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**Access to medication in the context of pandemics such
as HIV/AIDS, tuberculosis and malaria**

Report of the Secretary-General

Summary

The present report summarizes contributions received from States, United Nations organizations and non-governmental organizations on the steps they have taken to improve access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria.

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Introduction

1. In its resolution 2004/26, the Commission on Human Rights recognized that access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria is a fundamental element for achieving progressively the full realization of the right of everyone to the enjoyment of the highest available standard of physical and mental health. The Commission requested the Secretary-General to solicit comments from Governments, United Nations organs, programmes and specialized agencies and international and non-governmental organizations on the steps they have taken to promote and implement, where applicable, this resolution.
2. The present report summarizes replies received from the Governments of Cuba, Finland, Greece, Lebanon, Mauritius, Mexico, Namibia and Poland, and as well as from the International Labour Organization, the Joint United Nations Programme on HIV/AIDS (UNAIDS), the Office of the United Nations High Commissioner for Human Rights and the World Health Organization. A contribution was also received from the International Council of Nurses. A number of responses were also directed to the request for information under Commission resolution 2003/47 on the protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS). The report on these responses is contained in document E/CN.4/2005/79; complete replies are available for consultation with the Secretariat.

I. CONTRIBUTIONS FROM STATES

3. The Government of Cuba stated its belief that the right to the enjoyment of the highest attainable standard of physical and mental health includes, among other components, access to medicines. While HIV prevalence in Cuba remains relatively low, the Government feels that maintaining the situation is difficult in light of the current economic embargo, which denies Cuba access to 50 per cent of the world's pharmaceuticals. Nevertheless, Cuba has strong policies to control the epidemic. For those living with HIV and AIDS, a programme has been created to focus on their needs. Antiretroviral treatment is provided free of charge and specialized health centres have been established. The Government has created a special working group with the task of assessing and coordinating the national response to the epidemic. The fight against HIV/AIDS has been given priority within the general framework of the free universal health-care system in the country. The necessary drugs have been provided to all those in need, and the Government notes that the country's four decades of experience in the production of generic pharmaceutical products has proved useful in this regard. Cuba has a broad research and development infrastructure, as well a system of early reaction and response. A high standard of blood control and haemo-derivates' safety has been achieved, and since 1997 not a single new case of mother-to-child transmission has been detected.
4. The Government noted that the global fight against HIV/AIDS requires the involvement and commitment of pharmaceutical corporations. It expressed the view that an unfair global economic system facilitates the spread of the disease. In order to successfully fight the disease, the Government suggests that essential medicines should not be patented, that foreign debt should be cancelled, and that rich countries should shift investment from military expenditure to investment in health. With regard to international cooperation, the Government reported that Cuba cooperates with other countries, offering the international community 4,000 doctors and

other health personnel, enough professors in health areas to create 20 faculties of medicine, antiretroviral treatment for 30,000 patients and diagnosis kits. The Government expressed the opinion that the international community should in part cover the costs of material involved in this cooperation.

5. The Government of Finland reports that AIDS patients receive free medication and care. The Act on the Status and Rights of Patients (which applies to AIDS patients) provides for the right of patients to receive information, care and treatment as well as the right to make decisions about their treatment. The Act also strictly prohibits the release of information about the medical condition of a patient without his or her written consent.

6. The Government of Greece reported that new HIV infections in the country have now stabilized. Therapeutic treatments comprise a part of the Government's systematic combating of HIV/AIDS. Testing, follow-up (CD4, viral load) as well as antiretroviral medicines are provided free of charge. Special infections units and laboratory centres for AIDS reporting function through the country. Free nursing, medical and pharmaceutical care is available to foreign economic migrants and refugees infected by HIV/AIDS (among other infectious diseases). The Hellenic Centre for Infectious Diseases Control has created a psychological support guest house for HIV-positive persons with low income, as well as free dental and stomatological care.

7. The Government of Lebanon reported that triple-therapy treatment is now available to all eligible Lebanese and to all Palestinian people residing in Lebanon. Negotiations in the context of the WHO-UNAIDS access to drugs initiative have seen a 85-90 per cent decrease in prices of key drugs.

8. The Government of Mauritius reported that all people living with HIV/AIDS have access to free treatment with antiretroviral drugs, and treatment of malaria also provided free of charge. The prevalence of tuberculosis is low in Mauritius, and all cases are investigated and treated free of charge.

