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FOURTH INTERNATIONAL CONGRESS ON AIDS IN ASIA AND THE PACIFIC

"Partnerships Across Borders Against HIV/AIDS"

SATELLITE SYMPOSIUM ON GOVERNANCE AND HIV

MANILA, PHILIPPINES, 28 OCTOBER 1997

HIV - WHY IS GOVERNANCE SO CRITICAL?

The Hon Justice Michael Kirby AC CMG

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GOVERNANCE, UNDP AND HIV

Locked into our own little worlds, cocooned in our own life's experiences, we often fail to see the convergence of great ideas. We see the pieces of the mosaic. But we do not see how things fit together. This symposium on governance and HIV is

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* President of the International Commission of Jurists. One-time member of the WHO Global Commission on AIDS. Member of the UNESCO International Bioethics Committee. Chairman of the UNAIDS/CHR International Consultation on HIV/AIDS and Human Rights. Justice of the High Court of Australia.

about the convergence of important ideas. Ideas vital for life, liberty and the pursuit of happiness in the coming millennium.

We must take the blinkers off our eyes, fold the eyeshades, and put them reverently out of reach during this session. The challenge before us is to think new and bold thoughts. In the context of responding to such a terrible affront to humanity as HIV/AIDS, only boldness will do.

In this region particularly, there has been a tendency to use the language and to appear to use the practices demanded by funding agencies and donor countries for the struggle against HIV/AIDS but to act in different ways[1]. This session is about realities. The strategies that work. Very early in my experience in this epidemic I was taught the first rule by which every response to HIV must be tested. The criterion is not prejudice, mythology, religion, hunch or other people's notions. Good science, including good social science, are the imperative prerequisites to responding effectively to this unexpected challenge to humanity. This is what Professor June Osborn taught me more than a decade ago in the Global Commission on

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1 See B Parnell and Ors, *Development and the HIV Epidemic: A Forward-Looking Evaluation of the Approach of the UNDP HIV and Development Programme* (1996), 82.

AIDS. I am convinced that it remains the cornerstone for all effective strategies.

My qualifications to speak to you on governance and HIV do not arise from my functions as a judge in Australia[2]. Certainly, judges have a duty to be informed about the virus and its legal and social consequences[3]. Nor do my credentials arise out of my work for and with the United Nations Development Programme (UNDP) which I have been privileged to perform[4]. Instead, I want to draw on my experience in various other United Nations activities and in civil society organisations (NGOs) to bring together a few themes which we should keep in mind as we approach this symposium.

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2 But some cases do come before the courts relating to HIV/AIDS discrimination. See eg *IW v City of Perth* (1997) 148 ALR 1 noted (1997) 11 *National AIDS Bulletin* (Aust), No 4, 2. See also *D v United Kingdom,* decision of the European Court of Human Rights, unreported, 2 May 1997; *Times Law Reports* (London) 12 May 1997.

3 For a review of inter-jurisdictional judicial involvement see M D Kirby, "The Role of the Judiciary and HIV Law" in D C Jayasuriya, *HIV Law, Ethics and Human Rights,* UNDP, New Delhi 312. See also D C Jayasuriya, *HIV/AIDS: Health, Policy and Legal Aspects*, Commonwealth Secretariat, London, 1997.

4 In Malawi for UNDP, the author co-chaired the Constitutional Conference which facilitated Malawi's transition to multi-party democracy.

For WHO, I served on the Global Commission on AIDS. For UNAIDS, in September 1996, I chaired the Second International Consultation on HIV/AIDS and Human Rights[5]. In Cambodia I saw at first hand the link between the attempt to build a civil society in the wreckage of war and genocide and the difficulties of responding to yet a further problem in the form of HIV/AIDS. In the International Commission of Jurists, CIVICUS and other NGOs with which I am associated, I have striven, with others, to raise attention to this epidemic so that it will be an important focus of their action programmes[6]. Like UNDP, I come at this issue from a conviction that an effective response against HIV/AIDS depends upon building the effective structures of governance, consulting closely the communities affected and at risk, involving people living with HIV/AIDS and their carers, promoting the empowerment of women, combating poverty and fighting ignorance[7].

