

Open civil society letter to the participants of the “Capacity building workshop on human rights and gender in HIV legal frameworks”

15 April 2008

Dear Honourable Participants:

We, the undersigned organizations and individuals, write to extend our best wishes for the upcoming “Capacity building workshop on human rights and gender in HIV legal frameworks” to be held in Dakar, Senegal from 16-18 April 2008.

In light of the importance of a robust legislative response to the epidemic and strong action on behalf of the most affected communities, we draw your attention to serious human rights concerns that have been raised with respect to the N’Djamena “model law” and the national HIV laws that have followed it. This meeting is a vital opportunity to update these laws so that the region of West and Central Africa reflects the very best guidance on how countries respond to HIV with legislation.

A number of provisions of the N’Djamena “model law” violate international human rights law and the UNAIDS/Office of the High Commissioner for Human Rights International Guidelines on HIV/AIDS and Human Rights (“the International Guidelines”). Further, while the International Guidelines emphasize the importance of protecting women’s rights, the model law is extremely detrimental for women, who are more likely than men to be tested for HIV (due to testing conducted in antenatal clinics) and more vulnerable to violence and abandonment resulting from disclosure of their status.

Specifically:

- The “model law” contains language that could severely restrict educational activities around HIV prevention in schools.
- In explicit contravention of the International Guidelines, the “model law” allows mandatory HIV testing in situations such as where pregnant women go for a medical check-up, or “to solve a matrimonial conflict”. Mandatory testing for pregnant women jeopardizes women’s health and lives by discouraging them from seeking pregnancy-related care.
- The “model law” imposes a blanket duty on health care practitioners to disclose the HIV status of their patients to their patients’ spouses or sexual partners, regardless of the actual risk of transmission. The law contains no provisions to ensure that the person living with HIV be given advance warning of such notification, nor any means to prevent violence or abandonment that may be a direct result of such involuntary disclosure. This provision has particular implications for women who bear the brunt of intimate partner violence.
- The “model law” contains a provision criminalizing “the willful transmission of HIV”, and defines HIV transmission to be transmission of the virus “by any means”. This broad language could impose criminal penalties even on individuals who practice safer sex and/or disclose their HIV status to their sexual partners, or on mothers who transmit HIV to their children, either in utero or during labour and delivery.

UNAIDS and the Office of the High Commissioner for Human Rights reissued the International Guidelines in 2006 in recognition of the continued centrality of human rights to the fight against

AIDS. We urge you to ensure that the HIV laws in West and Central Africa guarantee human rights protections, including the human rights of women. HIV laws in the region should be based on education, empowerment, non-discrimination, and community engagement. Punitive provisions and other approaches that exacerbate stigma and discrimination will only drive people away from testing and treatment services and risk undermining an effective response to the epidemic.

We therefore urge you to ensure that the workshop results in:

- 1) Concrete plans, within established time periods, to amend the limited number of articles in national HIV laws that are at variance with international human rights law and the UNAIDS/Office of the High Commissioner for Human Rights' International Guidelines.
- 2) The N'Djamena "model law" has been promoted as a template for legislation in the region. It is therefore critical that it be revised so that it provides parliamentarians with a resource that reflects international human rights principles and the UNAIDS/Office of the High Commissioner for Human Rights' International Guidelines. We understand that revision was agreed to during the previous meeting on the "model legislation" in Dakar, July 2007. Specifically, the law should be revised to include provisions that specifically protect the rights of women, prisoners, and other vulnerable populations as well as to amend existing provisions on:
 - o Education on HIV and AIDS in schools;
 - o Mandatory HIV testing;
 - o Partner notification;
 - o Discrimination;
 - o Criminalisation of transmission;
 - o Prisons.
- 3) A clear commitment to genuine participation with civil society partners, particularly with representatives of those communities who will be most affected by the laws under discussion including persons living with HIV and women, from the region and across Africa, throughout the drafting, amendment, and implementation of these laws.

We look forward to learning the outcome of this week's meeting and to following this important process.

Sincerely,

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The ATHENA Network
Global

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