

# Report of the Meeting of Eminent African Jurists on HIV and the law in the 21<sup>st</sup> century



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## Executive Summary

From 10 - 12 December 2009, a meeting of eminent African jurists was held in Johannesburg, South Africa to discuss HIV and the law in the 21<sup>st</sup> century. The primary objectives of the meeting were to discuss the role of the law and the role of the judiciary in responding to and mitigating vulnerability to HIV infection and the impact of the AIDS epidemic across sub-Saharan Africa. Twenty-four judges from more than fifteen sub-Saharan African countries participated. The meeting was co-organised by the International Association of Women Judges (IAWJ), the International Commission of Jurists (ICJ), the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Development Programme (UNDP). As a local partner, the AIDS Law Project provided technical and logistical support to the organisation of the meeting.

The major premise of the meeting was that law and its appropriate enforcement are essential tools with which to create an enabling environment for effective responses to HIV and to provide access to justice for those affected by HIV. In the context of sub-Saharan Africa, which bears a disproportionate share of the global burden of HIV infections and morbidity and mortality from AIDS, the law and the judiciary must be fully engaged to do the utmost to help stem the tide of the epidemic. With this in mind, the meeting offered a unique space for participants to discuss the law, judicial decision-making in the context of HIV, and the impact of the law on the epidemic and those affected by it. Topics discussed included the need to do more to open up the judicial system to those affected by and living with HIV, the need for judges to have the latest information based on accurate and up-to-date scientific evidence about the response to HIV, the particular needs of women seeking access to justice in the context of HIV, how best to combat discrimination experienced by those living with HIV and how best to adjudicate issues concerning the criminalisation of exposure to HIV and/or transmission of HIV.

The philosophical architecture that framed the meeting was an acceptance of both the power and the limits of the law. A strong theme that emerged was the ability of the law and, by implication, the ability of judges who interpret and apply the law to play a transformative role with regard to the social and legal response to HIV. A progressive approach to legal interpretation, for example, can enable judges to ensure that people enjoy substantive rights under general and constitutional law even in the absence of legislation that expressly protects the rights of persons living with HIV.

At the same time, the judges demonstrated sensitivity towards the challenges inherent in the relationship between the judiciary and the elected branches of government - the need in the

separation of powers for a healthy relationship between the judiciary, the executive and the legislature, in which a strong judiciary ensures that all people, including those in minorities, enjoy substantive rights.

Within this framework a range of more specific issues formed the basis of various presentations, discussions and debate. The key themes discussed during the meeting included the importance of evidence-informed decision making on HIV-related issues. Presentations and discussions emphasised the importance of ensuring that judges have access to appropriate and scientifically accurate information on HIV and that they base their findings in HIV-related cases on such information and evidence. The meeting further highlighted the fear, prejudices and stereotypes relating to HIV, to people living with HIV and to those most at risk of HIV infection and how these too often translate into discriminatory laws and law enforcement. Examples of evidence-informed decision-making were shared and discussed to highlight how the law and the judiciary can challenge and defeat HIV-related myths, as well as prejudice and discrimination against people living with HIV.

The role of the law in addressing gender-based violence and promoting the realisation of women's rights was also discussed in the broader context of increasing legal literacy and ensuring greater access to justice for women, people living with HIV and those most at risk of HIV infection. Examples of judicial projects and civil society initiatives focussing on ensuring access to justice were discussed. The meeting devoted specific attention to the role of the criminal law in the AIDS response, especially the increasing recourse to overly-broad legislation criminalising HIV transmission or exposure in many African countries. The debates on this issue highlighted the potential negative impacts of the criminalisation of HIV transmission and exposure on individual rights and on the AIDS response, but also underlined the need for further awareness of the issue as certain members of the judiciary found merits in the criminalisation of HIV transmission.

To crystallise the main discussions, conclusions and agreements reached during the meeting, the participants adopted a *Statement of Principles on HIV, the Law and the Judiciary* (see Annex A) as a guiding document for members of the judiciary in sub-Saharan Africa in responding to HIV and AIDS.

While the meeting was an overwhelming success vis-à-vis its stated goals, participants underlined that it represents only one of many steps that should be taken in the judicial journey towards contributing positively in the response to HIV.

## Introduction

Across the African continent, the HIV epidemic has presented, and continues to present, African societies with enormous social, medical and economic challenges. In addition, HIV has raised new and complex legal and human rights challenges leading to judicial rulings on matters related to HIV that have become part of the jurisprudence of various countries. This jurisprudence includes judgments on discrimination related to HIV, employment law, access to education, medical insurance, treatment in prisons, confidentiality, access to medicines, and the rights of prisoners. Such rich jurisprudence, if it was more widely known and understood, could be used in courts to guide application of laws in a manner consistent with international human rights standards and founded on HIV-related scientific and programmatic evidence.

However, in the quickly evolving area of scientific, medical and legal aspects related to HIV and AIDS, there has been little opportunity for judges to take stock of epidemiological developments, as well as the evolving roles of the law and the judiciary in the response to HIV. In this context, the moral and societal role of members of the judiciary as agents of justice and protectors of all human rights has not been sufficiently explored or used to address vulnerability to HIV.

In order to provide an opportunity to members of the judiciary in Africa to review the current body of scientific, epidemiological, social and medical knowledge around HIV and AIDS, as well as to review a range of judgments and judicial activities relevant to HIV, the International Association of Women Judges (IAWJ), the International Commission of Jurists (ICJ), the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Development Programme (UNDP), organised a ground-breaking conference of Eminent African Jurists on HIV and the Law from 10 - 12 December 2009 in Johannesburg, South Africa. The primary objectives of the meeting were to discuss the role of the law and the role of the judiciary in responding to and mitigating vulnerability to HIV infection and the impact of the HIV epidemic across sub-Saharan Africa. Twenty-four judges from more than fifteen sub-Saharan African countries participated. The meeting was also attended by people living with HIV, representatives of sex workers and men who have sex with men, members of regional parliamentary institutions and non-governmental organisations working on HIV and the law in the region.

The present report summarises the discussions, conclusions and agreements reached during the meeting and provides as Annex the *Statement of Principles on HIV, the Law and the Judiciary in Sub-Saharan Africa*, which was adopted by participants as a guiding document for members of judiciary in responding to AIDS in the region.