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5 United Nations, Commission on Human Rights, Report of the Secretary-General on Second International Consultation on HIV/AIDS and Human Rights - *Alternative Approaches and Ways and Means Within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms*. (E/CN.4/1997/37) (20 January 1997).

6 The International Commission of Jurists agreed in 1995 to add discrimination on the ground of HIV/AIDS status and sexuality to the list of priorities of future human rights concerns.

7 UNDP, *Report of the Governance and HIV Joint Planning Meeting*, New Delhi, India (February 1997) 12.

THE DIMENSION OF THE PROBLEM

First let me try to paint some of the features of our target: the problem of HIV/AIDS in Asia and the Pacific[8].

- Approximately 7% of the total AIDS cases in the world are in Asia, a smaller proportion in the Pacific. As the population of Asia represents over 60% of the world's adult population, HIV/AIDS in Asia will obviously have a major impact on the global pandemic.

- Significant epidemiological trends in the region include:

  * The increasing spread of HIV infection, both in terms of the numbers of countries affected and increasing numbers of reported cases within particular countries.

  * Changing patterns in the spread of the infection.

  * Particularly rapid spread of HIV in Thailand, India, Cambodia and Myanmar/Burma.

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8 *Ibid,* at 10.

* One million of the 2.7 million estimated new HIV infections in the world in 1996 were in South East Asia - 30% of the estimated new HIV cases in children in 1996 occurred in South East Asia.

Statistics tend to be mind-numbing. But the basic message is clear. HIV/AIDS has reached the big population centres of this region. Past experience elsewhere suggests that there will be a delayed response between first appearance of the epidemic in big numbers and serious action on the part of governments[9]. There is an urgent need to "telescope" the process of moving from indifference, hostility and poor practice to better practice in response to the epidemic. One of the ways we can do this is by partnership - reaching across borders to learn from the experience of best practice in those countries which have been in the frontline of the epidemic at an earlier stage of its impact.

SOCIAL AND CULTURAL IMPEDIMENTS

If statistics are not your favourite diet, reflect on the many instances which illustrate the problem of converting

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9 *Ibid,* at 16.

governmental and societal responses to this epidemic in Asia and the Pacific from rhetoric into action:

* In Goa, in July 1997, the State Government justified the eviction of commercial sex workers from a red light area by its determination to curb the spread of AIDS. The Government spokesman opposed the demand to rehabilitate the sex workers or to facilitate a change of occupation or domicile[10].

* Reports of the rapid rise of HIV/AIDS in Papua New Guinea in August 1997 suggested that, as in other developing countries, "young females are basically being exploited by older males who are financially secure" but carrying the virus.

* In Malaysia, there is reported resistance to safer sex education and in Singapore it is difficult for gay groups to publish information to young homosexual or bisexual men because, as a relic of colonialism, homosexual activity,

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10 Reported in *The Navhind Times,* 29 July 1997 at 3. The National Human Rights Commission of India intervened to resist the action.

even between consenting adults in private, is still criminally illegal.

* In Australia, where the response of governments to HIV/AIDS has often been impressive, there is a recent reminder never to be complacent. A national survey of sexually active young people[11] showed a most significant drop in condom use during sex, falling from 57% in 1995 to only 42% this year[12].

* A recent conference in Melbourne was told of the disproportional burden of HIV amongst the poorest and most disadvantaged patients in many countries of the region. Sahara House, a drug rehabilitation centre established in Delhi, is seriously overcrowded because of discriminatory practices in medical clinics and hospitals which refuse to admit drug patients, even in emergencies[13].

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11 Reported in *Sydney Morning Herald* 22 August 1997 at 10.

12 Reported in *Sunday Telegraph* (Sydney) 24 August 1997 at 47.

13 (1997) 11 *National AIDS Bulletin* (Aust) No 4, 25.

* In Cambodia, as UN Special Representative, I protested against the removal of public informative posters and the closure of brothels. I was told that the posters were regarded by some citizens as "obscene". No sooner were the brothels closed but new ones sprang up elsewhere in the city, away from the healthcare and empowerment messages of UN and voluntary workers. The same Melbourne conference was told in June 1997, as I repeatedly heard in Cambodia, that young Khmers blame Vietnamese and Thai sex workers for bringing the epidemic to their country. Xenophobia, rejection, blaming others, contempt and stigmatisation are the regular travelling companions of this epidemic.

