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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

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

## Report of the Secretary-General

*Summary*

The present study is submitted pursuant to Human Rights Council resolution 12/27, in which the Council requested the Secretary-General to prepare an analytical study on the steps taken to promote and implement programmes to address HIV/AIDS-related human rights. The study was informed principally by (a) responses to a survey from Governments, United Nations organs, programmes and specialized agencies and non-governmental organizations; and (b) a consultation of Member States, non-governmental organizations and United Nations representatives, held in Geneva on 25 October 2010.

Informants reported some success in strengthening human rights elements of national HIV responses, but also many deep and politically difficult challenges yet to be overcome. Protection from HIV-related discrimination is embodied in national AIDS strategies and national laws, but discrimination remains widespread in many sectors of society. Discrimination is linked closely to HIV-related stigma, which is in turn linked to both fear and ignorance regarding modes of transmission of HIV and to association of HIV with behaviours that are criminalized or considered "immoral". There is increasing knowledge of programmes that can work to reduce HIV-related stigma, however such programmes are often not funded or implemented at a scale necessary to make a significant difference.

Ensuring the protection, respect and fulfilment of human rights in all areas of HIV services is essential for an effective response to HIV and AIDS. These goals will not be met without a major strategic shift and reallocation of resources to scale-up measures that directly advance the rights of people living with and vulnerable to HIV. Human rights-centred approaches entail a commitment to community empowerment and meaningful participation in decision-making by people living with HIV and affected populations.

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# I. Introduction

1. The Human Rights Council, in its resolution 12/27, requested the Secretary-General to prepare an analytical study based on comments from Governments, United Nations organs, programmes and specialized agencies on the steps taken to promote and implement programmes to address HIV/AIDS-related human rights, as referred to in the Guidelines on HIV/AIDS and Human Rights,[1] the Declaration of Commitment on HIV/AIDS of 2001 (see paragraph 3 below), the Political Declaration on HIV/AIDS of 2006[2] and Council resolution 12/27. The present study is submitted pursuant to that request.

2. The present study includes a thematic analysis of information provided by a survey of Member States, United Nations funds, programmes and specialized agencies and non-governmental organizations, and through a consultation held in Geneva on 25 October 2010 involving representatives of Member States, United Nations entities and non-governmental organizations organized by the Office of the United Nations High Commissioner for Human Rights with the support of the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Development Programme (UNDP).[3]

3. The Declaration of Commitment on HIV/AIDS, adopted unanimously by the General Assembly at its twenty-sixth special session in its resolution S-26/2, emphasizes that the realization of human rights and fundamental freedoms for all is essential to reduce vulnerability to HIV/AIDS. The Declaration highlights the central importance of addressing stigma and related discrimination against people living with and at risk of HIV. Noting the disproportionate HIV risk faced by women, the Declaration committed Member States to developing and implementing national strategies that promote the advancement of women and women's full enjoyment of human rights. The Political Declaration on HIV/AIDS, adopted by the General Assembly in its resolution 60/262, committed States to intensify efforts to enact, strengthen or enforce legislation, regulations and other measures to eliminate all forms of discrimination against and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV and members of vulnerable groups. It also included a commitment to full and active participation of people living with HIV and vulnerable groups in HIV responses.

# II. Contributions from Member States, United Nations funds, programmes and specialized agencies, and non-governmental organizations

## A. Human rights in national HIV/AIDS strategies

4. Almost all Government respondents to the survey conducted for the present study noted that human rights objectives or commitments were included in their national HIV/AIDS strategies and plans. Most of these mentioned non-discrimination based on HIV status as a central element of their national strategy. Protection of confidentiality with respect to HIV status was also cited as a cornerstone of national strategies. Several

[1] Commission on Human Rights resolution 1997/33.

[2] Adopted by the General Assembly on 2 June 2006 during the High-level Meeting and comprehensive review of the progress achieved in realizing the targets set out in the Declaration of Commitment on HIV/AIDS.

