



# 123<sup>rd</sup> ASSEMBLY OF THE INTER-PARLIAMENTARY UNION AND RELATED MEETINGS

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## REPORTS ON RECENT IPU SPECIALIZED MEETINGS

### (f) PARLIAMENTARY MEETING ON THE OCCASION OF THE XVIII INTERNATIONAL AIDS CONFERENCE

#### *Legislative aspects of HIV relating to key affected populations*

Parliament Building (Room VI), Vienna, 20 July 2010

## SUMMARY REPORT OF THE PROCEEDINGS

*Members of parliament and staff from 47 countries gathered in Vienna for a meeting organized by the IPU and the Parliament of Austria during the XVIII International AIDS Conference. They discussed the impact of criminal law on public health activities, with a special focus on testing and HIV virus transmission modes. Members of parliament agreed that laws criminalizing the transmission of HIV constitute a violation of the right not to be discriminated against, further stigmatize persons living with HIV and create a false sense of security. Instead of criminalizing HIV transmission, parliaments should examine and review the laws that already exist and that are or can be applied in the context of HIV. Members of parliament agreed that interventions to prevent transmission from mother to child are the most cost-effective way to remove one mode of HIV transmission. They endorsed the international community's call to eliminate vertical transmission of the HIV virus by 2015 and pledged to make this a goal in their countries.*

## INTRODUCTORY STATEMENTS

In welcoming the parliamentarians and other participants to Vienna, **Mr. Martin Preinerder, President of the Federal Council of Austria**, noted that the HIV response today required the translation of science into evidence-based policies and strategies. Parliamentarians needed to familiarize themselves with scientific knowledge and the economic environment in order to effectively address taboo issues such as drug use and sex work, as well as the impact of stigma and discrimination on HIV interventions. The International AIDS Conference and the parliamentary meeting represented an opportunity for parliamentarians to learn and network. Mr. Preinerder expressed the hope that the parliamentary meeting would result in several sound parliamentary initiatives.

**Mr. Geert Versnick, Vice-President of the IPU**, called for more forthright parliamentary leadership in fighting stigma and discrimination associated with HIV. In many places the HIV epidemic was being driven by groups of people who had been pushed to the edges of society. They included sex workers, injecting drug users and men who have sex with men. Unless urgent attention was given to the issues underlying the vulnerability of those groups, the internationally declared goal of universal access to HIV prevention, treatment and care would not be achievable. The IPU treated HIV as an eminently political question and was committed to helping members of parliament create an appropriate legal environment to respond effectively to the epidemic.

## **SESSION ONE**

### **CRIMINAL JUSTICE AND PUBLIC HEALTH: FINDING BALANCE**

**Chair: Ms. Petra Bayr, MP, Austria**

**Prof. Manfred Nowak, Scientific Director of the Ludwig Boltzmann Institute of Human Rights, United Nations Special Rapporteur on Torture**

Mr. Nowak said that human rights and public health should aim to prevent HIV transmission through evidence-based interventions rather than morally-based criminal prohibitions that often proved counter-productive. Evidence-based methods to prevent HIV transmission included HIV-related education, testing and counselling, protection of vulnerable groups, provision of condoms, opioid substitution therapy and implementation of needle and syringe programmes to injecting drug users.

Mr. Nowak explained that deliberate exposure to or transmission of HIV should be dealt with through the existing criminal code and warned against the adoption of laws criminalizing the transmission of HIV. On the same note, laws prohibiting and criminalizing consensual sexual behaviour among adults (homosexual activities, adultery and sex work) constituted a violation of the right to privacy and could not be justified on grounds of public health or morals. They stood in the way of implementation of effective HIV interventions as did laws criminalizing injecting drug use. Prisons in many countries were overcrowded with injecting drug users and in the absence of needle and syringe programmes, care and treatment, HIV was spreading very rapidly in those settings. Mr. Nowak underlined that the decriminalization of certain behaviours was not tantamount to condoning them, but revealed a pragmatic approach to discussing and adopting HIV-related legislation.

