Report of the

Eastern Europe and Central Asia Regional Dialogue of the Global Commission on HIV and the Law

Chisinau, Moldova, 19 May 2011

GLOBAL COMMISSION ON
HIV and the LAW

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Global Commission on HIV and the Law
Eastern Europe and Central Asia
Regional Dialogue

Chişinău, Moldova, 19 May 2011

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GLOBAL COMMISSION ON HIV and the LAW

"Every day, stigma and discrimination in all their forms bear down on women and men living with HIV, including sex workers, people who use drugs, men who have sex with men (MSM) and transgender people. Many individuals most at risk of HIV infection have been left in the shadows and marginalized, rather than being openly and usefully engaged… To halt and reverse the spread of HIV, we need rational responses which shrug off the yoke of prejudice and stigma. We need responses which are built on the solid foundations of equality and dignity for all, and which protect and promote the rights of those who are living with HIV and those who are typically marginalized."

- Helen Clark, Administrator
United Nations Development Programme

"[T]he law can be moved from an instrument of oppression to one of empowerment…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."

- Charles Chauvel, Commissioner
Global Commission on HIV and the Law

Contents

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Abbreviations

ART	Antiretroviral therapy (treatment)
CSO	Civil society organization
LGBT	Lesbian, gay, bisexual, transgender (people)
MARPs	Most-at-risk populations
MSM	Men who have sex with men
NGO	Non-governmental organization
PLHIV	People living with HIV
RAG	Regional Advisory Group
STI	Sexually transmitted infection
TA	Technical Assistance
TAG	Technical Advisory Group
TG	Transgender person
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme

1. Introduction

This report summarises the proceedings of the Eastern Europe and Central Asia Regional Dialogue of the Global Commission on HIV and the Law (the Commission) held on 18 and 19 May 2011 in Chisinau, Moldova. The report also draws from submissions that were made to the Commission from civil society in the region based on a Call for Submissions that was put out by the Commission Secretariat for the Regional Dialogue.

The Global Commission on HIV and the Law was launched in June 2010 by UNDP on behalf of the UNAIDS family. Its objectives are to analyse evidence on law in the context of HIV and develop rights-based and evidence-informed recommendations, increase awareness amongst key constituencies, including governments on issues of rights and law in the context of HIV, and engage with civil society and strengthen their ability to campaign, advocate and lobby.

The Commission comprises eminent persons from public life who provide global leadership on HIV-related legal and human rights issues. The Commission is based on three mutually reinforcing axes:

1) A high level Commission that will analyse the evidence and add insight and weight to findings and recommendations;
2) A Technical Advisory Group (TAG) to advise the Commission and help generate and build consensus around the evidence base; and
3) Regional Dialogues to ensure participation and inclusion of affected communities and law- and policy-makers

During its 18-month process (June 2010 – December 2011), the Commission is reaching out to civil society working on the HIV response and related issues, including groups and networks of key populations, and law and policy makers. The engagement of diverse stakeholders ensures that the Commission's deliberations are informed and enriched by the experiences of those most affected by the epidemic. The Regional Dialogues, a critical element of this outreach, aim to generate region-specific policy dialogue on key legal and human rights issues in the context of HIV.

The Regional Dialogue for Eastern Europe and Central Asia was the third of seven, and followed the first two organized in Asia and the Pacific and Caribbean regions. Other Regional Dialogue meetings will be organized in Africa, the Arab States region, Latin America and High Income countries.

Focus and Scope of the Regional Dialogue in Eastern Europe and Central Asia

The Regional Dialogue was organised by UNDP's Regional Programme for Europe and the Commonwealth of Indpendent States and the Commission Secretariat and jointly hosted and supported by UNDP and UNAIDS. To guide the regional process, UNDP, the UNAIDS Secretariat and the Global Commission Secretariat convened a Regional Advisory Group (RAG) comprised of representatives of non-governmental organizations.

The scope of the Regional Dialogue was influenced by written, audio and video submissions received prior to the Regional Dialogue. A call for submissions from civil society was made in relation to the following areas:

(1) Laws and practices that effectively criminalise people living with HIV and vulnerable to HIV;
(2) Laws and practices that facilitate or impede HIV-related treatment access;
(3) Issues of law and HIV pertaining to the rights to education, work, healthcare and residency; and
(4) Issues of law and HIV pertaining to young persons and women in the context of violence and discrimination

The Regional Advisory Group contributed to the review of submissions and advised on selection of the Regional Dialogue participants, based on the submissions recieved. Additionally, a

background Regional Issues Paper, *HIV and the Law in Eastern Europe and Central Asia* (English, Russian), was prepared in advance of the Regional Dialogue.
The experiences and knowledge shared at the Regional Dialogue will help to shape the Commission's thinking and recommendations. The Regional Dialogue will inform the Commission's Final Report, which is due in December 2011.

Structure of the Regional Dialogue

"The stigmatization of groups vulnerable to HIV is a serious obstacle to achieving Universal Access (UA). The rights of these groups must be protected to remove discrimination and turn back the epidemic."
- Government Representative, Moldova

The meeting brought together more than **100 participants from approximately 20 countries** and included government, civil society and international organizations including the UN family. The working languages of the meeting were Russian and English. The two-day meeting created a platform for governments and civil society organizations in Eastern Europe and Central Asia to engage in constructive dialogue, including sharing experiences on creating enabling legal environments and addressing legal barriers, stigma and discrimination in the context of HIV.

Day one consisted of preparatory meetings with two parallel sessions, one among government representatives and the other between civil society participants. The aim of these preparatory sessions was for each group to discuss key issues elucidated in the submissions made to the Commission.

