UNDP GLOBAL COMMISSION ON HIV AND THE LAW

EASTERN EUROPEAN REGIONAL DIALOGUE

18-19 MAY, CHISINAU, MOLDOVA

SUMMING UP by CHARLES CHAUVEL MP, COMMISSIONER

The Importance of Regional Dialogues in an Evidence-Based Process

We have now come to the end of the third regional dialogue sponsored by the Global Commission on HIV and the Law. This one, held in Chisinau, Moldova, has dealt with issues particular to Eastern Europe and Central Asia. The two others already held related to the Asia-Pacific region, held in Bangkok, Thailand, in February, and the Caribbean region, held in Port of Spain, Trinidad and Tobago, last month. The next one will concern Latin America and is due to take place in late June in Sao Paulo, and further regional dialogues will take place before the next meeting of the Commission in August.

Regional dialogues are held to inform the work of the Global Commission on HIV and the Law. They form part of an evidence-based process that also includes commissioning and receiving research on key issues that the Commission feels bound to address in its final report. Hearing from members of civil society organizations willing to share their in-depth knowledge of the problems faced by people affected by HIV/AIDS on a daily basis, and the solutions that must be put in place to those problems, is an important part of the evidence-gathering process. So is the Regional Issue Paper that has been prepared for this meeting by Leah Utyasheva. This is the first Regional Dialogue that has had such a paper prepared for it - it has been a very valuable tool in preparing for the dialogue and I hope further such papers will be commissioned in advance of future regional dialogues.

On my own behalf, and on behalf of my fellow Commissioner JVR Prasada Rao, I acknowledge our host country - the Republic of Moldova - and the very encouraging remarks we heard this morning from its Minister of Justice, Oleg Efrim. I also acknowledge the comments the heard from the UN Resident Coordinator, Kaarina Immonem, and the UNDP Deputy Administrator, Rebeca Grynspan. I acknowledge the work of the UNDP staff who have supported this dialogue, including Dr Mandeep

Dhaliwal, and the presence here today of Denis Broun, the UNAIDS Regional Director. UNAIDS is the co-sponsoring organization with UNDP for the Global Commission. I also note that delegations from roughly one-third of the 19 governments in the region attended, and I acknowledge the information they shared with us.

I should make it clear that these summary comments are personal reflections. An official report on this regional dialogue will follow.

The Aim of the Global Commission

The Global Commission is the brainchild of my friend and former colleague the Rt Hon Helen Clark, Administrator of the UNDP. Helen Clark's career as an elected official in my own country, New Zealand, began in 1981, and ended in 2009. For 12 of those 28 years she served as either New Zealand's Minister of Health or as its Prime Minister. When she was first elected to our Parliament, New Zealand was not to encounter its first HIV case for another four years, in 1985. Consensual male homosexual acts in private were illegal. No-one had the right to be protected from discrimination on the grounds of sexual orientation or health status. Prostitution was illegal as far as the sex worker was concerned. Laws and practices relating to intravenous drug use were basic. Marital rape was not an offence. State drug purchasing policy was unsophisticated. Knowledge of reproductive health issues and STIs was relatively low. In short, as a conservative society, we had done very little to change the colonial legal code that we inherited from the United Kingdom that saw drug use, prostitution and homosexuality as social evils that could somehow be suppressed by the law.

By the time that Helen Clark left NZ politics, much of this had changed. Needle syringe exchange and methadone programmes now operate. Comprehensive anti-discrimination laws now exist, as do civil union laws for same sex couples. Homosexual acts, and prostitution, have been decriminalized. The rights of married women have been enhanced. The state is a very efficient provider of pharmaceuticals due to an aggressive purchasing policy that maximises use of generics. State-sponsored education campaigns have helped to de-stigmatise HIV infection and groups at particular risk, and to help non-infected people understand how to keep themselves safe.

Helen Clark can take credit for a number of these developments, which signify the law moving from a punitive approach to an empowering one. Problems still exist, of course, but it is no coincidence that New Zealand's HIV rates are amongst the lowest in the

world, and that the treatments available to infected people are comparable to those in other leading developed countries.

No region's experience is directly comparable to another's. But the NZ experience - now echoed in many other jurisdictions - shows that the law can be moved from an instrument of oppression to one of empowerment, and that such a shift can be instrumental in making it easier for people at particular risk from HIV infection to access prevention and treatment services. As such, their health, their rights and their human dignity, are protected, and the risk of a general HIV epidemic is averted. It is this shift that the Global Commission on HIV and the Law seeks to encourage and replicate widely, consistent with local conditions.

The Evidence Presented to this Regional Dialogue

Eastern Europe and Central Asia is the only part of the world where HIV infections are still on the rise, with Russia and the Ukraine accounting for 90% of new infections globally. There are some encouraging signs. We heard of Moldova's progressive prison and other laws and policies, and Kyrgyzstan's moves toward treating drug addiction as a medical, rather than a legal, issue. Ukraine has legislated to remove disclosure requirements on HIV positive people, and to provide a legal basis for substitution therapy for HIV positive intravenous drug users. Russia has provided social protection rights for the children of HIV positive people. Countries like Slovakia, Bulgaria and Romania have, as a condition of EU accession, re-oriented some national laws, and others, like Croatia, are doing so.