**Ms. Michaela Clayton, Director, AIDS and Rights Alliance for Southern Africa**

Ms. Clayton said that the criminalization of HIV transmission was a very difficult issue for lawmakers. Although there were good intentions behind the laws criminalizing HIV transmission, including the prevention of new infections, encouragement of disclosure and the protection of vulnerable groups, they often translated into poor policy. The laws were often ill-defined and were sufficiently broad to cover several types of behaviour irrespective of the risk of transmission. They were also applied selectively, unfairly and ineffectively.

Specifically, laws criminalizing the transmission of HIV imposed punishment that discouraged people from testing and finding out their HIV status. That placed a particularly difficult burden on women, who were often the first to know their status through antenatal and other programmes. In addition, those laws often failed to take into account evidence-related

difficulties and carried the risk of a miscarriage of justice. Instead of criminalizing HIV transmission, Ms. Clayton called for efforts to focus on removing legal barriers to HIV prevention, treatment, care and support, and addressing the root causes that drove the demand for criminalization.

**Mr. Mikhail Grishankov, Member of the State Duma, Russian Federation**

Mr. Grishankov informed the meeting that the HIV epidemic in his country was largely driven by injecting drug use (62 per cent) while the share of heterosexual transmission accounted for more than 35 per cent of new cases. The spread of HIV continued despite a manifold increase in funding and other measures undertaken to contain the epidemic. In 2009, the country saw an 8 per cent increase in the number of new infections compared to 2008. The number of patients in the later stages and the number of AIDS-related deaths were also on the rise, as well as the number of people needing antiretroviral therapy.

The Russian Parliamentary Working Group on HIV/AIDS and other Infectious Diseases was established in 2004 to strengthen the parliamentary response to the epidemic. Based on the premise that political leaders had a pivotal role to play in creating a national consensus, the Group supported numerous HIV prevention projects targeting both vulnerable groups and the general population. However, some areas of the response such as drug use still suffered from a low level of interaction between lawmakers and public health officials, and were further jeopardized by an inadequate legislative framework governing the interventions. Mr. Grishankov called for a more comprehensive exchange of experiences among parliaments in the field of drug use and urged the IPU to give that matter urgent attention at the next global meeting of parliamentarians on HIV/AIDS.

**Ms. Susan Timberlake, Senior Human Rights and Law Adviser, UNAIDS**

Ms. Timberlake focused her presentation on HIV-related restrictions on entry, stay and residence as one form of punitive legislative measures against persons living with HIV. She informed the participants that 51 countries imposed some form of travel restrictions, five countries denied visas even for short-term stays and 22 countries deported individuals based on their HIV-positive status. As a result, programmes for HIV prevention, treatment, care and support often excluded mobile populations, nationals and non-nationals alike.

Ms. Timberlake highlighted that the existence of HIV-related travel restrictions was symptomatic of other problems with national HIV response. They included widespread mandatory testing, high levels of ignorance, stigma and discrimination, few effective prevention programmes to address real risks, and criminalization of vulnerable populations. China, Namibia and the United States had recently lifted all restrictions on entry, stay and residence for persons living with HIV. The International Task Team on Travel Restrictions had issued a set of findings and recommendations calling for the elimination of those restrictions, which were echoed in a number of IPU documents. UNAIDS and the IPU worked together to address travel restrictions with parliaments, which were considered key allies in efforts to remove them.

**Discussion and conclusions**

- A number of participants raised questions about how to balance human rights with certain cultural practices and beliefs. While human rights standards were universal, cultural differences existed. Human rights were not absolute but it was necessary to determine a threshold. Laws criminalizing HIV stigmatized by their very nature. If the rights of the persons living with HIV were protected, the rights of persons not infected

would also be protected by the same token. The keynote speakers urged parliamentarians to put evidence ahead of their moral, religious and cultural prejudices when discussing HIV-related laws.