Day two of the meeting was a moderated town hall dialogue on the key issues identified through the submissions made to the Commission and the experiences of participants with law and its practice in relation to the HIV response and prevention, treatment and care. The meeting was moderated by Yelena Khanga, a well know journalist and talk show host from the Russian Federation. The discussions and interventions were focused around the framework of:

1) "Good" laws that have bad and harmful consequences
2) "Bad" laws which cause harm and have detrimental impacts
3) Non-implementation of existing laws
4) Gaps in the law failing to protect those most vulnerable and marginalized

The meeting concluded with comprehensive closing remarks by Commissioner Charles Chauvel from New Zealand.

2. Main Issues Highlighted by Participants

HIV infections are rising faster in Eastern Europe and Central Asia than any other region in the world. The number of people living with HIV in the region has almost tripled in the past ten years; there were an estimated 1.4 million people living with HIV in 2009 compared with 760,000 in 2001.[1] Adult HIV prevalence is 0.8 percent across the region[2] and 1 percent or higher in Russia and Ukraine, which together account for almost 90 percent of newly reported HIV diagnoses. And AIDS-related deaths in Eastern Europe and Central Asia continue to rise. There were an estimated 76,000 AIDS-related deaths in 2009 compared to 18,000 in 2001, a four-fold increase.[3]

In recent years, many countries in the region have reviewed their legislation and policies and adopted a more responsive, evidence-based approach to HIV. For example, over the course of the Regional Dialogue, participants heard of Moldova's progressive prison laws and drug policies, Kyrgyzstan's moves toward treating drug dependence as a medical rather than legal issue, and Ukraine's legislation to remove disclosure requirements imposed on people living with HIV. Despite notable achievements and changes in addressing the epidemic, in much of the region more needs to be done. The epidemic in most of the region is concentrated among key populations at higher risk such as people who inject drugs, sex workers, men who have sex with men and people in prisons. In many cases, punitive and coercive laws against these groups reinforce and perpetuate stigma and discrimination, lead to human rights violations and contribute to the further spread of HIV.

[1] 2010 UNAIDS Global Epidemic Update Report.
[2] EHRN, *Achieving Universal Access in Eastern, South East Europe and Central Asia*.
[3] 1Ibid, pp. 38–39.

2.1 People who use drugs

> **"In our region drug users are constantly criminalized, they face a real threat of long term incarceration for possession of very small amounts of drugs."**
> *- Civil Society Representative, Russian Federation*

Injecting drug users account for more than 60 percent of all HIV infections in Eastern Europe and Central Asia. The rise in new HIV infections in this region is predominantly due to continuing high levels of HIV transmission between people who inject drugs and their sexual partners as well as networks of needle sharers.

The region is home to 3.7 million people who inject drugs, representing almost one quarter of the world total. Some 1.8 million of these people live in the Russian Federation. The highest prevalence of injecting drug use in the adult population worldwide is now found in Azerbaijan (5.21 percent), followed by Georgia (4.19 percent), Russian Federation (1.78 percent), and Ukraine (1.16 percent).

An estimated one-quarter of the 3.7 million injecting drug users in the region are living with HIV. Despite the high prevalence of HIV in this population, access to ART and harm reduction services remains low. According to the Global Prevention Working Group, ART levels for people who inject drugs are the lowest for any population at risk for HIV infection. The highest rates of ART for injecting drug users are in Ukraine and Russia. Still, very few of the total number of injecting drug users living with HIV receive treatment in these countries, ranging from less than 2 percent in Ukraine to only 0.2 percent in Russia.[4]

Laws and Practices

Participants in the Regional Dialogue highlighted the harm to HIV responses caused by punitive drug laws. Most national drug policies in Eastern Europe and Central Asia prioritize criminalization of drugs and the people who use them rather than harm reduction, resulting in an over-reliance on law enforcement while neglecting investment in treatment and other public health strategies.

Barriers to progress:

- Simple drug use is criminalized in at least Russia, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan.
- Drug possession of even miniscule amounts for personal use is a criminal offence in most reviewed countries. This creates obstacles to implementation of harm reduction measures (i.e. when possession of residual amount of drugs in a used syringe constitutes a criminal offence).
- Legislation in many countries contains broad prohibition of propaganda (or inducement to drug use), which has been interpreted to intimidate and harass harm reduction

[4] International Harm Reduction Association, *Global State of Harm Reduction*, 2010, p. 24.

organizations and peer-to-peer services that disseminate information.

- Laws in Russia, Kosovo, Turkey, Turkmenistan, and Uzbekistan restrict access to substitution drugs, such as methadone and buprenorphine.
- Although several countries do provide opioid substitution therapy (OST), no country has legal provisions that define the key principles of substitution therapy programmes and guarantee that the state will provide them. As a result, in almost all countries where they exist, OST programmes have remained at the pilot stage and their impact is minimal. For example, Kyrgyzstan, which has been running OST programmes since 2002, has the highest coverage of patients. Still, only 948 people receive OST out of approximately 25,000 people who inject drugs in the country.
- At least a few Eastern Europe and Central Asian countries, including Russia, Kazakhstan, Kyrgyzstan, and Ukraine, maintain drug user registries. The fear of being placed on registries is an impediment to accessing services. Registration can also lead to discrimination in the workplace and educational institutions, harassment and extortion by the police, risk of losing custody of children, and loss of confidentiality.

Successes:

- The majority of countries in Eastern Europe and Central Asia have national HIV or drug laws and policies that support harm reduction. Russia is a notable exception; its new Anti-Drugs strategy explicitly opposes harm reduction and bans opioids substitution therapy.
- In 2004, Ukraine passed legislation to provide a legal basis for substitution therapy for HIV-positive injecting drug users. It has since established the biggest and most rapidly growing substitution treatment programme of any country of the former Soviet Union (except the EU member Baltic States), with more than 5,500 people in treatment in 2010.
- Possession of drug paraphernalia (syringes, disinfectants, utensils etc.) is not itself an offence in any of the study countries.
- In Kazakhstan and Uzbekistan, government-funded needle substitution programmes (NST) exist at “trust points” established by the national HIV programmes.
- While simple drug use is an administrative offence in Moldova, the penalty for offenses has been reduced (to community service, for example); arrest for minor drug offences is not permitted.
- Armenia decriminalized drug consumption in 2009.

