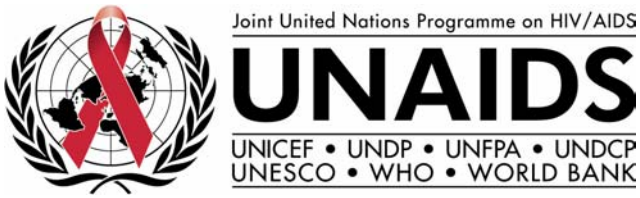


THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

"HIV/AIDS and Human Rights: The Role of National Human Rights Institutions in the Asia Pacific"

Sunday 7th October - Monday 8th October 2001
Melbourne, Australia

Held in conjunction with the Sixth International Congress on AIDS in the Asia Pacific (ICAAP) and Co-Sponsored by the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the Joint United Nations Programme on HIV/AIDS (UNAIDS).

REPORT

October 2001

Contents

1. Background

The United Nations Joint Programme on HIV/AIDS, (UNAIDS), has identified HIV/AIDS as "a fundamental issue of human security" and has called on non-government organisations, national human rights institutions, other UN agencies and governments and international organisations to address HIV/AIDS-related issues.[1] The United Nations High Commissioner for Human Rights, Mrs Mary Robinson has emphasised the importance of "…the integration of HIV/AIDS and human rights into institutional strategies and programmes at national, regional and international levels, as a means to effectively respond to the epidemic."[2]

A quick review of the overwhelming HIV/AIDS statistics quickly establishes why it is regarded as such an important human rights and human security issue.

In the twenty years since the first cases of Acquired Immunodeficiency Syndrome (AIDS) were reported there have been almost 22 million AIDS-related deaths. At the end of 2001, an estimated 40 million people were living with HIV around the world (UNAIDS epidemic update, December 2001 – available at www.unaids.org).[3]

In the Asia Pacific region there are some 7.1 million people living with HIV/AIDS.[4] The extent of the epidemic across the region can be broadly categorised as *established* (Thailand, Cambodia, Burma/Myanmar, Laos), *exploding* (India, Papua New Guinea, Nepal, China and possibly Vietnam and Sri Lanka), and *emerging* (Philippines, Indonesia, Malaysia).

HIV/AIDS is a disease that may affect all people, however globally it is the marginalised and vulnerable within developing nations, particularly the women and children that carry the heaviest burden. Living with HIV/AIDS and deaths resulting from AIDS decimates communities, pushing the vulnerable further into poverty, isolation and despair.

The growing body of research and analysis strongly indicates that respect for human rights is critical to the prevention and successful treatment of HIV/AIDS. Significant HIV/AIDS-related human rights issues include advancement of the right to health, the right to education, the right to life, the right to freedom from torture, cruel, inhuman or degrading treatment and freedom from slavery and servitude, the right to liberty and security, freedom of movement, the right to information and freedom of expression, the right to marry and found a family, the right to privacy, the right to equality between

[1] Speech by Dr Peter Piot, Executive Director of UNAIDS to the 57TH Session on the United Nations Commission on Human Rights, Geneva, 11 April 2001
[2] United Nations Press Release, High *Commissioner for Human Rights says World AIDS Day is a Call to Action to Put Treatment and Prevention Within Reach of All*, HR/P8/92, 30 November 1998
[3] "20 Years On: The Situation in Asia and the Pacific" Website of the Sixth International Congress on AIDS in Asia and the Pacific, 7 June 2001 at http://www.icaap.conf.au/news/200106_20years.asp
[4] Ibid

men and women, and non-discrimination and the right to information and education.

The UN Commission on Human Rights has for some time focused attention on the global HIV/AIDS crisis and its human rights implications . In resolution 1999/49[5] the Commission emphasized,

"…the increasing challenges presented by HIV/AIDS, the need for intensified efforts to ensure universal respect for and observance of human rights and fundamental freedoms for all, to reduce vulnerability to HIV/AIDS and to prevent HIV/AIDS related discrimination and stigma."

In response to these challenges the Commission invited,

"States to strengthen national mechanisms for protecting HIV/AIDS related human rights and to take all necessary measures to eliminate stigmatisation of and discrimination against those infected and affected by HIV/AIDS."

One such mechanism is a national human rights institution (NHRI) which is an independent body established by the state to promote and protect human rights.

The role that NHRI's can play in alleviating discrimination and improving the quality of life for people living with HIV/AIDS (PLWHA) is recognized by the United Nations Commission on Human Rights.

"[The Commission requests] States in consultation with relevant national bodies, including national human rights institutions, to develop and support appropriate mechanisms to monitor and enforce HIV/AIDS related human rights."[6]

In the Asia Pacific, NHRIs have established a regional organisation to collaborate on common issues of mutual concern. This organisation called the Asia Pacific Forum of National Human Rights Institutions (APF). It recently held its sixth annual meeting in Colombo, Sri Lanka in September 2001 and at this meeting Forum Members committed themselves to combat discrimination and human rights violations on the basis of HIV/AIDS. It agreed that HIV/AIDS should not be viewed as solely a health issue but as a human rights issue because of its serious civil, cultural, economic, political and social implications. It also reaffirmed its commitment to holding a regional workshop on the issue of *'HIV/AIDS and Human Rights: The Role of National Human Rights Institutions in the Asia Pacific'* from 7th to 8th October in Melbourne, Australia.

[5] E/CN.4/RES/1999/49
[6] Commission on Human Rights Resolution 2001/51 E/CN.4/RES/2001/51

2. Organisation

The Workshop was organised by the APF Secretariat, in collaboration with Sixth International Congress on AIDS in the Asia Pacific (ICAAP). Financial and technical support were provided by the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the AIDS Council of NSW (ACON).

The Workshop was held from 7-8 October 2001 in Melbourne, Australia. It was preceded by frequent consultation between the Forum Secretariat, ICAAP, UNAIDS and the OHCHR.

3. Participation

Dr David Miller, UNAIDS Country Program Adviser, India opened the workshop at a session that was also addressed by Mr Kieren Fitzpatrick, Director, Asia Pacific Forum of National Human Rights Institutions, Ms Michaela Figueira, Temporary Adviser, UNAIDS (Project Co-ordinator of the AIDS Law Unit, Legal Assistance Centre, Namibia), Ms Lisa Oldring, United Nations Office of the High Commissioner for Human Rights and Mr Carlos Valerio, Ombudsman of Costa Rica.

The Forum Secretariat, UNAIDS and the OHCHR focused on the role of national human rights institutions in addressing HIV/AIDS related human rights issues. It also welcomed the participation of non-government organisations, specialised institutions and governments as observers. Apart from facilitators and observers the workshop comprised of approximately forty five participants including:

- One participant from each of the nine Forum member institutions (Australia, Fiji, India, Indonesia, New Zealand, Nepal, Mongolia, the Philippines and Sri Lanka);
- Other relevant institutions including the Ombudsman of Costa Rica (Defensoria Des Los Habitantes), the Hong Kong Equal Opportunities Commission, the Islamic Human Rights Commission of Iran and Control Yuan of the Republic of Korea;
- Two representatives from the UNAIDS including Dr David Miller, UNAIDS Country Program Adviser, India and Ms Michaela Figueira, Temporary Adviser, UNAIDS;
- Two representatives from the OHCHR including Ms Anne Gallagher, Adviser on Trafficking to the High Commissioner for Human Rights and Ms Lisa Oldring, Human Rights Officer;

- Representatives from the United Nations Development Programme (UNDP), Nepal;
- Representatives from regional non-government HIV/AIDS organisations; and
- Three representatives from the APF Secretariat and one from ACON.

A list of participants is at Appendix One.

4. Workshop goal

The goal of the workshop was to enhance awareness of and cooperation on HIV/AIDS related human rights issues in the Asia Pacific region through the promotion and strengthening of national human rights institutions.

5. Workshop objectives

The objectives of the workshop were to:

- to increase the understanding of the role of national human rights institutions in addressing HIV/AIDS-related human rights issues through (a) enabling discussion of issues (b) facilitating joint activity on issues and in areas of mutual interest and commitment, and (c) encouraging the development of joint projects, training programs and staff exchanges;

- to develop practical strategies for national human rights institutions to use in addressing HIV/AIDS-related human rights issues.

6. Workshop program

The structure of the Workshop provided opportunities for each Forum member to report on their country's unique experience of HIV/AIDS and describe work that has been and could be done on this subject. As well as formal deliveries during sessions there were also open discussions at the end of each session, where more general discussions occurred between Forum members and observers. In addition, 'working groups' held each afternoon allowed Forum members and observers to focus on practical questions and discuss them as a group with the aid of a facilitator. The discussions were characterised by an open and free-flowing exchange of views and experiences that assisted participants to exchange information and forge institutional linkages and to pursue specific areas of interest. Where there was consensus on ideas shared during these working groups, these were fed into the concluding statement. The workshop program is at Appendix Two and the Concluding Statement is at Appendix Three.

The two-day workshop program was divided into three sessions and two working groups. The sessions were

- The United Nations and HIV/AIDS
- National Human Rights Institutions and HIV/AIDS
- Regional Issues and Cooperation.

The working group topics were

- What strategies can national human rights institutions develop to advance HIV/AIDS related human rights?
- How can NHRIs cooperate at the regional and sub-regional level on issues relating to HIV/AIDS?

The bulk of the workshop was devoted to presentations by, and discussions between representatives of national human rights institutions. Discussions covered both problems, identifying specific areas where action was need to effectively address HIV/AIDS and solutions, enabling participants to share their experiences with strategies that had proven successful or otherwise. Contributions by UNAIDS and OHCHR experts and representatives of NGOs and governments provided valuable additional information and explored avenues of cooperative action between the NHRIs, UN, NGOs and governments.

Below is a summary of discussions from each session and working group.

Session One: The United Nations and HIV/AIDS

This session included a welcome address by Dr David Miller, UNAIDS Country Program Adviser, India and other speakers included Mr Kieren Fitzpatrick, Director of the APF Secretariat, Ms Michaela Figueira, Temporary Adviser, UNAIDS and Project Co-ordinator of the AIDS Law Unit, Legal Assistance Centre, Namibia, Ms Lisa Oldring, Human Rights Officer, OHCHR and Mr Carlos Valerio, Ombudsman of Costa Rica.

Dr Miller reiterated the importance of the practical solutions and of the implementation of international human rights that can be achieved through mechanisms like national human rights institutions. Within the Indian context he drew attention to the recent work undertaken by the National Human Rights Commission of India. It had recently published its report on the *'National Conference on Human Rights and HIV/AIDS'* that was held in November 2000. The report firmly argued that HIV/AIDS is not just a medical problem but a human rights issue and that it has become an epidemic because many people do not have access to basic human rights. Once people are infected with or presumed to have HIV/AIDS the violation of their human rights is further entrenched by the refusal of treatment, denial of access to essential drugs including antiretroviral therapy, discrimination in the health care and employment sectors, and women being deprived of rights and thrown out of homes.

These violations force people and their condition 'underground' which only serves to create a fertile environment for the infection to thrive within. The Conference called upon the Indian Government and its agencies to urgently develop a rights-based response to HIV/AIDS as an essential approach to dealing with catastrophic threat to humanity.

Dr Miller urged NHRIs to use their mandate to promote and protect human rights by developing practical projects in education, training and through legislative review, recommendations and the investigation of complaints. He strongly urged NHRIs to include those people living with HIV/AIDS (PLWHA) and their families in the design, delivery and implementation of any HIV/AIDS related activity. Dr Miller said that PLWHA are "our teachers and critical as part of the solution". He also reiterated the Indian Commission's findings that stigma and discrimination kill people just as effectively as HIV/AIDS.

Mr Fitzpatrick noted that all national human rights institutions in the Asia Pacific region have the mandate and some power to combat discrimination and human rights violations on the basis of HIV/AIDS. He also noted that unfortunately this role has so far been largely underutilized and that there was a need to strengthen the capacities of national human rights institutions to undertake their educative, advisory and complaint handling functions more effectively. Mr Fitzpatrick emphasised the unique position NHRIs occupy as a bridge between the State and civil society and that this role must be used effectively to work with PLWHA, NGOs and the State to achieve the best possible level of human rights promotion and protection.

Mr Fitzpatrick said that there is a need for NHRIs to not only focus on respective domestic roles but also to work collaboratively at the regional or sub-regional level. One such issue for regional focus could be on the connection of trafficking of people, particularly women and children and HIV/AIDS. He noted that agreement to this type of collaboration can evolve from workshops such as this one and that the workshop itself was the APF's response to the UNAIDS call for action for international, regional and national commitment to global prevention and treatment of HIV/AIDS.

Ms Figueira made the point that health and human rights has been historically regarded as distinct and separate entities with little or no interconnection and that the discussions surrounding HIV/AIDS had assumed this false dichotomy. This flawed approach is now being abandoned and there is a paradigm shift towards the growing recognition that health and human rights are inextricably linked.

Ms Figueira asked the participants to consider the example of the core human right of non-discrimination and the impact that the violation of this right may have on health. Discrimination increases vulnerability to infection. Women and other vulnerable groups are particularly at risk of infection largely because of unequal status in society, unequal capacity to access information, to reduce risks and access prevention and care services. Discrimination in health systems exacerbates disparities in health. People, particularly women will not seek counselling, testing, treatment and support if this means facing discrimination, lack of confidentiality and other negative consequences. Lack of respect for human rights can thus shape vulnerability to ill health, whilst on the flip side the promotion and protection of human rights can favourably impact on health. The protection and promotion of all human rights is thus necessary to reduce vulnerability to HIV, lessen the adverse effect of HIV on those affected and to empower individuals and communities to respond to the epidemic.

Ms Figueira also said that because of stigmatisation, discrimination and other negative consequences associated with HIV/AIDS, many people are reluctant to undergo an HIV test and that this has negative consequences from a public health perspective in the sense that an effective response to the epidemic is dependent on as many people as possible knowing their HIV status and making informed decisions about practising safer sex.

Ms Figueira emphasised the obligations of government to respect, protect and fulfil human rights. She also called upon countries to develop national action plans and presented a framework , combining the aims of public health and the obligations of government with respect to human rights for the analysis of activities, programmes and policies relating to HIV/AIDS to ensure that they are achieving the highest results in both health and human rights terms.

Ms Oldring echoed the other speakers concerns that the HIV/AIDS epidemic was more than a heath catastrophe but has become one of the greatest human rights challenges facing the international community. A lack of respect for human rights is linked to virtually ever aspect of the HIV/AIDS epidemic, from the factors that cause or increase vulnerability to HIV infection, to discrimination based on stigma attached to PLWHA, to the factors that limit the ability of individuals and communities to respond effectively to the epidemic.

On the other hand there is evidence to suggest that where individuals and communities are able to realise their rights, the incidence and impact of HIV/AIDS is reduced. The promotion and protection of human rights therefore is a key to effectively containing the spread of the disease, reducing the vulnerability to HIV infection, and alleviating the impact of the epidemic.

Ms Oldring noted that there have been important developments at the international level related to the need for greater accountability for HIV/AIDS-related human rights. At the United Nations General Assembly's Special Session on HIV/AIDS in June 2001, States made explicit their

commitment to the realisation of human rights as an essential part of the international response and set certain goals and targets based on human rights law and principles in key areas. They also agreed on the need to address the factors that make individuals vulnerable to HIV infection, including poverty, lack of education, discrimination, lack of information and commodities for protection, and sexual exploitation of women, girls and boys, including for commercial reasons. The Declaration of Commitment adopted at UNGASS acknowledges the importance of monitoring and accountability in the context of HIV/AIDS and calls for the strengthening of monitoring mechanisms for HIV/AIDS related human rights. The UN Commission on Human Rights also has asked States, in consultation with relevant national bodies including national human rights institutions, to develop and support appropriate mechanisms to monitor and enforce HIV/AIDS related human rights. Most recently, at the World Conference against Racism in Durban, States committed to strengthen national institutions to promote and protect the human rights of victims of racism who are also infected with HIV/AIDS, as well as to ensure access to HIV/AIDS medication and treatment.

Ms Oldring noted that while commitments at the international level are valuable, they are meaningless without effective legal mechanisms to ensure their implementation at the national level. Independent national human rights institutions are essential to ensuring that these commitments are given meaning at the national level, through their power to investigate violations of human rights that occur in the context of HIV/AIDS; conduct public inquiries focusing on HIV/AIDS related human rights violations; receive and where appropriate, redress complaints of HIV related human rights violations; provide advice and assistance to government and conduct human rights education. By cooperating with each other; sharing information, training and development for institution members and staff; developing and sharing technical expertise on HIV/AIDS; and benefiting from the 'best practice' experiences of other institutions, APF members can make an important contribution towards improving respect for the human rights of individuals infected with and affected by HIV and AIDS, and to reducing spread and impact of the disease throughout the region.

Ms Oldring encouraged APF members to make us of the *International Guidelines on HIV/AIDS and Human Rights*, published jointly by the OHCHR and UNAIDS, as an instrument to assist them in addressing HIV and AIDS-related human rights throughout their activities. The Guidelines synthesise human rights principles and laws in the context of HIV/AIDS and translate them into practical measures to protect human rights in the context of HIV/AIDS.

Ms Oldring also drew attention to the work of the United Nations human rights mechanisms, including the committees that monitor the implementation of the main human rights treaties (the UN treaty bodies), in addressing HIV/AIDS related rights. She encouraged NHRIs to submit 'shadow' reports to the treaty bodies, with information on HIV/AIDS-related human rights, as a supplement to States party reports.

Mr Valerio spoke of his work as Ombudsman in Costa Rica, Central America. He provided Forum members with a national example of how the Ombudsman has used its office to advance human rights in the context of HIV/AIDS.

Costa Rica experienced its first case of HIV/AIDS in 1983 with haemophilic patients and in 1986 the infection began to surface amongst homosexual and bisexual groups. In 1990 heterosexual transmission of HIV/AIDS had shown a sharp growth, but in large the group most impacted by the disease homosexuals (also referred to as gay men).

