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PLEASE CHECK AGAINST DELIVERY

Jurists, Justice and AIDS

Distinguished jurists, friends and colleagues, I am extremely honoured to be here today. I appreciate the valuable time you have carved out from your demanding schedules to discuss the role of the judiciary in the HIV epidemic. This is a testament to your deep commitment to confronting this major challenge of our time.

I thank our esteemed patrons, Justices Langa and Chaskalson, as well as the Honourable Minister Radebe, for your wonderful hospitality here in South Africa. And I thank the International Association of Women Judges and the International Commission of Jurists for coming together with the UNAIDS Secretariat and UNDP to cosponsor this meeting.

New generation needs new champions

When I became Executive Director of UNAIDS in January of this year, I knew that we were at a pivotal moment in the history of the HIV epidemic. We have been engaged in this struggle for 28 years. Can you imagine? A full generation. And we must now engage a new generation in the response.

This generation is living in a world much different than when HIV first arrived, and it faces a very different epidemic—AIDS is no longer a death sentence; treatment means long and productive lives for people living with HIV. And although we have a long way to go, we are closer to achieving universal access to HIV prevention, treatment, care and support.

But despite these gains, the legal system in many countries is moving against people living with HIV, sexual minorities, people who inject drugs and sex workers, driving them out of reach of HIV services. For every two people receiving treatment today, five are newly infected.

This is why I have initiated a new corporate priority for UNAIDS—to work with governments to remove punitive laws, policies, practices and discrimination that seriously undermine the good work we are doing. The law must not stand between a person and his or her health. It must *protect* health.

New champions are emerging to help us take on this challenge. Last week, in Pretoria for World AIDS Day, I stood alongside President Zuma, who received a standing ovation when he committed to significantly scale up the AIDS response in this country. His pledge has been called “a dramatic and eagerly awaited shift” and a “definitive turning point.” He is giving hope to the millions who have been waiting for South Africa to join the front line in the global response.

This is the sort of passion we need to stimulate a new generation of leaders and partners to join us in the hard work of overcoming this virus. And I appeal to you, the judiciary, to join these new champions.

As jurists, you see many people affected by HIV and AIDS in your daily work. In some cases, HIV is *the* issue before you—from the high-profile cases where governments are sued to provide treatment or to end discrimination in their armed forces, to lesser-known cases of individual discrimination in the workplace.

But in many other legal cases, HIV hides in the background—the businessman, too ill to work, who is sued because his company is going bankrupt. The widow who is dispossessed of her property by her late husband’s relatives. The lawyer who delays the court proceeding against his client hoping the complainant will soon sicken and die. The custody case involving an orphan whose parents died of AIDS.

I am sure you have all been touched professionally and personally by HIV, and I thank you for your hard work to find and provide justice in a world where AIDS is an ever-present reality. Your communities have benefited from this work immensely. We need you very much.

Still burning

Years ago, activists declared that “Africa is burning.” They meant that millions were dying for lack of treatment. Since then, we have made important gains in antiretroviral therapy, so perhaps we can say that Africa is burning less. But flames persist in places where our best efforts just aren’t reaching.

AIDS continues to insidiously affect the young, and young women particularly. We as Africans should be dismayed that our sisters, our daughters, are being infected at up to seven times the rate of young men. We should be dismayed that infants are still being born with HIV, even though it is very easy and inexpensive to prevent this.

I cannot deny what I see around me in my travels, and I am troubled because I know with more leadership, more support, more targeting of resources to the right programmes and populations, this continent can halt and reverse the HIV epidemic.

Evidence-informed action

Our best chance to do this comes through rigorously evidence-informed and rights-based approaches to HIV.

As jurists, you certainly appreciate knowledge and action based on evidence. But in the world of AIDS, too often ignorance and ideology prevail. This leads to investment in programmes that do not work, or worse, that lead to more infections and more preventable deaths. Often, these are HIV prevention programmes that rely on a narrow approach—for example, when HIV prevention programmes are forced to suit a narrow world-view, rather than reflect life's variation. We want people to have the full choice of HIV prevention options so they will choose and act on the one that is right for them. Prevention works best when it is not limited to “only this” or “only that.”