9. The Government of Mexico reported an increase in coverage from 84 to 100 per cent for free antiretroviral treatment for persons registered as living with AIDS by health sector institutions. The federal Government has directed more than 300 million pesos to acquiring antiretroviral medication for the most vulnerable part of the population that lacks social security. These funds make it possible to guarantee the continuity of treatment for more than 3,000 patients and to include another 3,400 new patients. State governments will cater for 2,961 additional patients. The Government noted negotiations were concluded in June 2002 making it possible to lower the prices of first-line antiretroviral therapy, which is the most common for people living with HIV/AIDS (PLWHA). The Government reports that the prices of this therapy, which varied from US\$ 1,000 to \$5,000 in 2001, are now between \$350 and \$690. With a view to supplying adequate care for PLWHA who are without social security, the Government reports that specialized care services in Ministry of Health units were increased from 76 in 2002 to 94 in 2003. These new services were created in the states that have the largest number of PLWHA and where access to health care is more complicated because of geographical factors.

10. In relation to tuberculosis, the Government of Mexico attests that the disease represents a major public health problem and a health priority for the country. Morbidity due to pulmonary tuberculosis has shown a stationary trend during the last five years, oscillating around 20 cases

per 100,000 inhabitants above 15 years of age. The reduction in mortality due to pulmonary tuberculosis was 0.04 per cent during 2001 relative to 2000. The proportion of cases cured is 83 per cent. Quality care of drug-resistant cases has risen by 50 per cent. For the timely diagnosis and detection of new cases, more than 600,000 bacilloscopies were performed. In addition, epidemiological studies were done on 95 per cent of the contacts with ailing persons to discount possible contagion. A Mexican tuberculosis nursing network was set up with the participation of its 32 states and with more than 250 nurses and related professionals. World Tuberculosis Day was marked nationwide with the delivery of more than 25,000 talks to over 380,000 participants, the distribution of more than 488,000 pamphlets and the dissemination of 6,300 messages through radio, television and press outlets. There were also intensive activities at national, state, district and local levels with social and academic events and the participation of national and international organizations, where all health personnel were urged to intensify efforts to guarantee a "Mexico free of tuberculosis". Bilateral cooperation is taking place with the United States of America to strengthen the Mexican-United States referral and case management system, through the "binational TB card" for migrants suffering from tuberculosis, to facilitate the continuity of care, and to support the "Go healthy, return healthy" programme. Mexico is the Americas' representative in the World Health Organization's Stop-TB Initiative.

11. The Government of Namibia drew attention to the fact that the Ministry of Health and Social Services received the second-highest budget allocation in the year 2004-2005. In respect of HIV/AIDS, the Government put in place four years ago a programme aimed at ensuring access to antiretroviral medicines, in particular to pregnant and lactating mothers. In respect of measures to combat tuberculosis, the Government has in place programmes including: the establishment of TB clinics in all hospitals to make relevant medicines available; an immunization campaign (particularly among children); education about transmission; and the promotion of adequate nutrition. Noting that malaria is a serious health problem in the country (especially northern Namibia), the Government outlined responses such as integrating malaria control mechanisms into primary health-care services, access to anti-malarial treatments, and effective health education.

12. The Government of Poland reported that people living with HIV/AIDS have had access to specialized, free treatment since 1990. It highlighted the fact that Poland has offered advanced treatment to its sero-positive patients from the very beginning of the appearance of protease inhibitors in 1996. At present all patients who require antiretroviral therapy - currently around 2,400 - are being offered such a therapy, with all available drugs. Where medicines are not registered for use in Poland but essential for patient treatment, the Government takes steps to import them. Supporting professional medical care by assisting patients in maintaining maximum quality of life and sense of self-esteem is considered essential. Model testing centres have been operating in Poland since 1997, offering anonymous, free testing as well as counselling on a voluntary basis. More than 10,000 people were tested in 2003. In light of the high number of transmissions by injecting drug use, the chance for people living with HIV/AIDS to re-enter society is strengthened by the opportunity to participate in methadone programmes. Needle and syringe exchanges have operated in Poland since 1991, and with governmental approval since 1996. Since 1997 substitution methadone therapy has been available. Methadone-based substitution therapy started as a pilot project in 1997 and has progressed in terms of both methods and the number of patients. Intravenous drug users who are infected with HIV are given priority in treatment.