## **Opening Dinner**

Justice Pius Langa, the former Chief Justice of South Africa, opened proceedings, and the representatives of the co-sponsoring organisations (UNAIDS Secretariat, UNDP, IAWJ and ICJ) welcomed participants to the meeting. Justice Langa immediately set an objective for the participants – to move towards a common language for jurists to speak to the challenges of the HIV epidemic on the continent. Justice Langa noted that jurists could only achieve this objective if they actively remained abreast of scientific developments in the field of HIV. This was to emerge as an important theme of the meeting – the need for an informed judiciary that is well-equipped to make evidence-informed judicial decisions. For example, Langa recognised the impact of effective treatment on the workplace, noting that HIV is now a chronic manageable condition for those who have access to treatment. This has obvious implications for the rights of persons living with HIV in relation to the world of work, as treatment means that they are now able to lead long, healthy and productive lives and can be fit for work, like any other individual.

Ms Vuyiseka Dubula, General Secretary of the Treatment Action Campaign (South Africa), also took the floor, and based on her own experience as a person living with HIV, described the link between the right to health and human dignity. As an example of one of the juridical challenges that will impact the HIV epidemic, Ms Dubula drew attention to the draft *Anti-homosexuality Bill* pending in Uganda, which she viewed as both an attack on the dignity of lesbian and gay people and a significant threat to their health rights. Dubula noted that criminalisation on the basis of sexual orientation makes it practically impossible for men who have sex with men to seek and receive HIV prevention and health services. In addition, criminalisation translates into governments being unlikely to include such vulnerable groups in their HIV prevention and treatment strategies. This ultimately places them, their sexual partners and the wider community at greater risk of HIV infection.

## **Opening Session – HIV, law and the judiciary: realising rights in the response to the pandemic**

At the opening session, chaired by Dr Mbulawa Mugabe of the UNAIDS Secretariat, three contrasting yet complementary presentations were given by Mr Jeff Radebe, Minister of Justice and Constitutional Development, South Africa; Justice Georgina T. Wood, Chief

Justice of Ghana; and Mr Mark Heywood, in his capacity as Chairperson of the UNAIDS Reference Group on HIV and Human Rights.<sup>1</sup>

The remarks by these three speakers positioned the response to HIV in a nexus involving government, the judiciary and wider society. Although each presentation had a different emphasis, they all contributed to the recognition that, within that nexus, the judiciary has a critical contribution to make to address HIV and alleviate its impact.

Minister Radebe recognised that a *sine qua non* for dealing effectively with the epidemic in South Africa was changing political attitudes and reaching consensus on essential interventions that deal effectively with HIV. Thus, elected government is one essential player in tackling HIV, but not the only one. The Minister highlighted the necessity of the involvement of the judiciary by referring to the landmark *Hoffmann* case<sup>2</sup> in South Africa as an example of the transformative and critical role the judiciary plays as it reviews the nature of the government's response to HIV.

Justice Wood also acknowledged the important role of the judiciary in helping society tackle HIV. However, she warned that many members of the judiciary did not have sufficient knowledge about the essential facts of HIV. In this regard, she described an innovative survey on HIV knowledge and attitudes done among those working in the judicial system in Ghana and pointed out that the majority did not understand the basics about HIV transmission. This has affected their own behaviour, resulting in a low perception of personal risk of infection and sometimes leading to engagement in risky behaviour. This lack of information and understanding has also affected the administration of justice by skewing, with misconceptions, both the evidential basis of judicial decision-making and the implementation of court decisions. Thus, Justice Wood underlined the crucial need for continuing education within the judiciary about HIV - a theme that would be sustained throughout the meeting.

Justice Wood also pointed out that, on the jurisprudential side, the absence of comprehensive sources of law dealing expressly with HIV may necessitate a creative, and legitimate, reliance on other sources of law (e.g. through a purposive approach to legal

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<sup>1</sup> Mr Heywood is the Executive Director of the AIDS Law Project (the meeting's local organising partner) and the Deputy Chairperson of the South African National AIDS Council (SANAC).

<sup>2</sup> See *Hoffmann v South African Airways* 2001 (1) SA 1 (CC). Available at <http://www.saflii.org/za/cases/ZACC/2000/17.html>.



interpretation). In this regard, Justice Wood cited the example of Article 18(2) of the Constitution of Ghana which provides for a general right to privacy.<sup>3</sup> In her view, that general right can be the basis from which to derive the more particular right of an HIV positive person to protect confidential information about himself or herself from being unreasonably disclosed.

Mr Heywood's presentation completed the exposition of the government-judiciary-society nexus by describing the important role that civil society plays in the response to HIV. He specifically drew attention to those individuals who are often most vulnerable to HIV infection and/or the impact of AIDS but do not have sufficient opportunities to voice their rights, views and needs. Such vulnerable populations include men who have sex with men, sex workers, prisoners, refugees and asylum seekers, and people who use drugs.

By sharing experiences from the lives of vulnerable people, Heywood introduced and highlighted another theme which would run throughout the meeting: when the judiciary interprets and enforces laws and policies, they will be most effective and just when the actual lived realities of affected persons are understood and responded to in an accurate, evidence-based manner.

Heywood also pointed out some of the limitations and challenges of the law. For example, the law cannot eliminate social prejudices; other interventions are also necessary. Further, limited access to courts, and (in some jurisdictions) difficulties with legal standing, prevent courts from being used successfully to realise and vindicate rights recognised in law. Nonetheless, there is ample space and opportunities for the law and for judges to help ensure that progressive legal frameworks are effectively used to respect, protect and promote the rights of persons living with HIV and vulnerable to HIV infection.

Thus, the opening session established the critical need for government, the judiciary and civil society to work together to achieve effective, progressive and just outcomes in addressing the HIV epidemic in Sub-Saharan Africa. In particular, there is great need for sufficient political will to deal justly and decisively with HIV. There is need for ongoing and expanded judicial education on the facts about the epidemic in Africa and the science of HIV

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<sup>3</sup> Article 18(2) of the Constitution of Ghana states that "No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others." See Constitution of Ghana of 1992. Available at <http://www.ghanaweb.com/GhanaHomePage/republic/constitution.php?id=Gconst5.html>.

transmission, prevention and treatment; and there is need to recognise the centrality of civil society and those affected as critical partners whose experience with HIV should inform judicial understanding and decisions relating to HIV.

## **Session Two – Science and evidence-informed judicial responses**

This session was chaired by Justice Hansine Donli (ECOWAS Court of Justice). Professor Ashraf Coovadia (Rahima Moosa Mother & Child Hospital, University of Witswatersrand, Johannesburg) presented the science of HIV transmission, prevention and treatment and the importance of evidence-informed judicial decision-making. This session was well-received by participants, reflecting the reality that sufficient information and education on HIV, its mode of transmission, and HIV prevention and treatment should not be taken for granted, even among well-educated members of society. Many participants recounted stories about their own misinformation about the epidemic as well as about ill-informed prejudicial assertions by many of their colleagues about HIV and AIDS.