In 1985 the National Commission of AIDS was created to define and establish public health policies in relation to prevention and control of HIV/AIDS. It is now the National Council of AIDS that undertakes this role and it works closely with the Ministry of Education, the public health system, religious groups and non-government organisations in relation to HIV/AIDS matters.

Mr Valerio pointed to the importance of government policies that established the importance of early detection of the infection by free and voluntary testing. The Ministry of Heath developed specific programmes to access sex workers and children at risk. In 1990 the government provided AZT treatment to pregnant women infected by HIV and this has reduced the risk of infection via intra-uterine to unborn children.

In terms of legal protection, Costa Rica has adopted a number of international human rights instruments and it has a Constitution that provides for the universal provision of health services, freedom of expression, equality before the law, freedom of movement and other fundamental rights. Although the government had taken some positive steps to counter HIV/AIDS from the outset, it was clear that the legal protection of people's rights was uneven and required strengthening.

Many in the community including non-government organisations began advocating for specific HIV/AIDS legislation in 1995, and after overcoming some opposition within government, legislation was passed in 1998. This legislation provides for protection against discrimination or degrading treatment, right to integral health, confidentiality, prohibition of mandatory tests, prohibition against discrimination in employment and education. It provided that condoms would be universally available to the general population as a strategy in preventing the spread of the virus. Importantly the legislation also provided that the Ministry of Health must implement educational campaigns in penitentiary centres and provide condoms to these centres.

Mr Carlos said the Ombudsman's Office which was established in 1993 has played an important role in the promotion and protection of the human rights of PLWHA. The first case of HIV/AIDS discrimination that it dealt with related to discrimination in the non-provision of medical services. A public hospital laboratory refused to undertake clinical tests of people known to have HIV. A group of patients took its case against the hospital to the Constitutional Court with the support of the Ombudsman's Office. The Constitutional Court found in favour of the patients and established the right of access to health services for PLWHA as equal to all others in the community.

Another area of discrimination related to the non-provision of life insurance by the Instituto Nacional de Seguros to PLWHA. After it received complaints on this issue the Ombudsman's Office considered that it was possible for PLWHA to acquire life insurance because the probability of dying with HIV/AIDS had diminished due to the introduction of antiretroviral treatment. This means that PLWHA could live longer or could die of another cause other than HIV.

The Ombudsman's Office has also undertaken important educational activities to inform the community about the rights of those people with HIV/AIDS. It reproduced copies of the national HIV/AIDS legislation and distributed it to all hospitals and public institutions. It has also published a collection of important cases and resolutions relating to HIV/AIDS matters. It introduced a national award called the 'Quality of Life Award' to recognise important work undertaken by individuals or institutions relating to human rights. It recently acknowledged the AIDS Clinic of the Hospital Mexico for its prominent work relating to HIV infected patients.

Mr Carlos said his Office works very closely with non-government organisations particularly when requested to participate in community events or campaigns. The Ombudsman's Office also actively participates in activities organised for World AIDS Day on 1 December each year.

Mr Carlos commented that in spite of the efforts of the National Council of AIDS and his Office to disseminate information about HIV/AIDS legislation there is still a level of non-compliance of its provisions and a difficulty in giving practical effect to the law. He also noted that the Ministry of Health has limited resources for the design and implementation of prevention campaigns and that most of the effort falls upon under resourced non-government organisations.

Session Two: National Human Rights Institutions and HIV/AIDS

This session was addressed by Dr Lalit Nath, World Health Organisation, member of the National Human Rights Commission of India's Core Health Group and at this meeting representing the National Human Rights Commission, Professor Das Lal, Member, Human Rights Commission of Nepal, and Mr Warren Lindberg, Commissioner, New Zealand Human Rights

Commission. The session was chaired by Justice Aurora Navarette-Recina, Chair, Philippines Commission on Human Rights.

Dr Lalit Nath spoke on how the National Human Rights Commission of India (NHRC) was responding to HIV/AIDS within the human rights context. He reported that the Commission had identified it had legal and human rights expertise, however it required health expertise. As a result of this assessment, the Commission established a core group or "think tank" consisting of health professionals. On the basis of this group's recommendations the NHRC took up HIV/AIDS as a priority issue. This group has set out to provide leadership at the national level and to engage and consult with the public, NGOs, UNAIDs and others.

Dr Nath reported that in November 2000 the National Human Rights Commission of India organized a national conference on human rights and HIV/AIDS in partnership with National AIDS Control Organisation, Lawyers Collective, UN Children's Fund and UN Joint Programme on HIV/AIDS. He said the Commission has now produced a report 'National Conference on Human Rights and AIDS' that has made recommendations or action points in response to HIV/AIDS. The purpose of the action points is to complement the International Guidelines on HIV/AIDS and Human Rights with practical solutions within the Indian context.

The basis issues identified in the actions points included

- Consent and testing
- Confidentiality
- Discrimination in health care
- Discrimination in employment
- Women in vulnerable environments
- Children and young people
- People living with or affected by HIV/AIDS
- Marginalised populations

In closing Dr Nath proposed that human rights violations are both the cause and result of HIV/AIDS.

Professor Das Lal representing the Human Rights Commission of Nepal reported that the situation of HIV/AIDS in Nepal is grave and that rates of HIV infection are increasing every year. He said that groups most vulnerable to infection were sex workers and young girls. There was a particular concern in relation to women and girls involved in cross border trafficking. Many children and women who return to Nepal after being trafficked to India carry the infection and are rejected by their families, left isolated, stigmatized and discriminated against. One of the worst aspects of the epidemic in this region is that increasingly younger girl children are being forced onto sex and prostitution in the attempt by men to avoid or cure infection. They hold a mistaken belief that intercourse with a virgin can cure the virus. Professor Lal urgently called for a cross border approach between Nepal and India

particularly between the national human rights commissions and their respective governments.

Mr Warren Lindberg from the New Zealand Human Rights Commission provided an outline on the development of and responses to HIV/AIDS within the New Zealand context. Mr Lindberg was the former Executive Director of the New Zealand AIDS Foundation (a non-government organisation funded by government) and held that position for twelve years.

New Zealand is a small country with a population of 3.8 million. Its pattern of HIV/AIDS closely follows that of other 'western' countries in that primary HIV infection is amongst gay men. The next at risk group is through blood transfusions and there is a slow increase of infections amongst heterosexual men and women. There is minimal infection amongst injecting drug use (IDU) transmission and within the sex industry.

In New Zealand the initial response to HIV/AIDS was of moral panic. This was directed at the homosexual community because of 'bad blood' that had infected babies was traced back to its source which were gay men.

The New Zealand Government funded a prevention program that established the New Zealand AIDS Foundation (NZAF) – which is a gay based non-government organisation. The decision by the government to fund a gay NGO was an important one particularly as at that stage homosexuality was still illegal in New Zealand. The NZAF established the first anonymous testing and counselling service (vitally important in the context of the then illegality of homosexuality and fear that public knowledge would incite persecution). This program recognised the need to remove these fears and since then the government has also funded organisations for sex workers and IDUs even though both were illegal.

Non government organisations lobbied and achieved important legislative changes including:

- Decriminalisation of homosexual acts (1985-6)
- Decriminalisation of possession of needles and syringes (1987-8)
- Prohibition of discrimination on the grounds of disability and sexual orientation (1993)
- Decriminalisation of the sex industry (2002)

Mr Lindberg highlighted that there may be an assumption in the international community that as a developed nation, New Zealand has an 'anything goes' attitude regarding sexuality. However, he was quick to point out that in New Zealand it has been a hard battle to work with people's beliefs and attitudes and that to be done successfully it had to be done with care and respect. The difficulty in challenging people's long held beliefs and attitudes is an issue that can affect any country.

From 1984-1993 there was no legal protection for PLWHA. At this stage there was a reliance on changing public attitudes and education. In 1993 legislation was introduced and it is widely accepted that the public debate that had been had over the previous decade had made the introduction of legislation easier, although there was still some resistance at the political level. Mr Lindberg said that even at that stage it was important to have the support of a few courageous parliamentarians for a law that was viewed as controversial.

Mr Lindberg raised the important issue of the need for national human rights institutions to work with and encourage the media to take a responsible approach to reporting HIV/AIDS stories.

Mr Lindberg said that the New Zealand Human Rights Commission's primary responsibility is to educate the public about HIV/AIDS. It does this through consulting with gay and PLWHA groups. It runs seminars for employer organisations and issues plain language information fact sheets for the public. It has collaborated with the Ministry of Education on resources for school sex education programs.

It also accepts complaints of discrimination however the percentage of complaints in relation to HIV/AIDS is small. He noted that it is important to provide culturally appropriate support and prevention services for immigrants and refugees. New Zealand does accept refugees with a positive HIV status. He said New Zealand needs to do more work with its prison population, even though there is only a very small percentage of infection within prisons. Nonetheless, it must be targeted more effectively.

Session Two continued:

The second half of the session on 'national human rights institutions and HIV/AIDS' was chaired by Mr Karunakaran, Secretary General, Human Rights Commission of Sri Lanka and presentations were made by Mr Suyono Yahya, Indonesian National Commission for Child Protection, Ms Karen Toohey, Senior Investigation Conciliation Officer, Disability Complaints, Australian Human Rights and Equal Opportunity Commission and Mr Usaia Ratuvili, Senior Legal Officer, Fiji Human Rights Commission.

Mr Yahya spoke of the importance of national institutions in developing partnerships and trust among all stakeholders both domestically and internationally. He said that eliminating the stigmatization and discrimination associated with HIV was as just as important as finding a cure for the disease. As a Commissioner at the Indonesian National Commission for Child Protection, he saw stigmatization have a devastating impact on young lives.

Ms Toohey advised that at the time of the first cases of HIV/AIDS in Australia in the 1980's there was no effective legislation to provide for the protection of rights. There was however a national human rights commission with an effective commissioner who attracted substantial media attention. This media attention was used by the Commission to advocate for a whole of community response and for the government to fund community based groups. The commission participated in the whole of government response, the national hiv strategy, and worked to ensure community based groups had access to government and could provide input to a national response.

In 1992 the Disability Discrimination Act was proclaimed. The legislation was the result of active lobbying from the NGO community to give effect to the International Year of the Disabled. It provided a national framework and contained within it a broad definition of 'disability' (actual or imputed) that included HIV/AIDS by including coverage for 'presence of an organism capable of causing disease'. The legislation also provided protection associates of a person with a disability, thus providing protection from discrimination for those people caring for or working with people with HIV. It also covered discrimination against people on the basis of past, present or future disability, that is, where there was an assumption the person would develop the disease in the future.

Initially there was substantial money spent on media campaigns, education and distribution of information. The commonwealth also funded specialist disability legal services in each state to provide assistance to people with disabilities seeking to lodge complaints of disability discrimination.

Ms Toohey said the Australian experience closely reflected New Zealand's whereby the primary at risk category were gay men. The Australian Commission receives only a very small percentage of complaints relating to HIV/AIDS as does state anti-discrimination agencies. Initially complaints related to the area of employment and in particular disclosure of personal information, including a person's HIV status, by Commonwealth agencies, employment agencies, health providers and other service industries. Two HIV prisoners successfully pursued a state government in the hearing process alleging disability discrimination by being segregated, denied access to education services and by having their status disclosed to a wide range of staff and prisoners. Complaints regarding the provision of insurance services made up a high proportion of the complaints received. A number of these complaints were investigated and successfully conciliated resulting in industry wide changes to policy provisions. The Commission has also issued a guideline, in consultation with the insurance industry, on how insurance companies should consider statistical and actuarial information.

The complaint process has provided a means by which PLWHA have been able to address individual and broader social issues and to effect change in a number of areas of public life. While the process has been used by a small number of affected people, they have endeavoured to use the complaints process strategically to effect widespread change. Ms Toohey also said that the Australian Commission is also aware of a range of circumstances in

which the threat of a formal complaint has assisted in removing barriers to participation in public life.

At the time of writing this report the Australian Commission in its annual Human Rights Medal and Award ceremony gave the Law Award to NSW HIV Legal Centre. This award receives a high level of media attention and helps raise awareness and promote human rights issues.

Operating with a small staff of just one full-time solicitor and two part-time support staff, the HIV/AIDS Legal Centre provides people living with HIV/AIDS with legal advice, and conducts law reform and community education projects in their interests. Over the past year they provided legal advice and representation to 666 clients. Areas of legal advocacy undertaken by the Centre include discrimination and vilification complaints, unfair dismissal, superannuation and insurance claims, complaints relating to medical and health services, and guardianships. The legal advice they provide is free - appropriate given the economic hardship which is faced by many living with HIV/AIDS. They also provide a broad range of legal services, from face-to-face advice through to legal representation in casework matters, and a hospital outreach service.

While based in Sydney, the Centre conducts regular forums across rural, regional and remote New South Wales. They also work, support and consult with a whole range of government and non-government agencies, recognising that people living with HIV/AIDS have complex needs and are often dealing with a whole range of legal and non-legal issues.

Projects undertaken by the Centre, such as the Sentencing Kit and a resource kit for HIV positive women, have proved valuable in advancing the human rights of people living with HIV/AIDS.

Mr Usaia Ratuvili representing the Fiji Human Rights Commission said the Fiji Commission also regards HIV/AIDS as a human rights and health issue. Mr Ratuvili said that ignorance about HIV/AIDS and negative stereotyping in the community (including public officials and primary care givers) is a major challenge confronting the Commission. In June 2001 the Ministry of Health reported 77 confirmed cases of PLWHA in Fiji. However the Commission believes that this figure could be even higher but a more accurate account may be difficult to obtain given the fact that sex and related issues are taboo in Fiji and may not be discussed openly for fear of causing offence.

One area of particular concern for the Commission is prisoners and the prison authorities. Recently a prisoner had escaped from gaol and the Commissioner of Prisons made the announcement that the escapee was HIV positive. This set off a panic in the community and he was caught soon afterwards but his HIV status had become public. Soon after this event another prisoner contacted the Commission requesting it to disclose to him the identity of any prisoners with HIV so he and other prisoners could 'protect' themselves.

It was put to the Fiji Commission that prisoners shared tattoo machines (irrespective of such activities being prohibited by the authorities) and that this social activity within prison would place prisoners at risk of infection. The Commissioner of Prisons was asked by women's groups whether condoms were provided to the prisoners and he advised that it was not prison policy to do so (prison homosexuality is frowned upon by authorities and there is a pretence that it either does not exist or if does, there are only a few 'deviant' prisoners affected).

The idea of the danger posed to other prisoners by the common use of tattoo machines, although correct, also seems to provide a convenient and acceptable way of dealing with HIV infections in prison as one way of avoiding dealing with the reality of male to male sex.

In response to these issues the Fiji Commission has began to develop a policy on the rights of prisoners to information about HIV status (and other infectious diseases such as hepatitis). The crux of the issue for the Commission is to work with prison officials to respect the privacy of those prisoners with an HIV status and to also respect the right to life of prisoners generally. Dealing with issues such as male to male sex and addressing the issue of the tattoo machine will be vitally important. Solutions through prevention programs are achievable but will require great sensitivity and cooperation with authorities.

The Fiji Commission is established through the Fiji's 1997 Constitution (which was nearly abrogated in May 2000 after the coup). The Constitution contains a Bill of Rights Chapter and the enabling legislation that establishes the Human Rights Commission. It began operations in 1999.

The Commission has a mandate to promote and protect human rights through training and education, legislative review, advice to government and investigation and complaint handling. At present the Commission has a training officer whose task is to disseminate information and train people in relation to the International Conventions that relates to HIV/AIDS and the obligations that the State and by extension its citizens have to respect, protect and fulfil those obligations. It is developing seminars and courses that will be aimed at educating public officials and sensitizing them to the special needs and circumstances of PLWHA and to bring their regulations in conformity with the Bill of Rights under the Constitution. It also has launched a radio program to inform people of the Commission's role and what complainants can expect of the Commission. It is also working closely with NGOs including the AIDS Taskforce to channel some complaints to the Commission for investigation.

Mr Ratuvili welcomed the opportunity to attend this workshop and asked for his regional colleagues provide the Fiji Commission with information and advice on the issue.

In the open discussion after this session a common theme of concern for national human rights institutions was their level of accessibility (or lack of it) across the community. Large or difficult geographical areas, uneven communication systems, poor transport services, political instability and small NHRI budgets made it difficult for all citizens to have equal access to their commissions. It is equally true that accessibility can be difficult in large countries like India or small nations like Fiji. Many Commissions only have one office, usually located in the capital city. To address this issue the Costa Rican Ombudsman had initiated 'mobile responses' to outreach into small villages and towns. The Philippines Commission has established grassroots groups called 'Baranguy' that work with local authorities to run information seminars. The Sri Lankan Commission has ten regional offices around the island. The Indonesian delegate said that remoteness presented a problem to information distribution. Along with its central office in Jakarta it has a regional office in Aceh.

Working Group Session 'What strategies can national human rights institutions develop to advance HIV/AIDS related human rights?'

In this session participants took a 'functional approach' to addressing this question. That is, they focused on the mandated functions of NHRIs such as education/training, complaint-handling, monitoring and evaluation and applying them to issues associated with HIV/AIDS.

Participants regarded education and training as an important strategy to break down prejudice, stigmatisation, discrimination and misunderstanding. Participants noted that there appears to be a disparity in that the community says there are high levels of discrimination and stigmatisation, yet the low percentage of complaints relating to HIV related human rights does not seem to reflect this.

NHRIs need to collaborate with experts and non-experts in the non-government sector, medical, legal, religious, government and business sectors to effectively undertake its educational activities. Collaborating and seeking advice from PLWHA is also imperative. The development of 'codes of practice and conduct' within the medical, employment and education professions was regarded as beneficial. The Philippines Commission has used mass media, through radio, to send messages to the community. Its representative said that radio was an inexpensive medium of communication that has the potential to transmit to remote communities. Modules need to be incorporated into school curricula and informal education needs to be targeted, particularly as those children who do not go to school are often in the high risk category of infection due to sex work, trafficking and drug use. One suggestion was that the NHRI of a country should be the facilitator between government and non-government sectors to develop a HIV/AIDS national action plan and to assist in its implementation.

