UNITED NATIONS **A**

General Assembly

Distr.
GENERAL

A/HRC/10/47
19 February 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Tenth session
Agenda item 2

REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE HIGH COMMISSIONER AND THE SECRETARY-GENERAL

The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS)

Progress report of the Secretary-General*

* The present report was submitted late in order to include as much up-to-date information as possible.

GE.09-11163 (E) 020309

Summary

In its resolution 2005/84, the Commission on Human Rights recognized the need for intensified efforts to ensure universal respect for and observance of human rights and fundamental freedoms for all, so as to reduce vulnerability to human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) and to prevent HIV/AIDS-related discrimination and stigmatization, in particular in relation to women, children and vulnerable groups. States and other actors were invited to continue to take steps to ensure the respect, protection and fulfilment of HIV/AIDS-related human rights, as contained in the guidelines on HIV/AIDS and human rights.[1]

A previous report on this issue was submitted to the fourth session of the Human Rights Council in 2007.[2] This report provides an update on actions taken by Governments, United Nations organs, programmes and specialized agencies, international and non-governmental organizations to this end. It concludes that, while some progress has been made in the global response to the epidemic a number of human rights challenges remain, which pose barriers to achieving universal access to HIV prevention, treatment, care and support.

[1] E/CN.4/1997/37, annex I.

[2] A/HRC/4/110.

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Introduction

1. In its resolution 2005/84, the Commission on Human Rights expressed its concern at the increasing number of people living with HIV, in particular the situation of women, girls, and children in general and groups vulnerable to infection and discrimination. The Commission emphasized the need for intensified efforts to ensure universal respect for and observance of human rights and fundamental freedoms for all, so as to reduce vulnerability to HIV/AIDS, to prevent HIV/AIDS-related discrimination and stigma, and to reduce the impact of HIV/AIDS. To this end, the Commission invited States, United Nations bodies, programmes and specialized agencies and international and non-governmental organizations to continue to take all necessary steps to ensure the respect, protection and fulfilment of HIV/AIDS-related human rights, as contained in the guidelines on HIV/AIDS and human rights,[3] and called on States to implement in full the Declaration of Commitment on HIV/AIDS adopted at the twenty-sixth special session of the General Assembly on HIV/AIDS in 2001.[4] The Commission requested the Secretary-General to solicit comments from Governments, United Nations bodies, programmes and specialized agencies and international and non-governmental organizations on steps they have taken to promote and implement, where applicable, programmes to address the urgent HIV-related human rights of women, children and vulnerable groups in the context of prevention, care and access to treatment, as described in the guidelines and resolution 2005/84, and to submit, in consultation with interested parties, a progress report to the Commission for consideration at its sixty-third session. In accordance with Human Rights Council decision 2/102, this report is being submitted to the tenth session of the Council.

2. The present report summarizes replies received from 21 Governments, 9 international organizations and 8 non-governmental organizations (NGOs). The replies were voluminous and this report provides only a summary of the information received. The full texts of replies are available at the secretariat for consultation.

I. CONTRIBUTIONS FROM STATES

3. The Government of Australia provided information on its National HIV/AIDS Strategy for 2005-2008 which aims to reduce the number of new infections nationally through health promotion, harm minimization, education and improved awareness of transmission and trends in infection; improve the overall health and well-being of people living with HIV through equitable access to treatments and improved continuum of care in health and human services; reduce HIV-related discrimination that impacts upon people living with HIV and affected communities in Australia; and develop and strengthen links with other related national initiatives. Australia also has a Disability Discrimination Act 1992 that makes it unlawful to discriminate against persons with disabilities and disability is broadly defined to include people living with HIV and AIDS. Similarly, the Sex Discrimination Act 1984 provides that it is unlawful for a person or an organization to discriminate against a person on the basis of sex in a range of areas. Under both these acts, direct and indirect discrimination is recognized and complaints can be lodged with the

[3] E/CN.4/1997/37, annex I.

[4] General Assembly resolution S-26/2.

Australian Human Rights Commission. In terms of international development assistance, Australia has an HIV strategy entitled "Meeting the Challenge (2004)" which recognizes that addressing stigma and discrimination against people living with HIV is essential to effectively respond to the HIV epidemic. This strategy prioritizes working with those most vulnerable to HIV and its impacts, particularly women, injecting drug users and sex workers.

4. The Government of Austria provided information on its international development assistance in support of initiatives on HIV/AIDS. The Austrian Development Cooperation regards HIV/AIDS as a cross-cutting theme in its consideration of projects and programmes for development cooperation assistance. The majority of the HIV/AIDS-related projects that Austria supports are in Africa and Central America, and include multilateral funding through the Joint United Nations Programme on HIV/AIDS (UNAIDS) for monitoring national HIV/AIDS strategies and commissions, as well as bilateral support that promotes the human rights of women and young people, gender equality, and sexual and reproductive rights.

5. In its contribution, the Government of Canada underscored its commitment to human rights in the fight against HIV and AIDS and recognized the unique impact of HIV on women, children and other vulnerable populations. In this regard, Canada has supported a number of projects, which aim to provide care for caregivers, provide care and psychosocial support for children and their families, provide children with special protection from abuse, exploitation and violence, and improve women's access to legal, property and inheritance rights and in turn reduce their vulnerability to HIV. Significant financial contributions have been made to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the 3 by 5 Initiative of the World Health Organization (WHO) and UNAIDS and the African Health Systems Initiative, as well as bilateral funding. This has been complemented by the introduction of a new tax incentive to encourage corporate donations of medicines for charitable purposes, as well as the issuance of Canada's first compulsory license in September 2007 which enabled a Canadian generic drug manufacturer to export a generic fixed-dose combination AIDS drug to Rwanda.