[3] The full texts of submissions received are available at the secretariat for consultation.

respondents stated that gender equality was a central goal in the national HIV response. Several noted explicit commitments to Greater Involvement of People Living with or Affected by HIV/AIDS in HIV policy and programme decision-making. In many cases, anti-discrimination provisions in the national strategy were backed up by specific national law on non-discrimination based on HIV status (see paragraphs 10–16 below). These results were similar to the 2010 reporting on the goals of the 2001 special session of the General Assembly on HIV/AIDS, in which 89 per cent of Governments reported that their national strategies included human rights goals and commitments.

## B. Stigma

5. HIV-related stigma was by far the most frequently cited challenge to effective HIV responses, noted by Governments from all regions as well as by United Nations entities and non-governmental organizations. Respondents consistently linked stigma to two factors: (a) a misunderstanding of the clinical realities of HIV, particularly its mode of transmission; and (b) the association of HIV with "bad" behaviours and persons whose behaviour was regarded as immoral. With regard to the first factor, nearly 30 years into the epidemic there was widespread misperceptions about the virus, its transmission and its clinical impact, even in countries that had invested in information and education on HIV. Several Governments noted that many employers still regarded HIV as a condition that made people dangerously contagious or otherwise unfit for work, causing intolerance, discrimination and fear in the workplace. In its submission, Bahrain, for example, noted that an estimated 45 per cent of the population in 2006 believed that HIV could be transmitted by using the same toilet as a person living with HIV, or by simply touching the person.

6. Many informants reported that people's association of HIV with injection drug use, sex work, homosexuality and promiscuity entrenched already deeply held stigma associated with these forms of behaviour. Various Governments stated that HIV remained a "gay disease" in the public mind, which reinforced discrimination against men who have sex with men, and further reinforced in some countries by the criminalization of homosexuality. UNAIDS noted that sex workers, men who have sex with men and people who inject drugs were often stigmatized as "vectors" of a deadly epidemic. Some respondents observed that, since many of the populations at risk of infection are also criminalized, and therefore, have been in prison or pretrial detention, they faced many layers of stigma.

7. Relatively few countries reported that their programmic response to stigma was having a sufficient impact. UNDP responded that Tajikistan had undertaken a national study on forms of stigma, the first such survey in the Commonwealth of Independent States. HIV-related stigma was found to be particularly present among health-service providers, police and teachers. Bosnia and Herzegovina mentioned in its submission that over 3,500 health workers and numerous police officers, military personnel and firemen had been trained to address HIV-based stigma in their work. In the most recent round of reporting on the Declaration of Commitment on HIV/AIDS (see paragraph 3 above), 90 per cent of countries reported planning programmes designed to reduce stigma linked to HIV, but less than half of them had allocated a budget to support the implementation of the programmes.

## C. Discrimination

8. According to 2010 reporting on the Declaration of Commitment on HIV/AIDS, 73 per cent of countries report having laws that prohibited HIV-related discrimination, as was reflected in national responses to the present study. The Government of the Republic of

Moldova reported having passed an HIV law relatively early in its epidemic and revised it in 2007 to incorporate broader human rights protections. Some countries consider that wide-ranging protection against discrimination in their constitutions or other laws prohibited HIV-related discrimination, even if that prohibition was not explicit. Other countries had considered but not yet passed laws in this area. UNAIDS reported that, in spite of extensive civil society support, a 2006 draft AIDS bill with anti-discrimination provisions has not been passed into law in India.

9. Mechanisms to ensure access to justice under HIV-related non-discrimination statutes were described in several survey responses; the responses suggested that there was little investment in ensuring that people knew and were able to claim their rights under these laws. Brazil, exceptionally, had several complementary mechanisms of enforcement and redress involving public prosecutors, public defenders and councils for the defence and promotion of human rights at the municipal level. UNAIDS noted that the anti-discrimination law of the former Yugoslav Republic of Macedonia established an independent commission to oversee implementation and enforcement. In Sweden, where a new anti-discrimination law in 2009 brought together the provisions of seven earlier laws including prohibition of HIV-related discrimination, an "equality ombudsman" had been established to oversee compliance. UNAIDS reported that the anti-discrimination law of Chad, adopted in 2007, created an oversight mechanism as well as legal clinics or resource centres to assist with complaints. The 2010 report on the Declaration of Commitment on HIV/AIDS concluded that, while 71 per cent of countries had laws prohibiting HIV-related discrimination, only 56 per cent had mechanisms to deal with violations.