The recently established National Human Rights Commission of Mongolia said collaboration and partnership with other organisations was important to help it educate its public. It will be developing its HIV/AIDS policies and programs in cooperation with various UN agencies including UNAIDS, OHCHR and UNDP, as well as looking towards NGOs and the Asia Pacific Forum for ideas and assistance.

In relation to complaints and investigation the Australian Commission said it had a system of prioritising complaints which is particularly useful for HIV/AIDS based complaints. To improve accessibility, the Commission had also made its complaint form available on its website. It has also developed internal procedures to ensure that complaints are handled efficiently and effectively by its staff. It produced a 'complaint-handling manual' which has been used as a model by other national human rights commissions in the region and beyond.

The Australian Commission also revised its legislation to provide that complaints do not need to be in writing before it is accepted as a formal complaint. However anonymous complaints are not accepted. Along with Australia and New Zealand, Costa Rica has implemented a system of 'referrals'. That is, if a complaint does not fall within the jurisdiction of the human rights commission/ombudsman, staff must provide the complainant with options to other agencies or organisations that may be able to provide assistance.

The Indian Commission was able to self-initiate inquiries or investigations (suo moto) if there was an issue that it deemed to be a matter of public interest. That is, it does not need to rely on the receipt of an individual complaint to investigate a matter. It is also able to handle representative cases on behalf of groups as well as individual complaints. It allows the Commission to investigate beyond the surface of an individual case into systemic discrimination. This is similar to Australia which also has the power to conduct large scale public inquiries into human rights matters. These inquiries seek submissions and hold public hearings around the country to collect evidence. Recommendations are made on the basis of the inquiry's findings and are submitted to parliament and also made available to the public.

It was agreed that the resolutions or determinations of commissions, although in most cases are not legally binding were at least affordable to citizens (no payment is required) to access justice.

It was stressed that confidentiality of complaints was as a serious issue. The UNAIDS Temporary Adviser said that for many people in Namibia and other countries, it was not an option to be seen at a HIV/AIDS service/support organisation (including human rights institutions). The reason being that if you are seen within range of these organisations your HIV status is known or imputed, thereby creating gossip, prejudice and discrimination. In addition many people would be afraid they could not trust the service provider and staff in safekeeping their privacy, particularly in small villages and

communities. This point highlighted the importance of the need for some human rights institutions to develop a 'mobile service' strategy that meets with individuals out in the community rather than relying on individuals approaching its offices. This would be particularly useful to people with disabilities including PLWHA.

The Australian and New Zealand Commissions noted that in the early years of the disease confidentiality was of great concern to PLWHA/carers, however, it is now less of a concern because of more tolerant community attitudes developed through public education campaigns. However both Commissions have strict policies on disclosure and also have legislation that provides for 'victimisation' as a ground for complaint.

Participants emphasised the importance of national institutions in monitoring and evaluating government legislation, policies, plans, programs and practices along with other specialized agencies with special attention to what impact these matters have upon human rights.

Another important strategy discussed by participants was the use of 'best practice which simply means drawing upon practical experience from countries around the world, effective approaches, policies, strategies and technologies in relation to HIV/AIDS and adapting or modifying them to suit one's own country context if appropriate.

Session 3: Regional Issues and Cooperation

This session had keynote speaker Ms Anne Gallagher, Adviser on Trafficking High Commissioner for Human Rights discussing *'Conflicts and Challenges: Migration, Trafficking and HIV/AIDS with special reference to the role of NHRIs in the Asia Pacific'.* It was chaired by Ms Michaela Figueira, UNAIDS Temporary Adviser.

Ms Gallagher said that HIV/AIDS and migration are two defining features of the 21st Century. Current estimates place the number of persons infected with HIV to be around 36 million. At the same time, more that 100 million people move between countries each year. Many are leaving their homes voluntarily. However, many others move for reasons which are beyond their control including war, civil conflict, persecution and poverty.

There has been very little research or study in relation to the interconnection of migration, trafficking and HIV/AIDS. All three issues individually and collectively are very complex. Illegal or 'irregular' migrants face particular vulnerabilities because of the process surrounding mass human movement and migration. Irregular migrants are regarded as 'non-citizens' and therefore do not enjoy legal protection or entitlements. Irregular migrants are exposed to dangerous working and living conditions and lack access to health and support services. As a group they are rarely targeted for attention in national HIV/AIDS programs and 'fall between the cracks'.

Ms Gallagher made a useful distinction between people who are 'trafficked' and those whom are 'smuggled'. When people are 'trafficked' they have usually been tricked, coerced, or deceived (physically and/or psychologically) for purposes of exploitation. The trafficker and his/her network will usually continue contact with the trafficked person (s) upon arrival at the place of destination again through use of trickery, deceit and restraint. On the other hand those who are 'smuggled' are aware of the process and will provide payment for this illegal 'service'. The smuggler's aim is profit-driven and discontinues contact with the smuggled persons once payment is received and departure is organised. It is important to note that the distinction between the two categories is not always clear. An individual can be a smuggled migrant one day and a trafficked person the next.

Although there is little research on the relationship between trafficking and HIV/AIDS there is a widely-held assumption that trafficked persons are particularly vulnerable to infection. Ms Gallagher pointed to the example of Nepal, where the demand for girl-children in the brothels of India and other parts of Asia is fed by the myth that sex with a virgin will prevent or cure HIV/AIDS. Because of forced and unprotected sex, young girls trafficked into the sex industry often become infected with HIV/AIDS and are then expelled to their home country where they are ostracised and vulnerable to re-trafficking.

Ms Gallagher pointed out that some of the government policies developed to contain this phenomenon are problematic and rather than protecting victims, can further breach their human rights. For example one approach taken has been to restrict the right of movement of women and girls through legislation prohibiting emigration for women in relation to certain destinations. The intent may have been to end trafficking but the effect is discriminatory and in many cases directly unhelpful as it forces potential migrants to use the services of unscrupulous operators. Ms Gallagher said that these are the types of situations in which the role of a national human rights institution is so important to monitor and evaluate legislation within the prism of a human rights perspective and advise government accordingly.

As with the broader issues of HIV/AIDS and migration, there is a lack of reliable data on the scope and extent of trafficking. There has been significant research undertaken in South and South-East Asia and while numbers vary from study to study, the existence of a serious problem is beyond dispute. There is also agreement that trafficking is a phenomenon which effects and implicates all countries in the Asia Pacific in one way or another. The reality is that there exists a market for human misery and degradation in which there are buyers and sellers.

In many parts of Asia trafficking is also an internal problem usually involving a flow from rural to urban areas. One example is Sri Lanka, where the internal trafficking of children for commercial sex work is increasing and closely associated with the expansion of tourism. In China there is an estimate that 250,000 women and children have been victims of trafficking –

women are trafficked primarily to be sold as wives and children (mostly young boys) are taken for adoption.

Overall the national responses to trafficking, particularly by governments has been weak in this region. Although there appears to be a growing willingness for governments take up this issue more seriously. The first-ever regional anti-trafficking treaty was recently drafted under the auspices of the South Asian Association for Regional Cooperation (SAARC) and is expected to be adopted in January 2002. However there continues to be a significant gap between what is said and what is done by governments.

At the international level, trafficking is high on the political agenda. Both the UN Secretary-General and the High Commissioner for Human Rights have singled out trafficking as one of the major human rights challenges facing us today. A global treaty against trafficking was recently concluded under the auspices of the UN Commission on Crime Prevention and Criminal Justice. The US State Department's Country reports now issues its own annual evaluation of what other states are doing to combat trafficking. Many countries in the Asia Pacific including Australia, Cambodia, India and Thailand have amended or adopted legislation aimed at preventing trafficking, punishing traffickers and protecting victims.

Ms Gallagher said that the UN High Commissioner for Human Rights, Mary Robinson, has identified national institutions as an under-utilized resource in the fight against trafficking and they have a critical role to play by using their key education, advisory, complaints and investigation functions. Ms Gallagher strongly urged NHRIs to develop initiatives in this area and offered the OHCHR's support.

At a regional level, Ms Gallagher noted the progress that the APF has made to address trafficking by having its Members appoint an internal focal point on trafficking, by endorsing a regional workshop to be held on trafficking in South Asia in 2002, by referring the issue of trafficking to its Advisory Council of Jurists which is charged to responding to legal questions on human rights from the APF. Other initiatives have included the holding of this meeting to address the broader issue of HIV/AIDS and its interconnection with trafficking and its welcomed decision to develop a pilot project on cross border trafficking between the national human rights institutions of Nepal and India with assistance from UN agencies.

Finally Ms Gallagher reiterated that approaches and solutions to trafficking must of course be directed at different aspects of the problem. She noted, however, that attempts to deal with trafficking solely on the basis of its migration or law enforcement dimension are unlikely to work in the long-term. By definition, trafficked persons are victims of serious human rights violations. The violation of human rights inherent in abusive forms of migration such as trafficking makes it especially important that those working to promote human rights take up this issue with full force and vigor. The human rights community in particular has a special responsibility to ensure that trafficking and smuggling are not seen only as problems of

migration, problems of public order or problems of organized crime. These perspectives, are, of course, valid and important. However, in developing realistic and durable solutions we must be prepared to look further – to the rights and the needs of the individuals involved.

Working Group Session: 'How can NHRIs cooperate at the regional and sub-regional level on issues relating to HIV/AIDS?'

Discussion focussed on practical suggestions for cooperation including

Regional

- The APF Secretariat developing a webpage devoted to HIV/AIDS human rights related issues;
- Collect HIV national legislation as a resource for NHRIs
- Cooperate on identification of gaps and ineffective or detrimental legislation
- The APF develop staff exchanges between NHRIs to develop the professional and institutional capacity to effectively work on HIV/AIDS programs, policies and advice;
- Information exchange on institutional activities particularly in the areas of education, investigation, complaints and advisory services relating to HIV; and
- Cooperation on joint research

Sub Regional

- The APF to facilitate cooperation between countries with common borders (particularly South Asia).

There was also the suggestion that within national human rights institutions, the leadership must incorporate staff training on HIV/AIDS developments, issues and international/domestic law.

7. Workshop Outcomes

The major immediate outcome of the Workshop was the Concluding Statement which is attached at Appendix Three. This document is intended to be a practical guide to follow-up action for national institutions in the region. In addition these outcomes provide a useful tool to evaluate the stated objectives of the workshop against the actual results.

The information below outlines the specific objectives of the Workshop together with the results achieved.

- **Objective 1:** to increase the understanding of the role of national human rights institutions in addressing HIV/AIDS-related human rights issues through (a) enabling discussion of issues (b) facilitating joint activity on issues and in areas of mutual interest and commitment, and (c) encouraging the development of joint projects, training programs and staff exchanges

  a) The workshop, in bringing together representatives of national human rights institutions, UNAIDS, OHCHR, UNDP, governments and non-government organisations created a dynamic and open environment for the exchange of information and ideas about the role of national human rights institutions in addressing HIV/AIDS within a human rights perspective. In particular the participants applied the core functions of NHRIs such as education, investigation and resolution of complaints, advice and monitoring to discussions.

  b) and c)

  The Workshop endorsed the APF's decision to undertake joint activity in relation to HIV/AIDS for projects planned for the next twelve months including:

  - Developing and implementing staff exchanges in relation to activities around HIV/AIDS;
  - Incorporating HIV/AIDS into the APF's regional workshop on Trafficking to be held in South Asia in 2002; and
  - Incorporating HIV/AIDS into a proposed pilot project between the human rights institutions of Nepal and India in relation to cross-border trafficking.

The above projects also have the support of the OHCHR.

- **Objective 2*:*** to develop practical strategies for national human rights institutions to use in addressing HIV/AIDS-related human rights issues

  Forum Members discussed throughout the workshop some of the strategies it has put in place to address HIV/AIDS-related human rights issues. For example the Indian Commission organised a national conference on human rights and HIV/AIDS in November 2000.

  However Forum Members also agreed that the United Nations International Guidelines on HIV/AIDS and Human Rights was a useful tool to use in developing their own activities.

  Forum Members at the Workshop also welcomed the practical initiative of UNAIDS and the OHCHR to develop guidelines to assist national human rights institutions and requested the APF Secretariat, in collaboration with UNAIDS, OHCHR and NGOs to identify, collect, compile and disseminate material on innovative projects and best practices undertaken by NHRIs on human rights and HIV/AIDS.

8. Evaluation

Informal feedback from participants indicated that the Workshop was successful in its organisation and in providing exchanges of information between NHRIs in relation to HIV/AIDS related activities. An important dimension of the Workshop that does not lend itself to quantification was the opportunity it provided for representatives of national institutions, governments and NGOs to meet and exchange views at both a personal and institutional level. It is likely that the personal contacts developed through the workshop will facilitate important networks that will further works towards the achievement of the workshop's objectives.

9. Monitoring

The Forum's annual meeting provides an important and sustainable mechanism for the monitoring of the workshops outcomes. In addition the APF Secretariat will be regularly assessing outcomes against future activities.

10. Required Action

To achieve long-term and sustainable results the following action is recommended:

- Distribution of the workshop conclusions to the OHCHR, non-governmental organisations and governments and follow-up the Workshop's recommendations;
- Encouragement and financial support to be provided through the United Nations system and other donors for further workshops and technical cooperation programs;
- Governments and other funding agencies or bodies to seriously consider the various proposals as possible subjects for technical cooperation programs.

Appendix 1

ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

Regional Workshop

HIV/AIDS AND HUMAN RIGHTS: THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE ASIA PACIFIC – PARTICIPANT LIST

7-8 OCTOBER 2001, MELBOURNE, AUSTRALIA

1. MEMBERS OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

Institution	Delegate Name	E-mail address	Tel No:	Fax No:
1. AUSTRALIAN HUMAN RIGHTS & EQUAL OPPORTUNITY COMMISSION	Ms Karen Toohey Senior Investigation/Conciliation Officer	karentoohey@humanrights.gov.au	61 2 9284 9746	61 2 9284 9689
2. FIJI HUMAN RIGHTS COMMISSION	Mr Usaia Rakuka Ratuvili Senior Legal Officer	uratuvili@humanrights.org.fj info@humanrights.org.fj	679 308 577	679 308 661
3. NATIONAL HUMAN RIGHTS COMMISSION OF INDIA	Dr Lalit M Nath World Health Organisation and Core Group on Health	lalitnath@vsnl.com	91 11 4693282	91 11 336 6537
4. NATIONAL HUMAN RIGHTS COMMISSION OF INDONESIA represented by the NATIONAL COMMISSION FOR CHILD PROTECTION	Mr Suyono Yahya Co -Chairman	syahy@unicef.id info@komnas.go.id	62 21 819 0686	62 21 392 5227

5. THE NATIONAL HUMAN RIGHTS COMMISSION OF MONGOLIA	Mr Natsag Dashdorj Senior Officer	DashdorjN53@yahoo.com	976 11 329711	976 11 320284
6. NATIONAL HUMAN RIGHTS COMMISSION OF NEPAL	**Mr Das Gouri Shankar Lal** Commissioner	nhrc@ntc.net.np	977 1 525842	977 1 547973
7. NEW ZEALAND HUMAN RIGHTS COMMISSION	Mr Warren Lindberg Commissioner	warrenl@hrc.co.nz	64 9 3758609	64 9 3773593
8. PHILIPPINES COMMISSION ON HUMAN RIGHTS	Justice Aurora Navarrete Recina Chairperson	apnr@chr.gov.ph	63 2 928 56 55	63 2 929 01 01
9. HUMAN RIGHTS COMMISSION OF SRI LANKA	Mr Chakrawarthy Karunakaran Ramalingam Secretary	sechrc@sltnet.lk	94 1 685337	94 1 696470

2. RELEVANT INSTITUTIONS

Institution	Delegate Name	E-mail address	Tel No:	Fax No:
10. ISLAMIC HUMAN RIGHTS COMMISSION OF IRAN	Dr Meyandari Hosein Hassan Researcher	ihrc@majlis.ir	9821 204 6242	9821 204 0541
11. OMBUDSMAN OF COSTA RICA *(DEFENSORIA DES LOS HABITANTES)*	Mr Carlos Valerio Ombudsman	cajovamo@racsa.co.cr or valeriocarlos@hotmail.com	506 393 8274	506 259 0992
12. THE CONTROL YUAN OF THE R.O.C. –				

(HUMAN RIGHTS PROTECTION COMMITTEE)	Lian Yueh-Rong Senior Secretary	lian@ms.cy.gov.tw	886 2 23413183 ex 130	886 2 23568588
13. UNITED NATIONS DEVELOPMENT PROGRAMME, NEPAL	Alka Rajouria Rijal	arijal@mail.com.np	01 977 1 431 309	
13. EQUAL OPPORTUNITIES COMMISSION, HONG KONG	Ferrick Chu	ferrick@eoc.org.hk	852 2106 2157	852 5211 8142

3. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND UNAIDS (SPONSORS)

Institution	Delegate Name	E-mail address	Tel No:	Fax No:
14. THE JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS (UNAIDS)	Dr David Miller UNAIDS Country Program Adviser, India Ms Michaela Figueira, Temporary Adviser, UNAIDS	 aidslaw@mweb.com.na	 264 61 223356	 264 61 234953
15. OFFICE OF THE HIGH COMMISISONER FOR HUMAN RIGHTS (OHCHR)	Ms Anne Gallagher Adviser on Trafficking to the High Commissioner for Human Rights	agallagher.hchr@unog.ch	41 22 917 9210	
16. OHCHR	Ms Lisa Oldring Human Rights Officer	loldring.hchr@unog.ch	41 22 917 9406	41 22 917 9010