Important facts noted were (a) that HIV has a relatively low level of infectiousness and that the per sex act risk of transmission between a man and a woman is extremely low; (b) the infectiousness of someone who is on HIV treatment is much reduced; (c) women are biologically more susceptible to infection than men and this increases in cases of coerced sex or sexual violence. Other scientifically relevant facts were delineated in a “Brief for the judiciary on HIV in Sub-Saharan” and other background materials provided to the participants.

The session served two very important functions that shaped the rest of the meeting: first, it enabled participants to understand the law as one important tool for ensuring that effective, scientific interventions that can improve the lives of those living with HIV are implemented; and second, it generated the beginning of consensus among participants of the importance of following up the meeting with practical measures to ensure that judges make evidence-informed decisions in matters dealing with HIV, such as a user-friendly handbook with facts about the HIV epidemic and judicial training about HIV in the various regions across the continent.

During discussion, the judges raised questions about the scientific and ethical issues posed by HIV. For example, some participants noted that they were puzzled by reports that in a few rare cases there appears to be a natural resistance to HIV. There was also curiosity about how male circumcision lowers the risk of HIV acquisition. On the ethical front, the complex

issues of consent, coercion and HIV testing were discussed. These questions underscored the urgent need to ensure that all levels of the judiciary have sufficient information to be able to make evidence-informed decisions in cases involving HIV and AIDS-related issues.

Justice Regina Obiageli Nwodo (Federal High Court of Nigeria) presented a case involving the rights of prisoners living with HIV who had unsuccessfully approached prison authorities to transfer them to a medical facility where they hoped to receive appropriate treatment.<sup>4</sup> With the support of a local non-governmental organisation, the prisoners were finally able to access justice through the court system.

The case illustrated key issues that served as common threads throughout the meeting. First, the case again highlighted the need for evidence-informed decision making – that is judicial decision-making that is based on scientifically accurate facts and information related to HIV. In the Nigerian case, because the prisoners urgently needed access to life-saving treatment within a medical facility, their relocation from the prison facility was crucial. Secondly, echoing the empathetic understanding of the lived realities of persons with HIV described by Heywood earlier in the meeting, Justice Nwodo described the life-threatening plight of the prisoners who were living in overcrowded detention facilities with no access to health care services. By affirming the right of prisoners to access health care services, the court showed how judges can help realise the human rights of those who are most vulnerable, including prisoners.

Thirdly, the case was illustrative of the need for a generous and purposive approach to legal interpretation. In finding for the prisoners living with HIV, the court relied on a broad interpretation of provisions under Nigerian Law which guarantee to prisoners an existing right to receive emergency medical treatment outside prison facilities and constructed that right to “emergency care” to include access to HIV-related treatment. Thus, the law was interpreted widely enough to cover HIV-related illnesses (AIDS) thus allowing the prisoners to have access to much needed treatment. A narrow interpretation, on the other hand, might have resulted in the medical condition of the prisoners not being considered a “medical emergency”. This case demonstrates how a generous judicial interpretation of the law can help to provide access to HIV-related services for all.

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<sup>4</sup> The case discussed by Justice Nwodo is *Festus Odafe and Others v Attorney General of Nigeria and Others*, Federal High Court of Nigeria, Port Harcourt, 2004. Available at [http://www.chr.up.ac.za/centre\\_publications/ahrlr/2004-text-final.pdf](http://www.chr.up.ac.za/centre_publications/ahrlr/2004-text-final.pdf).

The court also invoked the provisions of the *African Charter on Human and Peoples' Rights* which prohibits cruel and inhuman forms of punishment by equating the denial of HIV-related services to prisoners to such punishment. Such jurisprudential creativity encapsulates two insights: first, it is only when aware of key medical facts that a judge *could* recognise that AIDS may constitute a medical emergency (thereby underscoring the need for ensuring wide access to HIV-related information among members of the judiciary); and second, specific sources of law dealing expressly with HIV are *not* essential for ensuring that persons living with HIV are able to enjoy substantive rights (as HIV-related issues may well be covered and addressed through a purposeful interpretation of existing general legal frameworks).

### **Keynote address**

In the keynote address, Mr Michel Sidibé, Executive Director of UNAIDS, spoke about the importance of placing the AIDS response within a social justice framework. He reminded the meeting that the basis of the rights of persons living with HIV is derived from and an integral part of a broader fight for human dignity. Sidibé stressed that no one can rest when up to 400,000 babies are born with HIV in Africa every year, when such “vertical transmission” of HIV has been virtually eliminated in many parts of the world. He cited this fact as an example of the disjuncture between the impact of the pandemic in Africa – sub-Saharan Africa in particular – and the rest of the world. In focusing attention on the reality of HIV and AIDS in Africa, Mr Sidibé expressly recognised the social and political context within which judges discharge their duties. He drew the judges’ attention to the social environment in Africa, which is often dominated by HIV stigma and discrimination and resistance to the protection of the human rights of people who are most vulnerable to HIV, including sex workers, people who inject drugs and men who have sex with men.

Sidibé noted that an effective legal and judicial response to the HIV epidemic does not necessarily depend on creating new rights but rather requires extending existing rights to all. This reflection was important in light of the caution by some participants against judges being *de facto* lawmakers, an outcome that is fraught with negative political and legal consequences. Instead, Sidibé’s point was an indirect endorsement of one of the central themes of the meeting: that judges can legitimately address the challenges of HIV within their existing constitutional, statutory and/or common law powers. Sidibé clearly articulated this theme by calling on the judiciary to deal “strategically and pragmatically with the human rights of vulnerable groups”.

In his conclusion, Mr Sidibé stressed the importance of evidence-based decision-making in a world of AIDS often dominated by ignorance and ideology. He stated that, in many instances, programmes to respond to HIV have followed a limited approach—for example, when HIV prevention programmes are forced to suit a narrow world-view, rather than reflect life's variation. Against this background, Mr Sidibé called on judges to use all the legal instruments at their disposal including national constitutions, legislation, and international human rights treaties to ensure the protection of people living with HIV and those most at risk of HIV infection. In doing so, he added, judges serve the interest of social justice and help to support an effective HIV response.

### **Session Three – Unfair discrimination against people living with HIV**

This session, which was chaired by Justice Papa Oumar Sakho (President, Supreme Court of Senegal), dealt with the issue of unfair discrimination against people with HIV in the workplace. Two presentations, by Justice Oagyle Dingake (High Court of Botswana) and Dr Adila Hassim (AIDS Law Project) respectively, focused on different aspects of the topic. Both speakers gave illustrative case examples of HIV-related discrimination within the workplace. The workplaces described were, however, very different.

Justice Dingake cited an example of an employee, working for an aircraft maintenance company, who had been dismissed after it was discovered that he was HIV positive. Dr Hassim highlighted a contrasting case of discrimination within the military where stereotypical conceptions of what kinds of people are fit for military purposes resulted in unfair discrimination against people living with HIV. These cases both raise the all-too common reality of ignorance-based, unjustified differential treatment of those living with HIV. They capture, in their different expositions of the problem, how specific facts about HIV need to be known to overcome discrimination in *particular* spaces.

