

Pacific Regional High Level Consultation on HIV and the Law, Ethics & Human Rights

Panel 4 – Criminalisation- Counterproductive and Contrary to Human Rights

Reflections from PNG

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Thank you to UNAIDS and UNDP Pacific Centre for the privilege of being a Panelist at this consultation. I am certainly not an expert, thus I am simply bringing some reflections that I hope will be of use to participants in their own national realities.

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When people think of the Pacific, it is usually of beautiful beaches, pristine water and happy families living in Christian villages. But this image of Paradise hides the reality of the crisis facing the Pacific as the silent wave of the global HIV epidemic sweeps through their families and communities.

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The reality is that denial, complacency, blame and fatalism are fuelling the HIV epidemic in the Pacific.

“It’s happening ‘there’ not here”

“It’s about those people, not us”

“Dirava sibona mai dibana(Only God knows)”

“If we look ahead, we can see that PNG is now about where South Africa was ten years ago, and Fiji is about where PNG was ten years ago. In just twenty years time, Melanesian countries like Fiji could be fighting a generalized epidemic. HIV has no respect for cultures or traditions.”

Melanesian Arts festival HIV campaign - Suva Oct 2006

Some presenters have talked about hearing the screams but I hear the sounds of silence, the whispered gossip, the shame and the blame – the denial of reality. And by the time you actually see HIV in your communities (with increased numbers of coffin makers, untimely deaths, orphans etc) you have already miss your window of opportunity. My message to other Pacific nations is act now.

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The topic for me to address is sex work, sodomy and marital rape law in PNG. I will not speak about legislative technicalities but more about the challenges of make legislative change and the even greater challenge of

ensuring that legislative change is implemented to the benefit of people they are intended to protect.

These challenges require us as legislators and policy makers to speak the unspoken; to see the invisible human face; to give a voice to the voiceless; to detach from prejudices; to seek community engagement; to demonstrate inclusiveness; and to create new realities not rhetoric.

HIV and the Law

PNG has led the Pacific in enacting HIV specific legislation – the National AIDS Council Act and the HAMP (HIV AIDS Management and Prevention) Act. An analysis of the effectiveness of the HAMP Act will be done tomorrow. However, there are many other areas of legislation that also have relevance to HIV and human rights that have needed review for a long time. These are not only laws relevant to sexuality, sexual violence and commercial sex but other laws relevant to gender equity and access to land and resources.

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Legislative reform requires a three way partnership – need or demand from community level, action from the political and bureaucratic decision-makers, and input from comparative experience elsewhere. In societies such as PNG where civil society is not highly organized often the bottom arrow is not strong and thus implementation also becomes problematic

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Laws on Rape, Sexual Violence & Child Sexual Protection – a limited success story.

In 1998, PACE (People Against Child Exploitation) officially handed me a draft Bill on Child Sexual Exploitation to take to Parliament as Private Member's Bill.

After four years of consultative workshops with relevant government agencies, the Parliamentary Counsel, NGOs, churches, and comparative and technical assistance from UNICEF, the legislation on child sexual

exploitation in a final form plus amendments to the Criminal Code on Rape, Sexual Assault and the Evidence Act was passed on the voices in March 2002 with almost no debate.

This package of legislation included new laws on incest, child prostitution and child pornography as well as major changes to the rape legislation with a much broader definition of rape that is gender neutral. It also removed the marital defense for rape. Amendments to the Evidence Act were also included.

In November 2001, I had attempted to bring an amendment to the Floor to remove the marital defense on rape after an outrage by women when a judge had no legal option than to acquit a man who was charged with violently raping his wife causing serious injury. That attempt failed with objections from certain male colleagues that interpreted it as an attempt to interfere with their bedrooms. Thus I included it without explanation in March 2002 and it slipped through unnoticed – certainly not an ideal way to pass legislation.