4. OTHER UN AGENCIES

Institution	Delegate Name	E-mail address	Tel No:	Fax No:
17. UNITED NATIONS DEVELOPMENT PROGRAMME, NEPAL	Alka Rajouria Rijal	arijal@mail.com.np	01 977 1 431 309	
18. Mainstreaming Gender Equity Programme-UNDP-Nepal	Indu Pant-Ghirune	gendueg@mas.com.np	977 7 541 499	
19. UNITED NATIONS DEVELOPMENT PROGRAMME, NEPAL	Bharati Silawal-Giri	bharati.silawal@undp.org	977 1 523 200	977 1 523 991 977 1 523 986

5. REGIONAL GOVERNMENTS

Country	Delegate Name	E-mail address	Tel No:	Fax No:
20. Australia	Ms Amanda Harris International Programs Branch AusAID	amanda_harris@ausaid.gov.au	61 2 6206 4203	

6. GOVERNMENTS

Institution	Delegate Name	E-mail address	Tel No:	Fax No:
21. IDHRB-Mapping exercise on HIV/AIDS Law, Ethics and Human Rights	Tahnia Shahid	idhrb@bangla.net	88 02 862 2219 88 02 862 2080	88 02 862 2219
22. IDHRB- Ministry of Law, Bangladesh	K.M Haque Kaiser	idhrb@bangla.net	88 02 862 2080	88 02 862 2269

7. OTHER INSTITUTIONS

Institution	Delegate Name	E-mail address	Tel No:	Fax No:
23. Information Publication and Public Affairs Office (IPPAO), Philippines	Atrlene T Garcia- Esplana	atgarcia@mail.upm.edu.ph atgesplana@yahoo.com	632 5210 184 632 525 3802 632 525 9825	632 5210 184 632 525 3802

8. NON-GOVERNMENT ORGANISATIONS

Institution	Delegate Name	E-mail address	Tel No:	Fax No:
24. Malaysian AIDS Council	Selvarajah "Joe" Selvaretnam	joe@mac.org.my	603 4045 1033	603 4042 6133
25. AIDS COUNCIL of NSW (ACON)	Michael Reid	manu@hn.ozemail.com.au	61 2 6622 1555	61 2 6622 1520
26.New Zealand AIDS Foundation	Matthew John Soeberg	Matt.soeberg@nzaf.org.nz	64 9 303 3129	64 9 309 3149

Institution	Delegate Name	E-mail address	Tel No:	Fax No:
27. CARE, USA	Veronica Magar	magar@care.org	662 576 1552 4	
28. Lawyer's Collective HIV/AIDS Unit, INDIA	Sharan Pramar Anand Grover	aidslaw@vsnl.com	91 22 270 2563	91 22 270 2563
29. Marie Stopes Clinic Society, Bangladesh	Dkhtar Imam Wahiduzzaueau Chowdhusng	mscs@citecho.net mscs3@citechco.net	0088 02 811 5777 0088 02 812 3068	
30. Community Action Centre, Nepal	Tulasa Lata Amatya	doesburg@hotmail.com	977 1 975 086 (off) 977 1 370 179 (res)	977 1 370 999

31. Persons with HIV/AIDS Rights Advocacy Association, Taiwan	Ivory Yi-Hui Lin	praatw@yahoo.com.tw	886 2 2311 033	886 2 2375 9150
32. Institute of Indonesian Healthy Life Movement	M.Nasser	nasserkelly@hotmail.com	62 21 570 9526	62 21 521 0771
33.. ICW/INP+, India	Celina D'Costa	dcostacelina@rediffmail.com	98 461 208 39	
34.CAS, UP Manila Padre Faura, Manila	Josefina G. Tayag	jgtayag@yahoo.com jgtayag@edsamail.com.ph	632 374 1972	632 374 1972
35. The HIV/AIDS Collaboration, Thailand	Natarakwa Skunodom	Ngs3@cdc.gov	591 8358	
36. ANEX (Assoc.of NSPs), Australia	John Ryan	j.ryan@anex.org.au	61 3 9417 4838	
37.Organisation for the Protection of Social Environment, Sri Lanka	Mallika R. Ganasinahe	mallika@lanka.ecom.lk	699 204/ 864 926	
38. Church of Chirst in Thailand AIDS Ministry	Julalak Khampeera Rev. Sanan Wutti	cam@chmai2loxinfo.co.th	66 53 306 310	66 53 306 313
39.Clearsky Project	Mr. Prasert Dechaboom	clearsky@cscoms.com	66 53 865 600	66 53 865 600

40.Federation for Religious	Mary McCarthy		675 235 1606	

9. ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS - SECRETARIAT

Institution	Delegate Name	E-mail address	Tel No:	Fax No:
41. Asia Pacific Forum of National Human Rights Institutions, Secretariat	Mr Kieren Fitzpatrick, Director	kierenfitzpatrick@humanrights.gov.au	61 2 9284 9673	61 2 9284 9825
42. Asia Pacific Forum of National Human Rights Institutions, Secretariat	Ms Pip Dargan, Coordinator – Programs and Projects	pipdargan@humanrights.gov.au	61 2 9284 9644	61 2 9284 9825
43. Asia Pacific Forum of National Human Rights Institutions, Secretariat	Mr Stephen Clark, Research Assistant	stephenclark@humanrights.gov.au	61 2 9284 9877	61 2 9284 9825
44. Asia Pacific Forum of National Human Rights Institutions, Secretariat	Ms Sarah Bergin, Researcher	sarahbergin@humanrights.gov.au	61 2 9284 9600	61 2 9284 9825

PLEASE NOTE THAT THE LIST OF PARTICPANTS MAY NOT BE FULLY UPDATED DUE TO LAST MINUTE CHANGES

Appendix 2

6th International Congress on AIDS in Asia and the Pacific

HIV/AIDS and Human Rights: The Role of National Human Rights Institutions in the Asia Pacific

Melbourne, Australia
7-8 October 2001

Program

SUNDAY 7th OCTOBER

Session One: The United Nations and HIV/AIDS

Chair	Mr Kieren Fitzpatrick, Director, Asia Pacific Forum of National Human Rights Institutions
9:00 - 9:15	***Welcome and introduction of speakers***
	Opening Remarks: Dr David Miller, UNAIDS Country Program Adviser, India
9:15 - 9:30	Ms Lisa Oldring, United Nations Office of the High Commissioner for Human Rights
	Taking HIV/AIDS seriously: The Role of National Human Rights Institutions
9:30 – 9:45	Ms Michaela Figueira, Temporary Adviser, UNAIDS, (Coordinator, AIDS Law Unit, Legal Assistance Centre, Namibia)
	HIV/AIDS and Human Rights
9:45 – 10:00	Mr Carlos Valerio, Ombudsman of Costa Rica
	National example: Ombudsman and the advancement of human rights in the context of HIV/AIDS
10:00 - 10:30	Open discussion – questions and answers
10:30 – 11:00	Morning Tea

Session Two:	National Human Rights Institutions and HIV/AIDS

Chair: Justice Aurora Navarette-Recina, Chair, Philippines Human Rights Commission

11:00 - 11:15 Mr Lalit Nath, National Human Rights Commission of India

HIV/AIDS as a Human Rights Issue: Response of the Indian National Human Rights Commission

11:15 – 11:30 Professor Das Lal, Member, Human Rights Commission of Nepal

11.30 – 11:45 Mr Warren Lindberg, Commissioner, New Zealand Human Rights Commission

Establishing a supportive and preventative legal environment

11:45 – 12:30 Open discussion – questions and answers

12:30 – 1:30 Lunch

Session Two:	Continued

Chair: Mr Ramalingah, Secretary, Human Rights Commission of Sri Lanka

1:30 – 1:45 Mr Suyono Yahya, Indonesian National Commission for Child Protection

1:45 – 2:00 Ms Karen Toohey, Senior Investigation Conciliation Officer, Disability Complaints, Australian Human Rights and Equal Opportunity Commission

2:00 - 2:15 Mr Usaia Ratuvili, Senior Legal Officer, Fiji Human Rights Commission

2:15 - 3:00 Open discussion – questions and answers

3:00 - 3:30 Afternoon Tea

3:30 - 4:30 Working Group on

- 'What strategies can national human rights institutions develop to advance HIV/AIDS related human rights'

4:30 - 5:00 Report back of Working Groups to plenary

MONDAY 8th OCTOBER

Session 3:	Regional issues and cooperation

Chair: Ms Michaela Figueira, Temporary Adviser, UNAIDS

9:00 'Housekeeping'

9:15 –9:45 Keynote Speaker: Ms Anne Gallagher, Adviser on Trafficking to the United Nations High Commissioner for Human Rights

'Conflicts and Challenges: Migration, Trafficking and HIV/AIDS with special reference to the role of NHRIs in the Asia Pacific'

9:45 – 10:30 Open discussion: questions and answers

10:30 – 11:00 Morning Tea

11:00 – 12:00 Working group on:

- 'How can NHRIs cooperate at the regional and sub-regional level on issues relating to HIV/AIDS?'

12:00-12:30 Report back of working groups to plenary

12:30-1:30 Lunch

Session 4:	Conclusion

Chair: Mr Lalit Nath, National Human Rights Commission of India

1:30 – 3:00 Adoption of Closing Statement

3:00 – 3:15 Concluding Remarks

Mr Kieren Fitzpatick
Ms Lisa Oldring

Appendix 3

HIV/AIDS and Human Rights: The Role of National Human Rights Institutions in the Asia Pacific

7th – 8th October 2001, Melbourne, Australia

CONCLUDING STATEMENT

Introduction

1. The regional workshop of the Asia Pacific Forum of National Human Rights Institutions, consisting of the individual Forum members representing the national human rights commissions of Australia, Fiji, India, Indonesia, Mongolia, Nepal, New Zealand, Philippines and Sri Lanka, met in Melbourne, Australia from 7th to 8th October 2001.

2. The Forum expressed its gratitude to the organizers of the 6th International Congress on AIDS in Asia and the Pacific (ICAAP) for the invitation to participate in the Congress. The Forum also expressed its sincere thanks to the Joint United Nations Programme on HIV/AIDS (UNAIDS), the Office of the High Commissioner for Human Rights and the AIDS Council of NSW for co-sponsoring the workshop and their financial and technical support. Forum members and participants also expressed their appreciation for the efforts of the Secretariat of the Forum for their work in the organisation of the meeting.

3. The Forum warmly welcomed the participation of representatives from the Ombudsman of Costa Rica, the Hong Kong Equal Opportunities Commission, the Islamic Human Rights Commission of Iran and Control Yuan of R.O.C. (Taiwan), regional governments, international organisations and international, regional and national non-governmental organisations (NGOs) and other delegates attending ICAAP.

Conclusions

4. Forum members recalled the resolutions of the United Nations Commission on Human Rights[7] and the United Nations Security Council,[8] as well as the United Nations Millennium Declaration[9] and the United Nations General Assembly Declaration of Commitment on HIV/AIDS (2001) which emphasize the increasing challenges presented by HIV/AIDS and the need for intensified efforts to ensure universal respect for and observance of human rights and fundamental freedoms for all, to reduce vulnerability to HIV/AIDS and to prevent HIV/AIDS related discrimination and human rights violations.

5. Forum members welcomed the United Nations International Guidelines on HIV/AIDS and Human Rights[10] and called on States, international organisations and NGOs to utilise the Guidelines as a tool to promote the realisation of human rights in the context of HIV/AIDS.

[7] UN Commission on Human Rights resolutions 1999/49 E/CN.4/RES/1999/49, 2001/33 E/CN.4/RES/2001/33 and 2001/51 E/CN.4/RES/2001/51.
[8] UN Security Council resolution 1308 S/RES/1308 (2000).
[9] UN Millennium Declaration A/55/L.2.
[10] Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS HR/PUB/98/1.

6. Forum members also recalled the conclusions of the Sixth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, held in Colombo, Sri Lanka from 24th to 27th September 2001 in which Forum members agreed that HIV/AIDS should not be viewed solely as a health issue but also as a human rights issue "because of its serious economic, social and cultural implications. Forum members, therefore, committed themselves to combat discrimination and human rights violations on the basis of HIV/AIDS and called upon the assistance of the United Nations, governments and NGOs in the performance of this task."[11]

7. Forum members agreed that national human rights institutions for the protection and promotion of human rights, in partnership with people living with HIV/AIDS, the United Nations, States, NGOs and other stakeholders can play a central role in the realisation of human rights in the context of HIV/AIDS as part of the global response to HIV/AIDS.

8. Forum members agreed that the main areas of their focus should be:

    (i) identifying and advocating legal reform to ensure a supportive legal framework for the protection and promotion of human rights in the context of HIV/AIDS;
    (ii) strengthening mechanisms for the addressing and redressing HIV/AIDS related human rights violations;
    (iii) facilitating educational activities to combat HIV/AIDS related stigma and discrimination and protect and promote human rights in the context of HIV/AIDS;
    (iv) assisting in the building of national capacities for dealing with HIV/AIDS human rights issues; and
    (v) cooperating and collaborating with each other on issues of common concern.

9. Forum members welcomed the initiative of UNAIDS and the OHCHR to develop guidelines to assist national human rights institutions and requested the Forum Secretariat, in collaboration with UNAIDS, OHCHR and NGOs, to identify, collect, compile and disseminate materials on innovative projects and best practices undertaken by national human rights institutions on human rights and HIV/AIDS.

10. Forum members recalled their commitment to the protection and promotion of the human rights of all vulnerable groups especially those of women and those of children and noted

[11] Paragraph 10, Sixth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, www.apf.hreoc.gov.au.

that in the implementation of its projects on both HIV/AIDS and trafficking, due regard should be given to the intersection between these two issues.

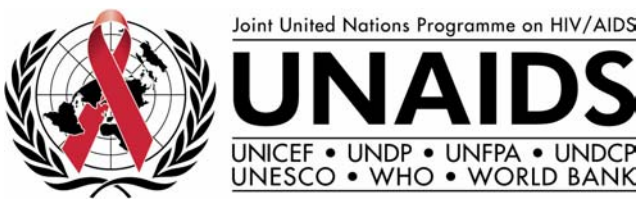
11. Forum members requested the Forum Secretariat to develop and seek funding for the implementation of practical projects by Forum members to combat HIV/AIDS related stigma and discrimination and promote human rights in the context of HIV/AIDS at the national level.

12. Forum members requested the Forum Secretariat to continue its focus on human rights and HIV/AIDS issues and report back to the Forum.

The Concluding Statement will be available on the Forum website soon.

http://www.apf.hreoc.gov.au

Appendix 4



HIV/AIDS and Human Rights: The Role of National Human Rights Institutions in the Asia Pacific

Melbourne, Australia
7-8 October 2001

Background Note:
HIV/AIDS and Human Rights

Ms. Miriam Maluwa, UNAIDS Law and Human rights Adviser[12]

Content:

[12] LL.B (Hon.) & LL.M (London, UK); 20 Avenue Appia 1210 Geneva Switzerland; E-mail- maluwam@unaids.org; Tel- (41) (22) 791 4675/4563; Fax- (41) (22) 791 4746

1. **Introduction**

Intensified action by the UN system and international, national and community partners is urgently needed to contain the HIV/AIDS pandemic. The commitment of National Human Rights Institutions to further promoting and protecting human rights as part of the global response to HIV/AIDS is crucial. The exchange of ideas and discussion at this workshop creates an opportunity for planning collaborative, inter-related and expanded activities.

3. Health and Human Rights

It has been increasingly recognised that health and human rights are complementary, inter-dependent and mutually reinforcing, rather than conflicting, goals. Both share the common objective of promoting and protecting the dignity and wellbeing of all individuals.

A human rights framework is central to the response to the epidemic.

In the last couple of years, the success of various HIV/AIDS interventions has been shown to be directly proportional to the degree to which human rights are promoted and protected. These realities, demonstrated time and again over the course of the epidemic, have made it clear that the protection and promotion of human rights must form an integral component in all responses to the HIV/AIDS epidemic.

Universally recognized human rights principles should guide decision-makers in formulating the direction and content of HIV related policy and forms an integral part of all aspects of national and local responses.

4. Why are Human Rights relevant to HIV/AIDS?

The promotion and protection of human rights is a crucial element in the response to HIV/AIDS because HIV/AIDS thrives upon and, in turn, worsens situations that are prone to human rights abuse.

There are at least three inter-related ways in which promotion and protection of human rights are important in relation to HIV/AIDS. These relate to impact, response and vulnerability:

1. *Impact*- Due to the stigma associated with HIV/AIDS and discrimination, the rights of people living with HIV/AIDS are frequently violated solely because they are known or presumed to have HIV/AIDS. People with HIV/AIDS are refused employment, education, health services, the right to get married and live in a family, and are even sometimes killed because of their sero-positive status.[13]

   This violation of their rights increases the negative impact of the epidemic because instead of people only worrying about their infection they also have to worry about the further loss of rights because of their HIV status.

[13] December 1999, a young community volunteer, Ms. Gugu Dlamini, was stoned and beaten to death by neighbors in her township near Durban, South Africa after she had spoken out openly on World AIDS Day about her HIV infection.

Discrimination against people living with HIV/AIDS, or those thought to be infected, is a violation of their human rights. All people are worthy of equal respect and dignity whatever their situation, including their health status.

Discrimination also compromises the health of the general population. When HIV infection leads to stigmatization and discrimination, those affected, actively avoid detection and contact with health and social services. The result is that those most needing information and, education and counseling are driven underground.

Safeguarding human rights within the context of HIV/AIDS is, therefore, not only vital in itself but it is pragmatic. Its aim is to encourage those who are infected to cooperate with the authorities so as to slow down the epidemic. This can be achieved only if people have assurances that their rights will be respected.

2. *Vulnerability*: Promoting and protecting human rights is a way of addressing the underlying social, cultural and economic conditions that make people vulnerable to HIV infection.