For example, Dr Hassim narrated the facts of the South African Security Forces Union (SASFU) case in South Africa, which considered the unfair treatment of persons living with HIV in relation to recruitment into, promotion within and external deployment by the South African security forces.<sup>5</sup> Dr Hassim highlighted the common myths and stereotypes that have led to a general and blanket perception that people living with HIV are unfit for military services. She explained that these myths had to be challenged in order to ensure the

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<sup>5</sup> For more on this case, see *South African Security Forces Union and Others v Surgeon General and Others*. Available at [http://www.alp.org.za/index.php?option=com\\_content&task=view&id=43](http://www.alp.org.za/index.php?option=com_content&task=view&id=43).

development of evidenced-informed policy in relation to persons living with HIV in the military.

Examples of myths held by military authorities included the general belief that one has to be a 'strong man', in some sense, in order to be in the military; HIV positive individuals were, by definition, ordinarily understood to be weak. This myth, in turn, meant that an HIV positive person could not be deployed externally or promoted in any way if he or she was already a member of the defence force, and, if not yet a member, he or she could not be employed. External deployment translates directly into increased salaries, so the denial of deployment opportunities to persons who are HIV positive – in addition to not promoting them – effectively prevented them from gaining wider experience and constituted a form of “economic death” as described by (now Chief) Justice Ngcobo in the *Hoffmann* case.<sup>6</sup>

Another myth is the belief that the military environment is an *exceptional occupational environment*, unlike any other. Dr Hassim explained how advances in HIV treatment – such as the fact that a widely used first-line treatment regimen involves taking only one pill once a day, and the reduction of morbidity and mortality among people living with HIV who have access to Highly Active Antiretroviral Therapy (HAART) – mean that HIV may be appropriately managed in conflict situations. As Dr Hassim puts it, “on the battlefield, there is higher risk of dying from combat”. There is also the myth that the military is an exceptionally *harsh* environment which warrants the exclusion of people living with HIV. However, Dr Hassim highlighted the need for appropriate measures which depend on (a) the job category – the discriminatory policy challenged in the *SASFU* case applied to all categories of jobs in the military, including chaplains and trumpet players – and (b) even on frontline, any differential treatment should depend on the unit within which the person living with HIV has been deployed.

The debate and discussion after this presentation revealed that, even among the judges present, there were strong beliefs about the military being an exceptional workspace that justified the blanket exclusion of persons with certain conditions such as HIV. Dr Hassim pointed out, however, that any exclusion should only be justified on the basis of an overall comprehensive medical assessment and relevant to the needs of the specific job or task of work under consideration. On its own, HIV status could not be a rational basis for *a priori* exclusion from any job in the military.

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<sup>6</sup> See *Hoffmann v South African Airways* 2001 (1) SA 1 (CC).

The workplace case study presented by Justice Dingake<sup>7</sup> further illustrated that differential treatment among workers based on HIV status was unacceptable. Justice Dingake's presentation reinforced the theme of using, in the absence of HIV-specific legislation, various legal sources to achieve substantive rights. He explained how judges may use national, regional and international legal instruments in order to "clarify the content, context, and location of any rights and duties that are conferred by the Constitution"; and that a purposive and generous interpretation of laws can enable the substantive enjoyment of rights by all, particularly those most vulnerable to HIV.

These points were established through the analysis of a workplace-related case in Botswana. The central fact in the case was the dismissal of an employee after the employer had compelled that employee to undergo an HIV test. The employee tested positive for HIV. Even though there is no specific legislation dealing with HIV in Botswana, the court used the Constitution to give meaning to the right of employees not to be discriminated against on the basis of their HIV status.<sup>8</sup> In addition, other relevant regional and international instruments were also used to interpret statutory law. These included the *Universal Declaration of Human Rights*, the *International Guidelines on HIV/AIDS and Human Rights*<sup>9</sup>, and the *International Covenant on Civil and Political Rights*.

These discussions on unfair discrimination illustrated the role that judges can play in achieving justice for all in society through recognizing HIV as a chronic manageable condition. At the same time, vigorous discussion about the merits of the *SASFU* case revealed that there are still deeply-held beliefs that characterize HIV as "disease" that disables. This discussion underscored the need to put together a comprehensive compendium of the evidence-informed facts about HIV that judges should use to guide them in deciding HIV-related cases.

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<sup>7</sup> Justice Dingake mainly discussed the case of *Lemo v Northern Air Maintenance* [2004] 2 BLR 317 (Botswana Industrial Court 2004), available at [http://www.southernafricalawcenter.org/library/item/lemo\\_v\\_northern\\_air\\_maintenance\\_pty\\_ltd\\_industrial\\_court\\_2004](http://www.southernafricalawcenter.org/library/item/lemo_v_northern_air_maintenance_pty_ltd_industrial_court_2004).

<sup>8</sup> Section 15 of the Constitution of Botswana, for example, outlaws discrimination.

<sup>9</sup> UNAIDS and Office of the UN High Commissioner for Human Rights (2006), *International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version*. HR/PUB/06/9. Available at [http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines\\_en.pdf](http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf).

## **Session Four – Using the law to protect women and to mitigate the impact of the epidemic**

In an interactive session chaired by Ms Anne Goldstein (IAWJ), Justice Beatrice Ntuba (High Court of Cameroon), Justice Eusebia Munuo (Court of Appeal of Tanzania) and Ms Flavia Kyomukama (Ugandan Chapter, Coalition of Women Against AIDS) spoke about the experiences of women in relation to HIV and the role that judges can play in alleviating the impact of the epidemic on women.

Ms Kyomukama made a plea for gender equality and for the protection of women's rights in the context of the HIV epidemic. This was echoed by Justice Ntuba who shared her experience on the bench in addressing violence against women and other forms of human rights violations targeting women that make them more vulnerable to HIV infection.

Justice Munuo described a project in which she had been involved to increase access to justice and legal literacy. Entitled "Jurisprudence on the Ground", the project is aimed primarily at educating community-based organisations so that they can help ordinary people access the courts. Through the project, legal processes are explained, including where to go, how to access the courts, what to do if you cannot afford a lawyer, and how to deal with corruption. Such efforts not only protect the integrity of the judicial system but also help women have access to the courts, which is critical in the context of sub-Saharan Africa where more than half of those infected by HIV are women.