II. CONTRIBUTIONS FROM UNITED NATIONS BODIES

A. International Labour Organization

13. The International Labour Organization (ILO) recalled that, in implementing its Code of Practice on HIV/AIDS and the World of Work, ILO is mobilizing its tripartite constituents (Governments, employers' and workers' organizations) and increasing their capacity to undertake HIV/AIDS prevention, care and support. ILO's long experience in promoting safety and health at work - including access to occupational health services and social security - and its fundamental principles for the protection of workers' rights are particularly relevant to national action. The organization reported that the promotion of access to care and treatment at the workplace level is carried out in collaboration with the ILO's United Nations partners. ILO has become a member of the task force established to implement the WHO/UNAIDS initiative to treat 3 million people by the end of 2005. The role of ILO is to advocate the workplace as a delivery point for treatment as well as prevention; encourage employers and donor partners to invest in antiretroviral treatment for workers, their families and the local community; strengthen occupational health services; increase the capacity of the social partners to support treatment delivery and adherence; and actively promote voluntary testing and counselling. ILO country-level activities include the development of workplace policies providing for the care and support of workers infected and affected by HIV/AIDS; the mapping of enterprises interested or already engaged in providing antiretroviral therapy to their employees; and the implementation of innovative health and insurance schemes.¹ ILO has also organized or supported meetings to guide and promote the extension of HIV prevention, treatment and care programmes.² ILO has collaborated with WHO to produce joint guidelines on the prevention and management of tuberculosis in the workplace, and both organizations are now working together on joint guidelines for health-care workers in relation to HIV/AIDS. Furthermore, ILO and the Global Fund to Fight AIDS, Tuberculosis and Malaria are joining forces to strengthen public-private partnership to extend access to prevention and care, with particular emphasis on the workplace in supporting the delivery of treatment and taking it to the local community. The Global Fund will also work with ILO to identify and share examples of successful proposals with a world-of-work component, to guide ILO constituents in application procedures, and to sustain country coordinating mechanisms through links with the social partners.

B. Office of the United Nations High Commissioner for Human Rights

14. The Office of the High Commissioner for Human Rights works to underline the importance of access to medication in protecting the right of everyone to the enjoyment of the highest available standard of physical and mental health. One means for doing so in relation to HIV/AIDS has been the dissemination of the revised guideline 6 (dealing with access to prevention treatment care and support) of the International Guidelines on HIV/AIDS and Human Rights, which was revised in 2002.

15. The Office also supports the work of the special procedures and treaty bodies in addressing access to medication. In his preliminary report to the Commission at its fifty-ninth session (E/CN.4/2003/58), the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health ("the right to health") expressed his intention to give particular attention to HIV/AIDS and to neglected diseases, including malaria and tuberculosis, over the course of his mandate. Guided by the

Commission's recognition that access to medication in the context of pandemics such as HIV/AIDS, malaria and tuberculosis is a fundamental element of the right to health, the Special Rapporteur has made a number of relevant interventions. His report to the General Assembly in 2003 included a chapter on HIV/AIDS and the right to health, which focuses on accessibility of medication and other obstacles to treatment (A/58/427). In his country missions to Mozambique, Peru and Romania, the Special Rapporteur discussed accessibility of medication for these diseases, including exploring obstacles encountered, particularly obstacles encountered by women and children, and examples of good practices. During his mission to the World Trade Organization, he gave attention to the impact of the Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPS Agreement) on access to affordable medication, and to promoting intellectual property protections coherent with human rights obligations (E/CN.4/2004/49/Add.1). The Special Rapporteur is collaborating with UNDP-WHO-World Bank special programme for research and training in tropical diseases to produce an analysis of the human rights dimensions of neglected diseases, including access to medication for vulnerable groups, such as people living in poverty, rural communities, women and children. In his work on these issues, the Special Rapporteur has engaged closely with a range of actors including States, inter-governmental organizations, health professionals, pharmaceutical companies and civil society, including associations of people living with HIV/AIDS.

16. In his report to the sixtieth session of the Commission on Human Rights, the Special Rapporteur on the question of torture (E/CN.4/2004/56) drew attention to the links between torture and other cruel, inhuman or degrading treatment or punishment, and HIV/AIDS. The Special Rapporteur underlined States' obligations to respect the right to health by, inter alia, refraining from denying or limiting equal access of persons deprived of their liberty to preventive, curative and palliative health services. He also recalled the provisions of the Standard Minimum Rules for the Treatment of Prisoners relating to treatment of sick prisoners.

17. The Committee on Economic, Social and Cultural Rights continues to consider access to medication in light of States parties' obligations under the International Covenant on Economic, Social and Cultural Rights, in particular the right to the highest attainable standard of physical and mental health. Over the past two years, the Committee has regularly urged States parties to conduct an assessment of the effect of international trade rules on the right to health for all and to make extensive use of the flexibility clauses permitted in the WTO Agreement on Trade-related Aspects of Intellectual Property Rights in order to ensure access to generic medicine and more broadly the enjoyment of the right to health for everyone. At its thirty-third session in November 2004, the Committee considered a draft general comment on article 15 of the International Covenant on Economic, Social and Cultural Rights, dealing inter alia, with intellectual property rights.