10. In spite of legal protections against it, HIV-related discrimination is reportedly rampant in many forms across the world and is closely linked to stigma. For example, the United Nations Children's Fund (UNICEF) and others emphasized that children living with HIV or from families where a parent was living with HIV often faced discrimination in school and society. Asia Catalyst, a non-governmental organization, reported that, in several Asian countries, when people living with HIV formed organizations, they faced discriminatory barriers to being registered as non-governmental organizations. The 2010 report on the goals described in the Declaration of Commitment on HIV/AIDS highlighted accounts of discrimination and against people living with HIV from across the world, including refusal of employment, denial of health and social services, insults and physical abuse.

11. Several respondents reported widespread HIV-related discrimination in the world of work, including in recruitment and in the denial of promotions. The Association of Young Lawyers in Niger, a non-governmental organization, reported that employers dismissed or demoted people living with HIV, but claimed that these actions were for other reasons. UNDP reported that, in Croatia, people living with HIV could not serve in police forces or private security firms, even in administrative jobs. Poland noted that the military excluded people living with HIV, even though a court decision had struck down a similar rule for police forces. The International Labour Organization (ILO) highlighted the fact that the first global labour standard on HIV and AIDS, passed by the International Labour Conference in June 2010, was an important step in addressing HIV-related discrimination in the world of work. The new AIDS recommendation enjoined countries and employers to ensure protection from HIV-related discrimination for all workers in all forms and situations of work, as well as in all stages of employment, including recruitment, retention and promotion. ILO launched the implementation phase of the recommendation in 2010.

12. Echoing observations related to stigma, many respondents noted that HIV-related discrimination was integrally linked to discrimination based on a person's status as a sex worker, man who has sex with men, transgender person, prisoner or former prisoner, or person who uses illicit drugs. The International HIV/AIDS Alliance, a non-governmental

organization based in the United Kingdom of Great Britain and Northern Ireland, asserted that transgender persons often faced heinous discrimination, abuse and violence, sometimes exacerbated by HIV-related discrimination. According to the Alliance, more than 200 transgender persons had been murdered for reasons linked to their gender identity worldwide in 2008 and 2009. The Economic and Social Commission for Asia and the Pacific (ESCAP) reported that, in resolution 66/10 of May 2010, ESCAP member countries had recognized that an effective regional response must tackle HIV-related discrimination and discrimination linked to sex work, drug use and sexual orientation.

13. Several Member States and non-governmental organization respondents underscored HIV-based restrictions on entry or residence in a country as a form of discrimination. The Government of the Republic of Moldova reported that it was reviewing its current travel and immigration restrictions, which included expulsion of HIV-positive foreigners in some cases, with a view to replacing them with a more tolerant regime. At the Geneva consultation, UNAIDS recognized that some HIV-related travel restrictions had been lifted in 2010, such as in China and the United States of America, and other countries, such as the Republic of Korea and Ukraine, are currently working towards lifting HIV-related travel restrictions.

14. Few of the survey responses noted progress in ensuring access to justice for people suffering from HIV-related discrimination. Some countries reported that they offered free or low-cost legal assistance services, but that the institutions providing them did not orient their work to HIV. One exception was Brazil, which noted that the Government supported at least 40 organizations that provided legal assistance to people living with and vulnerable to HIV. Aidsnet, a non-governmental organization from Denmark, and the Danish Institute for Human Rights recommended that national human rights commissions should play an active role in ensuring that HIV-related anti-discrimination statutes were well conceived and actively enforced.

## D. Participation of vulnerable groups

15. Information provided for the present study suggests that meaningful participation of vulnerable populations at risk of HIV infection — notably sex workers, men who have sex with men, and people who use illicit drugs — is impeded in many places by deeply entrenched stigma, social exclusion and criminalization. This is the case even though these groups are best placed to design programmes that will work for them. Respondents and presenters emphasized that criminal sanctions against sex work, drug use and homosexuality impeded meaningful participation in and uptake of HIV service. Not only did criminalized persons have a justifiable fear of processes that may identify them with an illegal behaviour, but they were also often unable to be part of officially registered non-governmental organizations of the kind invited to Government consultations. Even if they had organizations, those organizations were unlikely to have the resources and experience needed to participate effectively in HIV planning and decision-making. As noted by the Government of Mauritius, the fact of having been in prison or pretrial detention, a frequent occurrence for vulnerable persons in many places, also singled them out for further stigma and exclusion.