- All participants agreed that parliaments should not focus solely on adopting new laws. It was more important to have good overall legislation in dealing with HIV. They agreed that laws criminalizing the transmission of HIV constituted a violation of the right not to be discriminated against, further stigmatized persons living with HIV and created a false sense of security. Instead of criminalizing HIV transmission, parliaments should examine and review the laws that already existed and were applied in the context of HIV.
- In addition to drafting supportive laws, members of parliament should work with their constituents in setting up solid social/community networks to support persons infected and affected by HIV. As leaders who helped foster a common understanding in countries, parliamentarians played a crucial role in fighting stigma and discrimination both at the policy and the constituency levels.
- The members of parliament present in Vienna congratulated the IPU and UNAIDS on their efforts to advocate for the elimination of HIV-related travel restrictions. Travel restrictions were often a bilateral issue between States, whereby many sending countries felt the need to ask how their citizens were treated by receiving States.
- The issue of drug use was particularly sensitive in the regions of Eastern Europe and Central Asia. Harm reduction and substitution strategies were considered very controversial and it would take time for leaders to recognize their actual importance and relevance. The IPU could play an important role in the process by highlighting it in its HIV/AIDS activities.

## SESSION TWO

### HUMAN RIGHTS IN THE PMTCT CONTEXT

**Chair: Mr. David Cairns, MP, United Kingdom**

**Dr. Chewe Luo, Senior Adviser HIV/AIDS, UNICEF**

The global impact of the HIV epidemic on children was heavy. Dr. Luo informed the meeting that children accounted for 17 per cent of new global HIV infections (2.5 million) and 14 per cent of AIDS-related deaths annually (2.1 million). A compelling body of evidence indicated that combination antiretroviral regimens could result in transmission rates of lower than 5 per cent, even in breastfeeding populations. Those findings had been translated into new WHO guidelines for the prevention of mother-to-child transmission of HIV (PMTCT) that aimed to limit the vertical transmission of HIV to less than 5 per cent, even in resource-limited settings.

In order to eliminate the vertical transmission of HIV by 2015, it was necessary to scale up coverage and improve the quality of antenatal HIV services. However, 55 per cent of women in low- and middle- income countries did not have access to those services. It was therefore important to strengthen the community structures that would encourage women to access HIV services in the early stages of pregnancy. To that end, UNICEF and its partners had developed the so-called Mother-Baby Pack, an innovative, user-friendly and affordable packaging "mechanism" to deliver PMTCT prophylactic medications. Based on an idea developed by health workers in Lesotho, the Mother-Baby Pack gave mothers direct control over protecting their children from infection. It would be rolled out in four sub-Saharan countries: Cameroon, Kenya, Lesotho and Zambia.

**Ms. Hendrietta Bogopane-Zulu, Deputy Minister of Public Works, Republic of South Africa, Chair of the IPU Advisory Group on HIV/AIDS**

Ms. Bogopane-Zulu said that the lack of involvement by men in PMTCT programmes often undermined their success. After testing HIV positive, many pregnant women were afraid to disclose their status to their partners for fear of violence or abandonment. Involving male partners would ensure that men were also tested and did not blame the women for HIV infection. It would also ensure that men understood the need for safe feeding of their babies and for safe sex.

She stressed that criminal law in many countries often criminalized the transmission of HIV, including vertical transmission from mother to child. Such laws only discouraged women from accessing antenatal and HIV testing services. Members of parliament had more responsibility for the HIV epidemic than ever before. In order to create an enabling environment for PMTCT and other evidence-based HIV programmes, members of parliament should review existing legislation in light of human rights and scientific evidence.