6. Canada's domestic response to HIV includes the Federal Initiative to Address HIV/AIDS which focuses on HIV prevention, improved quality of life, reducing the social and economic impact of HIV/AIDS and contributing towards the global effort to reduce the spread and mitigate the impact of HIV; the Canadian HIV/AIDS Vaccine Initiative - a public-private sector partnership for the development of safe, effective, affordable and accessible vaccines; and a national stakeholder-led initiative entitled "Leading together: Canada takes action on HIV/AIDS (2005-2010)" which outlines concrete actions to increase awareness, address social factors driving the epidemic, increase prevention, provide leadership in the global response, strengthen diagnosis, care, treatment and support, and enhance front-line efforts both in Canada and abroad. The Federal Initiative targets interventions to populations most vulnerable to HIV, including gay men, aboriginal peoples, prison inmates, people who inject drugs, women, youth at risk, and people from countries where HIV is endemic. Canada's national response also promotes the participation of people living with and affected by HIV in the development of policies and programmes within Canada and abroad. The Canadian courts and human rights tribunals have also confirmed that HIV and AIDS constitute a disability.

7. The contribution of the Government of Cuba highlighted the fact that HIV disproportionately affects people living in poverty and that 20 per cent of the world's population consumes 90 per cent of the resources that are allocated for health. Cuba has a low prevalence of

HIV with some 9,304 people currently living with HIV. Access to health care is considered a human right, and universal and free access to health-care services is available in Cuba. The Government is committed to tackling the social determinants of vulnerability to HIV, non-discrimination and equal access to social services in the community. The main pillars of the national programme on HIV/AIDS prevention and control are education/prevention, diagnosis/research, and epidemiological surveillance and care. The programme guarantees universal access to treatment for those who require it, facilitated by the production of generic antiretroviral treatments, and in addition targeted interventions have been developed for youth, men who have sex with men, women, sex workers, and people living with HIV. Vulnerable groups also participate in the planning, monitoring and evaluation of programmes on HIV which affect them.

8. According to information provided by the Government of Cyprus, people living with HIV are entitled by law to free care if they are citizens or belong to special groups such as political refugees. This care includes HIV testing and counselling, social support and antiretroviral therapy. The current national strategic plan on HIV aims to prevent the sexual transmission of HIV and sexually transmitted infections (STIs); reduce harm-related drug use; prevent prenatal transmission; prevent HIV transmission through blood and blood products, tissue and organ transplants, and skin piercing procedures; provide health care based on the latest international standards in counselling, clinical management and laboratory testing; reduce the personal and social impact of HIV; and protect human rights.

9. The Government of Finland provided its 2008 progress report on the implementation of the Declaration of Commitment prepared for the 2008 High-level Meeting on HIV/AIDS. The report highlights that for the first 10-15 years of the epidemic, HIV affected mostly men who have sex with men and HIV incidence and prevalence in Finland was among the lowest in western European countries. However, the situation changed in 1998, when an outbreak was recorded among injecting drug users mainly in the capital area. By 2006-2007, the incidence rate had risen and heterosexual sex had become the main mode of transmission. Finnish national policy entitles residents to social and health-care services on an equal basis, and HIV testing, counselling, treatment and care is provided free of charge. Targeted safer sex programmes and health care for sex workers have been developed. Since 2004, primary and secondary education from the age of 11 has included education on sexual and reproductive health. The Act on the Status and Rights of Patients (1992/785) applies to AIDS patients and guarantees the right to receive information, care and treatment, as well as the right to make informed decisions about treatment. HIV is covered under the Communicable Diseases Act (1986/583) and is classified as a notifiable communicable disease, but does not permit testing or treatment without consent.

10. The Government of Greece indicated that in 2007, national action plans on sexual and reproductive health and HIV/AIDS and STIs were developed. The action plan on HIV/AIDS and STIs includes: prevention measures with a special focus on women which includes promotion of the female condom, awareness raising, addressing violence against women and sexual abuse; prevention of mother-to-child transmission (PMTCT); HIV prevention for young people aged 15-25 years by incorporating sex education in school curricula, organizing mass media awareness-raising campaigns and by monitoring behavioural change; and addressing stigma and discrimination of people living with HIV through measures including the planned enactment of a specific law on HIV.

11. Information provided by the Government of Guatemala indicated that the HIV epidemic is concentrated in defined subpopulations. The national strategy that has been developed is intended to prevent the spread of HIV in the general population and focuses on prevention in the most affected provinces. In addition, a general law was passed in 2000 on HIV prevention and to protect the human rights of people living with HIV. Among other issues, this law makes HIV education, epidemiological surveillance and promotion of the human rights of people living with HIV a requirement, and mandates the creation of a national commission to coordinate the implementation of national policies in the fight against HIV. The main pillars of the National AIDS Strategic Plan (2006-2010) are prevention, access to treatment and behavioural change to reduce risk and vulnerability to HIV. The Plan also focuses on at-risk groups such as sex workers and men who have sex with men.

