the latest research, judgments and developments from around the world.*

Critical to the Commission's work were seven regional dialogues that convened local participants from Asia-Pacific, the Caribbean, Eastern Europe and Central Asia, Latin America, the Middle East and North Africa, sub-Saharan Africa, and high-income countries. Following an open call for public submissions, the Commission heard from nearly 700 individuals and organizations in more than 130 countries.¹⁷ Those on the sharp end of making, and breaking, the law – including women, young people and key populations, among them transgender people, people who use drugs, prisoners and migrants – spoke of their experiences of being affected by and living with HIV. A number of their testimonials are quoted below.

Following an extensive process of research and consultation, the Commission released its report *HIV and the Law: Risks, Rights and Health* in July 2012.¹⁸ The report touches on several areas with implications for sexual and reproductive health and rights, including violence and discrimination

faced by women, girls, sex workers, transgender people and men who have sex with men; criminalization of HIV transmission, exposure and non-disclosure, and behaviours and practices such as sex work; same-sex sexual relations; human rights challenges faced by prisoners and migrants; and the health and human rights of children and young people.

Commissioners concluded from the evidence presented that the application of criminal law to consensual, private adult behaviour is counterproductive to the promotion of health, rights, and well-being. Countries that view sexual and reproductive health as matters best dealt with by their education and health systems, reserving the criminal law for cases where harm is deliberately inflicted on others, achieve better HIV-related outcomes than those that pursue anti-HIV initiatives through their criminal justice systems.¹⁸ The Commission's recommendations relating to sexual and reproductive health and rights are summarized below:

- It is counterproductive to criminalize the transmission of HIV, except in cases where one individual deliberately sets out to infect another, and succeeds in doing so. In such rare instances, existing laws – against assault, homicide and causing bodily harm, or allowing intervention where a person is spreading communicable disease – can be applied. HIV-specific criminal laws, which are unfortunately growing in number, perpetuate misconceptions of how HIV is transmitted and ignore the latest scientific evidence, particularly concerning the risks of transmission.¹⁹
- From the perspective of HIV and human rights, sex work is better regulated by applying general employment law to practitioners, and general consumer protection law to clients, than by criminalizing either group. A safe workplace, adequate minimum levels of remuneration, access to health care, the freedom to form collectives and other autonomous organizations, and the freedom from fear of harassment (including misguided “rescue” or “rehabilitation” initiatives aimed at sex workers) create an environment in which incentives to practise unsafe sex are minimized. Criminal law should enforce measures against trafficking in persons, and the sexual exploitation of minors. Such conduct should be clearly differentiated from adult consensual sex work.²⁰

*These working papers drew on, and cite, a vast body of published and unpublished material. For the sake of brevity, only the working papers themselves are cited in this article. Readers interested in this extensive background should follow the links to the working papers referenced in this paper.

- Criminalizing consensual sex in private between adult males is counterproductive to disease control. It does little to prevent male-to-male sexual activity; it simply drives it into the shadows and makes it much harder to deliver prevention and treatment interventions to members of a population at particular risk.⁴ In addition to decriminalization, it is vital to enact comprehensive anti-discrimination and anti-violence legislation, enabling men who have sex with men to access health promotion, disease prevention and treatment services voluntarily, without fear of stigma or loss of status.
- The status and identities of transgender people should be accorded legal recognition, including protection by anti-discrimination legislation, to facilitate maximum voluntary access to health promotion, disease prevention, and treatment services.⁵
- Sexual activity occurs in prisons, irrespective of legal or regulatory prohibitions. Acknowledging this reality, and providing access to condoms and lubricants, is the optimal response. Similarly, comprehensive harm reduction services, voluntary and evidence-based treatment for drug dependence, and antiretroviral therapy where indicated, should be available to all prisoners.²¹
- Criminal law should proscribe domestic violence, rape and other forms of sexual assault (including marital rape and rape related to conflict), irrespective of the sex or gender identity of the victim. It should also punish forced abortion and coerced sterilization of HIV-positive women and girls, as well as all other forms of violence against women and girls in health care settings.¹⁰ Legal environments which permit early marriage and other practices that increase HIV risk, such as “widow inheritance” or “widow cleansing”, must be reformed.⁷
- Women should have a legal right to access information on sexual and reproductive options, and to exercise informed consent in all matters relating to their health. The law must ensure access to safe contraception and support women in deciding freely whether and when to have children, including the number and spacing of their children and how to give birth.¹⁰
- Children and young people should have access to age-appropriate, comprehensive sexual

health education which enhances their knowledge and understanding, and can help in reducing the likelihood of risky sexual behaviour. The age at which young people can autonomously access sexual and reproductive health services must be no greater than the age of consent for sexual relations.⁸