16. The 2010 data on the National Composite Policy Index, part of the 2010 report on the Declaration of Commitment on HIV/AIDS, showed that barriers to meaningful participation of vulnerable groups were not coming down.

17. A few countries reported some success in inclusion of key affected populations in HIV-related decision-making. Vulnerable groups were permanently represented on the National AIDS Councils in Mexico and the Republic of Moldova, for example, and were reportedly active in the development of the national AIDS strategy in Guyana. The

representative of Lebanon at the Geneva consultation described his country's sustained effort to overcome "misconceptions, taboos and discrimination" against vulnerable groups.

18. United Nations and Government respondents from several countries, including Belize, Bulgaria, Chad and Croatia, reported that country coordination mechanisms for activities related to the Global Fund to Fight AIDS, Tuberculosis and Malaria and United Nations theme groups on HIV/AIDS had facilitated meaningful participation of key affected populations. The Government of Belize noted, however, that participation of marginalized persons on the country coordination mechanisms was often of a token nature because these groups were not taken seriously or did not have the capacity to participate effectively. Global Fund "community strengthening" grants were looked to in several countries to build capacity of organizations of vulnerable populations. The Government of Brazil saw investment in social movements and their participation as central to the HIV response. In its submission, Mexico reported that its national centre for HIV/AIDS prevention and control gave financial support to non-governmental organizations representing vulnerable populations. Deep challenges remain, however, with respect to key affected populations.

### 1. Men who have sex with men

19. The International HIV/AIDS Alliance emphasized the marginalizing effect of laws criminalizing homosexuality in over 86 countries. UNDP, for example, reported that the HIV response in many countries was undermined by discrimination and violence against men who have sex with men that were not publicly condemned or prosecuted. UNAIDS noted that the national AIDS response in India was aided greatly by the landmark court decision of 2009 that overturned its Victorian-era sodomy law, but added that much remained to be done to ensure that non-discrimination was a reality for men who have sex with men and lesbian, gay, bisexual and transgender persons. According to UNAIDS, criminal law on same-sex conduct as a source of stigma and discrimination directed against men who have sex with men drives them underground, out of reach of HIV services. Mauritius cited its achievement as one of only a few African countries that had legal prohibitions against discrimination based on sexual orientation. At the Geneva consultation, a representative of the Brazilian lesbian, gay, bisexual and transgender persons' rights organization, AGBLT/Grupo Dignidade, described the three-year struggle of the organization to gain observer status of the Economic and Social Council as a step to meaningful participation in United Nations processes. This milestone had been achieved thanks partly to support from the highest level of the Government of Brazil. The representative of France at the Geneva consultation noted that the endorsement by over 60 countries of a 2008 statement in the General Assembly condemning discrimination based on sexual orientation and gender identity and related abuses showed that progress was possible on politically difficult issues.

### 2. Drug use

20. Non-governmental organizations and United Nations bodies in several countries noted the absence of recognized organizations of people who use drugs as a barrier to their participation. A number of countries reported that people who use drugs participated in HIV responses largely as peer educators and outreach workers, and did not have a meaningful voice in the design of programmes and policies. According to the Canadian HIV/AIDS Legal Network, a non-governmental organization based in Toronto, while Canada had many networks of people who use drugs, those organizations had been excluded from the formulation of the national drug policy in 2007, which eliminated harm reduction as a "pillar" of the policy. Responses from several countries noted that reform of repressive drug laws was the key to enabling meaningful participation of people who use drugs in health policy and programmes, although mobilizing political support for such