12. The National HIV/AIDS and STI Strategic Plan (2007-2012) guides the national response to HIV in Jamaica. Information submitted by the Government of Jamaica indicates that addressing human rights issues and the involvement of vulnerable groups is a key policy focus of the Strategic Plan. The prevention component focuses on ensuring the expansion of coverage and empowerment of sexually active individuals including the most-at-risk groups (i.e. men who have sex with men, sex workers, persons in detention and adolescents). The treatment and care component seeks to increase access to antiretroviral therapy, improve quality care and strengthen the health sector. The component on an enabling environment and human rights includes the amendment of existing legislation (such as the Public Health Act), repealing outdated legislation (such as the Venereal Diseases Act, the Quarantine Act, and the Leprosy Act) and the development of new laws to support the national response. Community advocacy and participation of people living with HIV were also highlighted as key features of the national response. To date, some achievements in the human rights arena include the implementation of an HIV/AIDS workplace policy by government ministries and other organizational entities, revision of the health and family life curriculum and policy to deal more effectively with sexuality and HIV/STI prevention, and the proposed establishment of a national HIV-related discrimination reporting and redress system.

13. The Government of Japan provided information on its efforts to promote the elimination of stigma and discrimination against people living with HIV and to raise awareness of HIV. A number of educational programmes for the prevention of HIV have been developed, including the prevention of infectious diseases in the school curriculum and conducting research for the development of instruction manuals on sex education in schools. Japan has also provided funding to support a number of projects focusing on prevention, protection, care and capacity-building of women and girls affected by HIV and AIDS.

14. The contribution from the Government of the Maldives highlighted the fact that their national AIDS programme includes youth-friendly, gender-sensitive awareness-raising initiatives including priority attention to providing age-appropriate sex education; addresses protection from violence, stigma and discrimination in the context of HIV; promotes and protects reproductive rights; and focuses on HIV prevention, information, voluntary counselling, and testing and quality treatment especially for women and girls. In addition, a new labour law was enacted which addresses workplace policies and practices with a view to ensuring human rights protection of employees in the context of HIV.

15. The HIV and AIDS Act 2006 in Mauritius prohibits discrimination against people living with HIV and promotes the implementation of needle exchange programmes. Likewise, the Ministry of Labour has adopted a workplace policy to promote awareness, support and non-discrimination with regard to HIV. A national sexual and reproductive health policy has also been adopted which emphasizes the importance of human rights, gender equality and equity in providing and delivering health care. According to information provided by the Government of Mauritius, the Immigration Act, the Civil Status Act and the HIV and AIDS Act were all amended in 2008 and now require an HIV-positive non-citizen to disclose his/her status in order to marry a citizen, and work permits are not issued for HIV-positive migrant workers.

16. The National Multisectoral HIV and AIDS Strategic Framework 2000-2011 of Mauritius aims to reduce the transmission of HIV among vulnerable groups (injecting drug users, prisoners and sex workers) by developing, funding and strengthening national mechanisms to fight stigma and discrimination, ensuring full access to HIV prevention, information, voluntary counselling and testing, education and care, and treatment. The PMTCT programme routinely offers HIV testing and counselling and post-exposure prophylaxis is made available in the case of accidental injuries and to victims of rape. AIDS orphans are also entitled to social aid.

17. The contribution from the Government of Mexico drew attention to the fact that access to HIV treatment, prevention and care have been identified as priorities by the Secretary of Health, and that the national response to HIV has been framed in the context of respect for human rights and gender mainstreaming. The current national programme on HIV for the period 2007-2012 focuses on clinical HIV prevention with targeted interventions for key populations such as pregnant women, strengthening coordination, capacity-building and increasing resources allocated for prenatal care to prevent mother-to-child transmission. Funding has also been provided to civil society to support HIV prevention, education, counselling, behaviour change and information campaigns for key vulnerable populations. Information was also provided on the Ministerial Declaration that was adopted in August 2008 at the conclusion of the first Meeting of Ministers of Education and Health to Prevent HIV in Latin America and the Caribbean. In the Declaration, Ministers made a commitment to promoting concrete actions for HIV prevention among young people by implementing sex education and sexual health promotion programmes.

18. According to information provided by the Government of Oman, a number of measures to control and raise awareness of the risks and effects of sexually transmitted diseases, in particular HIV and AIDS, have been adopted. The national strategy to control AIDS and sexually transmitted diseases was launched in December 2007 and aims to improve the health and the psychological and social situation of people living with HIV, through the services of health counsellors, although these activities do not specifically target women and girls. Additional information was provided on the equal participation of women and men in public life in Oman.

19. The priorities of the Government of Poland with respect to HIV and AIDS include improving HIV prevention, HIV information and education, protecting human rights and empowerment of women, and improving care and support of people living with HIV. A new national programme on AIDS control and HIV prevention has been developed covering the period 2007-2011. To date, mortality due to AIDS has declined in Poland due to greater availability of treatment (including PMTCT) which is offered free of charge and the quality of life of people living with HIV has improved. Young people, pregnant women, children, men who

have sex with men, people who use drugs, sex workers and prisoners were indentified as vulnerable populations for which targeted interventions have been developed. Refugees can also receive antiretroviral therapy if they have acquired refugee status. Asylum-seekers can only receive such therapy if they have insurance coverage, they are under the age of 18 or if they are pregnant.

20. In its report, the Government of Serbia provided information on a number of existing laws which concern people living with HIV. A law on infectious diseases requires people with infectious diseases to follow medical orders such as obligatory use of condoms and safe sex to prevent HIV transmission. The health-care law requires people to provide complete information on their health condition to competent health professionals and to follow prescribed therapy - written consent is required if a patient wants to stop treatment. This law also permits persons bound by professional secrecy (e.g. doctors) to disclose private information to competent authorities in order to protect the public, and health professionals may disclose information on the HIV-positive status of individuals to adult family members without the consent of the patient, to avoid a health risk to a family member. The 2005 Criminal Code criminalizes the transmission of HIV - this includes negligent transmission and exposure to HIV, regardless of whether the virus has actually been transmitted. To date, only one case for such a criminal offence has been brought to the courts and is still pending; it remains to be seen how the courts will interpret and implement this provision.