Words into action: follow-up to the findings and recommendations of the Commission

Controversy is a natural bedfellow when addressing sexual and reproductive rights. While members of the Commission were in agreement on its findings and recommendations, there were differences of opinion to accommodate in reaching them. Among the most contentious issues was the role of religion. Some Commissioners argued for a greater recognition of the force of religious law (in particular, *shari'a*) and therefore for the inclusion of recommendations for short-term, pragmatic alternatives to full decriminalization of controversial sexual practices, where such calls might well provoke a backlash from conservative authorities. Other Commissioners, however, opposed the inclusion of any consideration of religion in the formulation of the group's findings and conclusions. Eventually, a compromise was reached in which the principle of equality was maintained through recommendations for the decriminalization of sex work and consensual same-sex acts between adults, while offering further recommendations on law enforcement, health care provision and other practical interventions where fully-fledged legislative reform is unlikely in the current climate.

Such debates go far beyond the Commission itself. A few months after the release of the Commission's Report, Equality Now, an NGO whose stated mandate is the advocacy of women's and girls' rights, together with a coalition of almost 90 other organizations, launched a campaign attacking a number of UN entities for their support of the findings of the Global Commission on sex work, as well as a 2012 report by UNDP, UNFPA and the UNAIDS Secretariat on sex work in Asia which called for the repeal of laws that explicitly criminalize sex workers, their clients and activities related to sex work such as soliciting, the management and operations of brothels, pimping and the advertising of services.²² In November 2012, open letters were written to the heads of UNDP, UNFPA and UNAIDS, objecting to

what they alleged was the reports' misleading portrayal of the impact New Zealand's decriminalization of sex work and the Commission's rejection of the so-called Swedish model, which criminalizes the clients of sex workers.²³ In September 2013, Equality Now launched a letter-writing campaign, posting a model letter on its website which expressed concerns with the Commission's findings and recommendations on sex work, among other issues. The letter claimed that the Commission had misrepresented the impact of decriminalizing prostitution and associated activities, and its effect on anti-trafficking efforts, as well as on women's rights.

In response, UN officials pointed out that the Commission's report stresses the need to enforce criminal sanctions against human trafficking, and that such measures should be applied to those using force to procure people into commercial sex, but that these activities should be distinguished from adult consensual sex-work. Representatives also noted that the distinction between sex work and sex-trafficking was essential so as not to infringe on the right to health and self-determination of sex workers. This position was supported by a vigorous response by other civil society groups against the Equality Now campaign. The Global Network of Sex Work Projects, encompassing more than 150 groups in over 60 countries, issued a statement supporting both the UN and the Commission, criticizing the conflation of sex work and trafficking, and noting that the recommendations of both reports were drafted after extensive consultation with individual sex workers and sex work organizations.²⁴

While controversy around these complex issues is inevitable, such episodes also demonstrate the value of the Commission's Report in providing a framework for efforts by civil society and UN actors to promote a rights-based response to the HIV epidemic. Since 2012, there have been initiatives in 84 countries around the world to advance the Commission's findings and recommendations. The very process that the Commission followed in reaching its conclusions has provided an innovative model for the exchange of opinions and experiences between those who craft, interpret and enforce the law, and those most likely to bear the brunt of punitive legislation. The Commission's regional dialogues have been replicated in 42 countries as national dialogues, thereby opening the door to frank discussions on the role of the law in national HIV responses, a

controversial and politically sensitive subject in many countries.