Experiences and testimonials of participants:

Participants emphasized the severe social stigma attached to drug use and the ongoing negative social effects of drug user state registries. They discussed how people who use drugs face discrimination and arbitrary barriers to accessing healthcare services, justice, employment opportunities and education.

Maxim Demchenko from The Light of Hope in Ukraine discussed incidents of police abuse:

"I had a lot of problems with violations of human rights when I was using drugs. I was constantly pressured by the police. I have often been ill-treated only for the fact that I am a drug user and I was repeatedly tortured during interrogation. I was denied access to medical care when I was suffering from a high temperature and an abscess."

Alexey Kurmanaevsky, a person living with HIV from Russia spoke about his struggle with drug abuse and the human rights violations he has faced as a drug user. Because his name was placed on a registry when he accessed medical treatment, information about his health was disclosed without his consent and his driver's license was taken away. After nearly 15 years of struggling with drug addiction, he asked Russia's Narcology Department to prescribe him substitution therapy but was rejected because this form of treatment is prohibited in the country. In 2010, he filed a lawsuit against Russia in the European Court of Human Rights to defend his right to life. That suit is ongoing.

Dasha Ocheret from Russia described the impact of repressive drug policies.

"I have repeatedly been in the situation when it was impossible to buy clean needles because of police raids near the pharmacies, or the refusal of employees of pharmacies to sell syringes to drug users. Strengthening of police control, aimed at combating street drug trafficking, led to the fact that carrying heroin from the selling point home became dangerous: the presence of doses for personal use could bring you several years in prison - or the need to pass bribes to law enforcement officials. To avoid this, I used drugs in the hallways, near the place of purchase, risking HIV infection and re-infection with other subtypes of hepatitis C. Those to whom I gave my syringe risked contracting hepatitis. The information I had about HIV and hepatitis did not help me to protect myself and people around me because of the repressive drug policies."

An HIV-positive individual from Uzbekistan summarized the obstacles faced by drug users living with HIV: A certificate of negative HIV status is required prior to surgery; for marriage, the registry office requires a certificate from the AIDS centre, the substance abuse clinic and the psycho-neurological clinic; the Drug Addictions Service discloses the HIV-status of drug users to the Ministry of the Interior; HIV-positive non-citizens can be deported from Uzbekistan; drug users are forced into compulsory drug treatment; and there is no substitution treatment programme at a national level.

Youth for Right to Life, an association of people using drugs and of people living with HIV in Moldova, has had some success in protecting the rights of drug users through government partnerships. The organization signed a memorandum with the police directorate which states that the police will assist in the implementation of harm reduction services.

Helsinki Citizens Assembly from Armenia discussed law enforcement practices regarding drug users in Armenia. In 2009, the Government of the Republic of Armenia approved the "*National*

Programme on Combating Drug Addiction and Illicit Traffic in Narcotic Drugs in the Republic of Armenia in 2009-2012" to prevent drug usage and the spread of HIV. Although the usage of narcotics drugs was decriminalized in 2008, a punitive and repressive approach to drug users is still predominant and no public health concept exists. The organization monitored the rights to a free trial of persons charged with illicit traffic of narcotic drugs from 2008-2010; in almost all of the cases, law enforcement officers collected artificial proof to impose accusation or bring drug users to criminal liability.

Issues of priority as expressed by participants:

- Drug use and drug possession for personal use should be decriminalized.
- Viable alternatives to incarceration for drug users charged with petty crimes should be introduced.
- Free and high quality legal assistance should be provided to drug users.
- Laws on compulsory drug testing should be abolished.
- Provision of drug treatment (harm reduction, especially Opioid Substitution Therapy) should be free and available to all who need it.

2.2 People confined to prison settings

Eastern Europe and Central Asia have some of the highest incarceration rates in the world. With 629 per 100,000 people in prison, Russia has the world's second highest prison population rate. Belarus (468) and Georgia (415) are close behind.

In most countries of the region, HIV prevalence is much higher among prisoners than in the population at large. The rate is particularly high among people in prison who inject drugs. This is because legal approaches to substance use emphasize incarceration and punishment over treatment and prevention, and therefore large numbers of HIV-positive drug users are imprisoned for drug-related offences. HIV prevalence in prisons is further exacerbated by transmission through needle sharing and unprotected sex.

Laws and Practices

Participants in the Regional Dialogue emphasized that few countries in the region have laws establishing healthcare services in prisons equal to those in the general community. As a result there is often a lack of capacity and infrastructure for the provision of health-related services to prisoners, particularly drug dependence treatment. Additionally, the penal codes of some countries discriminate against prisoners based on HIV-positive status and drug dependence.

Barriers to Progress:

- The health departments of most post-Soviet penitentiary systems operate under Ministries of Internal Affairs or Justice, and fail to provide adequate health care, including OST, adequate ART, voluntary drug dependence treatment and sterile injecting equipment in prisons and detention facilities.
- Prisoners ordered to undergo compulsory treatment for drug dependence and prisoners with infectious diseases (including HIV) are not eligible for "good behaviour" transfers from a colony with stricter security regime to less strict facilities. They are also not eligible for leave in exceptional circumstances (e.g. death or illness of relatives), although other prisoners are.

