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JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS

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5 March 2008

Dear Ms Slattery,

Thank you for your letter dated 27 September 2007 expressing the concerns of several organizations regarding the HIV-related legislation developed in N'Djamena, Chad in 2004 by the Forum of African and Arab Parliamentarians for Population & Development, with the support of AWARE-HIV/AIDS and Economic Community of West African States (ECOWAS). We have shared the contents of this letter with all those to whom you addressed your letter, and they have in turn agreed with the views we are expressing here. The UNAIDS Reference Group on HIV and Human Rights has also brought the matter to the attention of Peter Piot, as well as to that of Jeffrey O'Malley, Director, HIV/AIDS Practice, Bureau for Development Policy, UNDP.

While there are a number of positive provisions in the N'djamena law, we agree that there are a number of provisions that are not in line with rights-based approaches to HIV and should be improved. These provisions relate to HIV education and information, obligations to disclose HIV status, HIV testing issues, criminalization of HIV transmission, and some gender issues. We believe that, where these provisions have been taken "as is" and enacted in the region, the resulting laws should be improved; and where countries are contemplating the enactment of these provisions, they should be reconsider such a step and use alternative text that is more clearly protective of human rights.

Because of these concerns, during the time we have taken to respond to your letter, our respective offices have been engaging with Parliamentarians, other relevant members of Government, regional fora and civil society local partners to support rights-based HIV-related legislation, to improve the N'Djamena law where it can benefit from improvement, and to support law reform, where necessary, in the region. Let me outline for you some of the activities that we and our partners, including UNDP, UNIFEM, the Open Society Initiative of West Africa (OSIWA), have undertaken and intend to take:

As you are aware, in July 2007 the UNAIDS Regional Support Team for West and Central Africa, UNDP Regional Office and UNIFEM Regional Office, in collaboration with AWARE/USAID, OSIWA and ECOWAS Health Organization, convened an expert consultation in Dakar with the participation of several Parliamentarians from the region. The N'Djamena law was discussed extensively during the meeting, and recommendations were made on how to further support country processes to refine and improve their legislation.

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Representatives of our organisations then participated in a meeting organized by the Francophone Parliamentarian HIV Network in Ouagadougou, 11-12 October 2007, and presented the decisions and recommendations taken during the Dakar consultation. The representative of the UNDP Regional Service Centre in South Africa participated in this meeting specifically in order to propose the amendment of the provisions of the N'djamena law that are inconsistent with a rights-based approach.

The Parliamentarians present expressed their commitment to making sure human rights and gender concerns are taken into account in their national laws, but they indicated that greater technical assistance is required in the area of law reform and its implementation. Meeting participants also recommended that the N'Djamena law be revised, and discussions on how to support that process are ongoing.

In follow up to the decisions and recommendations of the Dakar and Ouagadougou meetings:

- The UNAIDS Regional Support Team in Dakar, on behalf of regional partners, has provided a set of comments on the N'Djamena law, developed by the Canadian HIV/AIDS Legal Network at the request of UNAIDS, to relevant Government authorities in countries that have recently undergone a law reform process. This analysis is intended to help countries to take into account critical human rights and gender issues they should address in their HIV-related law, regulations and policy. It is recommended to countries that they identify and revise problematic elements of their legislation as soon as possible.
- The UNAIDS Regional Support Team, West and Central Africa, working with the UNDP Regional Service Center in Johannesburg, has also disseminated to all UN Resident Coordinators, UN Theme Group Chairs on HIV, and UNAIDS Country Coordinators, the comments on the N'Djamena law, requesting that they provide necessary technical support to national authorities in revising or formulating their national laws and regulations with respect to HIV and human rights.
- Our staff have communicated to countries that our organizations are fully available to facilitate the provision of technical assistance to ensure that laws and regulations are protective of human rights and advance gender equality, and are developed through participatory processes that include people affected by the epidemic. This includes law reform to strengthen laws addressing violence against women, and other critical human rights issues that are driving the epidemic. A needs assessment with regard to technical assistance for law reform has been conducted, and the report will be available in the coming weeks.
- We are also planning to organize this month a capacity-building workshop for a pool of consultants based in the region that can help countries ensure their laws are informed by the *International Guidelines on HIV/AIDS and Human Rights* and the human rights treaties they have ratified.
- As a follow up to the Dakar and Ouagadougou meetings, we will also organize in April 2008 a regional workshop which will bring together AWARE, key Parliamentarians, officials from Ministries of Justice and Interior, and civil society groups to discuss the revision of the N'djamena law, and will suggest alternative wording as necessary.

- A letter has been sent to the Chair of ECOWAS asking him to bring up this issue at the next ECOWAS Heads of State meeting.
- Our regional office is proceeding with the recruitment of a senior staff member to follow up on this important issue. Moreover, UNDP has nominated a Regional Director for WCA based in Dakar and who is very much committed to strengthen capacity of the UN to deliver on law and human rights issues.
- Finally, I myself plan to write to relevant high-level government officials in order to express our concerns more directly and offer our support towards rights-based HIV-related legislation in the region.

Let me assure you that human rights remain at the center of our work against HIV, including in our support to national HIV responses and national legislation. We believe a legal environment supportive of the rights of those affected by HIV – accompanied by capacity for implementation and enforcement – is an essential part of effective national responses to HIV and to the achievement of universal access to HIV prevention, treatment, care and support. We look forward to working with the organizations represented in your letter, as well as regional and local organizations, to ensure such approaches.

Thank you again for sharing your concerns.

Yours sincerely,



Michel Sidibe
Deputy Executive Director, Programme

cc: Peter Piot, UNAIDS Executive Director
 Kemal Derviş, UNDP Administrator
 Louise Arbour, UN High Commissioner for Human Rights
 Joanne Sandler, UNIFEM Executive Director *a.i.*
 Jeffrey O'Malley, HIV/AIDS Director, Bureau for Development Policy, UNDP
 Meskerem Grunitzky-Bekele, Director, UNAIDS Regional Support Team, Dakar
 Cecile Mukarubuga, UNIFEM Regional Director, Dakar
 Susan Timberlake, Senior Human Rights and Law Adviser, UNAIDS
 Béchir N'Daw, Human Rights Adviser, UNDP
 Abigail Noko, Human Rights Officer, OHCHR
 UNAIDS Country Coordinators, West and Central Africa Region