These national dialogues have fed into wider legal environmental assessments or legal reviews in 61 countries, to determine whether the implementation and enforcement of HIV-related laws, regulations, policies and practices protect or impede human rights. In El Salvador, for example, steps to review or reform laws following a national dialogue in June 2012 have resulted in promising efforts to revisit the national AIDS law and to draft a gender identity law similar to Argentina's (discussed below). In the Pacific, multisectoral consultations on legal and policy barriers to HIV services in April 2013 led to the development of draft legislation and action plans in the Cook Islands and Tuvalu, while the Solomon Islands, Vanuatu and Kiribati began drafting rights-based national HIV cabinet papers to guide legal reform towards more effective HIV responses.²⁵

A third set of activities aimed at advancing the findings and recommendations of the Commission's Report centre on strengthening the on-the-ground capacity of those responsible for HIV, human rights and the law. For example, in several countries, including Lesotho, Malawi, Tanzania, Thailand, Swaziland and Zambia, law enforcement officials have been trained on the effects of punitive legislation on key populations, such as men who have sex with men, transgender people, sex workers and people who inject drugs. A case in point is Cambodia, which has launched an innovative Police – Community Partnership Initiative to increase access to services for key populations, including sex workers, men who have sex with men and transgender people. The project has improved police attitudes towards key populations and enhanced the friendly involvement of police in coordinating and facilitating training sessions and related events, reducing fear among key populations and strengthening care-and-service-seeking attitudes. As a result there has been an increase in the utilization of services, communication between the police and concerned partners has improved, and there is greater confidence on the part of entertainment establishment owners to cooperate with NGO partners in displaying and ensuring the availability of condoms in their venues.²⁶

In the Caribbean, Africa and Asia, members of the judiciary have participated in seminars looking at the impact of the Commission's Report on their daily work. During the Commission's

deliberations, more than 100 judges attended a panel on HIV and the law organized by its secretariat at a conference of the Caribbean Association of Judicial Officers. In 2013, two judicial compendia providing examples of best legal practice on HIV were produced by UNDP and disseminated to more than 30 judges from 16 countries in Asia, as well as 50 judges and magistrates from Botswana, Burundi, Kenya, Lesotho, Malawi, South Africa, Swaziland, Tanzania, Uganda and Zambia.²⁷ Access-to-justice initiatives continue to enhance the ability of people living with HIV to use the law to counter discrimination and to increase their uptake of legal and health services. In the Democratic Republic of Congo, for example, following a national dialogue organized in 2013 by the Minister of Justice and the Congolese Organization of People Living with HIV, the Government committed to create a Center of Information, Education and Counselling in charge of providing HIV services.²⁶

Further initiatives to enhance the legal environment around HIV and sexual and reproductive health and rights

Strategic litigation to prevent forced sterilization

The Commission found that women and girls living with HIV are systematically denied their sexual and reproductive rights through coerced or involuntary sterilization, prevalent in many parts of Africa, Latin America, Asia and Europe.²⁸ Among the countries in which the practice has been documented by the Commission are Chile, Venezuela, Mexico, Dominican Republic, Indonesia, Kenya, Namibia, South Africa, Tanzania, Thailand, Uganda, and Zambia. The suffering inflicted by such discriminatory laws and practices was brought home during the Commission's Africa Regional Dialogue, in which a number of participants spoke of their experience, including this testimony:

"I have been living with HIV for the past eight years.... [When] I gave birth to my second baby, it was then that I disclosed [my status] to my husband. He developed violent behaviour and would sometimes insult me and would eventually say that I infected him. Three years later, my husband and I decided to try for a baby again, maybe we would get a baby boy. It was really getting strange to me since a year passed by with me not conceiving. It is then that I eventually decided to go back to my doctor and seek help. You [should] have seen the look on his face after I had related my story. He just

*asked, 'Why would you want a baby again when you nearly died the last time and besides, you were sterilised during your daughter's delivery. You don't honestly mean to tell me that you don't know because your husband signed [the consent] for you.' I just froze."*²⁹

To counter this discriminatory practice, several civil society groups have taken to the courts. In Namibia, three petitioners living with HIV lodged a case against the Ministry of Health, in which they alleged that they had been asked to sign forms authorising sterilization just before or after delivering by caesarean section without adequate information, being either in severe pain or in labour at the time and therefore not in a position to give free and informed consent.³⁰ In a landmark judgment issued by the High Court of Namibia in July 2012, in the case *LM and Others v. Government of the Republic of Namibia*, the court confirmed the illegality of sterilization procedures without prior and informed consent, which constitute a serious human rights violation.³¹ In order to be truly informed, the court ruled that consent must be clearly understood, as well as freely and voluntarily given.