Successes:

- Armenia, Kyrgyzstan, Moldova, and Belarus have needle and syringe exchange programmes in prisons.
- Albania, Croatia, Georgia, FYR Macedonia, Moldova, Montenegro, Serbia, have OST in prisons. Kosovo plans to establish an OST pilot programme in two prisons by 2013.
- In Russia, people in detention facilities, prisons and other forms of custody have the right to health care. If necessary they have the right to free health care outside of detention centres and prisons. However, drug dependence treatment is very limited in prison settings and opioid substitution therapy is not available.

Experiences and testimonials of participants:

Participants spoke about how poor prison conditions throughout the region facilitate the spread of HIV and violate the rights of inmates. Prevention programmes are rarely available and many prisoners with HIV are unable to access antiretroviral treatment. Still, there are some success stories. A few participants described how the work of civil society has led to the implementation of harm reduction services in some places.

Maria Godlevskaya from CANDLE in Russia discussed the negative implications of incarcerating drug users:

"One of the main problems relating to the HIV epidemic in Russia is the unwarranted criminalisation of drug use, and as a consequence, the imprisonment of huge number of drug users. Most of our clients were first convicted of minor crimes, such as drug possession (although the quantities of drugs that were found were very small and did not exceed the daily dose). We are confident that the penalty of imprisonment for use and storage without the goal to distribute should be abolished, as this practice only exacerbates the situation. In prison, drug dependence treatment is not provided, social relationships are broken, health deteriorates and psychological problems build up. People come out of prison much more maladjusted, and the vast majority of them continue to use drugs."

Valery Kijashko from The Light of Hope, Ukraine described how poor conditions violate the rights of prisoners:

"The conditions of prisons and facilities, including medical aid and food for prisoners, are very remote from what the norms of the current legislation of Ukraine and the international standards prescribe. Prisoners, serving time spend years in inhuman conditions, conditions which assist spread of HIV and tuberculosis. The given diseases are a mass epidemic. Prisoners are released knowing or not knowing about their disease status and disperse in all Ukraine. I know enough examples of infringement of human rights; in particular of people living with HIV, pregnant women who were denied medical assistance due to their HIV status and who children started their lives in reanimation, and worse."

Mr. Kijashko has appealed against the decision of national courts and other bodies before the European Court of Human Rights for violation of fair legal proceedings and other rights of prisoners.

Alex Kotvitsky from Perspective in Ukraine discussed his organization's campaign to promote the rights of patients on ST to access substitution treatment while in police custody. In 2009, Perspective collected data about cases related to the detention of IDU patients in the Zhitomir region and violations of their rights and presented the findings to the regional Coordination Council to combat tuberculosis and HIV/AIDS. As a result, a working group of key stakeholders from government and civil society was formed. The group developed the first mechanism in

Ukraine to provide access to substitution treatment for ST patients in police custody. This model is already being used in other regions in Ukraine.

In June 2004, the Department of Penitentiary Institutions at the Ministry of Justice of Moldova implemented harm reduction programmes in 17 penitentiary facilities (including substitution therapy with methadone, ART, syringe exchanges, and education programmes). The guidelines provide for the confidentiality of medial information; voluntary testing with mandatory pre and post-test counselling and prohibition of coercive testing; prohibition of forced isolation and segregation of HIV positive prisoners; access for HIV positive prisoners to diagnosis and treatment; and provisions of condoms among prisoners. The program has demonstrated success: the number of new HIV infections in prisons decreased from 32 in 2004 to 14 in 2010; the rate of HIV infection in prisons in Moldova decreased from 2.02% (190 people) in 2004 to 1.76% (114 people) in 2010; and 100% of pregnant women prisoners receive HIV testing.

Issues of priority as expressed by participants:

- Medical points should be established to provide check-ups and treatment for people in remotely located prisons.
- Doctors should receive HIV training.
- If HIV treatment in prison settings is unavailable, then early release for PLHIV should be considered.
- Conditions in prisons should be monitored, especially in relation to medical assistance, food and working conditions
- The populations in prisons should be reduced, since the region has some of the world's highest rates of incarceration.
- Where feasible, procurement of ART in penitentiary systems should be conducted jointly by Ministries of Justice and Ministries of Health.

2.3 Sex Workers

"People are often punished for carrying condoms in their pockets – because he/she may be a prostitute. This practice needs to end."
– Civil Society Representative, Hungary

HIV prevalence among sex workers in most of Eastern Europe and Central Asia is low compared to much of the rest of the world, most likely due to the reportedly high rate of condom use during transactional sex. However sex workers are still more vulnerable than the general population and some categories of sex workers have higher rates of HIV infection, including male and transgender sex workers, those from countries with generalized epidemics, sex workers who work on the street, and those who also inject drugs. For example, at least 30 per cent of sex workers in the Russian Federation have injected drugs. The high HIV infection rate found among sex workers in Ukraine (14 to 31 per cent in various studies) is largely attributable to the overlap between paid sex and injecting drug use.

Criminalization of sex work, abusive law-enforcement practices, and rampant human rights violations against sex workers further increase their vulnerability to HIV. For example, police regularly arrest sex workers on the street or simply threaten to arrest them in order to extort bribes. The fear of such harassment restricts sex workers' ability to access vital health and support services, including medical care and harm reduction. Police also confiscate condoms to use as "evidence" of sex work, forcing sex workers to rush or skip negotiations about condom use with their clients. And after being detained by the police, sex workers often report being forced to undergo HIV testing against their will. Finally, sexual violence committed by both police and clients against sex workers puts sex workers at greater risk of HIV infection.

Laws and Practices

Sex work in most of the region remains illegal, making it difficult to implement effective HIV prevention, treatment and support programmes. Even where sex work and associated activities are not criminalized, actual law-enforcement practices often contradict legislation and contribute to abuse.

