



GLOBAL COMMISSION ON

HIV and the LAW

RISKS, RIGHTS & HEALTH

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ABOUT THE GLOBAL COMMISSION ON HIV AND THE LAW

The Global Commission on HIV and the Law consisted of fourteen distinguished individuals who advocate on issues of HIV, public health, law and development. Fernando Henrique Cardoso, former president of Brazil, chaired the Commission.

The Commission's unique convening power allowed it to focus on high-impact issues of HIV and the law, which have important ramifications for global health and development. The Commission advocated for evidence and human rights based legal environments for effective and efficient HIV responses.

The life experiences of the Commissioners gave them a formidable ability to access a wide cross-section of society. This means they are well placed to influence change on complex issues that require the engagement of multiple stakeholders across a range of sectors.



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ABOUT THE COMMISSION'S REPORT

"HIV and the Law: Risks, Rights & Health" is the Commission's flagship publication. Released in July 2012, the report presents public health, human rights and legal analysis and makes recommendations for law and policy makers, civil society, development partners and private sector actors involved in crafting a sustainable global response to HIV.

PREFACE

The end of the global AIDS epidemic is within our reach. This will only be possible if science and action are accompanied by a tangible commitment to respecting human dignity and ending injustice.

Law prohibits or permits specific behaviours, and in so doing, it shapes politics, economics and society. The law can be a human good that makes a material difference in people's lives. It is therefore not surprising that law has the power to bridge the gap between vulnerability and resilience to HIV.

We came together as a group of individuals from diverse backgrounds, experiences and continents to examine the role of the law in effective HIV responses. What we share is our abiding commitment to public health and social justice. We have listened with humility to hundreds of accounts describing the effects of law on HIV. In many instances, we have been overwhelmed by how archaic, insensitive laws are violating human rights, challenging rational public health responses and eroding social fabric. At other times, we have been moved by those who demonstrate courage and conviction to protect those most vulnerable in our societies.

Many would say that the law can be complex and challenging and is best left alone. Our experience during this Commission has shown us a very different perspective. We have been encouraged by how frank and constructive dialogue on controversial issues can sometimes quickly lead to progressive law reform, the effective defence of legislation or better enforcement of existing laws. Even in environments where formal legal change is a slow and arduous process, we have witnessed countries taking action to strengthen access to justice and challenge stigma and discrimination.

As we listened and learned over the past eighteen months, many of us found our perspectives and opinions changing on a range of complex issues. Ultimately, we chose to be guided in our final recommendations by the courage and humanity of those who have died of AIDS and the thirty four million strong who live on with HIV.

This report presents persuasive evidence and recommendations that can save lives, save money and help end the AIDS epidemic. The recommendations appeal to what is common to all our cultures and communities—the innate humanity of recognising and respecting the inherent worth and dignity of all individuals. This report may make a great many people uncomfortable—hopefully uncomfortable enough to take action. Undoubtedly, different countries will prioritise different recommendations. Each country needs to develop its own road map for reform, depending on its legal and political environment. Nevertheless, we are confident that all of the recommendations are relevant in every country of the world, given that the drivers of the HIV epidemic exist all over the world. The time has come to act on these recommendations. We cannot continue to let people suffer and die because of inequality, ignorance, intolerance and indifference. The cost of inaction is simply too high.



Fernando Henrique Cardoso

Chair, Global Commission on HIV and the Law

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The Global Commission on HIV and the Law is an independent body, established at the request of the Programme Coordinating Board of the Joint United Nations Programme on HIV/AIDS (UNAIDS) and supported by a Secretariat based at the United Nations Development Programme (UNDP). This report reflects the views and conclusions of the Commission, as well as its recommendations to countries, civil society actors, the private sector and the United Nations.

First and foremost, the Commission expresses its gratitude to the 1000 plus individuals who made written and oral submissions and who shared their knowledge and experience with such generosity. This report pays tribute to their courage and humanity in seeking a world that is fundamentally more just.

The Commission would like to express its appreciation for the leadership of Helen Clark (Administrator, UNDP) and Michel Sidibé (Executive Director, UNAIDS).

The Commission's work has been ably guided by the contribution and commitment of its Technical Advisory Group: *The Hon. Michael Kirby (Co-chair), Allehone Mulugeta Abebe (Co-chair), Aziza Ahmed, Jonathan Berger, Chris Beyrer, Scott Burris, Joanne Csete, Mandeep Dhaliwal, Sophie Dilmitis, Vivek Divan, Richard Elliott, Sofia Gruskin, Wendy Isaack, Rick Lines, Annie Madden, Kevin Moody, Vitit Muntarbhorn, Cheryl Overs, JVR Prasada Rao, Tracy Robinson, Purna Sen, Susan Timberlake, Matthew Weait.*

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The Commission is grateful to Edwin Cameron, who was a Commissioner. In light of his obligations as a judge of the Constitutional Court of South Africa, he did not contribute to any of the substantive decisions of the Commission. Because of his judicial duties, he decided to officially step down as a Commissioner at the end of 2011.

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ABBREVIATIONS

ACTA	Anti-Counterfeiting Trade Agreement
ADA	Americans with Disabilities Act
AIDS	Acquired Immunodeficiency Syndrome
ART	Antiretroviral Therapy
ARV	Antiretroviral
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
EECA	Eastern Europe and Central Asia
EPA	Economic Partnership Agreement
EU	European Union
FGM	Female Genital Mutilation
FTA	Free Trade Agreement
HIV	Human Immunodeficiency Virus
ICESCR	International Convention on Economic, Social and Cultural Rights
ICW	International Community of Women with HIV
ILGA	International Lesbian and Gay Association
ILO	International Labour Organisation

MSM	Men Who Have Sex with Men
NGO	Non-Governmental Organisation
PEPFAR	President's Emergency Plan for AIDS Relief
PLHIV	People Living with HIV
PMTCT	Preventing Mother-to-Child Transmission
R&D	Research and Development
SEP	Syringe Exchange Programmes
STD	Sexually Transmitted Disease
STI	Sexually Transmitted Infection
TPPA	Transpacific Partnership Agreement
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UN DESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund

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