21. In Serbia, employers are not allowed to undertake pre-employment HIV testing, but employees have a duty to inform their employers of their HIV status. The non-disclosure of HIV-positive status may be a legitimate ground for requesting a divorce. People living with AIDS or HIV-positive people who develop opportunistic infections are entitled to disability benefits and they may also benefit from social welfare.

22. The Government of Singapore provided information on its national AIDS programme which focuses on prevention and education, detection of HIV-infected cases and managing HIV prevention. Significant funding has been allocated for HIV education for the general public, in the workplace and in schools, as well as for campaigns for at-risk groups such as sex workers and their clients and men who have sex with men. Together with the Singapore National Employers Federation, the Government has developed an HIV workplace policy. HIV is a legally notifiable disease in Singapore but the confidentiality of people living with HIV is protected by law.

23. Information provided by the Government of Switzerland highlighted the fact that the national programme of HIV and AIDS is based on human rights standards as provided for in the Constitution, the European Convention on Human Rights and other applicable international human rights conventions. Heterosexual sex is the main mode of HIV transmission in Switzerland and in the last few years the number of HIV-positive women has increased. HIV interventions are gender-specific and targeted programmes have been developed to reach vulnerable groups such as female migrants and sex workers. A recent study undertaken by the Swiss AIDS Transmission Survey indicates that 61 per cent of all new infections in women take place in stable relationships. Sex education is available for children in school, where gender-specific HIV-prevention messages are promoted. Efforts to combat HIV are based on partnerships with civil society and the national programme on HIV has identified the following

priority groups for HIV-prevention initiatives: homosexuals and other men who have unprotected sex with other men, migrants and their partners from high prevalence countries, injecting drug users, sex workers, clients of sex workers and tourists who frequently visit countries where HIV is endemic and do not use protection. The Penal Code in Switzerland, which criminalizes the transmission of HIV even in situations where HIV is not actually transmitted, is currently under review and is expected to be amended. To address all forms of discrimination, *Aide Suisse contre le Sida* prepares a biannual report which summarizes incidents of discrimination in the context of HIV and develops recommendations for future action. In the area of development cooperation and humanitarian assistance, Switzerland has supported programmes that promote access to HIV education and information, support and care, voluntary counselling and testing, and sexual and reproductive health. Special consideration is given to the gender dimension of HIV/AIDS and the role that men and boys play in achieving equality between men and women.

24. The Government of Thailand indicated that a number of national laws have been amended in recent years to promote equal partnership between men and women within the household, to prevent sexual violence against women and to improve access to quality health-care services, including HIV treatment and prevention. For example, the amendment of the Criminal Code Act (2007) broadens the definition of rape to include rape by all sexes, all types of sexual penetration, recognizes marital rape and imposes criminal penalties for rape offenders and sexual abuse. The National Act (2007) recognizes that women's sexual and reproductive health must receive special attention and protection. In addition, Thailand is in the process of drafting an equal opportunity and gender equality act to promote women's rights and eliminate gender inequality, as well as a reproductive health act to enhance reproductive health services.

25. Thailand's National Strategic Plan on HIV Prevention and Alleviation (2007-2011) has mainstreamed gender and has focused on enhancing the ability and changing behaviour patterns to enable individuals and their families to protect themselves from and prevent the transmission of HIV; and securing an enabling environment for families, communities and other individuals to protect themselves from infection, stigma, discrimination and to fully participate in all aspects of AIDS prevention. Strategic PMTCT interventions resulted in a decline in the rate of HIV infection in pregnant women from 2.29 per cent in 1995 to 0.76 per cent in 2007. In addition, a programme to promote 100 per cent condom use in commercial sex by empowering sex workers to encourage clients to use condoms reportedly prevented an estimated 5.3 million infections among men and 2 million infections among women between 1990 and 2007.

26. Information provided by the Government of the Bolivarian Republic of Venezuela pointed out that the human rights of people living with HIV are protected by the Constitution. Free treatment for HIV is available and by the end of 2008, 25,627 people had received treatment. A framework and guidelines for the management of antiretroviral treatment have been developed which should enhance the ability of health-care workers to respond to the epidemic. A manual on adherence to HIV treatment has also been developed and significant funding has been allocated to support HIV-prevention initiatives. In November 2008, a seminar on the prevention of HIV was organized with a view to developing guidelines on an HIV-prevention strategy for 2009.

II. CONTRIBUTIONS FROM UNITED NATIONS BODIES, PROGRAMMES AND SPECIALIZED AGENCIES

A. Joint United Nations Programme on HIV/AIDS

27. The secretariat of the Joint United Nations Programme on HIV/AIDS (UNAIDS) indicated that according to national surveys conducted in 2007, 40 per cent of young males (aged 15-24) and 36 per cent of young females had accurate knowledge regarding HIV - still well below the 95 per cent goal for young people's knowledge of HIV unanimously endorsed by Member States in the Declaration of Commitment on HIV/AIDS. More than 80 per cent of countries, including 85 per cent in sub-Saharan Africa, report having policies in place to ensure the equal access of women to HIV prevention, treatment, care and support. However, the extent to which those policies are effectively implemented is not known. Although most countries report having strategic frameworks that address the burden of the epidemic on women, only 53 per cent report budgeted support for programmes focused on the needs and rights of women in the context of HIV.