- Prostitution is criminalized in Albania and Ukraine.
- In Armenia, Belarus, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Russia, Serbia, Montenegro, Turkmenistan, and Uzbekistan, sex work is directly prohibited, with administrative liability in place.
- Pimping is prohibited in all countries of Eastern Europe and Central Asia. It is an administrative offense in Russia and a criminal offense in all other countries, with punishments varying from fines to imprisonment.
- The Criminal Codes of Kazakhstan and Kyrgyzstan prohibit involvement in sex work using violence, threats and coercion, and the organizing and maintaining of brothels for prostitution. The consequences of criminalizing brothel-keeping are a more mobile and

less visible community of sex workers, which makes it more difficult to reach sex workers through outreach and clinic-based services. Direct prohibition of brothel-keeping also means that sex workers are often forced to work on the streets or in their clients' cars, which can further endanger their health and safety.

- Sex work per se is not prohibited in Kazakhstan, Kyrgyzstan and Turkey.
- Sex work in Hungary has been legalized and regulated by the government since 1999. According to the legislation, municipalities are obligated to designate tolerance zones in which sex workers can solicit sexual services if the area has a population of over 50,000. No municipality has done so.

Experiences and testimonials of participants:

Participants focused on incidents of abuse of sex workers by police.

Research conducted by the Sex Workers' Rights Advocacy Network for Central and Eastern Europe and Central Asia (SWAN) found that in several countries of the region (Kyrgyzstan, Ukraine, Russia, and Macedonia) the police were the group most frequently reported by sex workers to be a threat to their safety. In all countries of the region where research was conducted, sex workers reported high levels of physical or sexual violence by police officers: 41.7 per cent (86/206) of respondents reported that they had been physically abused by police, while 36.5 per cent (77/211) reported that police had sexually assaulted them. In some cases police appeared to be committing violence against sex workers, arresting and detaining them, as part of a government policy to intimidate and "cleanse" sex workers from certain areas. Members of easily identifiable ethnic minority groups, as well as male and transgender sex workers, were found to be particularly vulnerable.

Victoria Lintsova, a 35 year old woman living with HIV from Ukraine described incidents of police harassment:

"For a period before 2002, I was a sex worker. Law enforcement officials repeatedly used my sexual services without my consent and without payment, or just brutally raped me. Policemen regularly extorted money from me and blackmailed me by threatening to distribute information among my clients about my HIV-positive status. Because of these threats, in the end I had to leave my town. Almost all sex workers, whom I know told me about similar abuse by the police. We cannot go to court because of the risk of being punished for being a sex worker."

At a recent training for law enforcement in Serbia, a police officer summarized the views and attitudes of the police by saying that sex workers do not deserve to be protected.

Irina Maslova from Promotion in Russia stated that the criminalization of sex work pushes sex workers underground and leaves them vulnerable to exploitation, abuse, harassment and extortion from law enforcement officers. She put forth several recommendations: 1) The state budget should include funding for a prevention programme among vulnerable groups, including

sex workers; 2) medical and social workers should be counselled on HIV/AIDS and how to work with vulnerable populations; 3) Advocacy activities among the people responsible for policy formation should be strengthened.

Since 1997, Tais Plus has worked in the Kyrgyz Republic to empower the sex worker community to achieve more worthy life conditions. The organization serves more than 90% of sex workers who operate on the streets, and in saunas and hotels of the capital, Bishkek city. Tais Plus operates nationally in partnership with 6 NGOs in four provinces. It successfully advocated for the exclusion of a provision imposing mandatory HIV testing for sex workers from the 2005 National AIDS Law and successfully led the national campaign to stop the criminalization of sex work in Kyrgyz Republic in 2006.

"About five years ago, I was detained at the district police station, the police beat me in the kidney area and in the ribs and on the head- they didn't beat me on the face so that there would be no visible bruising- then they raped me with my arms tied to the radiator. After this incident I was depressed and considered killing myself. I had internal discomfort and for a long time I refrained from any sexual activity. I didn't report it to anyone. I was afraid because this had been done by the police themselves. There was a lot of violence and humiliation."

A sex worker from the Ukraine reported.

Issues of priority as expressed by participants:

- Sex work should be decriminalized and accepted as a legitimate form of work.
- States should be urged to enforce the implementation of anti-discrimination laws and identify all forms of violence against sex workers (including from law enforcement representatives) as unacceptable
- Voluntary and confidential services for sex workers should be implemented.
- Communication and coordination between networks of sex workers and gay men should be encouraged.

2.4 Men who have sex with men

In Eastern Europe and Central Asia, men who have sex with men (MSM) fall behind injecting drug users, sex workers and people in prison in terms of populations most vulnerable to HIV. However, with no consistent or accurate reporting, and high levels of homophobia and transphobia, it is likely that official figures underestimate the numbers of MSM living with and acquiring HIV. HIV prevalence among MSM in the region is highest in Ukraine (8.6 per cent in 2009), followed by Moldova (4.8 per cent in 2008), Georgia (3.7 per cent in 2008), and the Russian Federation (3.5 per cent in 2007).

While MSM are considered one of the key populations at-risk for HIV in most national prevention strategies, they are not prioritized. Consequently, there is little government funding for interventions that comprehensively focus on prevention, treatment, care and support for MSM living with HIV.

Coverage by local HIV prevention programmes for MSM is very low in most countries in the region. For example, HIV prevention programmes cover 12 per cent of the MSM population in Armenia; 16.8 per cent in the Russian Federation, 16 per cent in Ukraine; and 23 per cent in Belarus.

Laws and Practices

Laws criminalizing sodomy were abolished in most countries in the region relatively recently (1990–2000); however, discrimination and homophobia persist and anti-discrimination provisions often do not explicitly prohibit discrimination based on sexual orientation.

- Turkmenistan and Uzbekistan criminalize sodomy. In Turkmenistan this offence is

punishable by imprisonment for up to two years.