This discussion echoed the emphasis on civil society highlighted by Mr Heywood at the opening session of the meeting. More importantly, the presentation by Justice Munuo demonstrated how jurists (including judges and lawyers) can work with civil society to ensure that ordinary people understand their rights and know how to claim them through the judicial process. Such a programme illustrates that judges need not restrict their involvement to legal adjudication but may engage in activities that increase legal literacy and access to justice. Such activities not only do not undermine their roles as independent dispensers of justice, they strengthen such roles.

The need for judges to get involved in practical legal education was further underlined by the moving stories recounted by both Justice Ntuba and Ms Kyomukama about the injustice and gender inequality experienced by many women at the hands of violent partners and families and communities, which do not respect women's rights. Such experiences are particularly common to women living with HIV, who may have been infected due to sexual violence or may



experience violence as a result of their infection. The session provided practical ways to address the injustice experienced by women: greater access to the court and rights education.

### **Session Five – What is the role of the criminal law in the epidemic?**

In a session chaired by Justice Irene Mulyagonja Kakooza (High Court of Uganda), participants discussed the appropriate role for the criminal law in addressing the HIV epidemic. The session highlighted the lack of agreement on the role of the criminal law, as well as its impact, in the AIDS response.

In his presentation entitled “Criminalizing HIV”, Justice Edwin Cameron (Constitutional Court of South Africa) – who is openly living with HIV – argued against the overly-broad criminalisation of those living with HIV who transmit HIV or expose others to HIV infection. Cameron qualified his position in two ways: first, he supported the use of ordinary criminal law (not HIV-specific law) to prosecute those who deliberately seek to infect others; second, he agreed that prosecution is necessary and justified where there is rape or another form of violence that accompanies the exposure to HIV.<sup>10</sup>

Justice Cameron drew the attention of the participants to the fact that over fifteen African countries have introduced questionable HIV-specific criminal laws which generally have vague and overly broad provisions punishing HIV transmission or exposure. In Kenya, for example, the HIV Law expressly requires one to disclose his or her HIV positive status, regardless of the circumstances or one’s actual knowledge of HIV status. In Sierra Leone, the HIV Law expressly criminalises HIV-positive mothers who transmit HIV to their babies through mother-to-child transmission. Several other African countries have also enacted broadly drafted laws. Many of these could be disproportionately applied against women who often know their HIV status before their husbands, are blamed for “bringing HIV into the relationship”, and who have less social and economic power to defend against a lawsuit.

In Cameron’s view, such criminalisation increases stigma. The message it sends is one that states, “We must find the culprit!” Yet in the majority number of cases, HIV is spread through consensual sex between people who do not know their HIV status. Rather than supporting

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<sup>10</sup> For more on this subject, see UNAIDS and UNDP (2008), *Policy Brief: Criminalization and HIV transmission*. Available on-line at [http://data.unaids.org/pub/BaseDocument/2008/20080731\\_jc1513\\_policy\\_criminalization\\_en.pdf](http://data.unaids.org/pub/BaseDocument/2008/20080731_jc1513_policy_criminalization_en.pdf).

people to get tested for HIV and disclose HIV status, the law, through fear of prosecution and stigma, will likely be an incentive not to get tested or disclose HIV status.

The two respondents largely supported Justice Cameron. Justice Monageng (International Criminal Court) agreed on the need for government to take their responsibility with regards to the protection of individual freedom and liberty. In her view, overbroad criminalisation of HIV transmission, such as that of Kenya, is not desirable and exacerbates stigma. Echoing these views, Chief Justice Lehohla, Chief Justice of Lesotho, lamented the fact that, because of stigma, many people with HIV fear disclosing their status. This, he said, is not useful. Criminalisation, he concurred, negatively impacts the AIDS response.

The meeting did not reach consensus on whether HIV-specific criminal laws should be enacted against persons who transmit HIV or expose others to HIV infection. But there was an emerging understanding that, *from a practical, strategic viewpoint*, the public health benefits of not criminalising, in overly-broad fashion, the transmission of HIV may outweigh legal arguments in favour of criminalisation in some contexts.

In addition to the criminalisation of HIV transmission, the session also considered the impact that the criminalization of vulnerable groups, including men who have sex with men, sex workers and drug users, has on HIV prevention and treatment efforts. Participants discussed how the use of criminal law in relation to certain vulnerable groups increases stigma and drives those affected by these laws underground and away from HIV prevention and treatment services, thereby undermining efforts to overcome HIV and mitigate its impact. The existence of sodomy laws, for example, impacts men who have sex with men and transgender persons. For fear of criminal prosecution as well as stigma, these men often marry women and/or hide their sexuality in other ways, including avoiding HIV prevention, treatment, care and support services (where these are available). This leads to higher levels of HIV prevalence amongst them and amongst their sexual partners, men and women.

Some participants had different ideas about how best to respond to different laws. One delegate pointed out, for example, that, although there is an anti-sodomy law in Malawi, this is hardly ever implemented. Attempts to have it repealed may not only be unnecessary, but also result in a backlash. At any rate, it was a matter for legislative reform, not judicial intervention.

## **Session Six – Access to life-saving treatment**

The final substantive session of the meeting was chaired by Commissioner Mumba Malila (Vice-Chairperson, African Commission on Human and Peoples' Rights). The session focused on the issue of access to life-saving HIV-related treatment and care. While acknowledging the complexity and breadth of the topic which spans multiple sources of law and addresses questions of both law and policy, the session focused on a handful of issues pertinent to the topic. The presentations made during the session highlighted two central themes: the need for ensuring access to treatment for HIV infection as a non-negotiable aspect of any response to the HIV epidemic; and the importance of fully acknowledging that for those with access to highly active antiretroviral therapy HIV is now a chronic manageable condition.

In his presentation, Mr Jonathan Berger (AIDS Law Project, South Africa) focused attention on five key questions: (a) Why treatment? (b) How has the treatment landscape changed the legal landscape? (c) How well are treatment programmes in Africa doing? (d) What challenges need to be addressed? (e) Which cases pertinent to HIV-related treatment may come before judges in Africa?

In her response, Ms Patricia Asero Ochieng (Eastern Africa Treatment Access Movement) – a person living with HIV – drew attention to her personal struggles for access to treatment and current developments in Kenya that threaten access for her and Kenyans more broadly.

Both presentations and the discussion that followed supported the position that judges need to be both aware of and sensitive to the various ways in which the law can be used to ensure or limit access to life-saving treatment for people living with HIV. Mr Berger pointed to the use of the law to compel governments to provide or expand treatment services, to challenge decisions to suspend or terminate the provision of services, and to ensure equitable access without discrimination. He also drew the attention of participants to the ways in which laws dealing with various aspects of intellectual property may be used to limit or expand access to life-saving treatment including for HIV.