28. UNAIDS also highlighted the fact that the number of countries with laws that protect people living with HIV from discrimination has increased since 2003, but one third of countries still lack such laws. The degree to which such anti-discrimination laws are enforced is unclear, and in some countries such favourable legal frameworks are undermined by the increasing trend towards criminalization of HIV transmission. While 74 per cent of countries have policies in place to ensure equal access to HIV-related services for vulnerable groups, 57 per cent of these have laws or policies that impede access to HIV services for these groups. Even in countries with low levels of HIV infection, key populations at risk of HIV infection - including sex workers, people who use drugs and men who have sex with men - are experiencing an exceptionally heavy burden of the disease, including substantial numbers of new HIV infections. Scaling up focused HIV-prevention strategies for such populations represents an urgent human rights and public health imperative and requires political leadership. Stigma and discrimination continue to be formidable barriers to achieving universal access to HIV prevention, treatment, care and support, and more work needs to happen to address them in practical, programmatic ways. In this regard, the UNAIDS secretariat has published a resource guide entitled "Reducing HIV Stigma and Discrimination: a critical part of national AIDS programmes", which outlines strategies and programmes for overcoming stigma and discrimination. The UNAIDS secretariat and the United Nations Development Programme (UNDP) have also produced a handbook for parliamentarians that highlights how they can help and have helped defend the human rights of people living with HIV and other vulnerable groups.

29. In response to concerns about an apparent trend towards criminalization of HIV transmission and other punitive responses to the epidemic, the UNAIDS secretariat co-hosted with UNDP in November 2007 an "International Consultation on the Criminalization of HIV Transmission".[5] Meeting participants reaffirmed the ongoing relevance and necessity of applying

[5] For a summary of main issues and conclusions, see: http://data.unaids.org/pub/Report/2008/20080919_hivcriminalization_meetingreport_en.pdf.

the updated 2006 International Guidelines on HIV/AIDS and Human Rights, particularly guideline 4, and as follow-up, the UNAIDS secretariat and UNDP published a policy brief on the criminalization of HIV transmission, urging Governments to limit criminalization to cases of intentional transmission, i.e. where a person knows his or her HIV-positive status, acts with the intention to transmit HIV, and does in fact transmit it.[6]

30. In January 2008, UNAIDS also created the International Task Team on HIV-related travel restrictions which operated as an advisory/technical group, with broad representation. Its purpose was to draw attention to such restrictions on national, regional and international agendas, calling for and supporting efforts toward their elimination. The report of the findings and recommendations of the Task Team was presented to the Board of the Global Fund to Fights AIDS, Tuberculosis and Malaria in November 2008,[7] and the UNAIDS Programme Coordinating Board in December 2008.[8]

B. International Labour Organization

31. The work of the International Labour Organization (ILO) in the context of HIV focuses on rights linked to the workplace and to employment. ILO promotes and protects rights through the 10 key principles of the ILO code of practice on HIV/AIDS and the world of work, which provides a framework for standard-setting, advisory and technical cooperation activities with Governments, employers and workers in member States. The experience of the ILO in the seven years since the code of practice was approved is that measures taken at the workplace usually respect the code, but some of its principles are at times omitted from policies. A major issue has been HIV testing and confidentiality. In the interest of strengthening the workplace response to HIV/AIDS, the ILO Governing Body took a decision to work towards the adoption of a new international labour standard on HIV/AIDS which will be considered in 2009 and 2010 at the International Labour Conference. A study undertaken by the ILO in 2007 on law and practice relating to HIV/AIDS and the world of work, found that out of the 181 member States of the ILO, 169 had taken action to respond to HIV/AIDS by adopting a general national policy/strategy.

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[6] Further information can be found in the policy brief at: http://data.unaids.org/pub/BaseDocument/2008/20080731_jc1513_policy_criminalization_en.pdf.

[7] See Board Decision Point GF/B18/DP22 available online at: http://80.80.227.107/documents/board/18/GF-BM18-DecisionPoints_en.pdf.

[8] See UNAIDS Programme Coordinating Board Decision of 16 December 2008 at: http://www.unaids.org/en/AboutUNAIDS/Governance/PCBArchive/23rd_PCB_Meeting_December_2008.asp. To access the report of the International Task Team on HIV-related Travel Restrictions: findings and recommendations, see: http://data.unaids.org/pub/Report/2008/20081017_itt_report_travel_restrictions_en.pdf.

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

32. The Office of the United Nations High Commissioner for Human Rights (OHCHR) continues to address HIV/AIDS prevention, treatment, care and support as a human rights concern. In collaboration with other United Nations agencies and programmes, OHCHR uses the updated 2006 International Guidelines on HIV/AIDS and Human Rights both as an advocacy tool and to provide guidance at country level on implementing a rights-based response to the epidemic. HIV-related issues are also mainstreamed in the work of the treaty monitoring bodies, the special procedures and the universal periodic review process, where emphasis has been placed on the human rights protection of people living with HIV, especially vulnerable populations. A number of joint activities have been undertaken together with UNAIDS, including the publication of a handbook on HIV and human rights for national human rights institutions which aims to provide guidance to these institutions on integrating HIV-related human rights issues into their work. Together with other United Nations partners, OHCHR has also been engaged in providing technical assistance and promoting the integration of human rights norms and standards into legislation on HIV.