Some groups of people, for example, women, children, men who have sex with men, sex workers, injection drug users, refugees and migrants, prisoners, may be more vulnerable to contracting HIV because of their legal status or because they often are unable to realize their civil and political, and economic, social and cultural rights. HIV/AIDS prevention and care are hindered, for example, where women do not have the legal power to make choices in their lives and to refuse unwanted sex, where people are persecuted because of their sexual orientation, where children cannot realize their rights to education and information.

3. *Response*: Promoting and protecting human rights provides a more supportive environment for developing national response to AIDS, including the developing of targeted prevention and care programmes. The freedoms of speech and association, and the rights to education and information (including about HIV transmission), are crucial for effective prevention and care activities by individuals and community-based groups. Freedom from discrimination makes people with HIV less fearful of disclosing their status and organising themselves in-groups or associations to contribute to the response.

5. Which human rights?

Human rights principles which are essential for an effective response to HIV/AIDS are not separate rights but rather are the same found in the existing international instruments such as the Universal Declaration on Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ECSCR) and International Covenant on Civil and Political Rights (ICCPR), the International Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention Against Torture (CAT) and the Convention Against Racial Discrimination (CERD).

Regional Human rights instruments, namely, the African Charter on Human and People's Rights (African Charter), the American Convention on Human rights and the European Convention on the Protection of Human Rights and Fundamental Freedoms are also most relevant.

These human rights norms are legally binding. As members of the United Nations and as States Parties to international human rights treaties, States have obligations to *respect protect* and *fulfil* human rights. The obligation to *respect* requires States to refrain from interfering directly or indirectly with the enjoyment of human rights. [14]The obligation to *protect* requires States to take measures that prevent third parties from interfering with human rights [15] and the obligation to *fulfil* requires States to adopt appropriate legislative, budgetary, judicial, promotional and other measures for the full realisation of human rights.[16]

4. Analysis of HIV related violations of Human rights as contained in international human rights instruments

The following rights contained in the various human rights instruments are most relevant in order to protect the dignity of those infected and affected by HIV AIDS, prevent the spread of infection and provide adequate care and support for those infected:

Non discrimination

(Article 2 of the Universal Declaration on Human Rights; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on Elimination of All Forms of Discrimination Against Women; Convention on the Rights of the Child; and the African Charter)

This entails that People should not be discriminated against based on their actual or perceived HIV/AIDS status. People should be protected against mistreatment if they seek assistance or medical care when HIV positive.

All international instruments and the African Charter prohibit discrimination based race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, fortune, birth or other status.

UN Commission on Human Rights resolutions[17] have called *inter alia* for the UN Secretary-General to submit a report on international and domestic measures taken to protect human rights in the context of HIV/AIDS; for States to review their legislation, practices and policies and to ensure that they are in conformity with international human rights standards and norms; and for the special protection of vulnerable groups.

Importantly, these Resolutions have stated that the term "or other status" in non-discrimination provisions in international human rights instruments should be interpreted to cover health status, including HIV/AIDS", and has confirmed that "discrimination on the

[14] For example, refraining from identifying or limiting equal access of all persons, including prisoners, minorities, illegal immigrants preventive and curative HIV/AIDS heath services and care or abstaining from enforcing discriminatory practices as State policy.

[15] For example, adopting of legislation to ensure the equal access to health care and health related services provided by third parties; to control the marketing of medicines and medical equipment and to ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct.

[16] For example, adoption of a national health policy with a detailed plan; promotion of HIV/AIDS education, as well as information campaigns and vaccine research

[17] UN Commission on Human Right resolution 1999/49

basis of HIV/AIDS status, actual or presumed, is prohibited by existing human rights standards."

"…Discrimination on the basis of AIDS or HIV status, actual or presumed, is prohibited by existing international human rights standards, and that the term "or other status" in non-discrimination provisions in international human rights texts should be interpreted to cover health status, including HIV/AIDS." **.** [18]

Thus, no one should be discriminated against on the basis of HIV/AIDS or suspicion of it.

However, persons living with HIV/AIDS, their families and associates are often discriminated against in the exercise of their rights, due to their health status. Furthermore, existing discrimination against certain disadvantaged groups increases their vulnerability to the risk of HIV infection, as well as the likelihood that they will be targeted for coercive measures, such as mandatory testing, arbitrary arrest, segregation, detention and deportation. Such groups include women, children, minorities and indigenous populations, those living in poverty, migrants and other aliens, men who have sex with men, sex workers, and injecting drug users.

There is also double jeopardy, for example, in Africa, as elsewhere in the world, girl children face even greater discrimination in these terms than boy children.

Right to equality between men and women and equality of all persons

(Article 7 of the Universal Declaration on Human Rights; Article 3 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; Articles 3, 15 & 16 of Convention on Elimination of All Forms of Discrimination Against Women; Articles 3 & 19 of the African Charter)

The highest rates of infection are now occurring among women and girls. Biological, social, political and economic factors, including existing discrimination against women in all aspects of their lives (cultural, economic and social), increases the vulnerability of women and girls to HIV infection and intensifies the impact the disease has on them.

Women and girls often suffer from inequality in access to HIV/AIDS education and information, means of prevention, and health services. In relation to reproductive health care, they are often subject to hidden or mandatory testing for HIV and if found HIV positive, to coerced abortions and sterilization. Their unequal status in sexual, marital and reproductive relations make it difficult or impossible to negotiate safe sex. Their unequal status with regard to property and inheritance rights, as well as access to employment, credit and social support, make it difficult or impossible to end relationships that threaten them with infection. The sexual violence and coercion they suffer increase their vulnerability.

Women and girls carry a disproportionate share of caring for the sick, whether or not infected themselves, and often have no means to support the family if they are abandoned due to infection or if they lose their husband to AIDS.

[18] UN Commission on Human Rights Resolution 1995/44 and Sub-Commission Resolution 1995/21

In Courts, people living with HIV or suspected of it who have been found guilty of criminal offenses have been given harsher sentences than similarly convicted persons without HIV, thus reflecting the discrimination which occurs in the context of HIV/AIDS. Furthermore, criminal provisions regarding the intentional or negligent exposure of others to HIV have suffered from insufficient precision in terms of legal certainty and foreseeability, as well from problems of proof and discriminatory implementation.

Right to life

(Article 6 of the International Covenant on Civil and Political Rights; Articles 4 and 6 of Convention on the Rights of the Child; Article 3 of the Universal Declaration of Human Rights; Article 4 the African Charter)

As a disease with no cure with high rates of transmission and devastating personal and social impact, HIV/AIDS presents an urgent and compelling threat to the right to life. However, States often do not take sufficient positive measures to ensure the protection of the right to life, including the prevention of epidemics such as HIV and the prolongation of life, such as the lives of those living with HIV/AIDS.

Furthermore, people living with HIV/AIDS or merely suspected of it may be subject to violence, including the arbitrary deprivation of their lives,[19] due to the fear and stigma associated with HIV/AIDS.

In light of the rapid rate of transmission among children and the devastating impact of HIV/AIDS on them, States should give priority and urgency to allocation of resources for measures by which to prevent further transmission, provide care and support for children and families affected by HIV/AIDS, and reduce the impact of the disease.

[19] Witnessed by the stoning to death of an HIV+ volunteer Gugu Dhlamini, in Kwazulu Natal South Africa

Right to freedom from torture, cruel, inhuman or degrading treatment and Freedom from slavery, servitude

(Articles 4 & 5 of the Universal Declaration on Human Rights; Articles 7 & 8 of the International Covenant on Civil and Political Rights; Articles 37 & 39 of the Convention on the Rights of the Child; Article 6 of Convention on Elimination of All Forms of Discrimination Against Women and Article 5 of the African Charter)

People living with HIV/AIDS are often segregated in schools and hospitals, including under cruel and degrading conditions. Cases of degrading treatment are particularly significant in prisons where inmates are often mandatorily tested, and if found HIV-positive, isolated or put in solitary confinement, often without their basic needs being met, including access to sufficient medical care.

All non-consensual sex and sexual violence against women and girls, including rape, coerced sex, sexual abuse, trafficking, forced prostitution and harmful traditional practices are a violation of the right of freedom from torture, cruel, inhuman or degrading treatment and Freedom from slavery, servitude.

Further, this violation increases their vulnerability to infection because neither under these circumstances they have little or no access to HIV prevention information or means nor can they avoid unsafe sex. Women and children sold or forced into marriage, servitude or bonded labor may also be unable to avoid coerced sex or rape that threatens them with infection with HIV.

Sex workers often lack access to prevention and care programs due to discrimination against them and criminalization of sex work. Even where they have such access, they often do not have the power to negotiate safe sex.

As the rates of HIV infection among women and girls continue to rise, it is crucial for women, including women living with HIV (a) to participate fully in the development and implementation of policies concerning all aspects of the response to the epidemic at both the national and international levels; (b) to advocate for their specific needs in this response; and (c) to empower themselves by forming, political, legal and social alliances and support groups that can address the challenges the epidemic poses for them.

Right to liberty and security

(Article 3 of the Universal Declaration on Human Rights; Articles 9 & 10 of the of the International Covenant on Civil and Political Rights; Article 6 of the African Charter)

In the context of HIV/AIDS, deprivations of liberty and security are often done in the name of public health. This is despite the fact that there is no public health rationale to justify isolation or quarantine, based solely on the fact that a person is suspected or known to be HIV-positive. Deprivations of liberty and security take the form of compulsory blood tests, arrest, detention, segregation, and isolation because of a person actual or presumed HIV status.

Furthermore, since these deprivations of liberty occur in administrative settings, procedural and judicial safeguards are not applied.

Persons belonging to certain groups, such as commercial sex workers, injecting drug users and men having sex with men, are often deprived of liberty because they are suspected of HIV infection.

Persons suspected or known to be HIV-positive should remain integrated in society and integrated within institutional settings (schools, hospitals, prisons) and not be deprived of their liberty.

Freedom of movement

(Article 13 of the Universal Declaration on Human Rights; Article 12 of the of the International Covenant on Civil and Political Rights; Article 12 of the African Charter)

Some States require that nationals returning to their country submit themselves to HIV testing. Other States restrict movement of nationals and foreigners living with HIV/AIDS within their countries, through segregation or quarantine. Such measures are often imposed on persons suspected of HIV, such as migrants from certain countries, commercial sex workers and injecting drug users.

Foreigners living with or suspected of HIV/AIDS often face the threat of expulsion. Such expulsions may be carried out in the name of public health under administrative procedures without adequate procedural or legal safeguards. During such expulsions, confidentiality of health status may not be maintained either with regard to the expelling or receiving States.

States also impose some form of HIV screening with regard to the entry and stay of aliens for either short or long-term periods. States implementing such restrictions argue that they are either necessary to protect the public health or to avoid costs associated with HIV/AIDS.

These actions run counter to the fundamental human right principle of non-discrimination and also the enjoyment of freedom of Association. Additionally, these restrictions may interfere with other rights, such as the right family unity and the right to liberty and security. Further, travel/movement restrictions divert resources from prevention programs, create a false sense of security, and do not reduce the spread of infection. Furthermore it worsens the impact as family members are segregated, placed in quarantine, or in the case of children, taken from their HIV-positive parent(s).

Right to privacy

(Article 12 of the Universal Declaration of Human Rights; Article 17 of the International Covenant on Civil and Political Rights; and Article 37 of the Convention on the Rights of the Child)

The collection of information of HIV/AIDS status and its publication or use without the informed consent of the individual is a serious breach of the right to privacy.

The violation of the right to privacy also takes the form of compulsory registration of HIV-positive people or those suspected of it, compulsory collection and storage of information on HIV/AIDS status without confidentiality, and the disclosure of HIV status to third parties. This may occur due to government policies, occur in health care settings as part of routine or hidden testing, or be required by private parties, such as employers, for access to services. Information regarding HIV status or suspected status of individuals or groups has
been disclosed by governments, the media and private persons in breach of confidentiality and has incited public discrimination against those infected or affected.

In order to advance the right to privacy, any testing for HIV should be voluntary and done with the informed consent of the person involved. In the case of children, parents or legal guardians should provide informed consent, with due regard for the child's views if the child is of an age or maturity to have such views. Voluntary testing should be performed with pre-and post test counseling. It is in the context of pre-test counseling that informed consent should be obtained.

Mandatory testing, registration and publication of status are not useful measures because they do not prevent transmission of the disease on the contrary they drive people away from HIV prevention and care programs.

It is particularly important that the right to privacy be protected in the context of HIV/AIDS where association with HIV/AIDS results in prejudice, stigma and discrimination.

Right to information and the Right to freedom of expression

(Article 19 of the Universal Declaration on Human Rights; Article 17 of the International Covenant on Civil and Political Rights; Article 37 of the Convention on the Rights of the Child; and Articles 8 & 9 of the African Charter)

In the context of HIV/AIDS, the right to seek, receive and impart information has often been denied or curtailed, because information about HIV/AIDS is politically unpopular and/or perceived to conflict with obscenity laws or with religious, moral or cultural norms. For these reasons, States have been reluctant to disseminate information pertaining to the extent of the problem, the population groups most affected, and the ways by which to avoid infection.

Such censorship prevents people from obtaining life-saving information, increases vulnerability to infection, and increases the devastating social impact of the disease, including the discrimination and stigma associated with it.

Further, women, children, minorities, migrants, indigenous populations, and other vulnerable groups, do not have equal access to the information that is available.

The Right to marry and found a family

(Article 16 of the Universal Declaration on Human Rights; Article 17 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and the Convention on Elimination of Discrimination Against Women; Article 37 of the Convention on the Rights Convention; and Article 18 of the African Charter)

Some jurisdictions require mandatory HIV tests before granting a marriage licence, thus denying those who test positive the right to marry. Some courts have ruled that people living with HIV have no right to marry.[20] Mandatory or hidden HIV-testing may also be performed on women who present themselves for pre-natal care. Those who test positive may be coerced into abortions or sterilization.

[20] Indian High Court, 2000

Public health concerns are better served by providing to people considering marriage or childbirth information, counseling and voluntary testing so that they can take steps to protect themselves from infection and can make informed reproductive choices.

Right to Education and Information

(Article 26 of the Universal Declaration on Human Rights; Article 13 of the International Covenant on Economic, Social and Cultural Rights; Article 10 of the Convention on Elimination of All Forms of Discrimination Against Women; Article 28 of Convention on Rights of the Child; and Article 17 of the African Charter)

For social, cultural or political reasons, HIV/AIDS prevention education is often not included in school curricula or in programs for children outside of school. This is the case even though studies have shown that sex education, including the provision of HIV/AIDS-related information, not only does not encourage sexual activity but actually may delay the onset of sexual activity.

If prevention education is available, disadvantaged groups have less access to it. Furthermore, though they pose no public health risk, children living with HIV/AIDS or suspected of HIV infection are sometimes expelled from educational institutions or denied access to these institutions due to their sero-status or suspected status.

Children of indigenous peoples, refugees and migrants are among the most vulnerable groups with regard to HIV/AIDS. Cultural, social and linguistic barriers and a lack of appropriate and specifically targeted programs mean that many of these groups do not have access to HIV/AIDS prevention education and information, health care and treatment.

Right to Health

(Article 25 of the Universal Declaration on Human Rights; Article 12 of the International Covenant on Economic, Social and Cultural Rights & the Convention on Elimination of Discrimination Against Women; Article 24 and 25 Convention on the Rights of the Child and Article 16 of the African Charter)

The right to health requires authorities at country level should progressively achieve its full realization by all appropriate means, to the maximum of the country's available resources. The progressive realization of the right to health over a period of time should not be interpreted as depriving States obligations of all meaningful content. It means that States have a specific and continuing obligation "to move as expeditiously as effectively as possible" towards the full realization of the right to health. [21]

States need to provide comprehensive and accessible HIV/AIDS prevention and treatment services. These could include general and targeted information and education; voluntary testing and counseling; STD and sexual reproductive health services (untreated STDs increase the risk of HIV transmission); provision of the means of prevention, such as condoms, clean needles and syringes, universal infection control and safe blood supply; care and treatment, including of opportunistic infections; and epidemiological surveillance.

As for children's right to health, States should devote sufficient resources to prevention and care programs designed for children and take steps to ensure that children have access to HIV/AIDS-related child or youth friendly prevention education and information and health care services. Girl children face much more difficulty having access to the services.

The right to health extends not only to timely and appropriate health care but also to the underlying determinants of health such as access to safe and potable water, including access to health related education and information. A further important aspect is the participation of the population in all health- related decision making at the community, national and international.

The Committee on Economic, Social and Cultural Rights,[22] has identified interrelated and essential features of the right to health in all its forms and at all levels to be:

[21] *ibid*

[22] Committee set up under the Covenant on Economic Social and Cultural Rights to monitor the implementation of the Covenant, which includes the right to health. See the Committee's General Comment no. 14 on the Right to Health .

(i) *Availability* of functioning public health and healthy care facilities, goods and services as well as programs;

(ii) *Accessibility* of health facilities, goods and services to everyone without discrimination. Overlapping dimensions of accessibility to include:

(a) non-discrimination,
(b) physical accessibility to all parts of the population, especially the most vulnerable or marginalised groups such as ethnic minorities, women, children and persons living with HIV/AIDS
(c) Economic (affordability) of health care facilities, goods and services must be affordable to all. Payment for all health care services, as well as services have to be based on the principle of equity ensuring that these services whether privately or publicly provided are affordable to all, including socially disadvantaged groups and
(d) Information accessibility, which includes the right to seek, receive and impart information and ideas concerning health issues. Accessibility to information may on no account impair the right to have personal health data treated with confidentiality.

(iii) *Acceptability* of health facilities, goods and services. All these must be culturally appropriate and is respectful of medical ethics and improve the health status of those concerned.

(iv) *Quality* facilities, goods and services must be scientifically and medically appropriate and of good quality.

5. What role can national Human Rights Institutions play to advance human rights in the context of HIV/AIDS

National Human Rights institutions (National Human Rights Commissions, Ombudsmen Law Commissions) are key partners to addressing human rights issues that arise in the context of HIV/AIDS. National Human Rights Institutions should be engaging in dialogue, sharing information, developing technical expertise, building awareness and consensus, and advocating for the promotion and protection of human rights in the context of HIV/AIDS.

