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CANADIAN PUBLIC HEALTH ASSOCIATION

HIV PREVENTION WORKS

OFFICIAL SATELLITE SYMPOSIUM

VANCOUVER BC, CANADA

SATURDAY 6 JULY 1996

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HUMAN RIGHTS AND THE HIV PARADOX*

The Hon Michael Kirby**

For centuries people like me have been sentencing and locking up other people in the social groups who are now most exposed to HIV infection. Sex workers. Homosexuals and bisexuals. Drug users. Adulterers. Promiscuous people. The effort has been only partly successful. Resolutely, in their quest

* Based on an article submitted to *The Lancet* for its HIV Series 1996.

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for pleasure and their pursuit of happiness, the targeted groups have often ignored social sanctions. They have defied the law and its punishments. They have run risks and largely gone on doing what they wanted. Some were deterred by the awful pronouncements of people in black robes. But most were not.

Behaviour modification is hard to achieve at the best of times. It is harder to sustain where people's pleasures are involved. This product of judicial experience teaches that we cannot place a lot of store upon law enforcement as an effective and immediate means of achieving behaviour modification to help contain a pandemic such as that involving HIV.

Yet the pace of developments in the search for a cure and a vaccine has been so disheartening that unprecedented attention is now being paid to behavioural and social change and how, in practice, to procure it. For the foreseeable future, these uncertain and imperfect strategies will be essential to effective HIV prevention programmes everywhere. Whilst in developed countries some progress has been made in HIV prevention by mobilising political commitment to saving lives and by taking courageous and controversial decisions (eg syringe exchange), in most developing countries, which carry the greatest part of the global burden of the pandemic, the prospects of effective interventions often appear very bleak. They run headlong into deeply entrenched social phenomena such as:

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- * Religious and other impediments to the education of children in schools and colleges and in the media about sexual transmission;
- * The disempowerment of women, so that they cannot defend themselves against unprotected sex;
- * Prohibitions, by law and social convention, on homosexuals, on injecting drug users and on sex workers;
- * Unavailability of affordable and suitable condoms; and
- * Lack of clear political commitment to take the radical steps necessary to save lives.

A reflection upon the current stage of the HIV pandemic, the progress, or a lack of progress, towards really effective treatment and a vaccine, and the problematic nature of promoting and sustaining behaviour modification are enough to engender a feeling of despair and even desperation.

It is against this background that it is essential that we place the efforts of enlightened elements in the international community to respond effectively to the HIV pandemic in the context of universal human rights. This is not just theory. It is a matter of giving our debates a conceptual and historical framework from which people in the know can seek to argue for

action by people with power who are ignorant and often even obstructive.

Although the international human rights movement has a long history, its global manifestations really only gathered pace after the terrible suffering and revelations that followed the Second World War. The *Universal Declaration of Human Rights* 1948 and the *International Covenants on Human Rights* 1966 incorporate fundamental principles, which are now part of international law. They uphold the dignity and entitlements of each human being on earth. The rights include, relevantly:

- * Rights to healthcare, which include preventive health education and self-protection;
- * Rights to privacy (now held to extend to rights to sexual privacy and to one's sexual orientation);
- * Rights to shelter and housing;
- * Rights to employment without discrimination;
- * Rights of children to be given basic information necessary for their protection, health and life;

- * Rights of women to the dignity of their person and to protection from violence, including unconsensual sexual conduct;
- * Rights to protection against oppressive laws and policies of the state; and
- * Rights to due process of law.

Many citizens - and most political leaders - will question what human rights has to do with a successful strategy to contain the spread of HIV. It is here that the HIV paradox arises for consideration. However imperfect may be our understanding of the tools of behaviour modification, this much at least seems clear. In order to have a chance of getting into the mind of an individual, so that he or she secures the knowledge essential to change behaviour at a critical moment of pleasure-seeking, it is imperative to win the trust of the individual. Only in that way will their attention be captured in a manner that will convert words and information into action. Pamphlets and posters, homilies and sermons are only of minor use in this regard. What is needed is the direct supply of information by a source regarded as trusted, impartial and well-intentioned, so that, by repeated messages of this kind, a general awareness about the existence of HIV can be translated into individual daily conduct.