D. United Nations Educational, Scientific and Cultural Organization

33. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has assumed a lead role in the area of HIV prevention for young people in educational institutions. UNESCO has adopted a four-pronged approach to supporting an enabling environment for women, children and other vulnerable populations which includes the right of all children to access education with particular attention to young girls, orphans and other children affected by HIV and AIDS; the right of teachers living with HIV to receive appropriate support and to keep working; the right to confidentiality, non-stigmatizing curricula, and support services in the education sector; and the right of young people to learn about HIV and AIDS and how they can protect themselves.

34. The fact that 40 per cent of all new infections in 2007 were amongst young people aged 15-24 and that only 50 per cent of young people have been educated about HIV prevention, is of particular concern to UNESCO. In many curricula on HIV and AIDS, reference to sex education is avoided or greater emphasis is placed on the negative consequences of sex, even though 75 per cent of all HIV infections occur through sexual transmission. UNESCO therefore initiated a programme on sex, relationships and HIV/STI education in 2008, which will result in the formulation of guidelines in this area. UNESCO was also instrumental in the elaboration of a ministerial declaration adopted in 2008 by Ministers of Education and Health from Latin America and the Caribbean on comprehensive sex education as part of the school curriculum in these regions.

E. United Nations Department of Economic and Social Affairs

35. The United Nations Department of Economic and Social Affairs has stated that the Economic and Social Council has adopted two resolutions which deal with the HIV-related human rights of vulnerable populations. One resolution requires Governments to strengthen

legal, policy, administrative and other measures to reduce the vulnerability of youth to HIV.[9] The other resolution urges Governments, donors and UNAIDS to expand efforts to address inequality and inequity between men and women, gender-based violence, stigma, discrimination, deficiencies in sexual and reproductive health and the lack of respect for human rights as major factors that heighten vulnerability to HIV.[10] In addition, the priority theme of the Commission on the Status of Women in 2009 will be "the equal sharing of responsibilities between women and men, including caregiving in the context of HIV/AIDS" and the 2009 high-level segment of ECOSOC will also address the issue of "implementing the internationally agreed goals and commitment in regard to global public health".

F. United Nations Department of Public Information

36. Through its network of 63 information centres, the United Nations Department of Public Information (DPI) has engaged various groups advocating the protection of the human rights of women, children and vulnerable groups who are either HIV-positive or orphans as a result of AIDS. United Nations Information Centres (UNICs) in Accra, Brussels, Bujumbura, Dakar, Moscow, and Nairobi have led or participated in seminars, workshops and panel discussions that sought to address gender equality and the empowerment of women and youth. Other UNICs have raised awareness on topical issues such as PMTCT, gender-based violence and HIV/AIDS, and HIV-related human rights concerns of young people.

G. United Nations Development Fund for Women

37. The United Nations Development Fund for Women (UNIFEM) integrates gender equality and women's rights perspectives into its work on HIV. This has involved the development of strategies that make clear the links between HIV and violence against women, feminized poverty and women's limited voice in decision-making. The United Nations Trust Fund in Support of Actions to Eliminate Violence against Women, managed by UNIFEM, is funding a first-ever global learning initiative on how to address the linkages between violence against women and HIV/AIDS. In addition, a number of guidance documents and capacity-building tools have been developed aimed at protecting the rights of women in the context of HIV which include guidance on applying the Convention on the Elimination of All Forms of Discrimination Against Women in designing responses to HIV and a course for practitioners on integrating HIV and violence against women in programming and policies.

H. Office of the United Nations High Commissioner for Refugees

38. In its contribution, the Office of the United Nations High Commissioner for Refugees (UNHCR) referred to a guidance tool they developed in 2006 to ensure the protection of refugees, internally displaced persons and other persons of concern in relation to HIV, which covers discrimination; access to HIV and AIDS health care; access to asylum procedures; protection from arbitrary detention and unlawful restrictions on freedom of movement; respect

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[9] ECOSOC resolution 2007/27.

[10] ECOSOC resolution 2007/32.

for confidentiality and privacy; provision of HIV voluntary counselling and testing; freedom from mandatory HIV testing; access to durable solutions; HIV-protection-related needs of women and children; and access to HIV information and education. UNHCR has been working with resettlement countries to ensure that people living with HIV have access to resettlement procedures and are not denied access based on their HIV status. Currently, a number of countries require an HIV test before resettlement and issues regarding informed consent, confidentiality, disclosure of HIV status and pre- and post test counselling are of concern. In 2007, UNHCR produced an antiretroviral medication policy for refugees, which outlines human rights considerations to ensure equal access to treatment for populations of concern to UNHCR. The Executive Committee also adopted resolution 107 on children at risk and recommended that all efforts are made to ensure access to child-friendly health services and to HIV prevention, treatment, care and support including PMTCT and age-sensitive reproductive health and HIV information and education for adolescents.