For these reasons, UNAIDS encourages governments to deploy a broad range of HIV prevention programmes. It is what we call “combination prevention”—the right blend of biomedical, behavioural and structural programmes that address the particular realities of those most vulnerable to HIV infection.

We also promote access to voluntary testing and counseling as the gateway to treatment access. Indeed, in many countries, the highest court of the land has ruled that access to HIV treatment is part of the national constitutional provision on the right to health. This has been a major legal and human rights victory for people living with HIV, but it is a struggle that continues both inside and outside the courts.

Response based on rights

When lawsuits involving HIV fall within your purview, I encourage you to respond to them as we urge the other branches of government to respond—through the lens of human rights.

UN Secretary-General Ban Ki-moon, speaking in New York on World AIDS Day, pointed this out explicitly, calling on all countries “to dismantle legal frameworks that institutionalize discrimination against people living with HIV and people who are at most risk of infection.”

UNAIDS firmly believes that a human rights-based approach to HIV is not only the right thing to do but also leads to the best outcomes. The foundations of such an approach can be located in virtually every national constitution or in national obligations under international human rights treaties.

The law and the courts can ensure that everyone in a society—including young people, women, people living with HIV, prisoners, migrants and most-at-risk populations—have access to HIV prevention programmes and services and to HIV treatment, if needed.

The law and the courts can protect people affected by HIV from discrimination and violations of their privacy through unauthorized disclosure of their status.

The law and the courts can protect women and children from rape, domestic violence and sexual abuse. They can protect women and children from losing their property or inheritance when their husband or father dies of AIDS. They can protect women from bride inheritance and widow cleansing, and they can protect girls from early marriage.

Unfortunately, in many places, some in Africa, the law is not protective, but punitive. It forms a barrier between a person and his or her health. For example, the laws that call for mandatory testing always backfire. Instead of making sure more people are tested and treated, they drive people away rather than motivating them to come forward.

Then there are the laws that criminalize HIV transmission in an overly broad fashion, and the laws that criminalize various members of society, like men who have sex with men, sex workers and their clients, and people who inject drugs. Again, such laws drive people away from HIV services and farther out to the margins of society.

UNAIDS asks that governments only apply criminal law to the truly culpable cases of HIV transmission, where someone intended to infect and did infect another.

We also call for the decriminalization of sexual minorities, people who inject drugs and sex workers and their clients. By this, I mean that their conduct should not result in criminal penalties. Instead, the law should protect their rights and ensure their access to HIV services—and drug dependence treatment as needed.

This is not only right, it is necessary if we are to stop HIV infection among these populations as well as among the wider public.

In this meeting, you will consider a set of HIV-related judicial principles that is intended to set out useful guidance as jurists across this continent hear cases related to HIV. This document recognizes the instrumental position of the judiciary, as guardian of civil liberties and defender of the public good, to address the legal issues that the AIDS epidemic provokes.

This important meeting signals a much more intensive collaboration with the judiciary here in Africa, and I will carry the work we do here to all continents. I hope you will let me know how UNAIDS can support you in your vital and inspiring vocation.

Tribute to the work of the Jurists

I want to close with a tribute to the work you do.

Without the courts, people seeking justice are rendered mute. Thanks to you, the voiceless are heard, and the law becomes a transformational force in society.

Without the courts, we would not have HIV treatment recognized as a human right. Thanks to you, we are seeing this awareness expanding across the globe.

Without the courts, HIV status would not be recognized as a prohibited ground of discrimination. Thanks to you, people living with HIV can work and be productive members of society with full participation and inclusion in public life.

Finally, without the courts, governments would not be held accountable to the highest standards of justice and health for their citizens—*all* their citizens. Thanks to you, they are. African jurists have built an incredibly impressive body of jurisprudence, from Benin to Kenya to South Africa, that protects human rights in a world living with HIV. I thank you for that.

I hope that you continue to build a protective, inclusive, supportive legal framework. I also ask that, outside your robes, you be the kind of community and national leaders—the champions—we so desperately need. And that you stand up and speak out on HIV, and show the world: Ending this epidemic means boldly embracing those in need with prevention, treatment, legal protection and redress, and social acceptance.

That is the way to halt and reverse this epidemic—the greatest gift we can give this generation, and generations to come.