* Dr Peter Piot, Head of UNAIDS recently revealed that in Vietnam HIV rates among injecting drug users have soared from 9% to 44% between 1993 and 1995. Similar rapid escalations can be found in China and in Eastern Europe.

Dr Piot lays it on the line. In April 1996 he told the Commission on Human Rights in Geneva:

> "A conspiracy of silence continues to surround HIV/AIDS. This conspiracy keeps couples and communities unaware that HIV is in their midst. It allows governments to close their eyes to the urgency of action. It keeps HIV off agendas on which it should be. It fuels an 'us/them' mentality in which the uninfected deny the existence, the human value and the dignity of the infected".

And to the Melbourne conference Dr Piot said[14]:

> "The global epidemics of HIV and AIDS do not affect all regions and all groups equally. Instead, they exploit the faultlines of an already profoundly unequal world."

NOW THE GOOD NEWS

Some of us may be at this symposium because of a completely dispassionate scientific interest in this unpredicted epidemic. But most of us are here, propelled into action by puzzlement, anger, frustration, hope, determination, solidarity and love, to ensure that the world and our region give a better response to this epidemic than until now. I say love advisedly. Most of us know precious friends who live, or have lived, with HIV/AIDS. Thinking of them - people not statistics - humans like us, not economics - redoubles our efforts to share experience in the strategies that work. Fortunately, amidst the gloom, there is some good news:

* In some countries, particularly where politicians and bureaucrats manage to keep moral judgments out of the

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14 P Piot, at AIDS Impact Conference, Melbourne, Australia, June 1997, cited (1997) 11 *National AIDS Bulletin* (Aust) No 4, at 7.

AIDS policy equation, the growth of sero conversions has been slowed[15]. This achievement seems to have less to do with the politics of governments than with good fortune in having a few enlightened leaders in positions of power as well as the involvement of communities and responsive governmental institutions.

* Even where there has been strong resistance, determined community leaders can sometimes gain breakthroughs. In the United States, where AIDS has killed an estimated 350,000 people and hundreds of thousands carry the virus, the American Bar Association recently approved a controversial policy endorsing removal of legal barriers to needle exchange programmes for drug users[16]. Now that influential body is committed to persuading the timid legislators.

* A Royal Commission in Australia recently recommended extension of the needle exchange programmes that exist

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15 For a review of the British experience see V Berridge, *AIDS in the UK: The Making of Policy, 1981-1994*, Oxford, 1996 reviewed (1997) 11 *National AIDS Bulletin* (Aust) No 4, at 26.

16 Reported in *American Bar Association Journal,* October 1997 at 106.

there to provide sterile venues where drug addicted or drug using people can use needles without risk of catching the life-threatening virus[17].

* Reports earlier this month indicate that Chinese officials have asked Australian experts to help plan a "safer sex" education programme for China's 300 million adolescents. Named "Spark", its aim is to reduce population growth, abortions and, above all, to provide the young with information on sexually transmitted diseases including HIV/AIDS[18]. Apparently, the Chinese officials were impressed with a video-based adolescent sex education programme they saw, presented by third year medical students. They recognised the sensitivity of the issue. Funding for it is being provided by British and European bodies. This is truly an example of partnership across borders.

* In Japan, the Tokyo High Court last month ruled that discrimination by the Board of Education against a gay

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17 New South Wales, Royal Commission into the New South Wales Police Service (Paedophilia Reference), *Report,* August 1997.

18 Reported *Sydney Morning Herald,* 3 October 1997 at 5.

group "Occur" was illegal. It held that "indifference and ignorance on sexual orientation will not be tolerated" by the organs of government[19].

In every land, we could tell the stories of victories of this kind. But the macro problems remain. They need macro solutions. That is where United Nations, and specifically UNDP, come in.