Some proposed areas of focus are:

Review of policies, laws and customs

National Human Rights Institutions should be key partners in the process of identifying areas that require legal reform and consulting with the community on the proposed reforms.

1. Statutory laws, should be reviewed and appropriate legal reform proposed, particularly , Constitutions, Health and Criminal legislation to ensure:

   (a) consistency with international human rights standards;
   (b) non- mis-application of these laws in the context of HIV/AIDS;
   (c) creation of a conducive legal framework for prevention and care programmes (Example: The Philippines Government has enacted the " Philippines AIDS Prevention and Control Act of 1998" which protects the human rights of persons suspected or known to be infected with HIV/AIDS. The law, inter-alia, outlaws compulsory HIV testing , guarantees the right to privacy of individuals with HIV and expressly prohibits discrimination at workplace, schools, in public places and during travel based on actual, perceived or actual HIV/AIDS status).

2. Customary, traditional laws and norms should be reviewed, in consultation with community and traditional leaders, to identify those that enhance risk for infection of HIV/AIDS and that violate human rights principles. Develop a strategy, through community consultation, on ways in which these customs and traditions can be modified or repealed.

Enhance mechanisms for identification and enforcement of HIV/AIDS related human rights violations

1. National Human Rights Commission should integrate HIV/AIDS issues within their investigation, monitoring and enforcement of human rights. To this end, National Human Rights Commissions should investigate and/or receive complaints of HIV/AIDS human rights violations, process them, where appropriate, offer redress.

2. In order to strengthen such investigation, National Human Rights institutions should:

- Support the establishment of community Legal Aid Centers and /or legal services based in AIDS Service organizations to receive complaints of HIV/AIDS related human rights violations and forward these on to the National Human Rights Institutions for handling.

- Support existing Legal Aid systems that support and specialize in human rights and HIV/AIDS cases. (Example: Alter Law in the Philippines, Lawyers collective HIV/AIDS Unit, Mumbai, India. These are groups of Lawyers who are specializing in HIV/AIDS related cases and offer free legal service in this area).

- Train members of Association of People Living with HIV/AIDS in human rights and HIV/AIDS so that they are able to provide in-house para- legal counseling.

Capacity building

National Human Rights Commissions should assist in building national capacity in dealing with issues relating to human rights in the context of HIV/AIDS. Capacity building could be through, *inter-alia*-

(i) Facilitating, in consultation with other national partners, the establishment of community based associations and NGOs to deal with human rights issues in the context of HIV/AIDS including NGOs and community Groups specifically focusing on the promotion and protection of the rights of vulnerable groups such as women, children and People Living with HIV/AIDS.

(ii) Enhancing, through, inter- alia*, conducting of training seminars and workshops and provision of materials, the capacity of existing human rights NGOs and other institutions. Support Women Organizations to incorporate HIV/AIDS and human rights issues into their programmes. Further, through the holding of joint training sessions enhance greater understanding and collaboration and joint activities by Human rights NGOs and AIDS Servicing Organizations.*

(iii) Supporting the establishment of Associations of People Living with HIV/AIDS to enhance peer education, empowerment, positive behavioral change and social support.

Develop Best practice materials

1. National Human Rights Commissions should identify, collect, compile and disseminate materials on human rights and HIV/AIDS particularly responses that communities have adopted in Africa and other parts of world on protecting of human rights in the context of HIV/AIDS.

2. National Human Rights Commissions should compile or assist national Human rights organizations to compile human rights and HIV/AIDS manuals, legal rights brochures, handbooks, legal education and newsletters to encourage information exchange and networking in this area.

In order to ensure relevance of the intervention; create ownership of the activities; enhance sustainability of the interventions; capitalize on the available and ongoing initiatives and maximize impact, action taken should involve key national partners, including AIDS Servicing Organizations, community leaders and community based structures and religious institutions, should be consulted at various levels of the process namely, the conceptual, development, implementation and evaluation of the actions to be undertaken.

Regional and international institutions should also be engaged in the process. This will not only enhance transfer of knowledge, networking and sharing of experiences but also create opportunity for developing a regional vision to common concerns and issues in the area of human rights and HIV/AIDS.

Appendix 5

6th International Congress on AIDS in Asia and the Pacific

Asia Pacific Forum of National Human Rights Institutions

"A Partnership For Human Rights In Our Region"

HIV/AIDS & HUMAN RIGHTS:

The Role of National Human Rights Institutions in the Asia Pacific

7th – 8th October 2001
Melbourne, Australia

6th International Congress on AIDS in Asia and the Pacific

HIV/AIDS and Human Rights: The Role of National Human Rights Institutions in the Asia Pacific

Introduction

I am pleased to be able to welcome you to the opening of the Asia Pacific Forum of National Human Rights Institution's regional workshop on *HIV/AIDS and Human Rights: The Role of National Human Rights Institutions in the Asia Pacific*.

I would like to thank the organizers of the 6th International Congress on AIDS in Asia and the Pacific for their invitation to the Forum to participate in this meeting. I would also like to thank the United Nations Office of the High Commissioner for Human Rights and UNAIDS for providing financial assistance to enable the participation of representatives of human rights commissions from around the Asia Pacific region.

Finally I would like to extend my thanks to all participants – I know how busy all of you are in dealing with human rights violations in your respective countries. Your presence here is, I believe, a real demonstration of your organisation's commitment to combat discrimination and human rights violations on the basis of HIV/AIDS.

HIV/AIDS in the Asia Pacific

In the twenty years since the first cases of Acquired Immunodeficiency Syndrome were reported there have been almost 22 million AIDS-related deaths and a further 36 million cases of HIV infection.[23]

In the Asia and Pacific regions there are some 6.4 million people living with HIV/AIDS.[24] The extent of the epidemic across the region can be broadly categorised as *established* (Thailand, Cambodia, Burma/Myanmar, Laos), *exploding* (India, Papua New Guinea, Nepal, China and possibly Vietnam and Sri Lanka), and *emerging* (Philippines, Indonesia, Malaysia).

Health, HIV/AIDS and human rights

Issues affecting the health of people living with HIV/AIDS and other blood borne diseases are human rights issues. That must be the principal starting point of our discussions today.

Respect for human rights is critical to the prevention and successful treatment of HIV/AIDS. Significant HIV/AIDS-related human rights issues include the advancement of the right to health, the right to education, the right to privacy, the right to equality and non-discrimination and the right to information and education.

[23] "20 Years On: The Situation in Asia and the Pacific" Website of the Sixth International Congress on AIDS in Asia and the Pacific, 7 June 2001 at http://www.icaap.conf.au/news/200106_20years.asp
[24] Ibid

As we all know, the right to an adequate standard of health is recognised in the International Covenant on Economic, Social and Cultural Rights and in the Convention on the Rights of the Child both of which have been signed and ratified by the majority of States represented in this room. The Declaration on the Rights of Disabled Persons also specifies the rights of disabled persons to health care.

The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights oblige governments to respect and ensure that people can exercise their rights without discrimination of any kind, including, of course, HIV/AIDS status.

Many of you come from States with comprehensive Bills of Rights contained in your Constitutions. In addition, many of your Parliaments have passed legislation that gives effect to these rights and responsibilities. Some of your States have passed legislation that specifically deals with HIV/AIDS.

Whatever the situation in your respective States, however, all of the national human rights commissions in this room have at least some power and the responsibility to combat discrimination and human rights violations on the basis of HIV/AIDS.

The Role of National Human Rights Institutions

The United Nations Joint Program on HIV/AIDS, (UNAIDS), has identified AIDS as "a fundamental issue of human security" and has called on non-government organisations, national human rights institutions, other UN agencies and governments to address HIV/AIDS-related human rights issues.[25]

In response to UNAIDS' call, all the individual Forum member human rights commissions in the Asia Pacific region have affirmed that HIV/AIDS is a human rights issue. The issue of HIV/AIDS was placed on the agenda of the Sixth Annual Meeting of the Forum – where the human rights commissions of Australia, Fiji, India, Indonesia, Mongolia, Nepal, New Zealand, the Philippines and Sri Lanka, met only last week in Colombo, Sri Lanka from 24th to 27th September 2001. In addition to our Forum member institutions participants at the meeting included over 100 representatives from regional governments, other relevant human rights institutions and international, regional and national non-governmental organisations.

At that meeting Forum members agreed that "*HIV/AIDS should not be viewed as solely a health issue but as a human rights issue because of its serious economic, social and cultural implications*".

Forum members "*committed themselves to combat discrimination and human rights violations on the basis of HIV/AIDS and called upon the assistance of the United Nations, governments and NGOs in the performance of this task*".

Forum members specifically welcomed the initiative to hold this regional workshop and requested that the Forum Secretariat develop and seek funding for the implementation of

[25] Speech by Dr Peter Piot, Executive Director of UNAIDS to the 57TH Session on the United Nations Commission on Human Rights, Geneva, 11 April 2001

practical projects to assist Forum members to implement the conclusions of this workshop and undertake work in this area.

This Forum workshop is therefore a direct response to UNAIDS' call for action. The workshop sits within an international, regional and national commitment to the global prevention and treatment of HIV/AIDS. The significance of HIV/AIDS as a health and human rights crisis for Asia Pacific Forum members is evidenced by various resolutions of the UN Commission on Human Rights, in the UNAIDS regional call for action to fight HIV/AIDS in the Asia Pacific and the Declaration of Commitment to HIV/AIDS resulting from the UN Special Session on HIV/AIDS which recognises the disease as a global crisis requiring global action.

The UN Commission on Human Rights has, for example, invited,

> ***"States to strengthen national mechanisms for protecting HIV/AIDS related human rights and to take all necessary measures to eliminate stigmatisation of and discrimination against those infected and affected by HIV/AIDS."***

But by calling on States to strengthen national mechanisms – including national human rights commissions – how do we actually want these institutions strengthened? The answer to this question is one of the main goals of this workshop. The fundamental – and unfortunately so far largely unrealised – role that can be played by national human rights institutions in alleviating discrimination and improving the quality of life for PLWHA must indeed be strengthened and enhanced. But in recommending to our respective States the exact ways we need to be strengthened we must learn from each other – we are the experts in human rights protection mechanisms – not the State bureaucrats. But we must also learn from the experts working with people with HIV/AIDS. We need to consider how each of our respective national human rights commissions can be strengthened to combat the human rights dimensions of HIV/AIDS. And given that national human rights institutions occupy a unique position as a bridge between the State and civil society – we need to consider how to most effectively work with people living with HIV/AIDS, NGOs and the State in achieving the best possible level of human rights protection and promotion.

In his address to the international meeting of national human rights institutions in Geneva in April of this year, the Executive Director of UNAIDS identified five practical ways in which national human rights institutions can strengthen their work regarding HIV/AIDS:

1. By investigating violations of human rights that occur in the context of HIV/AIDS
2. By conducting public inquiries focusing on HIV/AIDS related human rights violations
3. By receiving, and where appropriate redressing complaints of HIV/AIDS-related human rights violations
4. By providing advice and assistance to governments in the area of human rights and HIV/AIDS, and
5. By conducting human rights education in the context of HIV/AIDS.[26]

I think the above five suggestions provide this workshop with an excellent starting point. And I am confident that with the dedication, intelligence and commitment of the individuals in this room we can significantly build on these suggestions and produce a set of outcomes

[26] Statement by Dr Peter Piot, Executive Director of UNAIDS to the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights, Geneva, 18-20 April 2001

that, when implemented, will produce a real and tangible increase in human rights protection and promotion for people living with HIV/AIDS.

And the reason I am confident of this is that since its establishment in 1996 the Forum has demonstrated that with more intensified and coordinated action among our member institutions in the region, and their links to governments and NGOs, there is an opportunity to make a real contribution to improving the human rights of people in the Asia Pacific. It is our task over the next two days to therefore examine the main role and functions of national human rights institutions, see how they relate to HIV/AIDS issues and make recommendations as to how they can be strengthened so that we can do our job better.

While most of our discussion will, by necessity, focus on our respective domestic roles we must also examine how we can cooperate regionally. For example a significant issue for discussion at this workshop is the connection between abusive forms of migration, such as trafficking, and HIV/AIDS.

In recent years the Forum and the United Nations have been increasing our attention on preventing trafficking at the regional level.

At the 4th Annual Meeting of the Forum in Manila in 1999, the Forum agreed to the identification of 'focal points on trafficking' within each member institution and at our recent 6th Annual Meeting the Forum continued its specific commitment to the promotion and protection of the human rights of women by endorsing a proposal to hold a regional workshop on the issue of trafficking in 2002. Forum members also requested that the Forum Secretariat develop practical projects to combat trans-border trafficking – and finally Forum members agreed to make a reference to the Forum's Advisory Council of Jurists on the issue of trafficking. The effectiveness of these initiatives will be strengthened by this workshop's focus on the intersection between human rights abuses and trafficking and the subsequent vulnerability of affected people to HIV/AIDS.

Conclusion

In conclusion I wish to stress that it is my intention and hope that this workshop be very practical in its approach. As individual national human rights institutions we have already made a commitment to fight human rights violations on the basis of HIV/AIDS. In addition all our institution have also spoken with our collective voice – through the Asia Pacific Forum – about our determination to make this fight a priority. What we currently lack, however, is the practical 'know how' of what constitutes 'Best Practice' in this area. I therefore would encourage you to speak frankly about what your organisation has done – and what it hasn't done – to combat HIV/AIDS human rights violations. We need to find out what works and what doesn't. Through our collective experience and expertise I am sure that we can produce a series of practical outcomes that, when implemented at both the national and regional levels, will have a real and positive impact.

I look forward to working with you over the next 2 days to meet this challenge.

Thank you.

Appendix 6

HIV/AIDS and Human Rights :
The Role of National Human Rights Institutions in the Asia Pacific
7 – 8 October 2001
Melbourne, Australia

Taking HIV/AIDS seriously:
The role of national human rights institutions
Speaking notes – Lisa Oldring, OHCHR

Background : HIV/AIDS and human rights

1. HIV/AIDS continues to have a devastating impact around the world:

- By the end of 2000 there were 21.8 million AIDS-related deaths, including 4.3 million children and 9 million women. Over 36 million people are currently infected with the HIV virus, with 5.3 million new infections reported last year.
- In the Asia Pacific region there are 6.4 million people living with HIV/AIDS, with an estimated 700 new infections daily in young people in South East Asia alone.

2. More than a health catastrophe, the epidemic has become one of the greatest human rights challenges facing the international community today. A lack of respect for human rights is linked to virtually every aspect of the HIV/AIDS epidemic, from the factors that cause or increase vulnerability to HIV infection, to discrimination based on stigma attached to people living with HIV/AIDS, to the factors that limit the ability of individuals and communities to respond effectively to the epidemic:

- Certain people are more vulnerable to contracting the HIV virus because they are denied the right to freedom of association and freedom of information, for example, and are precluded from discussing issues related to HIV/AIDS, participating in AIDS service organisations and self-help groups, and taking other preventive measures to protect themselves from HIV infection.
- Women, and particularly young women, are more vulnerable to infection if they lack of access to information, education and services necessary to ensure sexual and reproductive health and prevention of infection.
- People living in poverty are unable to access HIV care and treatment, including antiretrovirals and other medications for opportunistic infections.
- Stigmatisation and discrimination of those with presumed or known HIV/AIDS status may obstruct their access to treatment and may affect their employment, housing and other rights.

3. There is growing evidence that where individuals and communities are able to realise their rights, the incidence and impact of HIV and AIDS is reduced. The promotion and protection of human rights therefore is a key to effectively containing the spread of the disease, reducing the vulnerability to HIV infection, and alleviating the impact of the epidemic.

Recent developments

4. At the General Assembly's Special Session on HIV/AIDS in June, States made explicit their commitment to the realisation of human rights as an essential part of the international response. They agreed on certain goals and targets based on human rights law and principles in four key areas: prevention of new infections, provision of improved care, support and treatment for those infected with and affected by HIV/AIDS, reduction of vulnerability, especially among groups which have high or increasing rates of infection or who are at greatest risk of infection, and mitigation of the social and economic impact of HIV/AIDS. They also agreed on the need to address the factors that make individuals vulnerable to HIV infection, including poverty, lack of education, discrimination, lack of information and commodities for protection, and sexual exploitation of women, girls and boys, including for commercial reasons.

5. These commitments are important developments. But commitments at the international level are meaningless without effective legal mechanisms to ensure their implementation at the national level. The need for accountability in the context of HIV and AIDS, in particular at the national level, is clear:

- The UNGASS Declaration of Commitment acknowledges, for the first time, the importance of monitoring and accountability in the context of HIV/AIDS and calls for the strengthening of monitoring mechanisms for HIV/AIDS related human rights.
- The UN Commission on Human Rights has asked States, in consultation with relevant national bodies - including national human rights institutions - to develop and support appropriate mechanisms to monitor and enforce HIV/AIDS related human rights
- At the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance last month, States further committed to strengthen national institutions to promote and protect the human rights of victims of racism who are also infected with HIV/AIDS, as well as to ensure access to HIV/AIDS medication and treatment.

The role of national human rights institutions

6. Ensuring that these commitments are effectively followed-up will require the integration of HIV/AIDS-related human rights into institutional strategies and programmes at the national level. Many national human rights institutions – including APF members - have already shown their commitment to achieving this goal. HIV/AIDS figured prominently on the agenda of the 6th Annual Meeting of the Asia Pacific Forum last week in Sri Lanka. The meeting concluded with the recognition by Forum members of the need to address HIV/AIDS as a human rights issue, rather than as solely a health issue, and to combat discrimination and human rights violations on the basis of HIV/AIDS. Forum members committed to the promotion and protection of the human rights of women by focusing in particular on gender-based discrimination and the exploitation of women.