- There are no marriage rights or civil partnerships for same sex couples in any of the researched countries, except Croatia. In Moldova, same-sex partnership is forbidden by law.
- In Croatia, Serbia, Montenegro and Russia, discrimination based on sexual orientation is not explicitly included in anti-discrimination provisions. Government authorities and law enforcement agencies rarely act on cases of violence or threats of violence towards gay, lesbian and transgender people when the incident is related to sexual identity. In the past few years stigmatization of MSM/LGBT people has increased.
- Armenia classifies homosexuality as an illness.

Experiences and testimonials of participants:

Participants emphasized that the biggest challenge for MSM is stigma in society, media, and health care settings. Because of discrimination based on sexual orientation, MSM are often afraid to benefit from healthcare services and often do not report cases of violence to the police.

- An MSM police officer from the Czech Republic was forced to go on sick leave after his HIV-positive status was disclosed to the police department without permission. He now lives on the street because he has been unable to find another work.
- A representative of the NGO Tahandgoma in Georgia emphasized that many people in Georgia do not know that sodomy has been decriminalized and therefore stigma and homophobia remain high, discouraging MSM from accessing important services. He suggested that this could be aided by passing specific anti-discrimination laws based on sexual orientation.

Issues of priority as expressed by participants:

- States should be pressured to recognize LGBT communities as legitimate members of society.
- States must receive support in the implementation of changes in legislation regarding transgender people.

2.5 Families and children living with HIV

Families affected by HIV, including discordant couples and children living with HIV, are strongly marginalized in Eastern Europe and Central Asia. For example, discordant couples are not allowed to become foster parents. There are a range of laws and practices that affect the rights of children and young people relating to age of consent, confidentiality and rights of non-discrimination in access to education and health services.

Although national HIV laws provide for special rights and benefits to families of HIV-positive children, in reality this protection is rarely available. Children living with or affected by HIV have been refused entry to schools and child care after being forced to disclose HIV status. Reports indicate that some families of children living with HIV choose to forgo the little social protection available to them due to concerns about confidentiality and discrimination. Children living with HIV in orphanages are unable to be placed in families, which leads to increased numbers of suicides among teens and young people. Finally, children and youth have limited access to HIV testing and treatment services because they generally cannot independently consent to testing.

Experiences and testimonials of participants:

Participants at the Dialogue emphasized that it is necessary to provide quality treatment for children, and families with children living with HIV should have their right to confidentiality ensured.

Our Hope Foundation in Ukraine unites foster parents, guardians, government experts, and NGOs to place children living with HIV in family-based environment. In partnership with the Ministry of Family and Youth, the organization has also worked to change societal attitudes toward HIV-positive children and children born to HIV-positive mothers. Through the introduction of a curriculum for teachers titled “Formation of a tolerant attitude toward children with HIV in schools and early childhood education” and corresponding workshops for educators, Our Hope Foundation is raising awareness of issues impacting children affected by HIV.

Participants from Ukraine stated that the rights of children living with HIV are being violated. There is a low level of social and psychological support for families caring for children with HIV and fear of disclosure stops up to 25% of the families to apply for disability pensions for their HIV positive children. Convenient forms of pediatric ARV therapy do not exist; instead adult formulations are usually divided. Several orders of the Ministry of Education force social workers in schools to collect information on the health of children, including their HIV status. This leads to unwanted disclosure and discrimination at school.

Issues of priority as expressed by participants:

- Barriers that children living with HIV face regarding education should be lifted. States should ensure access to education for all children regardless of their or their parents' HIV status.
- Medical records indicating HIV status should be removed for children living with HIV.
- Doctors should stop spreading fear among pregnant women living with HIV and should direct them towards treatment instead of encouraging abortions and sterilization.
- People who are part of discordant couples should not be criminalized.
- Quality social and medical services must be provided to HIV-positive children and their parents.

2.6 Access to Healthcare

"Access to antiretroviral therapy in many new EU countries is much lower than in other countries of the region. Patients have to pay the same prices for medicines as in developed countries of Western Europe due to the common market."
– Civil Society Representative, Lithuania

The level of access to antiretroviral therapy (ART) in the Eastern Europe and Central Asia region is low, with only 19 per cent of people living with HIV receiving coverage compared to 36 per cent worldwide. The reality of access to healthcare varies greatly from country to country depending on the availability of domestic and international funding. And despite the fact that in many cases healthcare services are provided for free, patients may have to cover other costs such as meals, medications and bed linen. Additionally, people living with HIV frequently have their confidentiality breached by healthcare providers, who may have an inadequate understanding of patients' rights and needs.

Laws and Practices

Each country has a specific constitutional provision guaranteeing its citizens access to health care. Public health legislation in the majority of countries in Eastern Europe and Central Asia clarifies the scope of free health care and provides guidelines for implementation. In a majority of countries, the right to free healthcare includes secondary care, which covers treatment for drug dependence, HIV infection and opportunistic infections. Often, however, secondary care treatment is provided by facilities and departments specializing in a particular disease, such as drug dependence clinics, AIDS, TB and STI centres, and oncological hospitals. This specialization leads to the departmentalization of health care and difficulties in accessing care for patients with more than one condition.

Experiences and testimonials of participants:

Initiative for Health Foundation, an NGO in Bulgaria, described the problems with a fragmented healthcare system.

"Due to the lack of a complex healthcare approach to those patients, we often face cases when a certain infection is a reason for not treating another disease in the patient. For example, we had a drug addicted client infected with HIV and tuberculosis, who was denied hospitalization in the tuberculosis hospital, because of his HIV status, while at the same time the HIV hospital had difficulties in treating his addiction. At the same time, his psychiatrist refused to adjust his methadone doses according to needs of the tuberculosis treatment and thus impeded the treatment of addiction and the overall treatment process. This partial approach to the treatment of such patients often puts significant limitations on the successful treatment of HIV and other related diseases."