THE LESSONS OF GLOBAL CONVERGENCE

I said at the beginning that we must embrace bold ideas and see linkages which are not always immediately apparent. For example, at the individual level, we all know the difficulty of converting knowledge of, and information about, HIV into action. This is the classic problem of behaviour modification which the law and judges have been striving to achieve for millennia. But what of the conversion of governmental knowledge (that AIDS is spreading in their societies) into effective governmental action? This is the problem of behaviour modification writ large. It is the problem which UNDP has been closely studying. UNDP's conclusions are sensible. We should take the opportunity of this

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19 Reported "Rights victory in Japan" in *Capital Q Weekly* (Sydney), 26 September 1997 at 5.

symposium to study them and to see how they apply to every country in Asia and the Pacific:

* To realise that effective strategies against the spread of HIV/AIDS and the pursuit of good governance are not separate paths, but different aspects of the same path.

* To understand that decentralisation, which is inherent in good governance, has lessons for effective strategies against HIV/AIDS. In particular, getting down to the grass roots. Reaching out to the civil society organisations, involving patients and their carers, mobilising communities and people living with HIV and AIDS. These are strategies likely to be effective in combating the spread of HIV. But they are also the methodologies of good governance.

* Appreciating that the empowerment of women is a crucial element in the struggle against this epidemic. All too often, their involvement is purely token. The provision of a written notice to commercial sex workers in Mumbai, India, was well intentioned. But it does virtually nothing to redress the disempowerment of such persons so as to help them to insist on condom use and to resist risky behaviour. Women are often the educators of children and young ones in the home. They are generally more practical about sexual matters because usually it falls to them to sort out, and bear, the burden of the problems. The empowerment

of women is a constant theme of all studies addressing effective strategies against HIV/AIDS. Yet if women are disempowered, not organised, disadvantaged by culture, religion or otherwise, how will governance in the countries of our region change to provide them with protection against HIV?

* Good governance is also concerned with the poor, the stigmatised and the systemically marginalised groups of society. Yet these are the very people who are often most in need of help, information, education and support if behaviour modification is to be secured in containing this epidemic[20]. You all know the groups I refer to. Commercial sex workers. Injecting drug users. Men who have sex with men. The poor who are looked down upon and whose lives are not really valued. It is very difficult, even in advanced societies, to reach out to, involve and win the trust of these groups and the individuals who make them up. Yet unless government can do so, the chances of securing effective behaviour modification are slim indeed. The chances of telescoping the lessons learned by other societies are limited. The prospects of leaping ahead and

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20 UNDP Report, above n 7, at 7.

nipping the epidemic in the bud are virtually nil. Do we really have to see millions of human beings infected and suffering before there is a proper response to the scourge of HIV/AIDS?

The answer to these questions rests with us - and with the leaders, the institutions and communities in our countries. Unless there is immediate and effective action, the conclusion which UNDP has reached is sobering:

> "By the year 2010 Asia and the Pacific is expected to have the largest cumulative number of people with HIV infection[21]."

The human toll of this prediction is devastating. Yet in an age when so much is governed by economics, it is necessary methodically to turn the cries of suffering into the language of dollars, baht and pesos. There is a clear relationship between HIV/AIDS and the performance of the economic and finance system. There is a ratio between development strategy and an effective response to HIV. For example, it is estimated that the epidemic will cost Thailand some $8.7 billion before the end of

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21 *Ibid,* at 14 citing "An Initial Analysis and Description of the Interaction Between Governance and HIV/AIDS in the Asia and Pacific Region" (UNDP/RBAP/RPPD: Paper on Governance and HIV-Concepts and Joint Work Planning, 1997).

this decade. Those costs will be direct (largely in the matter of healthcare) and indirect (in the value to society of the economic output lost through premature death). The opportunity costs of the loss of the contribution of young and often talented people can only be imagined. For the hard of heart, let us tell them how much this epidemic will cost their societies in economic terms[22]. Clearly this is relevant to policy projections. Perhaps it will dispel some of the indifference and lead to effective action.

That action should include:

* Facilitation of information, access and exchange.

* Collaboration between countries and institutions.

* Interaction between national professionals.

* Development of Internet accessible data bases.

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22 See eg P Godwin (ed) *Socio-Economic Implications of the Epidemic,* UNDP, New Delhi, 1997 at 34-36; D Bloom and P Godwin (eds) *The Economics of HIV and AIDS - The Case of South and South East Asia,* Oxford, Delhi, 1997; Parnell and Ors, *Development and the HIV Epidemic,* above n 1.