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This legislative package was hailed regionally but it is a limited success story. Yes it has set benchmarks but we all know law does not necessarily change reality. Successful implementation of laws is often an even longer process than their drafting and passage.

It has been a successful advocacy tool in proactive provinces (eg East New Britain) and made people more aware of the need to protect our children from sexual abuse. It appears to have lead to an increase in reporting and charging regards incest which was always hidden by the silence of shame. But I have been told that police in some areas are refusing to or reluctant to lay charges of rape in marriage situations for women complainants.

There is a need for continued awareness programs through schools, community learning centres, public media etc for the legislative changes to be effectively implemented.

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And it is an unfinished story.....

The amendments of 2002 omitted the human rights issue of sexual orientation - too contentious and could have jeopardised the process at that time. Thus the provisions on “unnatural offences” that criminalise sodomy between consenting adults (and even include bestiality) still need to be removed from criminal code and even reinforced by anti-discriminatory laws.

In addition, Child Sex Tourism and Human Trafficking for commercial sexual exploitation an abuse of children and women were also not included because they involve international law and would have slowed the process. Some work has started on Child Sex Tourism but there is still a lot to be done.

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But there is another story – sex work

At present sex work and soliciting or living off the earnings of prostitution is a criminal offence in PNG. These laws are randomly enforced with gross abuses of human rights (eg Three mile raid in 2005).

They must be reviewed, both from a human rights perspective and from a public health perspective rather than from a morality perspective. The moral debate polarises the issue and leads nowhere (eg 2006 Question without notice)

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The moral debate on sex work is deeply divisive and disempowering, often denying a voice or choice options to the women (& men) at its centre. Radical viewpoints believe that prostitution can and should be eradicated by criminal law. Liberal viewpoints recognise the inevitability and legitimacy of sex work. Fundamentally the moral debate is a wrong debate. The morality of prostitution is not the issue because morality is not the law’s business. Protection of citizens, whatever their occupation, is the law’s business and decriminalisation could assist with public health priorities & human rights.

The task of reviewing laws pertaining to sexuality and sex work will need strong political commitment as well as courageous leadership and advocacy from all levels of society and all stakeholders. It needs a lot of comparative research of various models – Swedish model, legalized sex industry model, New Zealand decriminalisation model, decriminalisation with regulations pertaining to public health and human rights etc.

The public debate and misinterpretation of what I thought was a considered logical answer to the Questions Without Notice clearly indicated the need to establish a clear strategy for these legislative changes because they will be much harder than the ones on child sexual abuse and rape.

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The strategy must start from where we are. Increasing poverty has resulted in the increase of commercial sex activities throughout PNG and I am sure the Pacific in general. We need to analyse the nature of commercial sex work, ‘casual’ sex (siari siari), changing customs (eg chaperoning customs, widows) and associated risks, honestly and without judgement.

Accept the reality of sexuality and passion driven behaviour of people of all ages and particularly young people. Educate and provide the right to informed choice and the responsibility of safe sex.

Tap into work in progress, eg “High Risk Setting” strategy – Poro Support Project (AUSAID with Save The Children) and now other NGOs such as FHI – that have begun mobilising and empowering female sex workers and MSMs.

Meet with them; hear their stories; see the human face of commercial sex workers and be a voice for the voiceless. Accept that sex work may be by necessity or by choice because we as politicians must deal with reality, not morality. Attempts to redirect sex workers into “respectable” work have limited success (eg Henao Sisters project).

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Find allies from other walks of life to hear their stories and viewpoints and establish a focus group or working party. I have established a focus group on decriminalization in Port Moresby and meetings so far have been timed

to coincide with visits by members from Scarlett Alliance (an Australian Association of Sex Workers funded under AUSAID to help sex workers in their efforts to organize). Scarlett Alliance has recommended the New Zealand model as the best approach from the point of view of sex workers and the National Co-ordinator of the New Zealand Prostitutes Collective has provided me with research information.