7. The International Guidelines on HIV/AIDS and Human Rights, published jointly by the OHCHR and UNAIDS, are an important tool for national institutions to use in helping to design, co-ordinate and implement practical and effective national HIV/AIDS policies and strategies based on the promotion and protection of human rights. The Guidelines synthesise

human rights principles and laws in the context of HIV/AIDS and translate them into practical measures based on the following approaches:

- improvement of government capacity for multi-sectoral coordination and accountability;
- reform of laws and legal support services, with a focus on anti- discrimination, protection of public health, and improvement of the status of women, children and marginalised groups; and
- support and increased private sector and community participation to respond ethically and effectively to HIV/AIDS.

In short, the Guidelines are a useful practical instrument to assist national institutions in addressing HIV and AIDS-related human rights throughout their activities, whether these involve education and training, advising governments on the development of policy and legislation, or addressing HIV/AIDS-related human rights complaints.

8. Although much will depend upon the individual mandate and constitution of particular institutions, following are a few suggestions on how human rights commissions can strengthen their role and functions to improve respect for human rights in the context of HIV/AIDS.

Educative function

9. Perhaps the most important way that national institutions can contribute to reducing the spread and impact of HIV/AIDS is through their educative function.

- Educating individuals and groups on the human rights dimensions of HIV/AIDS is an important means of breaking the cycle of stigma and discrimination which continues to fuel the epidemic.
- Strategies for achieving this goal may include integrating HIV/AIDS issues into training and education materials, including into programmes designed specifically to change discriminatory attitudes and behaviour; disseminating information on AIDS-related human rights issues; and organising discussion groups and seminars.
- Target groups for such programmes and policies may include lawyers and law enforcement officials, teachers, government officials, and local community groups, including AIDS service organsations.

10. Several national institutions have already been active in integrating HIV/AIDS issues in their efforts to promote and protect human rights through education and training:

- The national human rights commission in Mexico organised a series of lectures and roundtables on human rights and HIV/AIDS, including discussions on access to medication, discrimination, and assistance and support for people living with HIV/AIDS.
- The National Human Rights Commission of India recently hosted a national consultation on human rights and HIV/AIDS.
- The Canadian Human Rights Commission has undertaken a series of initiatives to combat misunderstanding of the disease, including by encouraging employers to commit to policies of non-discrimination for HIV-positive employees.

Advisory function

11. Another important function is the role national institutions play in advising and assisting governments in the promotion and protection of human rights in the context of

HIV/AIDS. National institutions can help governments make informed policy and legislative decisions through the submission of opinions on proposed or existing national legislation, the initiation of new legislation, or the intervention in legal proceedings which raise issues of human rights in the context of HIV/AIDS.

12. Through their advisory function, national institutions can encourage governments to:

- review criminal laws affecting homosexual behaviour, injecting drug use, and women and men involved in prostitution to ensure that these conform with international human rights standards and guarantee that such laws are not misused in the context of HIV/AIDS or targeted against vulnerable groups
- review health legislation, for example, to ensure that policies related to HIV testing are based on voluntary, informed consent; confidentiality; and counseling; or to ensure that legislation regulating HIV-related goods, services and information promotes the availability of affordable and appropriate medication and therapies for those who need them
- review legislation and policies to combat the factors which contribute to the vulnerability of women to HIV infection including lack of access to information, education and services necessary to ensure sexual and reproductive health, violence including sexual violence, and lack of legal capacity and equality in family matters
- ensure that human rights are integral to national AIDS plans and strategies
- develop codes of conduct in the area of employment regarding HIV/AIDS issues that translate human rights principles into codes of professional responsibility and practice.

13. National institutions also play an important role in helping governments fulfil their international human rights treaty obligations, including by preparing shadow reports to relevant UN treaty bodies on HIV/AIDS related matters.

Complaints and enquiries

14. A third important function of national institutions lies in their ability to receive and act upon complaints pertaining to HIV-related human rights and to undertake enquiries into particular human rights questions related to HIV/AIDS. This latter function is a particularly important means of identifying and addressing systematic violations of the rights of groups particularly vulnerable to the impact and spread of HIV infection, such as women, injecting drug users, prisoners, women and men in prostitution, and men who have sex with men. Such enquiries could focus in particular on stigma and discrimination, and on the consequent loss of enjoyment of other human rights.

15. Complaints from groups or individuals alleging violations of human rights in the context of HIV/AIDS may include:

- discrimination in housing or employment based on real or perceived HIV/AIDS status
- denial of access to medical treatment or therapy
- violation of the right to privacy through breach of confidentiality in HIV testing
- restrictions on the freedom of movement through the requirement of mandatory HIV testing for returning residents, segregation/quarantine of people living with HIV, denial of visa or other required travel documents
- gender-based domestic violence stemming from HIV status

16. National institutions could strengthen their capacity to address such complaints by maintaining strong ties at the community level – most importantly with people living with HIV and AIDS, but also with individuals and organisations working with them, for example in community health centers, hospitals, prisons and detention centers, and schools.

17. The functions of national human rights institutions as they relate to HIV/AIDS related human rights are, in many respects, mutually reinforcing. Successful education and training by national institutions will help to break the cycle of AIDS-related stigma and discrimination which may, in turn, make it easier for individuals to come forward with AIDS-related complaints. At the same time, where a national institution is active in conducting HIV/AIDS related human rights education, individuals infected with and affected by HIV and AIDS are more likely to be aware of its existence as a mechanism for recourse when their rights are violated.

18. The Asia Pacific Forum, as a regional network of national human rights institutions, has an important role to play in ensuring respect for human rights in the context of HIV and AIDS. By cooperating with each other; sharing information, training and development for institution members and staff; developing and sharing technical expertise on HIV/AIDS; and generally benefiting from the 'best practice' experiences of other institutions, APF members can make a real contribution towards improving the human rights of individuals infected with and affected by HIV and AIDS and reducing spread and impact of the disease throughout the region. Considering the horrific toll this disease continues to take on people in every country every day, the importance of this goal should not be underestimated.

Appendix 7

HIV/AIDS and Human Rights
The Costa Rican Ombudsman Office Report

Carlos Valerio
Public Health Lawyer
Ombudsman Office of Costa Rica

1. Costa Rica. General Demographics

In Costa Rica, in accordance with the distribution for age and the composition for sex, the biggest population proportion corresponds to the group of 0-4 year-old age (11.7%), and the minor to the 75 year-old group and more, with 1.6%. The biggest population percentage corresponds to the masculine sex with 50.5% and the feminine one with 49.5%.

The life expectancy when being born in 1998 was 76.1, 73.6 in men and 78,7 in the women.

In 1996 there were registered 79.203 births; 45% of those births is of single mothers and the group of adolescents (smaller than 19 years) contributes with 19% to the total of the births. 97% of the childbirths is assisted in hospitals of the Costa Rican Public Health System. The rate of maternal mortality for the year 1998 was of 0.2 for 1.000 births. As for infantile mortality, from the year 1990 come diminishing, until arriving in 1999 to a rate of 11.8 for 1000 births

The general mortality reported for 1998 is of 39.0 for 10 000 inhabitants. When analyzing the mortality from 1990 to 1998, for the five first big groups of causes, it is observed that the mortality for illnesses of the circulatory apparatus occupies the first place, with rates that have gone growing from 1990 of a rate of 10.5, up to 1998 to a rate of 11.2 for 10.000 inhabitants. The second place corresponds to the tumors, with rates in 1990 of 7.5, increasing the following years, until arriving in 1998 to a rate of 8.0 for 10.000 inhabitants, it continues the supplementary classification of external causes, with a rate of 4.5 for 10.000 inhabitants.

According to the preliminary results of ***Population's of 2001, IX Census*** the country passed of a population of 2,416,809 according to the census of 1984, to a total 3,824,593 inhabitants in the year 2000, what represents an increment of almost a million and half of people in a 16 year-old period. In relative terms, this change meant to pass of an annual half rate of growth of 2.3% among the censuses of 1973 and 1984, to a rate of 2.9% between 1984 and the 2000. Given the descent in the fecundity happened in the period, is reasonable to attribute this increase in the rate of growth to the increment of the international immigration.

This increase of the population in Costa Rica between 1984 and the 2000 leads to an increment of the population density from 47 to 75 inhabitants for square kilometer, that is to say, almost 60% superior. On the other hand, the proportion of men and women are same (50%); the same of the census of 1984.

For county it can be observed that although San José continues like seat of more than a third of the population of the country, and it grew to an annual half rate of 2.7% in the period intercensal, the other central counties -Alajuela, Cartago and Heredia - that on the whole almost embrace the national population's 40%, they presented higher rates of growth of 3.3%, 3.0% and 3.7%, respectively. However, that more it stands out it is the case of the county of Limón, with the biggest relative growth - it appraises mediates of 4.5 % annual - and with which duplicates their size in the considered period and it reaches to represent the national population's 8.9%. This increment so marked is owed, in great measure, to the strong migration that the county received in the period.

In contrast, the counties of Guanacaste and Puntarenas that represent a sixth part of the population of the country, they diminish their percentage participation in the last 16 years.

The rate of net education rate according to educational level indicates that in 1996 for primary education it was of 96.7% and education secondary 46.8%. The rate of illiteracy descended until 6% in people older than 10 years old and in the rural area it reaches 10%.

The employment rate was in 1995 of 51.1% and in 1996, 47.0%. In 1998, the rate of national open unemployment was of 5.6%.

The rate of poverty decreased from 21.6% (141.477 families) in 1996 to 20.7% in 1997 (138.865 homes of scarce resources). The rate of families in extreme poverty decreased from 6.9% to 5.7%, ne of the lowest percentages in the last years.

The inflation rate in 1997 arrived to only 11.2%, which is a very below rate than the one programmed by the Government.

In the period of 1989-1995, the national production, measured by the real GDP grew to a rate average of 4.65%. however the production for inhabitant only grew on the average a 2.11, suffering a deterioration of 0.23% in 1991 and a practically null increment in the last year of the period.

2. HIV/AIDS in Costa Rica

The first case of AIDS in Costa Rica was detected in 1983; up to 1985 it had been presented 14 cases of AIDS in their majority in hemophilic patients. In 1986 the first cases were detected in homosexual and bisexual groups.

Analyzing the period from 1988 to 1999 it is found that the most important groups of risk were the homosexuals in the first place, followed by the bisexual ones and of third place the hemophilic patients. The prenatal transmission is detected starting from 1990 with a growing tendency until 1995 year in that the AZT treatment is given to pregnant women.

Starting from 1990 it is observed that the heterosexual transmission shows a very marked growth what indicates that epidemic pattern is varying; however the group of the homosexuals continues being the one that contributes the biggest number of cases.

The relation between men and women in this period is 9.6 men for each woman. With relationship to AIDS and age groups, the most affected group is the one from 25 to 44 years old but with a tendency to grow among the group from 20 to 24 years old, what reinforces the necessity to promote preventive actions in this group.

From the beginning of the registration in 1983, the total of cases accumulated until December of 1999, belongs to 1736, 1549 men and 187 women. In the year 1997, the number of deaths ascends at 684 (51.9%), 47.0% is alive and 1.1% is outside of the country.

In Costa Rica, the supply of the antirretroviral drugs from 1997 has had the following impact: a) the lethal rate for AIDS has diminished 74% from 1995 to 1998. In 1995 the rate was 21.51 %, in 1998 this rate was 5, 54 %. b) The rate of mortality for AIDS diminished 63% from 1995 to 1998. The mortality rate for the year 1995 was of 33.3 per million inhabitants, in 1998 this rate was 12. 4. In absolute numbers, the deaths diminished from 111 deaths in 1995 to 44 deaths in 1998.

The phenomenon of the descent in the lethal and of the mortality rates of the HIV/AIDS according with the previous data allows affirming that in Costa Rica, HIV/AIDS stops to be an imminent mortal disease and it becomes a chronic illness.

From 1985 the National Commission of the AIDS was created in order to define and establish the Public Health politics as regards prevention and control of the infection for HIV/AIDS. Then in 1989, this commission was officially conformed by means of ordinance. This commission took charge of fulfilling the same purposes up to 1993 that it was disintegrated regrettably until in 1998 that it was conformed again as part of the HIV/AIDS regulation. The National Council of AIDS is now the maximum instance in the national level in charge of recommending the politics and the programs of action of the whole public sector, related with the concerning matters to the HIV/AIDS.

The National Council of AIDS, the Ministry of Education and the Costa Rican Public Health System have coordinated and shared with the Non Governmental Organizations and different religious groups, the mission to prevent the infection and to assist the social consequences of the pandemic.

The government policies have always established the importance of the early detection of the infection by means of the free and voluntary realization of detection tests to the population. The Ministry of Health has worried in a special way for the attention of the sex workers and the children exposed to social risks.

From 1990 the government offers to the pregnant women and infected by the HIV the supply of the treatment of the AZT with the purpose of reducing the infection possibility for via intra-uterine.

The programs of sexual education for adolescents are scarce and they don't respond to the necessities and interests of population's group.

At the present time the National Council of the AIDS meets in a weekly way with the purpose of fulfilling the purposes of the prevention and the attention of the HIV/AIDS and its biggest achievement has been to propose the National Plan of VIH-AIDS.

At the moment the National Council of HIV/AIDS has approved with the participation of most of the interested sectors, the new National Plan of HIV/AIDS that is attached to this report.

3. Legal system and HIV/AIDS in Costa Rica

Since the beginning of the pandemic, there have been juridical norms that guarantee the right to health and the protection of human rights in Costa Rica. Indeed, article 140 of the Political Constitution of Costa Rica establishes that it concerns the President of the Republic and the Minister of Health to define the politics of health, as well as the planning of all these activities. On the other hand, article 73 of the Constitution establishes that the benefit of medical services will be carried out by the Caja Costarricense de Seguro Social (Social System) as the institution in charge of offering health services to all population.

Costa Rica has also adopted diverse international instruments on human rights, such as the Universal Declaration of Human Rights, the International Pact of Economic, Social and Cultural Rights, the American Convention on Human Rights or Pact of San José, the Convention of Children and the Convention Against the Woman's Discrimination.

In attention to human rights, Costa Rica has not only incorporated several agreements of international level in its juridical system, but rather the mechanisms to foresee them by establishing institutions where people are able to defend their rights in front of any type of violation or outrage. The Constitutional Court and the Ombudsman Office are two of these instances where people are able to defend their basic rights.

Our system establishes the juridical consequences for the protection against discrimination or isolation. The norms about the appropriate attention to patients without any restriction and other fundamental rights that guarantee supreme values like life and health are also established. On the other hand, the Political Constitution guarantees freedom of expression, equality before the law, freedom of movement, and other fundamental rights.

There is an acceptable legal system at the present time in Costa Rica concerning Human Rights and HIV/AIDS. It was not simple; as in all countries, AIDS caused a certain level of confusion among the sanitary and political authorities about the better way to prevent and attend the consequences of the pandemic. Costa Rica didn't escape to this joint. During the last 15 years some decrees were promulgated. Later these rules, in attention to its unconstitutionality and violation to human rights, some were repealed, others modified and, others- the good ones- were incorporated as part of the General Law of HIV/AIDS.

4. General Law on VIH/AIDS in Costa Rica

The legislative process of the HIV/AIDS bill began in September, 1995 to be finally approved in May, 1998. The difficult road that culminated with this law was very complicated due to the opposition of some government sectors that considered unnecessary a specific legislation in this respect.

The main topics that regulate this law are: Fundamental rights of people living with HIV/AIDS, Prevention and Education regulations, and finally a chapter of sanctions and infractions.

Some of the fundamental rights established in this law are: the protection against discrimination or degrading treatment (article 4), right to integral health (article 7), confidentiality (article 8), prohibition of mandatory tests or any type of labor discrimination (article 10) or in educational centers (article 11).

Regarding prevention campaigns, strict controls are settle down for the banks of blood and of other human products. Another important aspect is that this law declares the use of condoms as a mean of prevention and it orders the C.C.S.S. and the Ministry of Health to verify that the whole population has access to them. Another point of great relevance is the importance in the implementation of prevention programs on HIV/AIDS to all population and especially for those exposed under higher risk to be infected.

There is a chapter of great importance that regulates all the topics concerning the Penitentiary Centers in the field of HIV/AIDS. The Ministry of Health must implement educational campaigns in penitentiary centers and facilitate condoms to this population. According to law inmates must receive the same type of medical services as the rest of society. Isolation is prohibited except when it is it necessary under certain circumstances.

Finally, law regulates some sanctions for those who commit any non-observance of these rules.

5. Human rights and HIV/AIDS in Costa Rica according to Ombudsman Office Reports

Some violations to human rights of people living with HIV/AIDS have been confirmed and denounced by the Ombudsman Office of Costa Rica.

The first concrete case registered consisted on a systematic violation to the right of medical attention during 10 years when a public hospital laboratory rejected to perform clinical tests to those people known as HIV infected.

This situation forced the Minister of Health to report the facts to the Ombudsman. Meanwhile, with the purpose of satisfying the attention of this service, the authorities of the C.C.S.S. hired the services of private laboratories so that the patients could receive the medical treatment that they required.

Also, the Ombudsman office was notified that a lawsuit was presented before the Constitutional Court by a group of patients. So, the Ombudsman office also presented an adherence in order to support the patients complaint. The Constitutional Court finally emitted a resolution, which established a serious violation to human rights and especially to the right of access to health services just like everybody in the country.

Later, the opposition presented by the Authorities of the C.C.S.S. towards giving the antirretroviral treatment forced some patients -with the support and counsel of the Ombudsmen Office- to present several lawsuits before the Constitutional Court in order to achieve access to this treatment. This Court emitted an historical resolution, which determines that the medical aid is a duty of the Costa Rican State, derived from the concepts of justice and solidarity. This sentence ordered the Costa Rican Public Health System to start supplying immediately an appropriate antirretroviral medication to HIV patients since September 1997.

