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HIV/AIDS and human rights

I. The issue

1. The extent to which human rights are neglected or promoted is a major factor in the distribution of human immunodeficiency virus (HIV) infection within a population and the speed with which infection progresses to acquired immunodeficiency syndrome (AIDS) and death. Human rights have been fundamental to the response to the HIV/AIDS epidemic since the creation of the first global AIDS strategy in 1987.¹ The linkages between HIV/AIDS and human rights, as contained in such major human rights treaties as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child and under international human rights law have been reiterated and increasingly clarified in the normative statements of the General Assembly,² the World Health Assembly,³ as well as the United Nations human rights treaty monitoring bodies, and the Commission on Human Rights. Governments that ratify international human rights treaties have a legal obligation to ensure that their national laws, policies and practices are in compliance with the rights contained in the treaties. This obligation also entails reporting periodically to the treaty monitoring bodies — each of which has affirmed their interest in having Governments include HIV/AIDS when fulfilling their reporting requirements. In addition, concrete approaches to ensure the respect, protection and fulfilment of human rights in the context of HIV/AIDS have been set out in some detail in the United Nations international guidelines on HIV/AIDS and human rights.⁴ The importance of bringing

HIV/AIDS policies and programmes into line with international human rights law is generally reflected in some national and international policies and programmes but, unfortunately, still insufficiently carried out in reality.

2. Governments and the international community have an obligation to promote and protect human rights, including to promote and protect health. An effective response to the epidemic requires attention to the linkages between HIV/AIDS and international human rights law. Central to these are the principles of non-discrimination, equality and participation⁵ in relation to the strategies and approaches to reducing risk, reducing vulnerability and reducing the impact of HIV/AIDS on individuals and populations. The optimal balance between these strategies will vary by country and community, yet it is crucial in all settings that each should be addressed simultaneously and with sufficient attention to human rights principles.

3. International human rights law provides a critical framework for responding to the challenges of HIV/AIDS because its approach is relevant to all countries at all stages of development, including resource-poor countries. Instituting policies and programmes that reduce the spread and impact of HIV/AIDS and respect human rights means that the technical and operational aspects of health interventions should include attention to the civil, political, economic, social and cultural factors that surround them. Thus, responses to HIV/AIDS should explicitly take into account such factors as gender relations, religious beliefs, homophobia and racism, which individually or in combination influence the



extent to which individuals and communities are protected from discrimination, inequality and exclusion and have the ability to access services and to make and carry out free and informed decisions about their lives.

4. Governments are responsible for not violating rights directly, as well as for ensuring the conditions that enable rights to be realized as fully as possible. In the context of HIV/AIDS this means that governments have the obligation to:

- **Respect:** States cannot violate rights directly in laws, policies, programmes or practices. For example, Governments are increasingly recognizing their responsibility to ensure that the privacy of persons living with HIV is protected, or that HIV-infected prisoners receive the same standard of medical care that is offered to other prisoners.
- **Protect:** States must prevent violations by others and provide affordable, accessible redress. For example, States must ensure that private employers do not discriminate against HIV-infected employees and provide avenues for redress if individuals are fired or unable to secure housing or employment on the basis of their HIV status.
- **Fulfil:** States must take increasingly positive measures towards the realization of rights — including budgetary, legislative, administrative and other measures. For example, States should take urgent action to provide education and services to prevent the transmission of HIV and take steps to mitigate the impact of AIDS on all sectors and segments of society to address the social and economic factors contributing to HIV risk and vulnerability.⁶

5. Incorporating human rights in the response to HIV/AIDS implies recognizing that these three elements of adherence to rights standards — to respect, to protect and to fulfil — are essential, interdependent and indivisible. To pass a law prohibiting discrimination in employment on the basis of HIV status is a first step, but the inability to provide a mechanism for implementation means that human rights obligations in the context of the HIV/AIDS epidemic have not been sufficiently realized.