This case sets an important precedent, affirming the importance of obtaining informed consent from patients (including those living with HIV) in health care settings. Strategic litigation driven by strong community mobilization, as well as targeted sensitization efforts in the defence of women's rights, can lead to social and legal change, as well as empowering vulnerable groups to claim their rights.³²

Addressing transphobia through legal reform

The Commission called for a paradigm shift in addressing the health and human rights concerns of transgender people, replacing punitive legal approaches with frameworks that offer transgender people access to effective HIV and health services and commodities, and enhance their ability to resist violence and other human rights violations. In far too many instances, transgender people are effectively treated as non-persons due to a refusal to recognize their gender identity.⁵ The impact of such laws and practices was highlighted by participants in several of the Commission's Regional Dialogues, among them this testimony from a member of RedTraSex, a transgender support group in Panama:

"I have always been discriminated and my rights violated for being trans. The police are always after

me, they have violated and abused me, they have torn my condoms. People passing through the area where I work look at me as if I was the worst thing in the world; they've called me sidosa [pejorative for AIDS positive]. It's always the same."³³

Data show high levels of violence faced by transgender people worldwide, with a pronounced increase in Latin America.³⁴ Violence, marginalization, stigma and discrimination by society-at-large and especially within health care centres, contribute to the high level of HIV risk of transgender people, deterring them from seeking medical services. The vulnerability of transgender women to HIV is of special concern, with data showing that they are "49 times more likely to be living with HIV than women overall, with a pooled HIV prevalence among transgender women of 19%".³⁵

The ability of transgender people to effectively protect themselves against HIV infection and assert their sexual and reproductive health and rights requires a recognition of their fundamental right to personhood. As recommended by the Commission, transgender people must be ensured gender recognition in identification documents, "without the need for prior medical procedures such as sterilization, sex reassignment surgery or hormonal therapy".³⁶ A progressive precedent has been set by Argentina, which adopted the "Gender Identity and Health: Comprehensive Care for Transgender People Act" in 2012, based on the self-determination of transgender people.* The law recognizes the right of transgender people to their gender identity, including the right to change their name and sex details in official documents.³⁷ Confidentiality provisions within the law prohibit the disclosure of the former names or sex of transgender people, thereby protecting their right to privacy; the law further requires the use of the adopted name and gender identity of a transgender person, if so desired by the individual, for summoning, recording, filing, calling or any other procedure or service in the public and private domain. Studies reveal that large numbers of transgender people in Argentina have obtained new gender-congruent identity documents, and it is expected that this will decrease the social stigma they face in health care settings.³⁸ Argentina's gender identity law

has prompted similar proposals by lawmakers in France, Germany, Ireland and Malta.

Argentina's adoption of the Gender Identity Law is being used by UNDP and other key actors in the region to advance legal reform for the recognition of rights and identity of transgender people in a number of countries, among them Bolivia, Guatemala and Nicaragua. In El Salvador, for example, UNDP has worked with the Office of the Ombudsman and a number of NGOs to conduct a study on human rights and transgender people, with recommendations for policy reform, including the need for a gender identity law. Other related initiatives supported by UNDP, in line with the Commission's recommendations, include the establishment of LGBT-friendly health centres in Argentina where access to sexual health care (including HIV specific services) is made available.³⁹

Sexual and reproductive health through equal property rights for women

The ability of women to exercise their sexual and reproductive rights is critically dependent on their ability to lead autonomous lives. This, in turn, is influenced by their economic independence and financial security. The Commission noted that when women lack the protection of laws that recognize equal rights to property, they are more likely to be rendered economically dependent on, and susceptible to, control by their spouses in all domains, including their sexual lives.¹⁸ While equality in property law cannot guarantee women's financial security, it is an essential means to that end.