Also, the Ombudsmen Office investigated several cases of violations to human rights of people living with HIV/AIDS between 1996 and 2001. In this sense, it is worthwhile to point out some of them, as the case of the rejection of the Instituto Nacional de Seguros (I.N.S.) of offering the possibility to the PLWH of acquiring a life insurance.

The Ombudsman Office considered that it is possible for a PLWH to acquire life insurance because in Costa Rica the HIV/AIDS epidemic reports that the probability of dying of aids has diminished considerably due to the antirretroviral treatment. This means that the PLWHIV will live longer and that they may die of another cause than HIV/AIDS.

On other occasions the Ombudsman has received several accusations for discrimination in the employment. One of them was the case of a teacher who lost all his labor rights when he regrettably got sick.

In the hospital environment it is possible to affirm that the current situation has improved considerably due to the effort of the committees specialized in AIDS of some Hospitals of the C.C.S.S. However, the Ombudsman Office has detected the persistence of some old problems, as in a recent case in a public hospital where they were given foods to the patients with VIH in disposable plates.

It is necessary to point out nevertheless that the AIDS Clinic of the Hospital Mexico was rewarded with Quality of Life Award that the Ombudsman offers every year to those who promote human rights. This clinic won this award for its prominent work in the attention to HIV infected patients.

It is still necessary to reinforce the implementation of HIV tests to pregnant women as part of the actions of secondary prevention in order to avoid the transmission of HIV to the fetus.

In the Costa Rican prison environment, the Ombudsman has pointed out the necessity to also strengthen the program of the antirretroviral treatment to inmates and especially the prevention campaigns.

The Ombudsman has also pointed out that the effective application of the General Law on HIV/aids in general and especially in the prison environment has found serious difficulties due to scarce resources and lack of interest.

The main detected problem - which has been improved considerably in the last months - has consisted on the difficulties of carrying out laboratory tests to the patients with HIV inside the penitentiary centers or remitting the patients or the blood samples to a laboratory.

By the middle of the year 2000 an agreement was made among the authorities of the C.C.S.S. and of the Ministry of Justice with the purpose of putting into practice the right to an integral medical attention to inmates. As a result of this agreement, 4 people have received the treatment since February 2000. The Ombudsman has been informed that the rest of the patients doesn't yet require to use the treatment because they don't yet fulfill the requirements of the medical protocol, that is - it should be indicated- the same that for the rest of patients outside prison.

In spite of the efforts of the National Council in the popularization of the General Law on HIV/aids, the Ombudsman considers that this normative text is still ignored by many sectors and its practical implementation has been difficult by some state authorities which according to this law, are responsible of fulfilling certain commands.

The Ombudsman also had insisted that, in spite of the efforts carried out already, these have not been enough. The challenges are great and important. The Ombudsman believes that it is necessary to support the efforts carried out up to the moment and to give the pandemic a special priority by the Costa Rican State.

The Ministry of Health has had limited resources for the design and setting in practice of prevention campaigns of the pandemic. It has been pointed out by the Ombudsman that most of the efforts that have been carried out in this sense have been done by the organized community by means of Non Government Organizations; whose existence is today threatened by the retirement of the financial international cooperation, since it is considered that Costa Rica is not a priority in connection with the rest of the countries of Central America and the Caribbean.

This situation has generated the reaction of the NGO/s in Costa Rica, which have signed the Declaration of the Non Government Organizations in May 2001 that was presented before the United Nations meeting on HIV/aids held in New York this year.

Finally, all NGO´s have presented a complaint before the Ombudsman Office in order to demand more support from the Authorities. The Ombudsman is now requesting the State to strengthen the prevention actions against the pandemic.

It is important to mention that the Ombudsman Office has published one edition of the General Law on HIV/AIDS and has distributed it among all hospital and public institutions. It has been also published a collection of its most important cases and resolutions in the field of Human Rights and Public Health, where a important group of cases on HIV/AIDS has been included.

Finally it is also important to point it out that the Ombudsman Office works very closely with NGO/s, especially when they have asked to participate in community events in order to promote the human rights of people living with HIV/AIDS. The institution also actively participates in the events of December 1st.

FIJI HUMAN RIGHTS COMMISSION
GPO Private Mail Bag
SUVA, FIJI ISLANDS

Appendix 8

National Human Rights Institutions and HIV/ AIDS

I am making this presentation on behalf of the Fiji Human Rights Commission in relation to the above topic.

I shall be making my presentation on the premise that HIV/ AIDS is not only a health issue, but also a human rights issue, and one in which our respective human rights institutions have an important role to play insofar as dissemination of information on individual rights and also in safeguarding each individual's rights as defined by domestic and international law are concerned.

The Statutory Framework

The 1997 Fiji Constitution, which is our supreme law, has a Bill of Rights Chapter at Chapter 4 and this is binding on the legislative, judiciary and the executive branches of government at all levels (section 21(1)). In addition, this Chapter applies to all laws in force at the commencement of the Constitution and extends to things done or actions taken outside of Fiji (section 21 (5), (6).

Section 22 *protects the right to life, and often this is related to proper care and access to medicine and health facilities.*

Section 32 *protects a person's freedom of association, although our Constitution provides that laws may be made to limit this in the interest of*

- *national security, public safety, public order, public morality or public health;*
- *for the purpose of protecting the rights of others; or*
- *for the purpose of imposing reasonable restrictions on the holders of public offices in order to secure their impartial service.*

These exceptions are however subject to the Constitutional requirement that "the limitation is reasonable and justifiable in a free and democratic society."

The most important provision in relation to rights is at **section 38**, which *guarantees a person's right to equality before the law. It protects a person from being discriminated against on the basis of their: -*

(i) *actual or supposed personal characteristics or circumstances, including race, ethnic origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability: or*

(ii) *opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others.*

The above Constitutional provisions are primarily binding on the State and not on private entities or individuals, except to the extent of allowing access to public places (see Section 38(4)).

Section 42 establishes the Human Rights Commission and as a result the Commission's enabling legislation, the Human Rights Commission Act came into force in 1999 to set up the Human Rights Commission. The main focus of the Commission is to protect individuals and promote and safeguard their human rights from any unlawful discrimination from both the State and State entities and also private individuals and companies.

The Fiji Human Rights Commission and HIV/AIDS

The Fiji Commission is now barely two years old and in that short period of time it has had to endure quite a lot of turbulent times and at one stage our very existence was in question as a result of an attempt to abrogate the 1997 Constitution, which establishes the Commission.

In addition to these momentous Constitutional events, the HIV/AIDS scourge continues unabated in Fiji. According to the latest statistics released by the Ministry of Health, as of June 2001 there are now 77 confirmed cases of people with HIV. The gut feeling is that this figure could be higher given the fact that for most people in Fiji, sex and related issues are taboo and may not be discussed openly for fear of causing offence.

There is also the stigma associated with HIV and the way in which it is usually spread in Fiji, which is by unsafe sexual activity i.e. promiscuity. The commission is aware that it may have an increase in the number of complaints related to discrimination based on the fact that a person is infected with HIV. This is especially true for rural areas and isolated communities where often advocates cannot have easy access and therefore people would be left to more or less fend for themselves.

In formulating a policy in relation to the above subject, the Commission has endeavored to reconcile two positions, which are an antithesis of each other, namely an individual's right to privacy as opposed to the right to life of other individuals. This manifests itself very vividly in prisons and other confined environments and to date we are still grappling with this dilemma. We therefore feel that this is an opportune time to share our limited experience in Fiji and also to learn from our counterparts and their experiences, and in the process, formulate a policy that is consistent with international and domestic laws on the subject.

Education and Training

In terms of fulfilling our training and educational mandate conferred by section 7(1)(a) of the Human Rights Commission Act, the Commission has an education and Training Officer whose task is to disseminate and train people in relation to the International Conventions that relate to HIV/AIDS and the obligations that it imposes on the State and, by extension, individual citizens.

Initially, these seminars will be aimed at Government Departments, particularly the Police and Prisons Departments. These courses and seminars will be aimed at educating these public officials and sensitizing them to the special needs and circumstances of HIV/ AIDS sufferers and to bring their regulations in conformity with the Bill of Rights under the Constitution.

In addition the Commission has also launched a radio program to educate people about the Commission, its role and also what the complainants can expect from the Commission. It is envisaged that this program will reach people outside of the main urban areas and they will also be aware of the Commission and its special role in being a guardian and defender of their human rights both against arbitrary State action and also against unlawful discrimination by private entities and individuals.

In terms of our complaints procedures we only have one reported case so far that is directly linked to a HIV sufferer and his complaints of discriminatory treatment due to his status as a HIV positive patient.

The following is a case study to illustrate what we are faced with in the Fijian context.

Case Study

The matter first came to our attention when a prisoner escaped from one of our prisons and the Commissioner of Prisons made the announcement that he was HIV positive. This set off a panic in the community and he was caught soon afterwards but his HIV status has become public.

The Commission then, a week later, received a letter from another prisoner, requesting an audience with the Director of the Commission (who is a lawyer). The Commission was only a few months old at the time. The Director visited the writer of the letter who said he represented other prisoners who needed to know if a fellow prisoner was HIV positive so that they could protect themselves whenever necessary. It was put to the Director that prisoners shared tattoo machines (irrespective of such activities being prohibited by the prison authorities) and that this social activity within prison would place prisoners at risk of infection. They wished to know if there were prisoners among them who were HIV positive.

The Commissioner of Prisons was asked by women's groups whether condoms were provided to the prisoners and he replied that it was not prison policy to do so (prison homosexual activity is frowned upon by the authorities and there is pretence that it either does not exist or if it does, there are only a few 'deviant' prisoners affected.)

The idea of the danger posed to other prisoners by the common use of tattoo machines seemed to be a convenient and acceptable way of dealing with HIV infections in prison.

The Commission began to draw up a policy on the rights of prisoners to information about the HIV status (or indeed other status such as hepatitis) of their fellow prisoners. The crux of the issue was the tension between the right to life of prisoners generally and the right to privacy of the infected prisoner. The right to information of the non-infected prisoner was linked to his right to life.

The Commission was unable to reach a decision on this issue, as research was still ongoing on the methods by which other Human Rights Commissions had dealt with the problem, when the May 2000 coup intervened.

Currently the Commission does not have a firm policy position on this issue since it is a difficult one and requires wide consultation with the Fiji Aids Taskforce and other stakeholders before a human rights policy can be decided. However, we will need to discuss this at this workshop with colleagues who can assist us, in the spirit of regional cooperation, to formulate a definitive policy in keeping with international law on the issue and APF policy as well as the policy from the Office of the High Commissioner for Human Rights. The Fiji Commission would gratefully receive any help with HIV/AIDS and how it is dealt with as a human rights issue.

Projections for the Future

The Commission is confident that with its existence now well and truly established and with more people being aware of the Commission and its special role, we are bound to receive more complaints from people infected with HIV or who may be exploring information areas relevant to their condition.

This is due to the fact that most people in Fiji (including public officials and primary care givers) are ignorant about HIV and they have very biased and often very wrong stereotypes of HIV patients, which would potentially lead to discrimination.

The Commission will also be relying on the NGOs, including the AIDS Taskforce to channel some of these complaints to us and also to follow through with State agencies in sensitizing them to the unique needs of HIV and AIDS sufferers. To achieve this the Commission will need to be widely consultative and forge concrete alliances with a wide spectrum of stakeholders to ensure that we have as broad a coverage as possible.

Appendix 9

Policy of the National Human Rights Commission of Mongolia on HIV-AIDS and Human Rights

Today HIV-AIDS prevention is becoming a task before not only health organizations but also governmental bodies, particularly national human rights institutions since respect of rights of and non-discrimination towards HIV-AIDS positive persons is an inseparable part of human rights issues.

Different studies show that compulsory or forced medical treatment negatively affects the involvement of people in HIV-AIDS prevention programmes by causing seclusion and isolation, thus putting the ground for spreading of the disease. It is widely recognized that discrimination based on sex, race, ethnicity, disability, and economic capacity causes spread of HIV-AIDS and negatively impacts on the prevention and assistance.

In 1992, when one incident of HIV-AIDS was detected, Mongolia was registered as the 165th HIV-AIDS affected country of the world. Since that time there were two more HIV-AIDS incidents registered in the country. The first registered died in 1999 and the second one – in 2001.

Specialists agree that there is a strong sign of HIV-AIDS increase in the current situation of Mongolia given the fact that the population is small, prostitution and STDs are spreading, preservatives are not widely used. Moreover, the developing international relations and the HIV-AIDS spread in the neighboring two countries can also be considered as the factors causing HIV-AIDS increase in Mongolia.

For the prevention of HIV-AIDS, the Government of Mongolia has been undertaking a range of organized measures, including adoption and enforcement of laws and regulations, strategies and policies. For instance, in 1992, a National Committee for Combatting HIV-AIDS was established along with the National Programme for Combatting HIV-AIDS. Moreover, clinical hospitals in aimags, sums, and districts started doing HIV-AIDS test. It should also be mentioned that the number of governmental and non-governmental organizations in the field of STDs and HIV-AIDS prevention is increasing.

The issues around HIV-AIDS, including prevention from the disease, respect of rights and non-discrimination of the HIV-AIDS positive persons, are regulated by a number of legal documents such as the Law on the HIV-AIDS Prevention /1993/, the Law on Combatting Pornography, the Law on Health, the Criminal Code, the Law on Administrative Responsibilities, and the Law on Privacy.

Since 1996, the Government of Mongolia has been implementing HIV-AIDS prevention and combating programmes in collaboration with the UN specialized agencies, including UNDP, UNICEF, and WHO. For example, a Memorandum of Understanding 1997-2001 was signed between the Government of Mongolia and UNAIDS. The Memorandum of Understanding and the National Programme for Combatting HIV-AIDS aim at developing and sharing accurate data on HIV-AIDS damage, at incorporating the policies

and their implementation, at effective research and surveillance followed by more active efforts of awareness raising and better supply of preservatives thus reducing the STDs.

However, the spread of STDs is directly related to inadequate advocacy among the public, poverty, non-hygienic living conditions including food, and the low monitoring from the part of the state over these issues.

Considering all the above discussed, the policy of the National Human Rights Commission shall promote:

1. Development of the cooperation with UN agencies and other international organizations, particularly the regional institutions of the Asia and the Pacific; better implementation of the obligations under the Covenant on the Economic, Social, and Cultural Rights (Article 12) ratified by Mongolia in 1974; show professional assistance in development and improvement of the legislation on HIV-AIDS prevention and combatting;

2. Streamlining the capacity of health institutions, governmental and non-governmental organizations, and the public for the better understanding and improved social protection towards the HIV-AIDS positive persons, prevention from discrimination.

Appendix 10

Powerpoint Presentation (converted to word document) by Ms Ms Michaela Figueira, Temporary Adviser, UNAIDS (Project Co-ordinator of the AIDS Law Unit, Legal Assistance Centre, Namibia).

HIV/AIDS and Human Rights: Exploring the Connections

HIV/AIDS and Human Rights: The Role of National Human Rights Institutions in the Asia Pacific

Melbourne, October 2001

Health and Human rights: historically distinct entities

Health and rights: making the connection

•Health is a "state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity"
•The mission of public health: to provide conditions in which people can be healthy
•Disease is a function of the basic organisation and function of society
•Illustrates the indivisibility and interdependence of rights as they relate to health – rights to autonomy, information, education, association, equality participation and non-discrimination are integral part of achievement of right to highest attainable standard of health just as enjoyment of health is inseparable from other rights
Closing the gap …
•Aims of public health:
•Reduce morbidity, mortality and disability through prevention, care and support
•Promote healthy lifestyles by recognizing and acting on risks imposed by cultural or social constructs
•Develop health systems that equitably improve health
•Promote enabling development policies that contribute to advancement of health
•WHAT IS THE LINK?

Health and rights inextricably linked

•Consider the example of the core human right of non-discrimination and the impact that the violation of this right may have on health:
•Discrimination increases vulnerability to infection: Women and other vulnerable groups are particularly at risk of infection – largely because of unequal status in society – unequal capacity to access information , to reduce risks and access prevention and care services
•Discrimination in health systems exacerbates disparities in health: people will not seek counselling, testing, treatment and support if this means facing discrimination, lack of confidentiality and other negative consequences.

•Lack of respect for human rights can shape vulnerability to ill health; on the flip side the promotion and protection of human rights can favourably impact on health

•The protection and promotion of all human rights is thus necessary to:

•Reduce vulnerability to HIV

•Lessen the adverse impact of HIV on those affected

•Empower individuals and communities to respond to HIV/AIDS

Government obligations

•**Respect** human rights – refrain from interfering directly or indirectly with enjoyment of human rights – provision of health services on basis of equality and freedom from discrimination

•**Protect** human rights – take measures to prevent non state actors (insurers / health care providers) from interfering with human rights

•**Fulfill** human rights – adopt appropriate legislative, administrative, budgetary and other measures towards full realization of human rights

Translating good ideas into action

•Combine the aims of public health and the obligations of government with respect to human rights to develop an analytical framework

•Can be used to identify issues that need to be addressed and to define roles and responsibilities of different actors in health and human rights

•Can also be used to consider whether interventions are achieving the highest results in **both** health and human rights terms

Framework for analysis and action (1)

•What is the specific intended purpose of the policy or programme

•How and to what extent does it impact positively or negatively on health

•What and whose rights are impacted

•Does it necessitate the restriction of human rights

•If so, have the criteria for restricting rights been met

•What system of monitoring, evaluation, accountability and redress exists

Framework for analysis and action(2)

National action

•Investigate human rights violations

•Receive and redress complaints

•Assist governments in integrating human rights into HIV policy and legislative framework

•Education on HIV/AIDS and human rights

•"*I was a nurse at that time, it so happened that I was pregnant, I wanted a caesarean but the doctor told me that he will not continue with my operation unless I agree to be sterilized afterwards. The doctor shouted in the operation theatre saying 'you know you have HIV/AIDS and you will die soon, what if you get pregnant I am certainly not going to operate on you'".*