**Dr. Marleen Temmerman, a Senator from Belgium, Member of the IPU Advisory Group on HIV/AIDS**

Dr. Temmerman told the meeting that continued unsatisfactory outcomes of PMTCT programmes in high prevalence settings required a critical assessment of current HIV testing paradigms that focused on an "opt-out" approach to HIV testing. Stigma was one of the key reasons for the distinctiveness of HIV testing as HIV continued to be linked to a variety of negative views around perceived promiscuity, sexual morality judgements, mortality and illness. The challenge was to de-stigmatize HIV in the public consciousness, and to balance women's autonomy and the right not to know one's HIV status with the interest of the child.

Two trials in Africa and an observational study in the United States had shown the efficacy of antiretroviral prophylaxis in reducing HIV infection in newborn infants whose mothers had not received the drugs. Within an enabling policy environment, the degree and nature of benefits from an early HIV diagnosis differed markedly from benefits of a late diagnosis made with the inevitable severe diseases that occurred in those infected with HIV. For no other group was testing more urgent and benefits more apparent than for newborns, explained Dr. Temmerman. The benefits of those policies had to be clearly communicated to the public and women's rights, health and safety needed attention and support. Parliamentarians had an important role to play in initiating that debate in their countries.

**Discussion and conclusions**

After the keynote addresses, the session Chair invited the members of parliament to break up into three groups to discuss the following questions: Would you support the international community's call for the elimination of mother-to-child transmission by 2015 as a goal in your country? What can parliamentarians do to make that happen? What can parliamentarians do to move higher up the agenda the priority for women and children in terms of allocation of resources and development of programmes?

The conclusions and recommendations presented by the groups are summarized as follows:

- Parliamentarians from all countries supported the call for the virtual elimination of paediatric HIV/AIDS by 2015 and pledged to support it as a goal in their countries. For that to happen, comprehensive PMTCT services needed to be integrated along with maternal health and family planning services.
- Members of parliament should promote PMTCT programmes through their activities. Parliamentarians should work at the grass-roots level with their constituencies, promote early testing and encourage families to attend antenatal centres and access services. Stigma and discrimination needed to be removed for those interventions to happen.
- Even if prosecutions had not yet materialized, the use of criminal law against HIV-positive pregnant women could compound the stigma already faced by them and have a chilling effect on women's utilization of PMTCT programmes. Urgent decriminalization of HIV transmission was needed to encourage testing.
- The question of finding the right balance between human rights and the public health need to test pregnant women and newborn infants had to be examined shrewdly. An enabling legal environment needed to be created to encourage women to access PMTCT services on a voluntary basis.
- PMTCT interventions were cost-effective and parliamentarians needed to ensure that they were accompanied by adequate funding. Scaling up PMTCT services and ensuring that they were affordable, accessible and of good quality was the most effective strategy for reducing vertical transmission of HIV and should be the primary strategy in all countries.

## CLOSING SESSION

In his concluding remarks, **Mr. Versnick** thanked the Parliament of Austria for hosting the parliamentary meeting. The event provided a good opportunity to build relationships and provide guidance to parliaments. The discussions had revealed that there were still gaps and shortcomings in HIV-related legislation and parliamentarians should ensure that those gaps were filled. Members of parliament should also take the lead in fighting stigma and discrimination against persons living with HIV and set an example for the public. Mr. Versnick thanked all the parliamentarians present for attending the meeting and sharing their experiences. He also thanked the staff of the Austrian Parliament and the IPU Secretariat for helping to make the meeting a success.

**Ms. Bogopane-Zulu** concluded by saying that there were a number of issues that required robust parliamentary involvement. She called for immediate parliamentary action on: the review and improvement of existing legislation in light of scientific evidence; recognition of the right to access medicines as a fundamental human right; lobbying for resources for research to underpin more informed legislation and more knowledgeable parliaments; and respect for human rights and access to justice for all. She thanked the IPU for its leadership in HIV/AIDS and urged it to continue developing strong mentorship programmes for the world's parliaments.

*The meeting rose at 5.30 p.m.*