My allies from other walks of life have very interesting stories as to why they support decriminalisation and in what form and include religious leaders (eg Father John Glynn's work and Father Jude), medical profession (eg Dr Sapuri's story), lawyers, Chief Ombudsman, police, NGOs etc. The strategy must represent a cross-section of society and include influential decision-makers as well as representatives of sex workers themselves. (Friends Frangipanni Association is a very new association of sex workers from several towns. Magdalene Sisters is more localized – Father Glynn's model with an area mother). Our problem is that the number of organized sex workers who insist on safe sex with their clients is lower than the growing numbers of people involved in casual sex for whatever purpose.

Be sensitive to the fact that we are asking people to move out of their comfort zones so construct situations by which they come to terms with their own mis-conceptions and they put a human face to prostitution (eg My portfolio covers women's affairs, family and child welfare etc. The officers on the task force are two very Christian ladies – very good officers but I could see that they were very uncomfortable at the meetings. Organised them to join me on International Women's day etc They are now moving forward and have established an informal team within the Department to move the issue forward)

Once the informal working group is comfortable, bring in other necessary stakeholders who may have originally been resistant. Begin the long task of advocacy, drafting etc with a planned media strategy running parallel with the work. The Pacific nations were caring, compassionate society which did not marginalise people. We need to draw on these good qualities to introduce a human rights approach to our legislation and public policy on sex work.

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The way Forward

How the legislation on prostitution will be reformed in PNG is still unclear but there is an increasing acceptance that the present laws must change. In my opinion, creating a legal 'sex industry' is not a solution and would not be acceptable. The various models of decriminalization (with or without regulation) need to be assessed thoroughly but it is important that the respect for human rights must be basic to whatever model is created. Some limited details on decriminalization models are attached.

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I would like to speak a little about the importance of community engagement in all of this and the need to utilize methodologies that engage communities and help individuals and communities take ownership. I am grateful to Jacqui Badcock from UNDP for her determination to assist my Department with financial and technical assistance to introduce the Community Capacity Enhancement (CCE) methodology for HIV management. It is based on promoting community conversations for analytical awareness on preventing HIV & accepting the reality of sexuality & commercial sex.

How can I prevent HIV infection? Why are condoms important? How can I protect my family? How can I help my community? If I do use the services of a sex worker what is my responsibility to her and my wife?

We need to structure the community conversations to be inter-generational and inter-gender so that the community can hear each others voices and thoughts about culturally sensitive topics such as sex and HIV in a facilitated setting.

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Talk, talk, talk – the language of community conversations is very important. We need to dialogue with people; not dictate to people.

We need to remove emotive words that increase fear and stigma eg 'killer' disease, victims, 2 kina etc.

Leave moral judgement out of the talk and separate the myths from the facts. Eg the fact is that sex workers who are organizing are insisting on safe sex

and use of condoms with clients and thus are less of a risk factor than the mobile, married men with money and multiple partners (5 M factor) in terms of the spread of HIV.

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The MDG equation for HIV reduction. $1 + 2 + 3 = 6$

1. Poverty Reduction+ 2. Education For All+ 3. Women's Empowerment

= 6. HIV/AIDS prevention

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But we are Christian nations.

Culturally, we do not talk about SEX. Condoms promote sin & promiscuity. Prostitutes and homosexuals are sinners

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Submission 148, re Prostitution Reform Bill 2001- Very Rev Bruce Hanson

"The issue is not one of arguing the moral issues of the practice of prostitution, but rather legislating in a way that is fair, just and equitable and in the public interest. Given that the practice of prostitution and the use of prostitutes is a known fact within ours and all societies, I would submit that the proposed legislation is in keeping with the Christian ethos"

His full submission is attached.

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So what are we going to do? Choices we can make

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How will the future judge us if we do not respond, knowing that we had the tools in front of us?

We must get involved. The time bomb is ticking.