Contextualising the struggle for access to high quality HIV-related treatment to the realities of Kenya, Ms Ochieng highlighted the way in which Kenyan civil society has responded to the numerous challenges to ensuring equitable access to treatment. By focusing on two examples – civil society's response to anti-counterfeiting legislation that threatens to limit access to affordable generic medicines of proven quality, safety and efficacy, and

government's responsibilities with regard to threats to sustainable access to treatment – she built on the necessary interplay between governments, civil society and the judiciary in addressing the HIV epidemic. Ms Ochieng particularly discussed the legal challenges laid by civil society against anti-counterfeiting legislation introduced in Kenya as an example of civil society commitment to broader and unimpeded access to quality HIV-related treatment.

### **Towards a consensus statement**

The final session of the meeting was an opportunity for the eminent judges to consider adopting a consensus statement reflecting the outcomes of the meeting and crystallising the discussions and agreement reached over the three-day meeting. This session was co-chaired by Deputy Chief Justice Irene Mambilima (Zambia) and Justice Edwin Cameron (South Africa), who facilitated debate on a draft consensus statement that was developed throughout the meeting and had been circulated to participants. This afforded an opportunity for final discussion and agreement on an action-centred statement that reflected the collective views of those present at the meeting.

The consensus statement reflects existing as well as newly-understood insights into the legal and social challenges posed by the HIV epidemic. It commits the eminent jurists to use their positions and power wisely, appropriately, and in the public interest. The consensus statement therefore addresses the following issues: a) the role of the law in responding to the HIV epidemic; b) science and evidence-informed decision-making; c) HIV-related stigma and discrimination; d) protecting and empowering women: the links between HIV, gender-based violence and property rights; e) protecting and empowering marginalised and criminalised communities; f) ensuring proper application of criminal law; and g) court proceedings and access to justice. (See Annex A for a copy of the Statement of Principles.)

As this report has shown in its exposition of the various sessions, the strongest consensus points focused on the need to recognise that the law can be used, with jurisprudential expertise, to ensure that rights are enjoyed by all in the context of the HIV epidemic even in the absence of HIV-specific legislation. By interpreting laws generously and purposively, and drawing both on domestic and international sources of law, the rights of persons vulnerable to HIV infection or living with HIV can be ensured.

## Closing remarks

Arthur Chaskalson, former Chief Justice of South Africa, closed the meeting by explaining that there is merit to drawing a distinction between good and bad law in spite of concerns raised by some of the participants about the appropriateness of judges evaluating laws as either good or bad (e.g. the anti-sodomy laws in most African countries). Their concerns were based on the view that it is not appropriate for the judiciary actively to participate in any conversation that is largely moral and political – and not legal – in nature, and the separation of powers doctrine precludes judges from expressing any view on the validity of such laws.

In refuting this approach, Chaskalson referred to the role of judges in apartheid South Africa. In particular, he spoke about how a handful of progressive judges – working within a highly discriminatory legal system – were able to find creative ways to promote justice by interpreting laws, wherever possible, in a manner that advanced human rights. This was a powerful concluding reminder that judges can indeed fulfil a social justice role without encroaching upon the executive's domain.

He related this principled discussion to the discussion of anti-sodomy laws in some countries. Justice Chaskalson pointed out that it is disingenuous to try to ignore these laws, even where they are not routinely applied, since their mere existence demeans those whose lives and identities they deem criminal. The salient point implicit in these concluding remarks is that judges cannot, however difficult, entirely disentangle their role as judges from wider social, moral and political realities. Instead, they should seek to find ways of striking that complex but necessary balance between respecting other branches of government *and* making a meaningful contribution to the realising of the human rights of *all* people, including those vulnerable to HIV and living with it. In the context of HIV, the moral and societal role of judges is to ensure that the legal response to HIV does not leave out key segments of societies that are more vulnerable to HIV. Judges should ensure that they interpret, enforce and apply the law in ways that serves the response to HIV and fulfils the dignity of all individuals.

## **Annex A:**

### **Statement of Principles on HIV, the Law and the Judiciary in sub-Saharan Africa**

#### **BACKGROUND**

1. We, judges from more than 15 sub-Saharan African countries, met in Johannesburg from 10 to 12 December 2009 to review the role that judges could play to deal constructively with, and mitigate, the harsh impact of the HIV epidemic.
2. We underline that HIV is having a severe impact on the economic, social and cultural fabric of our societies, with adverse effects on the health, human rights and development gains made in the region.
3. We are deeply concerned that sub-Saharan Africa remains the region most severely affected by HIV, with more than 22 million people living with HIV, more than 1.4 million AIDS-related deaths in 2008, and with women representing approximately 60 per cent of all HIV infections.
4. We affirm that HIV is fundamentally a human rights issue. We also recognise the universality of the human rights of all persons, including those living with and/or affected by HIV.

#### **ROLE OF THE LAW IN RESPONDING TO THE EPIDEMIC**

5. We note that the law, and the manner in which it is interpreted, applied and developed, has the potential both to mitigate and aggravate the impact of the epidemic. Some laws afford protection whilst others may exacerbate vulnerability to HIV.
6. We recognise that, where no specific legislation relating to HIV exists, other sources of law, including the common law, comparative jurisprudence and/or international law where appropriate, should be expansively and purposively interpreted and developed to ensure the realisation of the human rights of all, including those vulnerable to HIV infection and living with HIV.

## **EVIDENCE-INFORMED DECISION-MAKING**

7. We recognise the importance of understanding the science of HIV transmission, prevention, treatment, care and support in order to ensure evidence-informed adjudication on all matters relating to HIV.
8. We stress the importance of developing guidelines for, and within, our respective judiciaries, aimed at empowering all judicial officers to deliver evidence-informed and rights-based judgments on all matters relating to HIV. In this regard, judicial education should be aimed at the entire hierarchy of the judiciary, including the use of internationally accepted non-stigmatising language. This will help to eliminate myths, misconceptions and prejudices related to HIV and to AIDS.

## **STIGMA AND DISCRIMINATION**

9. We are acutely aware of, and concerned about, the continued stigma and discrimination that is experienced by those vulnerable to and living with HIV. Such stigma and discrimination undermine their inherent dignity.
10. We are particularly concerned by the absence of protective anti-discrimination legislation in a number of African countries. We call for a review of all laws to ensure consistency with the *International Guidelines on HIV/AIDS and Human Rights*. Furthermore, laws should be developed, where necessary, to ensure full and effective protection against unfair discrimination on the basis of HIV status.

## **PROTECTING AND EMPOWERING WOMEN: THE LINKS BETWEEN HIV, GENDER-BASED VIOLENCE AND PROPERTY RIGHTS**

11. We recognise that gender inequalities fuel the epidemic in sub-Saharan Africa.
12. We understand that gender-based violence, discrimination against women, inequitable distribution of property and other goods, combined with lack of access to the legal system increase vulnerability to HIV infection.
13. We urge judges to implement widows' inheritance rights, as these rights support food security, economic empowerment and the ability to mitigate the impact of the

epidemic.