reform was difficult. The representative of Lebanon at the Geneva consultation reported that the decriminalization of certain categories of drug offences there had greatly facilitated the provision of HIV services to people who use drugs. The Executive Director of the International Harm Reduction Association, a non-governmental organization based in the United Kingdom, pointed out that drug addiction was described as a "serious evil" in the widely ratified Single Convention on Narcotic Drugs (1961), language that tended to encourage demonization and exclusion of people living with drug dependency. The representative of the Association in the Geneva consultation, among others, called on Member States and United Nations bodies to recognize and address the fact that drug law at the national and international levels had been developed largely without reference to human rights norms. With regard to illicit drugs, sex work and criminalized same-sex conduct, leadership was urgently needed to change legal frameworks that had allowed the proliferation of arbitrary arrest and detention, lack of due process and lack of access to justice.

### 3. Sex work

21. According to the 2010 report on the Declaration of Commitment on HIV/AIDS, more than 100 countries had criminal laws against sex work or activities associated with sex work. These laws often gave the police great latitude to arrest and detain sex workers, sometimes at the cost of violating sex workers' rights. As ESCAP noted, even in places where sex work itself was legal, sex workers were highly vulnerable to human rights abuse and marginalization. At the Geneva consultation, the representative of the Paulo Longo Research Initiative emphasized that sex workers were often arrested and detained for infractions of non-criminal statutes relating for example, to loitering and vagrancy. She also noted that sex workers in many countries had been "rescued" in the name of anti-trafficking, sometimes in abusive ways, even when they had not been trafficked and did not seek to exit sex work. Relatively few respondents noted successes in ensuring meaningful participation of sex workers in HIV-related decision-making. According to the Best Practices Policy Project, a non-governmental organization, in the United States, no sex worker organization had been invited to participate in the development of the 2010 national HIV strategy, which did not mention sex workers, in spite of overwhelming evidence that police abuse and other human rights violations undermined sex workers' ability to protect themselves from HIV. In Brazil, exceptionally, a national consultation on sex work and human rights was held in 2008, and the Government had supported the strengthening of a national sex work network.

### 4. Migrants and refugees

22. The International Organization for Migration stated that migrants were the least likely of any population to be able to participate meaningfully in HIV decision-making. Even when they were invited to participate, they often chose to remain invisible for fear of deportation or arrest. The Office of the United Nations High Commissioner for Refugees (UNHCR) noted that refugees were often wrongly assumed to have high HIV prevalence or to be "bringing" HIV into a country. According to UNHCR, some progress had been made, in that 52 per cent of African countries had included refugees in national HIV plans, and 43 per cent of African countries had included internally displaced persons. Lebanon provided HIV services to Palestinian refugees within its borders. Nonetheless, many challenges remained. In Finland, Spain and Sweden, for example, many people living with HIV were migrants from countries with generalized epidemics; survey responses from those Governments underscored this fact as a policy challenge. Sweden expected to issue a new national policy on health services for migrants in 2011. The Government of Costa Rica noted the difficulty of providing HIV services for persons of irregular immigration status who did not qualify for health insurance.

### 5. Persons with disabilities

23. Few respondents mentioned persons with disabilities and their participation in HIV programmes. Brazil noted that persons with disabilities were wrongly thought not to exercise their sexuality, and that they could thus be disregarded in HIV decision-making. At the Geneva consultation, a representative of the Government of South Africa observed that persons with disabilities were excluded not only from HIV decision-making processes, but also from basic HIV information. Meetings and consultations were held in venues not accessible to persons with disabilities. HIV information was provided in formats not accessible to persons with hearing and visual impairments. Women and children with hearing or sight impairments and other disabilities were at a high risk of physical and sexual violence, but addressing these risks was not a programme priority.

## E. Lack of access to health services

24. Many of the Member States that provided information for the present study cited greatly expanded care for HIV, especially access to antiretroviral therapy, as the most important human rights achievement in their HIV responses. Nonetheless, respondents and presenters at the consultation pointed out that stigma, discrimination and fear of criminal prosecution kept many people living with and vulnerable to HIV from seeking health services they needed, including HIV prevention and treatment services. Several respondents cited the urgent need to help health workers to be part of the solution to HIV-related stigma in health services rather than part of the problem. UNAIDS cited widespread stigma and mistreatment of people living with HIV in public health services in India and the lack of mechanisms of redress for these abuses. In 2008, the Supreme Court of India had issued interim directions to ensure access to care for people living with HIV at public hospitals. Such judicial remedies appeared to be rare elsewhere. The Government of Mexico emphasized the need to address both HIV-related prejudices and homophobia among health service providers.