* Promotion of regional exchanges when we can all learn what seems to have worked somewhere else and may work for us, to save lives and suffering[23].

CONCLUSION: HIV STRATEGIES & GOOD GOVERNANCE

The big leap to perceiving the interconnections between HIV strategy and good governance is difficult for some to take. It is impossible for others to deliver. Yet it stands to reason and it is linked, inextricably, to behaviour modification. So let me, in closing, demonstrate how the link is made and why it is important:

* There is no simple cure for HIV/AIDS. In Asia and the Pacific the advanced antiviral therapies are usually completely out of the reach of most governments and most people. No vaccine is yet available. Therefore, the only means of containing this epidemic is securing behaviour modification in the people most at risk of becoming infected. This is a notoriously tall order.

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23 UNDP Report, above n 7, at 9.

* Simple laws, banning HIV, criminalising carriers and closing brothels do not work. On the contrary, they tend to drive the people who most need information and empowerment out of the range of the messages essential to changes in their behaviour.

* This is why the AIDS paradox is so important[24]. To have any chance of changing behaviour at critical moments of pleasure (whether in sex, drug use or otherwise) it is essential to win the confidence and capture the attention of the target of your message. You will not succeed by alienation, criminalisation and discrimination. The only hope for change in behaviour is defending the human rights of those at risk so they will listen to and believe your messages.

* Autocratic, distant governments, out of touch with these realities, will put their faith in highly ineffective laws ("HIL"). Decentralised, transparent accountable governments, in touch with the people with problems, will respect their human dignity and defend their human rights.

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24 M D Kirby, "Human Rights and the HIV Paradox" in (1997) *The Lancet,* 348, 9036: 1217-1218.

They will break through and achieve results - imperfect it is true - but affirmative for saving lives.

* Good governance will involve, and engage, the communities at risk. It will address the urgent needs to protect them from discrimination, to educate the young and to participate with marginalised groups in responding to the epidemic - free from judgmental attitudes that get in the way of effective action.

I do not underestimate the difficulties of linking good HIV strategies with advances towards good governance. The one concerns a desperately urgent imperative. The other concerns a long-term strategy requiring systemic, legal and attitudinal changes of the most far-reaching kind in a country's culture. The fundamental question before us is whether the urgency of the one can galvanise our leaders and our societies into basic changes of the other.

A realist might say, it is all too difficult. Too many careers bound up in the present way of doing things. Too many bureaucrats committed to the present system, resistant to change. Too many political, legal and structural impediments. Too many disempowered people, now afflicted with another burden: dispirited, ground down, unable to change, struggling to survive.

Yet HIV/AIDS has already brought many changes that would not have been thought possible before its arrival:

* A much greater willingness in many countries, born of necessity, to speak openly about human sexuality, recognising that nothing else will save millions in the coming generations.

* A willingness to reconsider even our strategies on drug laws, to consider harm minimisation instead of prohibition - to think thoughts which just a few years ago would have been rank heresy.

* A willingness to contemplate needle exchange for injecting drug users so as to diminish the fearful risks of infection by that means.

* A readiness to sweep away the colonial laws against adult homosexual conduct and to enact new laws to prevent and remedy discrimination on that ground.

* A willingness to reach out in dialogue to commercial sex workers so that, by protecting them, we protect societies in which they serve their clearly established and seemingly universal need.

* A new recognition and respect for community groups and individuals who stand up before the world and say - we are living with AIDS. We are your brothers and sisters. We do not *ask* but we *demand* that our governments honour and protect us and our loved ones. Yet unless governance can be changed, improvements in responding to this epidemic will be temporary, chancy, dependent on individual commitment rather than societal and systemic structures.

I hope that, in this symposium, we can give a lead to the larger conference. That we can turn our puzzlement, anger, frustration and hope to determination, solidarity, lessons in good governance and love. These are not idle desires. They are urgent obligations of us all if the blight of AIDS upon individual lives and on national economic development is to be addressed effectively. The questions at the end of this session will be the ones with which we started. Do we have the imagination to see HIV/AIDS in the wider focus of good governance? Do we have the determination to turn this tragic and unparalleled disaster into an impetus for societal reform and the quest for justice and human dignity for all our citizens? Each one of us, wherever we come from, must give our answers.