One of the recommendations coming out of the Caribbean Regional Dialogue was, given the common British colonial origin of many of the repressive laws still in force in that region, a new model code on legal questions relevant to HIV that countries in the region could adopt without having to each begin drafting from scratch. In light of the common Soviet origin of the laws of this region, that may be a solution that could be adopted here as well. The provisions of the model code could be based on evidence of best practice and international legal norms.

Too often, the overall tenor of national legal systems' approach to the epidemic remains punitive rather than empowering. This is a common heritage of the Soviet approach that prevailed across the region until the late 1990s and early 1990s, and which appears to continue to dominate thinking in Russia, the largest and most influential jurisdiction

in the region. We heard that the attitudes behind this approach also continue to be widespread, even in countries that have largely purged it from their statute books, and limit the effective enforcement of progressive laws where they exist.

We heard of a number of specific issues that I particularly want to mention:

- Injecting drug use accounts for the vast majority of regional HIV infections. But drug use remains criminalized in 6 countries. 5 countries do not permit substitution therapy. 8 countries provide for drug-using mothers to lose care of their children. Severe social stigma attaches to drug use, and drug users face discrimination and arbitrary barriers to accessing healthcare services, justice, work and education. Registration requirements can have ongoing negative social effects. None of this is acceptable. Nor does it represent an effective response to the epidemic. Given the rate of new infections, it seems clear that the punitive approach to the issue has failed. There is an obvious need to consider the merits of the decriminalization of drug use and of possession for personal use, with severe criminal sanctions instead targeting sale and supply.

- There are disproportionately high levels of HIV prevalence amongst prison inmates. These are accompanied by predictably high rates of TB and Hepatitis C. Only 4 countries provide needle syringe exchange programmes; some 7 provide substitution therapy. There is very uneven treatment available, including post-release.

- 3 countries criminalize sex work and virtually all others penalize it in some way. Police and other administrative harassment and violence remains a problem. So does using condom possession as evidence of intent to engage in sex work. This stigmatisation impedes successful HIV responses in many ways.

- 2 countries criminalize same sex relations; a number continue to classify homosexuality as an illness; social stigma continues to attach to MSM and transgendered people. In most countries there is no anti-discrimination legislation; where it exists, it is often difficult to enforce. Thus, an important risk group is difficult to reach with prevention and treatment services.

- Only 19% of adults in need of antiretroviral treatment have access to it. Prices for treatments are alarmingly high. The reasons for this seem diverse but may include that legacy intellectual property regimes appear not to be fit for purpose, and therapeutics purchasing policy seems rudimentary in some cases. In addition, official attitudes to HIV

positive people from health professionals and other officials is in many cases below par, including on confidentiality questions.

- Other disturbing practices drawn to our attention include arbitrary restrictions on the rights of so-called 'discordant families' (including curtailment of the ability to foster, adopt or otherwise start families, all in an environment where orphanages are still common); the criminalization of HIV transmission; and travel, entry and residence restrictions on HIV positive people.

- Another apparent legacy of the soviet years is a widespread lack of trust in institutions to deliver remedies, even when these are formally prescribed by law.

The Importance of Russia

Given the enormous influence on a political, economic and cultural level exercised in much of the region by Russia, it was disappointing that it elected not to send an official delegation to the dialogue. This non-engagement, and Russia's apparent insistence on adhering to an epidemic control approach that has failed, does not seem compatible with its aspirations as an emerging power, and its status as a rich country and a member of the G20.

What to Do Now?

The tragedy of the Central Asian and Eastern European region being the only one on the planet where infection rates are rising is that the situation was entirely preventable. 15 years ago, before the regional epidemic had occurred, there was enough epidemiological evidence to be able to say with confidence what approaches should have been taken here to prevent the spread of HIV. That evidence was too often ignored and so we have the problem here we face today.

The question is what to do now. The answer is to apply the evidence. And the evidence is overwhelmingly in favor of treating HIV as a health problem, not a justice problem; to respect the dignity of people affected by HIV and groups at risk of it; and to ensure the effective delivery of healthcare to those who need it. Reactionary attitudes and regressive laws have to be challenged and then changed. People in the region need to be given access to accurate information about HIV-related issues directly, perhaps via social media, and initiatives that are evidence-based should be reinforced. This is the

only way that we will be able to turn the numbers around in this part of the world, and reverse this regional epidemic that simply did not need to happen.

The Commission has no coercive power. It cannot order anyone to do, or refrain from doing, anything. But we can engage in dialogue, and we can come up with recommendations that are backed up by the evidence. I want to conclude by thanking everyone who has participated in this dialogue yesterday and today for your invaluable assistance in helping to equip us to do so. I hope you will continue to support the work of the Commission, and that when you see our report, you will feel that our work deserves that support.

******