I. United Nations Permanent Forum on Indigenous Issues

39. The United Nations Permanent Forum on Indigenous Issues has, throughout its sessions, paid attention to HIV and its impact on indigenous peoples throughout the world. It has recommended on several occasions that data disaggregation and culturally appropriate HIV/AIDS programmes should be implemented or improved, and has urged Governments, the United Nations system and intergovernmental organizations to ensure the full and effective participation, and free, prior and informed consent, of indigenous peoples in all programmes related to HIV prevention and treatment of indigenous communities.[11]

III. CONTRIBUTIONS FROM NON-GOVERNMENTAL ORGANIZATIONS

40. Human Rights Watch provided information based on research conducted in Canada, India, Kenya, Russia, South Africa, Thailand, the United States of America, Zambia and Zimbabwe concerning human rights violations that are fuelling the HIV epidemic and presented key recommendations for addressing them. First, the report stressed that the expansion of HIV testing and counselling should be accompanied by safeguards against the risk of human rights violations which can arise from involuntary testing, breaches of confidentiality, and failure to provide linkages to other health services. Second, the report highlighted the fact that gender-based inequality puts women at risk of HIV, impedes women's ability to access HIV information and testing, and is also a barrier to starting or continuing lifesaving antiretroviral therapy. A number of countries have failed to recognize and adequately address the ways in which such abuses hinder women's HIV treatment. Third, a significant number of children do not have the access to HIV treatment that they need and are less likely than adults to receive antiretroviral therapy. Additional assistance, including paediatric counselling, additional resources for sufficient nutrition and transportation for caregivers is needed to reach children. Fourth, harm reduction services remain out of reach for the vast majority of drug users worldwide even though outside of sub-Saharan Africa, nearly one third of all new HIV infections can be traced to the sharing of contaminated syringes by people who inject drugs. Policing practices, including the fact that

[11] See, for example, E/2006/43 and E/2003/43.

many public hospitals and drug treatment centres collect and share information about an individual's drug use with law enforcement, compound the inaccessibility of treatment. Research from Human Rights Watch indicates that many drug users who have been subjected to drug detoxification and re-education have been denied HIV services altogether or provided such services in a manner that violates their fundamental right to health and to life.

41. Fifth, according to the submission of Human Rights Watch, incarceration is a critical risk factor for HIV. In many countries, HIV prevalence in prison populations has been reported to be several times the prevalence in the population at large. At the same time, there is also an increased risk of exposure to other infectious diseases such as tuberculosis. Yet, prisoners and other persons in detention have little or no access to HIV prevention, care, and treatment services even when these are available in the general community. Sixth, despite the long-standing recognition of heightened HIV risk faced by migrants and mobile populations, the international community has largely ignored this call for action and has failed to establish policies or mechanisms to provide health-care services to these populations. Seventh, more than 85 countries still uphold anti-sodomy laws that criminalize consensual homosexual contact between men and often between women, impeding access to HIV/AIDS services by placing people at risk of legal penalties. Finally, the fact that many countries do not recognize palliative care and pain treatment as priorities in health care was raised as a concern, as well as the fact that narcotic drug control regulations or enforcement practices in many countries impose unnecessary restrictions that limit access to morphine and other opioid pain relievers.

42. In a submission by the International Association for the Study of Pain, the interface between human rights and medical care, specifically in the context of pain management and palliative care for patients with HIV, was reflected. They drew attention to the fact that according to WHO, every year an estimated 1.4 million patients with end-stage HIV suffer moderate to severe pain, but do not receive appropriate treatment and that most countries do not have palliative care policies. This Association made the argument that palliative care and pain management constitute important components of the right to health for persons living with HIV and called for ensuring the provision of basic medication for symptom control and terminal care, including analgesics; adopting and implementing national pain and palliative care policies; and ensuring the education of health professionals in the care of patients with HIV and AIDS which includes pain management and palliative care.

43. A number of proposals for further action were made and directed to Governments by the International Council of AIDS Service Organizations (ICASO). They include the need to: (a) fully implement the Declaration of Commitment and the Political Declaration, including reaching universal access to HIV prevention, treatment, care and support by 2010, as adopted by the General Assembly; (b) ensure legal protection against discrimination and violence against women and girls, and decriminalizing sex work, men who have sex with men, transgender people and people who use drugs; (c) repeal existing legislation and halt any efforts to pass legislation criminalizing HIV transmission and exposure; (d) abolish laws that discriminate against women and girls, or laws that contribute to human rights violations against women and girls; (e) involve key populations such as people living with HIV, sex workers, people who use drugs, men who have sex with men and transgender people in policy and programme design and implementation; and (f) develop mechanisms for the redress of human rights violations. ICASO

also called for greater attention to be paid by the Human Rights Council and the special procedures to the situation of coerced and forced sterilization of HIV-positive women, the impact of criminalization of HIV transmission, exposure of marginalized groups and the risk of selective prosecution.

44. The International Community of Women Living with HIV/AIDS (ICW) raised concerns related to forced and coerced sterilization of HIV-positive women without consent and the fact that sterilization is often a prerequisite for women to access other services, including prenatal care. The growing trend to criminalize the transmission of HIV was also highlighted, drawing attention to the adverse effect that such laws may have on women as they are more likely to be tested for HIV through routine testing for antenatal care or as part of gynaecological procedures and the fact that criminalization incorrectly places the blame for HIV on people living with HIV, impedes the desire to get tested, and increases stigma and discrimination against people living with HIV. Provisions on the criminalization of HIV transmission are often overly broad and could therefore potentially include criminal penalties for mother-to-child transmission, or the selective prosecution of women who are sex workers and injecting drug users.