25. Several respondents reported that people living with HIV, sex workers, people who use illicit drugs and men who have sex with men were often excluded from health services because they were unable to get health insurance or feared being mistreated by health-care providers. In some cases, people living with HIV could be covered for antiretroviral therapy paid for by donor funding, but might be unable to obtain affordable care for opportunistic infections and other problems. The World Food Programme noted that, although food and nutrition assistance should be part of comprehensive HIV care, it rarely was.

26. At the Geneva consultation, the Director of the International Harm Reduction Association reported that, among the people who use drugs worldwide, half of those who needed access to sterile syringe programmes did not have it, and less than half who need opioid-substitution therapy could obtain it. Quoting from a report issued by the Association in 2010, he pointed out that international donor support for these measures in middle-and low-income countries amounted to about US$ 0.03 per person who injects drugs. UNAIDS noted in its submission that one barrier to expanded services was the ambiguous legal status of needle exchange and the above-mentioned therapy in some countries. The representative of Lebanon at the Geneva consultation reported that moving forward with the much needed opioid-substitution therapy required getting a ministerial decree giving the therapy clear legal grounding. Even when some structural barriers were removed, as in Lebanon, the challenge remained to mobilize resources to provide services at a scale that met demand.

27. The inaccessibility of humane treatment for drug dependency was underscored by several informants. ESCAP, Asia Catalyst and non-governmental organization representatives at the Geneva consultation highlighted human rights concerns relating to compulsory drug detention centres in several Asian countries where people suspected of

using drugs and/or living with drug dependency underwent forced labour and other human rights abuses in the name of treatment. ESCAP noted that children under the age of 18 years were sometimes confined to these centres and that the economic importance of the cheap labour that they provided could give these centres political protection. In its submission, Asia Catalyst reported that, in one Asian country, people could be held in such centres for up to six years with no avenues of redress or due process. Hepatitis C was also noted as a problem disproportionately affecting people who use drugs, for which they often had no access to treatment. UNAIDS reported that, in many countries, there was a lack of clarity as to whether basic coverage in public health services included hepatitis C treatment. The Director of the International Harm Reduction Association emphasized that opioid-substitution therapy and the management of pain with legal opiates were both impeded by irrational restrictions on the use of opiates; about 80 per cent of people needing prescription opiates for pain management had no access to them.

28. A number of United Nations and Member State respondents credited Global Fund support for the ability to scale-up services, such as needle exchange and opioid-substitution therapy for people who use drugs. There was concern that declining donor support for the Global Fund could endanger these programmes. According to the income-level criterion of the Global Fund, some countries that had enjoyed this support might also be ineligible for future assistance.

29. Several respondents stressed the challenge of establishing or maintaining adequate HIV services in prisons and pretrial detention centres in spite of the epidemiological importance of HIV transmission in these settings. Some respondents recognized the lack of access to condoms in prisons as a major gap in the national HIV response. Some noted that drug injection took place in prison and that lack of access to sterile injection equipment undermined HIV prevention, particularly in the many places where people who inject drugs were overrepresented in prison populations. A few successes were noted. In Poland, all persons in State custody may receive free antiretroviral therapy. In India, the Bombay High Court ordered an expansion of HIV services for prisoners, including testing and counselling.

## F. Gender-based subordination and violence

30. At the Geneva consultation, nearly all respondents and several presenters highlighted women's legal, social and economic subordination and violence against women as continuing concerns in national HIV responses, though often without detail about programmes to address these problems. The representative of the Young Women's Christian Association asserted that gender inequality and violations of the rights of women were widely recognized as drivers of HIV epidemics, but programme budgets nationally and internationally did not reflect the urgency of addressing these abuses. The 2010 report on the Declaration of Commitment on HIV/AIDS concluded that only 46 per cent of countries had a specific budget for HIV programmes for women.