6. The HIV/AIDS epidemic impacts on the physical, mental and social well being of individuals, as well as

on the economic, social, cultural and political life of their communities. The neglect and violation of rights is relevant to risk and vulnerability to infection, as well as to the impact that the epidemic has on individuals and communities. The greater the impact of the epidemic in a particular place the more challenging it is to the ability of individuals, families and communities to respond effectively to it. While discrimination, lack of equality and lack of participation continue to fuel the HIV/AIDS epidemic, the neglect or violation of other rights also have a tremendous influence on risk, vulnerability and impact, and can therefore point the way towards the responses which can effectively be brought to address them. And as will be discussed below, these responses in and of themselves raise important human rights issues.

II. Lessons learned: reducing risk, vulnerability and impact by respecting, protecting and fulfilling human rights

7. As noted in the report of the Secretary-General of 16 February 2001,⁷ the most effective responses to the epidemic simultaneously address risk, vulnerability and impact on the individual, community and national levels while ensuring observance of such human rights principles as non-discrimination, equality and participation. There is an abundant and growing body of evidence that shows that well-designed HIV prevention, care and treatment programmes do work. An exclusive reliance on risk-reduction strategies — such as behavioural change or condom promotion — have, however, been of limited effectiveness when they have failed to engage the underlying individual and societal issues in which the risk of acquiring HIV infection and the probability of acquiring appropriate care, support and treatment are deeply rooted. Evidence demonstrates that where individuals and communities are able to realize their rights, the incidence of HIV infection declines. The most successful efforts embrace simultaneous strategies to promote and protect human rights, such as overcoming social stigma and discrimination, ensuring access to prevention, care and treatment, and putting mechanisms into place to foster the inclusion of civil society, especially people living with and affected by HIV/AIDS and young people, at all levels of policy and priority setting. Over 20 years

Some examples of human rights neglect and violations regarding the risk, vulnerability and impact of HIV/AIDS

Human rights in relation to risk

- Deliberate exclusion or forcible inclusion of people in mandatory HIV testing schemes, including migrant workers, whether implemented for case-finding or other purposes (*right to security of person*).
- Lack of suitable prevention and care programmes and therefore increased risk of infection as a result of criminalization of certain behaviours (such as commercial sex work, same-sex sexual activity) (*rights to association and equal protection*).

Human rights in relation to vulnerability

- Inaccessible information on HIV/AIDS prevention, because, for example, it is not available to ethnic minority populations in a language they can understand, which may result in people unknowingly engaging in risk-taking behaviours (*right to information*).
- Low-intensity and open conflicts resulting in population displacement, refugee flows and circumstances of extreme poverty and deprivation, in turn resulting in increased vulnerability to HIV in populations, even if assumed previously to be at low risk (*rights to social services and to freedom from arbitrary interference with family and home*).

Human rights in relation to impact

- Inadequate access to HIV care and treatment, including antiretrovirals and other medications for opportunistic infections, for individuals living in poorer communities (*right to health, right to the benefits of scientific progress*).
- Travel and immigration restrictions imposed on the basis of HIV status (*right to travel, freedom of movement*).
- Inadequate alternative care situations (extended family, foster families, group homes) for children orphaned owing to one or both of their parents dying from AIDS (*right to adequate standard of living, right to family life*).

of accumulated experience has shown that the respect, protection and fulfilment of human rights, when forming an integral element of best practices in public health, succeed in reducing risk, vulnerability and the impact of HIV/AIDS. This is illustrated in the few examples that follow.

Risk and risk reduction

8. Behaviour change and the provision of commodities to reduce the risk of acquiring HIV infection through unprotected sexual intercourse, blood transfusions and transmission from mother to child

have been the usual components of many risk-reduction strategies. These strategies have been most successful when they have drawn on human rights principles to address the inequality that puts some people at greater risk of infection than others. The relationship between gender and HIV helps illustrate this inequality. Risk reduction strategies that attend to the lack of control women, young women and girls have over their lives, in particular in relation to their sexual and reproductive choices, have been most effective. Inequality also exists in the focus of priorities set for research towards the development of new methods of risk reduction: the lack of availability of female controlled methods such as microbicides and female condoms to prevent HIV/AIDS transmission tragically illustrates this point. Fulfilling the rights to education and to seek, receive and impart information of young people in risk-reduction programmes has shown that well-designed services and programmes specifically designed to meet their needs have a greater likelihood of reinforcing and helping to sustain safer sexual behaviours and practices. Vulnerable populations, such as sex workers, men who have sex with men, injecting drug users, migrant workers, refugees and internally displaced persons, as well as children in need of special protection, have all shown their resilience in the face of the epidemic through their capacity to organize and engage in prevention and care programmes concerning them. Risk-reduction strategies that reach out and build on the inner strengths of marginalized and discriminated-against communities who may experience greater risk of HIV infection are not only respectful of human rights but are more effective.

