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AUSTRALIAN
FEDERATION OF AIDS
ORGANISATIONS
INC.

Dear Seema

Thank you for the opportunity to comment on the first draft of the UNAIDS policy brief on 'HIV and Criminal Law'.

AFAO is very supportive of this initiative. In recent years criminal prosecutions relating to HIV transmission have increased in Australia, and AFAO is deeply concerned by this development.

We have reviewed the draft of the policy brief and fully support the principles it expresses. Our comments in relation to the draft are minor

Page 2, paragraph 1, which begins 'These approaches recognize that HIV is transmitted by highly private behaviours, that 90% of those with HIV do not know their status'. While on a worldwide basis this is certainly true, it is less true in developed countries such as Australia, where many positive people are indeed aware of their status. It may be worth including a qualifier here.

Page 2, paragraph 4, beginning, 'The application of criminal law to intentional HIV transmission could be justified on groups of retribution, deterrence, and incapacitation'. While the notion of rehabilitation as a purpose of criminal sanctions is problematic, it makes sense to include rehabilitation as a purpose here. Criminal punishment cannot cure a person of HIV, but it could encourage someone to desist from intentionally transmitting HIV in the future – which is one purpose of applying such sanctions.

Page 3, paragraph 3, which begins, 'The risk of HIV transmission in any single sex act is extremely low and lower still from woman to man and even lower still from woman to circumcised man'. While this is technically true, it is also true that HIV can be transmitted in a single sex act. We are concerned by the implications of this sentence in its current form, and suggest it be deleted.

Page 3, paragraph 5, beginning 'there is no data demonstrating that criminal penalties result in rehabilitation or deterrence from the complex sexual and drug-using behaviors which may result in HIV transmission'. This statement is also true; nonetheless, it is

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equally true of any sex-related crime. The arguments used in this paragraph would not be used to justify abolition of criminal penalties against sexual assault, and we question whether they should be used in relation to intentional transmission of HIV.

I hope that these comments are helpful, and look forward to participating further in the development of this brief and other future initiatives.

Yours sincerely,

Don Baxter