31. Gender-based violence was reported by respondents from all regions to be a widespread and entrenched problem. Several noted that laws against all forms of gender-based violence, including domestic violence and marital rape, were weak, non-existent or poorly enforced. UNICEF specified in its submission that as many as one in four girls in parts of Africa reported that their first sexual experience had been forced. In many parts of Africa, HIV prevalence among girls was as much as 4.5 times greater than that of boys. Where girls were much younger than their sexual partners or husbands, gender power relations were such that refusing to have sex or demanding condom use might not be possible. UNICEF also emphasized that, as difficult as it was to mobilize support for programmes to combat violence against women, it was even more difficult to address

violence against girls because of the cultural barriers to public discussion of issues relating to sex with girls.

32. Several informants highlighted heinous abuses faced by women living with HIV. At the Geneva consultation, non-governmental organization representatives cited cases of HIV-positive women having been sterilized without their consent or pressured to have abortions, including numerous cases of forced sterilization that were currently the subject of litigation in Namibia. The Association of Young Lawyers in Niger, a non-governmental organization, reported in its submission widespread abuse of HIV-positive women by their husbands or sexual partners.

33. The organizations Global Action on Widowhood and Widows for Peace through Development echoed the frequent observation that marriage was the most important HIV risk factor for women in many settings. Inadequate legal protection of women's property and inheritance rights was cited by several respondents. The response from the First Lady's Save Our Youth Campaign in Nigeria underscored both the lack of full protection of women's property and marital rights in statutory, customary and sharia law — all important in Nigeria — as well as the risks inherent in practices of widow inheritance (levirate marriage) and sexual cleansing of widows. Lack of access to reproductive health services for widows was also cited.

34. Relatively few responses to the survey informing the present study included achievements in the area of gender equality or addressing gender-based violence. UNAIDS cited the full implementation of the national domestic violence act in Belize as a step forward. The Government of Costa Rica pointed out its support for access to post-exposure HIV prophylaxis for survivors of rape. The Government of Brazil supported a number of institutions for women facing violence and other abuse, including special reception centres, women's rights councils and other human rights institutions in provincial capitals and cities.

## G. Rights of children and young people

35. Concerns about the rights of children living with and affected by HIV were raised in some responses to the survey. UNICEF and Caritas Internationalis highlighted the human rights vulnerability of children orphaned by AIDS, noting that placing orphans in institutional settings could impede their development and should be a measure of last resort. UNICEF and Caritas Internationalis also observed that service provision for children living with and affected by AIDS was still dominated by non-governmental and faith-based organizations, and exhorted Governments to do more to fulfil their responsibilities in this area.

36. Most of the references to children and young people in the survey responses concerned barriers faced by children (persons under 18 years of age) to sexual and reproductive health information, HIV testing and other services. Several Governments and United Nations respondents reported strong cultural, religious and sometimes parental opposition to comprehensive sex education in schools or access to reproductive health services for young people. The Government of Guyana noted that some teachers and others in the education system scorned sexually active youth rather than helping to enable them to protect themselves from HIV. Several respondents remarked that programmes were needed to support and prepare teachers to give lessons on sexual and reproductive health, as many teachers were not comfortable with this activity. UNICEF reported that HIV knowledge among adolescents, especially girls, was "disturbingly low", even in highly affected countries.

37. With regard to access to HIV services, at the Geneva consultation, Caritas Internationalis emphasized the urgent need to ensure access to treatment for children living with HIV. Paediatric formulations of antiretroviral treatment remained out of reach for many children because of costs and other barriers. Several respondents asserted the importance of removing barriers to access to HIV testing for children and adolescents. UNICEF noted that HIV testing was often unavailable to children and young people, partly because of denial that they might be sexually active; it therefore urged Governments to overcome this reticence. The Government of Belize was exploring the idea of eliminating the requirement of parental consent for HIV testing for persons under 16 years of age. The Government of Sweden described its specialized HIV resource centre for children and adolescents, which disseminated information about services for young people, conducted training programmes and produced guidance for teachers, parents and young people.