Vulnerability and vulnerability reduction

9. Vulnerability occurs when people are limited in their abilities to make and carry out free and informed decisions. Policies and programmes that promote human rights increase autonomy and thereby reduce the vulnerability of those who live on the fringes of society or are otherwise at increased risk of infection. Behaviour, race, ethnicity, sexual orientation and gender have been the grounds for much of the discrimination that continues to drive the epidemic. Where women's social and economic status is low, the vulnerability of young girls and women to HIV infection is exacerbated. Actions to address

discrimination against women, promote their equality and participation in relation to their rights and access to information, education, employment, income, land, property and credit have been shown to decrease the vulnerability of women and girls to infection. Gender inequality also touches men in their own relationships and actions. Young men are often encouraged to seek out many sexual partners and insist on unprotected sex; same-sex relationships between men are often criminalized and in other ways not tolerated and therefore kept secret, thereby limiting access to HIV/AIDS prevention and care. People who are unemployed, legal and illegal migrant workers, displaced populations and children living in especially difficult circumstances are often marginalized and denied their rights in relation to access to essential information, education and services, and as a result find themselves more likely to be exposed to HIV infection and its health consequences. Likewise, people living in rural communities are often disadvantaged with respect to access to education, health and social services.

10. Attention to human rights through political leadership has helped to overcome social and cultural inhibitions and has fostered more equal and effective responses to the epidemic. Concrete immediate steps towards longer term change, including the elimination of laws and policies that intentionally or unintentionally discriminate against vulnerable populations, have both enhanced the protection of rights and helped reduce vulnerability. The vulnerability of children and young people to infection has been lessened when families, schools, and communities were able to impart life-skills education (for youth both in-school and out-of-school), provide access to youth-friendly reproductive and sexual health services and offer education on ways to prevent harmful drug use and reduce the consequences of abuse. Innovative community initiatives have helped reduce the vulnerability of children affected by HIV/AIDS, in particular orphans, and the impact of the epidemic on their survival and development. The needs of this ever-growing population call for a bold national and international response grounded in human rights principles and sound public health.

Impact and impact reduction

11. In many places, the impact of HIV/AIDS, including its social and economic impact, has been far-reaching. Families and communities have become impoverished, agricultural and economic productivity diminished, employment discrimination rampant, educational institutions and opportunities eroded and health systems and care providers overburdened. One pertinent example to reducing impact is realization of the right to the highest attainable standard of health in the context of HIV/AIDS. It entails an obligation to provide effective and adequate care, treatment and support — including the management of opportunistic infections and access to antiretroviral therapies and other forms of care. Human rights confer obligations on Governments to take steps to ensure that all persons have equal access to necessary drugs, goods and services on a basis of non-discrimination.⁸ Progressing towards this goal requires structures and resources that may not be immediately available to cover their needs. Human rights obligations include the realization of equal, non-discriminatory access to prevention, comprehensive care, treatment and support, in relation to the available resources of the state, and in cooperation with the international community. Recent efforts by Governments, non-governmental organizations, the international community and civil society significantly brought down the cost of medicines needed to prevent and treat HIV/AIDS and related diseases. These efforts have thus far lead only to a small increase in the number of people with access to HIV/AIDS treatments in lower income countries. Yet, small-scale projects have shown promise for resource-constrained settings and may pave the way for sustained and effective treatment. The realization of human rights in the context of HIV/AIDS care, treatment and support places an obligation on governments and the international community to fulfil progressively the health needs of people living with and affected by HIV/AIDS and to set benchmarks against which progress can be measured.⁹

III. Implementing the Declaration of Commitment: applying human rights principles

12. Genuinely bringing human rights into implementation of the Declaration of Commitment

requires a commitment to the principles of non-discrimination, equality and participation in all HIV/AIDS-related efforts. This will help strengthen the capacity of Member States to respond more effectively to the epidemic, fulfilling their commitments toward the public health of individuals while progressively realizing — in relation to their available resources and in cooperation with the international community — their already agreed to international human rights obligations.