45. ICW also highlighted the fact that HIV-positive women are often denied reproductive rights, including the freedom to decide whether to bear children, the number of children and the spacing of children. They are also provided with insufficient information about reducing mother-to-child transmission and often lack access to treatment. In light of the above, a number of proposals were made with regard to the human rights of HIV-positive women as follows: decrease stigma and discrimination against HIV-positive women at health-care facilities; involve HIV-positive women in all planning, programming and decision-making initiatives that impact their lives; create accessible, available, high-quality and acceptable services for HIV-positive women; examine the situation of forced sterilization of HIV-positive women; end the criminalization of HIV transmission; develop legal protection for people living with HIV including protection from discrimination; develop mechanisms for redress when the human rights of HIV-positive people are violated; abolish laws that discriminate against women and girls; and abolish laws that criminalize behaviours which further stigmatize and marginalize groups of women, including laws which criminalize drug use and sexual orientation.

46. The International Harm Reduction Association (IHRA) indicated that although an estimated 15.9 million people inject drugs in 158 countries and territories, the global state of harm reduction is poor, especially in countries where such services are needed most. Detailed information was provided on human rights abuses against people who use drugs, and which impede HIV prevention, treatment and care efforts, which include denial of harm reduction services, discrimination in accessing antiretroviral therapy, abusive law enforcement practices, disproportionate criminal penalties, and coercive and abusive drug dependence treatment. The submission also drew attention to the fact that drug control entities rarely discuss human rights and the human rights bodies and mechanisms, in turn, rarely focus on drug policy. IHRA was concerned that this has resulted in an international system and policy environment where significant human rights violations, many impeding HIV-prevention efforts, fall between these two separate regimes, unaddressed and largely ignored. A number of recommendations were, therefore, made to the human rights entities within the United Nations system to address these systemic gaps.

47. The Open Society Institute (OSI) highlighted the intersection between HIV/AIDS and violations of the right to be free from torture and cruel, inhuman or degrading treatment or punishment. Based on documented cases of violations, OSI provided information on abuses which include physical and psychological abuses against sex workers, including rape by police and prison officials, demands for sex as payment for medical treatment, and medico-militia raids where doctors and the police forcibly test sex workers for sexually transmitted infections; flogging, chaining, caging, unmedicated opiate withdrawal, verbal and sexual abuse against drug users; confinement of people living with HIV in prisons, pretrial detention facilities, and compulsory drug treatment centres without access to antiretroviral treatment, opiate substitution therapy, condoms and sterile injection equipment, tuberculosis control and treatment, and treatment for hepatitis C; involuntary and prolonged detention of patients with drug-resistant tuberculosis in conditions that lack proper infection control measures; denial of pain medication to people living with HIV; abuse of HIV-positive women in health settings including coerced abortion and coerced sterilization; and the intentional use of painful withdrawal from opiates to coerce confessions from drug users. OSI recommended that special attention be given to the role of torture and cruel, inhuman, or degrading treatment or punishment in future reports to the Human Rights Council and that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment consider the linkage between his mandate and HIV in his future reports.

48. The Quaker United Nations Office (QUNO) provided information on HIV/AIDS and women and girls in prison and drew attention to the fact that in many countries female prisoners are infected with sexually transmitted diseases including HIV. Women and girls are also at risk of contracting HIV whilst in prison due to their vulnerability to sexual violence. Research undertaken in Australia indicated that 89 per cent of female prisoners had been sexually abused at some point in their lives and 70-80 per cent of females in prison were survivors of incest. Research in women's prisons in Brazil found that HIV affects a higher percentage of incarcerated women than men. QUNO recommended that the same HIV-related services should be available to women and girls inside and outside prison with guaranteed protection from involuntary testing and the conditions secured for confidential, free and informed consent.

49. Oxfam called for better monitoring of confidentiality and a code of ethics on HIV which includes guidance on disclosure of HIV status and better clarity on the opt in and opt out policies around HIV testing, as well as a better understanding of the human rights implications of such policies. The need to protect people living with HIV from criminalization and to ensure that persons vulnerable to HIV and who may be involved in illegal activities (e.g. sex workers and injecting drug users) have access to HIV prevention, treatment, care and support was also emphasized.

IV. CONCLUSIONS

50. **The contributions received for the preparation of this report confirm the central role of human rights in the response to HIV and point to a number of challenges that the international community faces in addressing the human rights aspects of the epidemic.**

51. **In his report on the implementation of the Declaration of Commitment and the Political Declaration, the Secretary-General noted that substantial barriers remain that reduce access to HIV-prevention services and that 63 per cent of countries report having**

policies that interfere with the access of vulnerable populations to HIV-related services.[12] The information received for the preparation of this report highlights the fact that those vulnerable to HIV infection or to human rights violations related to the disease include children and youth, indigenous populations, injecting drug users, men who have sex with men, migrants and other mobile populations, prisoners and persons in detention, sex workers, and women. Some of the areas that were highlighted and require further attention in order to understand their impact on the enjoyment of human rights include existing policies on HIV testing, disclosure, education and information, access to treatment and care (especially paediatric treatment, prevention of mother-to-child transmission, post-exposure prophylaxis and palliative care), sexual and reproductive health, and the criminalization of HIV transmission.

52. **Legal protection from stigma, discrimination and other human rights violations of people living with HIV was a prominent feature of the information received for this report, as many countries move towards reform or enactment of laws related to HIV. The contributions received also highlight a common message, that whilst laws that protect people living with HIV from stigma, discrimination and which prevent the spread of HIV are essential to mitigating the adverse effects of HIV, such laws must be evidence-informed, non-discriminatory and should not result in unintended negative consequences in order to be effective.**

53. **Finally, contributions reaffirmed the fact that the realization of human rights and fundamental freedoms is essential to meet the goal of universal access to HIV prevention, treatment, care and support by 2010 and to reduce vulnerability to HIV.**

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[12] A/62/780, para. 56.