18. In 2003, the Committee on the Rights of the Child adopted its general comment No. 3 on HIV/AIDS and the rights of the child. In dealing with the treatment and care of children living with HIV or AIDS, the Committee underlined the obligations of States parties to the Convention to ensuring that children have sustained and equal access to comprehensive treatment and care, recognizing that this includes access to antiretroviral and other drugs, diagnostics and related technologies for the care of HIV/AIDS, and related opportunistic infections. The Committee noted that States parties should negotiate with the pharmaceutical industry in order to make the necessary medicines locally available at the lowest costs possible. The Committee has on a number of occasions recommended to States parties to ensure that regional and other free trade

agreements do not have a negative impact on the implementation of children's rights and, in particular, that these do not affect the possibility of providing children and other victims of HIV/AIDS with effective medicines for free or at the lowest price possible.

C. Joint United Nations Programme on HIV/AIDS

19. The Joint United Nations Programme on HIV/AIDS (UNAIDS) commented on a number of developments and activities during the 2002-2004 period. In line with the Commission's call upon the international community to assist developing countries in the fight against pandemics such as HIV/AIDS, tuberculosis and malaria, important progress has been made by a wide range of actors committed to a rights-based approach to scaling up HIV treatment. Furthermore, the last two years have seen a tremendous growth in political will to scale up treatment and in financial resources available from both international and national sources by which to accomplish such expansion. UNAIDS expressed the view that these positive developments have been greatly facilitated by the sharp drop in the price of medicines and diagnostics in recent years, and some Governments (for example, Canada and Malaysia) have begun to make use of the public health safeguards in multilateral trade and intellectual property agreements to promote greater access to HIV medicines in low- and middle-income countries.

D. World Health Organization

20. The World Health Organization drew attention to the activities of the WHO/UNAIDS Global "3 by 5" Initiative to have 3 million people living with HIV/AIDS in developing and middle-income countries on antiretroviral treatment (ART) by the end of 2005. The initiative is underpinned by a number of guiding principles, including "treatment and human rights" and "equity". Under the first, the initiative will advance the United Nations goals of promoting human rights as set out in the Universal Declaration of Human Rights, and clarified (as far as dealing with HIV/AIDS is concerned) in the Declaration of Commitment of the United Nations General Assembly Special Session on HIV/AIDS in 2001. Under the principle of equity, special efforts are being made to ensure access to ART for people who risk exclusion because of economic, social, geographical or other barrier. As of 30 June 2004, 440,000 people living with HIV/AIDS were receiving antiretroviral therapy in developing and transitional countries. Although this is 60,000 less than the target for the initial six months of the "3 by 5" Initiative, the trend of increases in gains suggests that there is progress in scaling up and many of the building blocks are now in place to facilitate a rapid increase in the number of people on treatment over the period towards the target date of the end of 2005.

III. CONTRIBUTIONS FROM NON-GOVERNMENTAL ORGANIZATIONS

21. In its contribution, the International Council of Nurses (ICN) voiced its support for the resolution and provided a summary of activities it has taken consistent with the resolution. These include working in partnership with the International Treatment Access Coalition, which aims to increase access to antiretroviral medicines. ICN collaborates with other health professionals organizations such as World Medical Association, International Pharmaceutical Federation, and International Association of Physicians in AIDS Care, WHO and others to improve capacity of nurses and other medical personnel to deliver antiretroviral medicines. The council lobbies pharmaceutical companies to make antiretroviral medicines available to health professionals living with HIV/AIDS (as one way of building the capacity of health

systems), and has reviewed and updated its position statement on AIDS to include access to antiretroviral drugs for people living with HIV/AIDS. In partnership with WHO and UNAIDS, ICN has developed fact sheets on HIV/AIDS for nurses and midwives which advocate access to antiretroviral drugs. A fact sheet on mobilizing nurses for HIV/AIDS prevention and care urges national nurses associations to lobby for increased access to prevention, treatment and a continuum of care for people living with HIV/AIDS. Guidelines have been developed for reducing the impact of HIV/AIDS on nursing and midwifery personnel. ICN educates nurses on human rights and HIV/AIDS through its publications, position statements, congresses and other events that incorporate human rights issues. The council has also invited the Secretary-General's Special Envoy for HIV/AIDS in Africa to be the keynote speaker at its annual conference.

Notes

¹ Project on the future of health-care financing in Botswana currently undertaken by ILO/AIDS and the Finance, Actuarial, and Statistical Services Branch (SOCFAS).

² Tripartite Interregional Meeting on Best Practices in HIV/AIDS Workplace Policies and Programmes, Geneva, December 2003; UNAIDS Global Fund Partnership Meeting, Lusaka, January 2004; International Conference on Tuberculosis, New Delhi, March 2004; ILO-WHO joint side event on care and treatment through occupational health services at the International Labour Conference, June 2004; Leadership Forum on HIV/AIDS and the world of work, XV International AIDS Conference, July 2004; Panel on "Partnership in the fight against HIV/AIDS" in the General Assembly of International Federation of Pharmaceutical Manufacturers Association (IFPMA), Barcelona, October 2004.