14. We note the existence of various initiatives aimed at alleviating court backlogs and overcoming barriers to justice, in particular in cases that disproportionately affect women. These measures include specialised courts for issues that affect women, the allocation of particular days to deal with backlogs and barriers, and programmes to cut the costs of access.
15. We call on judiciaries to experiment with these and other initiatives aimed at addressing these barriers.

#### **PROTECTING AND EMPOWERING CHILDREN**

16. We recognise that many children are left vulnerable by the HIV epidemic and that this manifests in many ways, including large numbers of orphans, child-headed households, children born with HIV, children vulnerable to trafficking and high HIV prevalence among adolescents.
17. We stress the importance of taking these facts into account when determining the best interests of the child in all relevant HIV-related juridical matters such as guardianship, adoption, inheritance, education, social security, and access to health care services, including voluntary testing and counselling, and prevention, support and treatment services.

#### **PROTECTING AND EMPOWERING MARGINALISED AND CRIMINALISED COMMUNITIES**

18. We note that the *Declaration of Commitment on HIV/AIDS*, adopted at the United Nations General Assembly Special Session on HIV/AIDS (UNGASS) on 27 June 2001, recognises the existence of “identifiable groups which currently have high or increasing rates of HIV infection or which public health information indicates are at greatest risk of and most vulnerable to new infection”.
19. We stress the importance of enforcing, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against, and to ensure the full



enjoyment of, all human rights and fundamental freedoms by people living with HIV and members of vulnerable groups, in particular to ensure their access to, inter alia, education, inheritance, employment, health care, social and health services, prevention, support and treatment, information and legal protection, while respecting their privacy and confidentiality; and to developing strategies to combat stigma and social exclusion connected with the epidemic, as agreed by Governments in the *Political Declaration on HIV/AIDS* (2006) at the UNGASS.

### **ENSURING PROPER APPLICATION OF CRIMINAL LAW**

20. We are mindful of the negative impact that laws that expressly criminalise HIV transmission have on HIV prevention, treatment, care and support programmes. In this regard, we understand that the criminalisation of HIV transmission refers to laws that impose criminal penalties on people living with HIV for not disclosing their HIV status or for exposing others to the virus or for transmitting it, as well as special, HIV-focused prosecutions.
21. We recognise that the use of criminal law to target vulnerable groups undermines prevention, treatment, care and support and increases stigma. It also prevents vulnerable communities from accessing services such as HIV prevention, treatment, care and support.

### **COURT PROCEEDINGS AND ACCESS TO JUSTICE**

22. We recognise that the ability to claim human rights relevant in the context of HIV depends on knowledge of rights, access to courts and affordability of legal services.
23. We call on all judicial officers to work towards increasing access to justice by educating the public about the legal process. This will improve transparency of the legal system.
24. We stress the importance of ensuring that the judiciary is able to harness the experience and expertise of civil society in order to enhance access to justice. Mindful of the imperative to respect the separation of powers, we recognise the need for the judiciary to work with the other branches of government to ensure access to justice.

## **ACCESS TO HIV TREATMENT**

25. We note the importance of securing, expanding and sustaining access to treatment of proven quality, safety and efficacy, mindful of the fact that for those with access to highly active antiretroviral therapy, HIV infection is ordinarily a chronic manageable condition.
  
26. We recognise that the judiciary may have an important role to play in relation to a wide range of treatment-related issues such as the provision, expansion, suspension or termination of health services, equal access to such services, public procurement of medicines, and the relationship between intellectual property rights and access to affordable medicines.

## **THE WAY FORWARD**

27. We call upon members of the judiciary to use their positions of power and influence to act as role models by providing leadership on the HIV epidemic in their communities.
  
28. We commit to upholding the rule of law so that governments fulfil their national and international obligations relevant to HIV.
  
29. We call upon UNAIDS to establish, as a matter of urgency, a Commission on AIDS and the Law that includes jurists and assists countries to align their laws with the *International Guidelines on HIV/AIDS and Human Rights*.

## **ANNEX B: AGENDA**

### **THURSDAY, 10 DECEMBER**

**19:00**

**Reception dinner** (open to the media)

**Chair:** Justice Pius Langa, former Chief Justice of South Africa

- **Welcome** – Justice Pius Langa
- **Short welcomes from co-sponsoring organizations** – International Association of Women Judges, International Commission of Jurists, UNAIDS and UNDP
- **Living with HIV in Africa: a real view** – Vuyiseka Dubula, General-Secretary, Treatment Action Campaign, South Africa

### **FRIDAY, 11 DECEMBER**

**8:15 – 8:45: REGISTRATION**

**9:00 – 10:30**

**Opening Session – HIV, law and the judiciary: realising rights in the response to the pandemic** (open to the media)

**Chair:** Mbulawa Mugabe, UNAIDS

- **Official opening** – Mr Jeff Radebe, Minister of Justice and Constitutional Development, South Africa
- **The experience of the judiciary in dealing with HIV: an African perspective** – Justice Georgina T. Wood, Chief Justice of Ghana
- **Litigating before African courts: a civil society perspective** – Mark Heywood, Chair, UNAIDS Reference Group on HIV and Human Rights

**10:30 – 11:00: COFFEE AND TEA**

**11:00 – 12:30**

**Session Two – Science and evidence-informed judicial responses to HIV**

**Chair:** Justice Hansine Donli, ECOWAS Court of Justice

- **The science of HIV transmission, prevention and treatment** – Professor Ashraf Coovadia, Rahima Moosa Mother & Child Hospital, University of the Witwatersrand, Johannesburg
- **Evidence-informed judicial responses to HIV: the case of *Odafe v Attorney-General*** – Justice Regina Obiageli Nwodo, Federal High Court of Nigeria

## Discussion

**12:30 – 13:30: LUNCH**

**13:30 – 14:00**

## Keynote address

**Chair:** Justice Justine Ahadzi-Azanaledji, Supreme Court of Togo

- Michel Sidibé, Executive Director, UNAIDS

**14:00 – 15:30**

## Session Three – Unfair discrimination against people living with HIV

**Chair:** Justice Papa Oumar Sakho, President of the Supreme Court of Senegal

- **Non-discrimination in the workplace: using international law to protect employees** – Justice O. Dingake, High Court of Botswana
- **HIV testing in the South African National Defence Force** – Dr Adila Hassim, AIDS Law Project, South Africa