The paradox is that laws which criminalise particular target groups (sex workers, homosexuals, injecting drug users etc) may appear to be a suitable response. They are often attractive to the public and therefore to distracted politicians anxious to be seen to be doing something in the face of the grave challenge to public health which HIV presents. But experience teaches that such responses have very little impact on the containment of such an epidemic. They actually tend to have a negative impact upon behaviour modification because they put target groups out of contact with the requisite information. They create a barrier in the flow of trusted information. They undermine the creation of the supportive social and economic environment in which effective strategies can be prosecuted.

Thus the HIV paradox teaches, curiously enough, that one of the best strategies in the design of behaviour modification that will actually work to reduce the spread of HIV, by enhancing and sustaining self-protection, is to be found in measures that positively protect the target groups and uphold the rights of individuals within them. In those countries where there has been a measure of success in achieving and sustaining behaviour modification, and thereby reducing the spread of HIV infections, the strategies adopted have included:

- * Introduction of systems for the exchange of sterile needles;

- * Legalisation of adult, consensual, private homosexual conduct where this has been illegal;
- * Decriminalisation of prostitution and other activities of sex workers and legalisation of brothels;
- * Facilitation of school education and public information in frank and direct terms, including by imaginative use of the public media;
- * Publicity concern condom use and the free distribution of condoms in selected venues;
- * Involvement of representative community groups and leaders in programmes designed to sustain behaviour modification campaigns; and
- * Provision of the best affordable medical care and up-to-date information to persons living with HIV.

To those who find the HIV paradox unconvincing or even offensive, two answers may be given. The first is that of practicality. No other strategy has been shown to work. Without effective behaviour modification HIV will continue to spread rapidly causing enormous personal suffering and devastating economic and human loss. By 1987, most informed health officials, led by the World Health Organisation, had come

to recognise the force of the HIV paradox. However, their endeavour to supplement public and health prevention efforts with attention to human rights has only been partly successful. The effort must continue.

The second justification for the strategy which I have described takes me back to fundamental human rights. They are important, not because they are in international instruments or national constitutions or laws. Their importance lies in the fact that such rights inhere in every human being for no reason other than the humanity and unique individuality of each one of us. I once explained, to a law school in the United States, the practical reasons for supporting a strategy protective of the rights of individuals specially at risk of HIV infection. A young law student rebuked the judge. He told me that I had forgotten the main reason. This was that we accord every human being that person's human rights because it is our duty and their right. When epidemics are about, human rights tend to go out the window. But even in times of epidemic, departures from respect for fundamental human rights must be controlled by law. They must be limited to measures that are strictly proportional and necessary. They must be compatible with the other objectives of a democratic society.

In the struggle against HIV/AIDS we need to learn again the lessons that were taught nearly a century ago when syphilis presented a major challenge to public health in some ways similar

to that now presented by HIV. The manifestations of symptoms were delayed. The condition was often, ultimately, fatal. The drug therapy then available was incompetent and had serious side effects. The social stigmas were substantial. They arose largely from the sexual modes of transmission. This was the time before advanced therapy. It was only when syphilis was treated in a way that accepted its reality, applied strategies to promote non-transmission and respected the rights and dignity of the patient, that any real progress was made towards containment.

HIV shines the spotlight of human rights on medical practice, epidemic control and our social responses to aspects of human sexuality and drug-taking. Only by re-learning the lessons of the past, and by studying such successful endeavours as exist in the present, will we avoid the mistakes that beset most of the present strategies against HIV. As these pages demonstrate, the problem is extremely urgent. The obstacles are many. The apathy, indifference and hypocrisy that attend such terrible suffering are appalling. Teaching the HIV paradox to frightened communities is by no means easy. Yet we must persist in our attempts to do so.

Let me therefore lay it on the line: The most effective strategies we have so far found to help promote reduction of the spread of HIV involves the adoption of laws and policies which protect the rights of the people most at risk of infection. This

may seem surprising. It is a paradox. But it is so. We should take this course because it is all that is likely, at this stage, to be effective in changing the behaviour we need most urgently to change. But we should also do it because it is right.