Sometimes property rights are determined through age-old cultural and traditional practices, which in many contexts also adversely affect sexual and reproductive rights.⁴⁰ In certain regions of sub-Saharan Africa, "widow cleansing" requires a woman whose spouse has recently died to have sexual intercourse either with a relative of the deceased, or a man delegated as the village cleanser, often without the use of a condom, thus placing both parties at risk of HIV. Another example is that of widow inheritance, which requires women whose spouses have died to marry a close relative of the deceased. Both practices are often employed as strategies to assert the ownership of the deceased man's family over property. Such laws and practices, which disempower women, not only increase their vulnerability to HIV, but also

*The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: <http://www.yogyakartaprinciples.org/>.

undermine them once infected, as one participant, from Zimbabwe, at the Commission's Africa Regional Dialogue, explained:

*“Women with HIV are told they don't need to inherit as they are going to die anyway. There are two key issues; first, the inability of women to access their right to property pre-disposes them to HIV, as it leaves women economically vulnerable. Second, it is difficult to access rights where they exist.”*⁴¹

Ensuring gender equality in these contexts often calls for innovative ways of working with communities in providing access to justice. The Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN), an NGO, has used an alternative dispute resolution mechanism to address disinheritance issues faced by widows and orphans affected by HIV and AIDS.⁴² Ancient Luo custom in parts of Kenya deemed all land as collectively owned, although this practice has changed over time. Men have influenced this tradition to their own advantage, resulting in the exclusion of women from land when their husbands die – a pressing issue for women in the shadow of HIV.

In response, KELIN has trained elders and the community at large on human rights and existing legal provisions in relation to property rights, which provide women and men with equal inheritance rights. Elders are engaged to administer the alternative dispute resolution mechanism as part of the customary form of justice, which is less intimidating and more efficient for the parties involved than the formal legal system. This approach has succeeded in ensuring that widows' rights to property are recognized. It has also generated greater demand in other communities to address cultural practices that expose women and girls to a higher risk of HIV infection.

Building on this pioneering initiative, and following the model of the Commission's regional dialogues, KELIN and the Kenya Judicial Training Institute convened a judicial symposium on HIV, human rights and the law in 2013, in partnership with UNDP and UNAIDS Secretariat Nairobi. A judge who attended the seminar was also responsible for writing a progressive, rights-based decision by the Industrial Court of Kenya asserting the principles of gender equality and non-discrimination of people living with HIV, of particular significance for women and their struggle to assert fundamental political, economic, social and sexual rights.⁴³

Reducing violence and discrimination faced by sex workers

In its recommendations, the Commission emphasized that reforming law and policy on paper is insufficient if it is not accompanied by reform in police practices, particularly in relation to key populations, who are in regular and usually unwelcome contact with law enforcement. For some populations, such as sex workers, reforming police attitudes and practices has a direct bearing on their sexual and reproductive health and rights. Change is urgently needed, as this testimony from a participant from Mozambique at the Commission's Africa Regional Dialogue clearly illustrates:

*“Sometimes there is illegal detention and you are humiliated. I was detained when there was a summit in Mozambique. I spent seven days in prison. I went to court and I asked if I could speak to my mother. The judge said ‘Why are you here?’ and I told him I was loitering, I need money for my child. We are used by the police, they take us to cemeteries and the beach to have sex without a condom. Sometimes we are beaten up by the police.”*⁴⁴

Rights-based policing can significantly reduce the HIV risk faced by key populations at the individual and community level. A case in point is Ghana, where HIV prevalence among female sex workers is markedly higher than in the general population. National AIDS policy and programming recognizes female sex workers as a group requiring priority attention with regard to their health, including robust prevention, care and treatment services. Yet these interventions can be effective only if sex workers are empowered to utilize them in a non-stigmatizing and non-violent environment.

Evidence of abuses such as rape and assault at the hands of police were recently documented through a process of inquiry and validation by UNFPA and the Ghana Police Service.⁴⁵ Along with such research, these agencies undertook advocacy with the National AIDS Programme and UNAIDS to reduce human rights violations involving police personnel, by promoting interactions with female sex workers in the form of orientation and sensitization meetings on sex workers' rights. Police officers were also made aware of how to use discretionary powers to the benefit of sex workers and public health, and encouraged to set aside moral beliefs while focusing on their public duties and responsibilities.