## Discussion

**15:30 – 16:00: COFFEE AND TEA**

**16:00 – 17:30**

## Session Four: Using the law to protect women and mitigate the impact of the epidemic

**Chair:** Anne T. Goldstein, Human Rights Education Director, International Association of Women Judges

**Interactive panel:**

- **Using the law to protect women against gender-based violence** – Justice Beatrice Ntuba, High Court of Cameroon
- **Property and inheritance rights of women** – Justice Eusebia Munuo, Supreme Court of Tanzania
- **Respondent** – Flavia Kyomukama, Ugandan Coalition of Women Against AIDS

**Discussion**

**17:30 – 18:15: TRANSFER PARTICIPANTS TO CONSTITUTIONAL COURT**

**18:30 – 19:00**

**Evening tour of the Constitutional Court**

- Justice Albie Sachs, former justice of the Constitutional Court of South Africa – his own experience of judging in the epidemic

**SATURDAY 12 DECEMBER**

**9:00 – 10:30**

**Session Five – What is the role of the criminal law in the epidemic?**

**Chair:** Justice Irene Mulyagonja Kakooza, High Court of Uganda

- **Criminalizing HIV** – Justice Edwin Cameron, Constitutional Court of South Africa and person living with HIV
- **Respondent** – Justice Sanji Monageng, International Criminal Court

**Discussion**

**10:30 – 11:00: COFFEE AND TEA**

**11:00 – 12:30**

### **Session Six – Access to life-saving treatment**

**Chair:** Commissioner Mumba Malila, Vice-Chairperson, African Commission on Human and Peoples' Rights

- **Using the law to ensure, expand and sustain access to treatment in Africa** – Jonathan Berger, AIDS Law Project
- **Respondent** – Patricia Asero Ochieng, Eastern Africa Treatment Access Movement

### **Discussion**

**12:30 – 13:30: LUNCH**

**13:30 – 17:00 (coffee and tea from 15:00 – 15:30)**

### **Session Seven – Outcomes of meeting**

**Co-chairs:** Deputy Chief Justice Irene Mambilima, Zambia and Justice Edwin Cameron, South Africa

- **Development of statement of principles** – led by Co-chairs
- **Suggested follow-up** – led by Co-chairs

**17:00 – 17:30**

### **Final session – Wrap-up and closing**

**Co-chairs:** Justice Arthur Chaskalson, former Chief Justice of South Africa and Michel Sidibé, Executive Director, UNAIDS

## ANNEX C: LIST OF PARTICIPANTS

### MEMBERS OF THE JUDICIARY

**Arthur Chaskalson**

Former Chief Justice  
South Africa

**Pius Langa**

Former Chief Justice  
South Africa

**Mahapela Lehohla**

Chief Justice  
Lesotho

**Papa Oumar Sakho**

President of the Supreme Court  
Senegal

**Georgina T. Wood**

Chief Justice  
Ghana

**Justine Ahadzi-Azanaledji**

Supreme Court  
Togo

**Edwin Cameron**

Constitutional Court  
South Africa

**Henriques Cossa**

Provincial Court of Zambezia  
Mozambique

**Oagile Dingake**

High Court  
Botswana

**Hansine Donli**

Community Court of Justice  
ECOWAS

**Charles Hungwe**

High Court  
Zimbabwe

**Luis Madeira**

Supreme Court  
Mozambique

**Rita Makarau**

High Court  
Zimbabwe

**Irene Mambilima**

Deputy Chief Justice  
Zambia

**Jacques Mayaba**

Supreme Court  
Benin

**Flavien Mbata**

Supreme Court  
Central African Republic

**Yvonne Mokgoro**

Former justice, Constitutional Court  
South Africa

**Sanji Monageng**

International Criminal Court

**Irene Mulyagonja Kakooza**

High Court  
Uganda

**Eusebia Munuo**

Court of Appeal  
Tanzania

**Beatrice Ntuba**

High Court  
Cameroon

**Regina Nwodo**

Federal Court of Appeal  
Nigeria

**Thumba Pillay**

Former justice, High Court  
South Africa

**Albie Sachs**

Former justice, Constitutional Court  
South Africa

**Oumar Senou**

Supreme Court  
Mali

**Duncan Tambala**

Supreme Court  
Malawi

**Leslie Alden**

President  
International Association of Women  
Judges

**OFFICIALS**

**Michel Sidibé**

Executive Director  
UNAIDS

**Jeff Radebe**

Minister of Justice & Constitutional  
Development  
South Africa

**Andries Nel**

Deputy Minister of Justice & Constitutional  
Development  
South Africa

**Frederick Ngenzebuhoro**

Member of Parliament  
East African Legislative Assembly



## **OTHER EXPERTS**

### **Patricia Asero Ochieng**

Eastern Africa Treatment Access Movement

### **Jonathan Berger**

Senior Researcher  
AIDS Law Project  
South Africa

### **Ashraf Coovadia**

Rahima Moosa Mother & Child Hospital  
University of the Witwatersrand  
South Africa

### **Michaela Clayton**

Executive Director  
AIDS and Rights Alliance for Southern Africa

### **Fatimata Dème**

Executive Secretary  
Forum of African and Arab  
Parliamentarians for Population and  
Development

### **Djibril Diallo**

Senior Adviser to Executive Director  
UNAIDS

### **Vuyiseka Dubula**

General Secretary  
Treatment Action Campaign  
South Africa

### **Patrick Eba**

Adviser, Human Rights and Law  
UNAIDS

### **Evelyn Edroma**

UNDP

### **Anne T. Goldstein**

Human Rights Education Director  
International Association of Women  
Judges

### **Adila Hassim**

Head: Litigation and Legal Services  
AIDS Law Project  
South Africa

### **Mark Heywood**

Executive Director  
AIDS Law Project  
South Africa

### **Flavia Kyomukam**

Ugandan Chapter,  
Coalition of Women Against AIDS

### **Kyomya Macklean**

Women's Organization Network for  
Human Rights Advocacy  
Uganda

### **Mumba Malila**

Vice-Chairperson  
African Commission on Human and  
Peoples' Rights

### **Martin Masiga**

Senior Legal Adviser, Africa Programme  
International Commission of Jurists

**Mbulawa Mugabe**

Regional Director (a.i.)  
Regional Support Team  
East and Southern Africa  
UNAIDS

**Tinashe Mundawarara**

Programme Manager: HIV/AIDS, Human Rights  
and Law Project  
Zimbabwe Lawyers for Human Rights

**Bechir Ndaw**

Policy Advisor: Human Rights  
UNDP  
Senegal

**Vinay Saldanha**

Executive Assistant to the Executive Director  
UNAIDS

**Boemo Sekgoma**

HIV and AIDS Policy Advisor  
SADC Parliamentary Forum

**Susan Timberlake**

Senior Adviser, Human Rights and Law  
UNAIDS

**Joan Winship**

Executive Director  
International Association of  
Women Judges