Issues of priority as expressed by participants:

- Palliative care with morphine therapy needs to be made more available in the region.
- Access to affordable antiretroviral therapy (ART) can be increased through working with States so that they better understand how to use TRIPs flexibilities.
- Civil society should play more of a leading role in reducing the prices of essential drugs and medicines.
- Sustainable mechanisms for the procurement of medicines to treat HIV should be introduced.
- Governments must address the decreasing interest and funding for Hepatitis C, since HIV-HCV infection is the leading cause of mortality for people living with HIV.
- Sanctions for countries that do not fulfil their obligation to provide antiretroviral therapy to all who need it should be enforced.

2.7 Other Issues of Priority

Other issues of priority expressed by participants at the Regional Dialogue included:

- Funding from national and international budgets should target HIV prevention for MARPs and marginalized populations, including harm reduction interventions.
- HIV transmission and exposure should be decriminalized since data has shown that there are no public health benefits.
- High quality legal aid services for all vulnerable populations should be funded by governments in order to promote access to justice.
- Training and sensitization of law enforcement representatives on HIV-related issues in relation to drug use, sex work should be strongly encouraged.
- Laws restricting the travel, visit or stay in countries need to be revisited and abolished. Travel restrictions cannot be justified by reference to the protection of public health, as HIV does not pose the threat to public health that other infectious diseases do. Travel restrictions create an inaccurate impression that HIV is a foreign problem that can be addressed by limiting the entry of people who know that they are HIV-positive.
- Countries should share and spread best practices in the areas of HIV prevention, treatment and care.

3. Conclusions

- The importance of engaging government representatives from the Russian Federation in order to ensure an effective regional response to HIV was highlighted at the meeting. Participants were informed by the Commissioners that although the Russian government was unable to attend, the Commission will make attempts to engage them on these issues before preparation of the Commission's final report.

- In light of the common Soviet origin of many laws in the region, a possible solution could be collaboration between countries to develop and adopt a new model code on legal questions related to HIV through a cohesive and consistent process and in consultation with communities affected by HIV. The provisions of the model code should be based on evidence of best practice and international legal norms.

- The Commission has no coercive power and hence cannot order anyone to do, or refrain from doing, anything. But the Commission can engage in dialogue, and can come up with recommendations that are backed up by evidence. The evidence is overwhelmingly in favour of treating HIV as a health and social challenge, not as a criminal justice problem. Focus needs to be on respecting the dignity of people affected by HIV and MARPs and ensuring the effective delivery of healthcare services to those who need it. Regressive laws have to be challenged and then changed. Finally, people in the region need to be given access to accurate information about HIV-related issues and initiatives.

Annex I Agendas

Preparatory Meeting with Civil Society Wednesday - 18 May 2011	
TIME	**TOPIC**
8:30 – 9:00	**REGISTRATION**
9:00 – 9:45 am	**WELCOME & INTRODUCTION OF PARTICIPANTS**
9:45 – 10:30 am	**OVERVIEW OF THE INITIATIVE** Introduction to the Global Commission on HIV & the Law including an overview of the Regional Dialogue and submissions process and purpose; A Commissioner's perspective from Commissioner Rao
Break	
11:00 am – 12:30 pm	**KEY LEGAL ISSUES RAISED IN SUBMISSIONS** Discussion of key issues raised in the civil society submissions and their health/HIV/human rights impacts
Lunch	
1:30 – 3:00 pm	**PREPARATION FOR TOWN HALL MEETING ON DAY 2** Introduction of Town Hall Moderator Yelena Khanga; preview of Day 2 agenda; suggestions for participation and preparation of civil society participation for the Town Hall meeting *(Preparation of civil society participation shall take place through discussions in issue-based sub-groups. Instructions for the same shall be circulated in advance.)*
Break	
3:30 – 5:00 pm	**PREPARATION FOR TOWN HALL MEETING (DAY 2)** continued
5:00 – 5:30 pm	**FEEDBACK TO COMMISSIONERS** Key messages and reflections from the sub-groups presented to the

	Commissioners
7:30 – 8:30 pm	**WELCOME RECEPTION FOR ALL PARTICIPANTS**

Preparatory Meeting with Government Experts & Representatives 18 May 2011	
TIME	**TOPIC**
8:30 – 9:00 am	**REGISTRATION**
9:00 – 9:30 am	**WELCOME AND INTRODUCTION OF PARTICIPANTS** Welcome from UNDP Regional HIV Programme & Global Commission on HIV and the Law, and introduction of participants
9:30 – 10:05 am	**OVERVIEW OF THE INITIATIVE** Introduction to the Global Commission on HIV & the Law, including an overview of the Regional Dialogue and submissions process and purpose, a Commissioner perspective from Charles Chauvel and JVR Prasada Rao
Break	
10:30 am – 11:45 am	**DISCUSSION OF KEY LEGAL & HUMAN RIGHTS ISSUES ARISING IN THE CONTEXT OF HIV** Presentation of issues raised in civil society submissions
11:45 am – 12:30 pm	**ADDRESSING LEGAL BARRIERS TO EFFECTIVE HIV RESPONSES** Discussion of successful approaches & challenges encountered in tackling legal barriers, focusing on the role of government
Lunch	
1:30 – 2:00 pm	**ADDRESSING LEGAL BARRIERS TO EFFECTIVE HIV RESPONSES** (cont.)
2:00 – 3:00 pm	**PREVIEW OF TOWN HALL MEETING AGENDA (DAY 2)** Introduction of Town Hall Moderator Yelena Khanga, review of Town Hall agenda and guidelines for participation
7:00 – 8:00	**WELCOME RECEPTION FOR ALL PARTICIPANTS**