The impact was noticeable – raids against sex workers in the capital ceased, as did harassment by the police for condom possession. Even more encouraging, the police themselves began to distribute condoms among sex workers. Building on these efforts, a national dialogue supported by UNDP and UNAIDS Secretariat was held in April 2013, providing a forum for constructive discussion on the importance of a rights based response by law enforcement officials.⁴⁶ The Ghana Police Service continues to invest in this approach by identifying higher-level personnel to sustain engagement with sex workers at community meetings, and to offer protection in instances of rights abuses.

Conclusions

In assembling the evidence base on the impact of law on national responses to HIV, and daily lives, the Global Commission on HIV and the Law has strengthened the case for legal reform pertaining to people living with HIV and those most vulnerable to HIV infection. For authorities who resist calls for change on the basis of respect and recognition for human rights, the Global Commission's findings and recommendations also offer a pragmatic argument for change in the interests of public health.

The Global Commission's recommendations in relation to sexual and reproductive health and rights, including stigma, discrimination and violence experienced by women living with HIV, female sex workers, transgender persons, as described in this paper, have opened the door to discussions in more than 80 countries on aspects of legal reform. And they have strengthened efforts of civil society across the Global South to achieve sexual and reproductive justice in local, national and regional contexts.

Best practices to protect sexual and reproductive health and rights, as identified by the Commission and implemented in the follow-up to the Commission's findings and recommendations, must now be brought to scale, through inclusion in national HIV strategies, investment plans, as well as in Global Fund-supported programmes. It was a sex worker from India, a contributor to one of the Global Commission's regional dialogues, who best summed up the process and the promise of the Commission's work on sexual and reproductive health and rights:

*"There has to be some law... Are we not humans? We also have desires and rights and we deserve better treatment."*⁴⁷

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Résumé

La Commission mondiale sur le VIH et le droit a été formée en 2010 pour définir et analyser le cadre complexe du droit international, national, religieux et coutumier qui façonne les ripostes au VIH et le bien-être des personnes vivant avec le VIH et des populations clés. Deux ans de délibérations, fondées sur une étude exhaustive des recherches en matière de santé publique et de droits de l'homme internationaux, ainsi que près de 700 témoignages de particuliers et d'organisations dans plus de 130 pays, ont guidé les recommandations de la Commission sur la réforme des lois et pratiques qui criminalisent les personnes vivant avec le VIH et vulnérables au virus, soutiennent ou atténuent la violence et la discrimination dont souffrent les femmes, facilitent ou entravent l'accès au traitement lié au VIH et/ou concernent les enfants et les jeunes dans le contexte du VIH. Cet article présente les conclusions et recommandations de la Commission dans leur rapport avec la santé et les droits sexuels et génésiques, et il examine comment le travail de la Commission recoupe les litiges stratégiques sur la stérilisation forcée des femmes vivant avec le VIH, la réforme juridique du statut des individus transgenres/transsexuels, les initiatives pour améliorer le traitement policier des professionnelles du sexe et l'égalité des droits fonciers des femmes vivant avec le VIH en Afrique subsaharienne et en Amérique latine.

Resumen

La Comisión Mundial sobre el VIH y la Legislación fue establecida en el año 2010 para identificar y analizar el complejo marco de derecho internacional, nacional, religioso y consuetudinario que define las respuestas nacionales al VIH y el bienestar de las personas que viven con VIH y poblaciones clave. Dos años de deliberación, basada en una revisión exhaustiva de becas internacionales en salud pública y derechos humanos, así como casi 700 testimonios de personas y organizaciones en más de 130 países, informaron las recomendaciones de la Comisión en cuanto a la reforma de leyes y prácticas que penalizan a las personas que viven con VIH o son vulnerables al VIH, sustentan o mitigan la violencia y discriminación que viven las mujeres, facilitan o impiden el acceso al tratamiento relacionado con el VIH y/o están relacionadas con niños y personas jóvenes en el contexto del VIH. Este artículo presenta los hallazgos y recomendaciones de la Comisión con relación a la salud y los derechos sexuales y reproductivos, y examina cómo el trabajo de la Comisión está vinculado con el litigio estratégico sobre la esterilización forzada de mujeres que viven con VIH, la reforma legislativa respecto al estatus de personas transgénero/transsexuales, las iniciativas para mejorar la manera en que la policía trata a las trabajadoras sexuales, y la igualdad de derechos de propiedad para las mujeres que viven con VIH en África subsahariana y Latinoamérica.