Ensuring non-discrimination

13. Member States should ensure that national laws, policies and practices do not discriminate in the ways they are written or as applied, in all sectors, including the health and social sector. Non-discrimination must guide the realization of other rights such as association, travel, residence, education, employment, social services and health care towards people living with or affected by HIV/AIDS, and all other vulnerable individuals defined in the Declaration of Commitment, including:

- Children living with HIV;
- Women;
- Migrant workers, refugees and internally displaced persons;
- Minorities (ethnic, racial, religious, linguistic, sexual or political).

Enhancing equality

14. Member States should ensure that national laws, policies and practices enhance equality on the basis of gender and other social characteristics, with particular attention to geographic and socio-economic disparities and the evolving capacity of children with respect to the following:

- Primary and secondary education;
- Health care information, care, treatment and services, including but not limited to voluntary counseling and HIV testing, safe blood, prevention services and commodities (male and female condoms, microbicides) and the continuum of affordable clinical, community and home-based care and treatment (including access

to antiretrovirals and other medications), psychosocial support and counseling, as well as essential legal, educational, and social services;¹⁰

- Sexuality, sexual health and reproductive health education programmes, and access to the accuracy of scientific information and to newly discovered technologies;
- Participation in research, including enrolment in clinical trials, with attention to the participation of particularly vulnerable groups as defined in the Declaration of Commitment;
- Fair allocation of resources necessary to enhance the response to HIV/AIDS.

Expanding participation

15. Member States should ensure that the development and implementation of HIV/AIDS-related national laws, policies and practices reinforce the mechanisms for and involve the participation of:

- People living with HIV to ensure that they are agents, not merely objects of prevention, care, treatment programmes, policy and research;
- People, including young people, affected by and vulnerable to HIV, as defined by the Declaration of Commitment, to ensure effectiveness of programmes that are intended for them;
- Non-governmental organizations and other civil society partners that work across the social, economic and health sectors, locally, nationally and internationally;
- National human rights institutions, as they are vital to the promotion and protection of HIV/AIDS related human rights.

Conclusion

16. HIV/AIDS has become a global crisis. The epidemic kills millions, destroys families and communities and renders millions of children parentless. It threatens the social and economic fabric of many nations. Respecting, protecting and fulfilling the human rights of all individuals is indispensable to reducing the rates of infection, expanding access to care and treatment and mitigating the impact of the epidemic. Nations must ensure the integration of

human rights in their individual and collective responses to HIV/AIDS. Bringing about an end to the HIV/AIDS epidemic cannot wait, and the time to move ahead is now.

Notes

¹ World Health Assembly resolution 40.26 of 15 May 1987.

² See, for example, General Assembly resolution 42/8 of 26 October 1987.

³ See, for example, World Health Assembly resolution 54.10 of 21 May 2001, entitled "Scaling up the response to HIV/AIDS".

⁴ HR/PUB/98/1. The guidelines were produced at the Second International Consultation on HIV/AIDS and Human Rights, jointly organized by the Office of the United Nations High Commissioner for Human Rights and UNAIDS. They offer concrete measures that could be taken to protect human rights and health, in line with Member States international human rights obligations. While in many resolutions the General Assembly has urged countries to implement the guidelines, they are not legally binding.

⁵ Framework for Global Leadership on HIV/AIDS (UNAIDS/PCB (10)/00.3), December 2000.

⁶ Key actions for the further implementation of the programme of action. General Assembly resolution S-21/2, annex, para. 67.

⁷ See A/55/779, chap. V on key lessons learned and elements of a successful response.

⁸ See, especially, Commission on Human Rights resolution 2001/33 on access to medication in the context of pandemics such as HIV/AIDS: "[P]revention and comprehensive care and support, including treatment and access to medication for those infected and affected by pandemics such as HIV/AIDS, are inseparable elements of an effective response ...]"

⁹ Ibid.: "[A]ccess to medication in the context of pandemics such as HIV/AIDS is one fundamental element for achieving progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."]

¹⁰ See, for example, Committee on Economic, Social and Cultural Rights general comment 14 on the right to the highest attainable standard of health.