Town Hall Meeting 19 May 2011	
TIME	**TOPIC**
8:00 – 8:30	**REGISTRATION**
8:30 – 9:05 am	**WELCOME** Welcoming remarks from Kaarina Immonen, United Nations Resident Coordinator in Moldova and Oleg Efrim Minister of Justice, Republic of Moldova;
9:05 – 9:30 am	**CONTEXT** Video, Q & A with regional expert on HIV and law
Break	
10:00 am – 12.30 pm	**DIALOGUE** In town hall style format, covering themes and topics raised in the submissions and experiences from the region *(A dialogue will be facilitated by Moderator Yelena Khanga by eliciting experiences from civil society participants and perspectives from government participants, and experts in the meeting)*
Lunch	
1:30 pm – 4:45 pm	**DIALOGUE** (continued) Including coffee break
4:45 – 5:00 pm	**WRAP UP** Reflections from Commissioner Charles Chauvel and Commissioner JVR Prasada Rao. Vote of thanks & reflections on follow up from UNDP Regional Centre, UNAIDS Regional Support Team

Annex II List of participants

NAME/ИМЯ	COUNTRY/СТРАНА
Commissioners	
JVR Prasada Rao	India
Charles Chauvel	New Zealand
Moderator	
Yelena Khanga	Russia

NAME/ИМЯ	COUNTRY/СТРАНА
Participants	
Zhenya Mayilyan	Armenia
Tatevik Matinyan	Armenia
Rosa Babayan	Armenia
Etibar Mamedov, Ali Oglu	Azerbaijan
Anna Tkacheva	Belarus
Irina Mikhailovna Baranovskaya	Belarus
Anna Lyubenova	Bulgaria
Leah Utyasheva	Canada
Robert Teltzrow	France
Bechir N'Daw	France
Levan Jorbenadze	Georgia
Kakhaber Kepuladze	Georgia
Marianna Bodzar	Hungary
Elena Bilokon	Kazakhstan

Andrey Andreev	Kazakhstan
Larissa Bigdan	Kazakhstan
Alex Mamytov	Kyrgyzstan
Gulnara Kurmanova	Kyrgyzstan
Dastan Uulu Ulan	Kyrgyzstan
Muratov Abdimanap Attokurovich	Kyrgyzstan
Jamankulov Marat Turgunbaevich	Kyrgyzstan
Larisa Bashmakova	Kyrgyzstan
Raminta Stuikyte	Lithuania
Ninoslav Mladenovic	Macedonia
Andrej Senih	Macedonia
Natalia Mardari	Moldova
Vitali Rabinciuc	Moldova
Angela Dumitrascu	Moldova
Ludmila Untura	Moldova
Igor Chilcevschii	Moldova
Alexandru Kurasov	Moldova
Ruslan Poverga	Moldova
Veaceslav Mulear	Moldova
Ilona Burduzha	Moldova
Oleg Efrim	Moldova
Stefan Gheorghita	Moldova
Viorel Soltan	Moldova
Arcadie Astrahan	Moldova
Claude Cahn	Moldova
Alexandrina Iovita	Moldova

Gabriela Ionascu	Moldova
Mikhail Golichenko	Regional/Canada
Peter Wiessner	Regional/Germany
Dasha Ocheret	Regional/Lithuania
Stasa Plecas	Regional/Serbia
Romanyak Elena	Russia
Svetlana Islamova	Russia
Irina Maslova	Russia
Godlevskaya Maria Viacheslavovna	Russia
Kurmanaevsky Alexey Vladimirovich	Russia
Pisemsky Eugene	Russia
Irina Teplinskaya	Russia
Vladimir Mayanovsky	Russia
Solovieva Larisa Borisovna	Russia
Dmitri Bartenev	Russia
Ilnur Sharapov	Russia
Grigory Vergus	Russia
Anna Chernyakhovskaya	Russia
Denis Broun	Russia
Emily Wright	Russia
Katarina Jiresova	Slovakia
Dudley Tarlton	UNDP (Slovakia)
John Macauley	UNDP (Slovakia)
Louise Sperl	UNAIDS (Slovakia)
Carmen Perez Casas	Switzerland
Bordunis Tatiana Anatolieva	Ukraine

Iryna Varshyk	Ukraine
Ilyin Ivan Igorevich	Ukraine
Victoria Lintsova	Ukraine
Maxim Demchenko	Ukraine
Elena Berezina	Ukraine
Alex Kotvitsky	Ukraine
Sergii Chyshko	Ukraine
Voronov Alexandr	Ukraine
Valery Kiyashko	Ukraine
Elena Yeshchenko	Ukraine
Vitaliy Sundeyev	Ukraine
Konstantin Lezhentsev	Ukraine
Vladimir Gordeiko	Ukraine
Yuri Marchenko	United Kingdom
Boyan Konstantinov	UNDP (New York)
Vivek Divan	Global Commission on HIV and the Law
Mandeep Dhaliwal	UNDP (New York)
Shonali Shome	USA
Sergei Uchaev	Uzbekistan
Timur Abdullaev	Uzbekistan

"Every day, stigma and discrimination in all their forms bear down on women and men living with HIV, including sex workers, people who use drugs, men who have sex with men, and transgender people. Many individuals most at risk of HIV infection have been left in the shadows and marginalised, rather than being openly and usefully engaged… To halt and reverse the spread [of HIV], we need rational responses which shrug off the yoke of prejudice and stigma. We need responses which are built on the solid foundations of equality and dignity for all, and which protect and promote the rights of those who are living with HIV and those who are typically marginalised."

- UNDP Administrator Helen Clark

UNDP is the UN's global development network, advocating for change and connecting countries to knowledge, experience and resources to help people build a better life.

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