## H. HIV testing

38. Many respondents suggested that protecting human rights linked to HIV testing remained a challenge. In many countries, mandatory testing was legal in a number of circumstances, including as a condition of employment in certain jobs, as a condition for obtaining a marriage licence, upon entry to prison, as a condition of entry to or residence in some countries, including for profiling individuals from countries with high HIV rates, and upon arrest or detention for prostitution. There did not appear to be a public health basis for these measures, which violated human rights. The Sex Workers Forum of Vienna reported that sex workers must be tested for HIV four times a year in Vienna, which had the effect of making clients more likely to demand sex without condoms. The Best Practices Policy Project stated that, in the United States, mandatory testing of arrested sex workers had sometimes resulted in the dissemination of information about their HIV status in the mass media, a violation of their rights.

39. Some respondents noted that ensuring confidentiality of the results of HIV tests continued to be uneven in spite of guarantees of confidentiality in HIV laws or public health regulations. Fear of breaches of confidentiality together with HIV-related stigma was reported as a barrier to the scaling-up of HIV testing. Some countries reported focused efforts to enforce confidentiality provisions in the law or in health regulations.

40. At the Geneva consultation, the representative of the Young Women's Christian Association asserted that provider-initiated HIV testing sometimes shortchanged or eliminated counselling, which was critical for people to understand the consequences of testing and a positive diagnosis. She cited the results of a survey of women living with HIV in Europe and Central Asia, among whom 54 per cent had received no counselling when they were diagnosed with HIV, and 33 per cent had experienced violence from their husbands or sexual partners when HIV-positive status had become known. Of these women, only half chose to disclose their status to their regular sexual partners.

## I. Criminalization of HIV transmission and exposure

41. The Guidelines on HIV/AIDS and Human Rights and the 2008 UNAIDS/UNDP policy brief entitled "Criminalization of HIV transmission" emphasized that the application of criminal law to HIV transmission should be restricted to the rare case in which intentional transmission could be demonstrated. In addition, such cases should be handled using existing criminal law rather than by passing new HIV-specific laws. Member States, United Nations and non-governmental organization responses indicated that, in many countries, HIV-specific laws or court decisions had opened the door to prosecutions not limited to these rare cases.

42. The International HIV/AIDS Alliance noted with concern that, since 2005, 14 States had adopted laws in sub-Saharan Africa that enabled the criminalization of HIV transmission under many circumstances, without regard for the actual risk of transmission. In Niger, one of the 14 States, the Association of Young Lawyers judged that this law was the fruit of ill-informed fears among legislators and urged reform of the law. The Canadian HIV/AIDS Legal Network reported "ever more expansive use of criminal law" in these areas in Canada, even in cases where "significant risk" of transmission had not been demonstrated. The Sex Workers Forum in Vienna asserted that even a person who did not know that he or she was infected could be prosecuted in Austria for criminal negligence related to HIV exposure. Both UNDP and the Government of Finland reported that sensational reporting of criminal cases relating to transmission contributed to HIV-related stigma and undermined the right to confidentiality.

43. At the Geneva consultation, in response to a Member State query, a UNAIDS expert emphasized again that new HIV-specific laws in this area were likely to contribute to stigma and run counter to efforts to expand the uptake of HIV prevention and treatment, and that the rare cases that merited prosecution should be handled by existing law. The Governments of Brazil and of Sweden reported their decisions to use existing law for cases of intentional transmission rather than to make an HIV-specific law. Brazil noted that there was still a need to work with judicial officials to avert unnecessary criminal prosecutions. Switzerland was in the process of modifying its penal code to restrict prosecutions to cases where intentional transmission could be demonstrated. At the Geneva consultation, the representative of Lebanon emphasized that some degree of decriminalization could go a long way to improving access to HIV services for socially marginalized persons; laws that criminalized drug use and addiction, sex work and homosexuality, which were major barriers to the meaningful participation of affected persons and thus to effective HIV responses, were, however, often politically difficult to revise or rescind.

# III. Conclusions

44. **The information provided by Member States, non-governmental organizations and United Nations bodies indicate that while there have been some positive developments in protecting, respecting and fulfilling human rights in the context of HIV and AIDS, many politically difficult challenges still have to be addressed. Even though many gains have been made in access to HIV prevention, treatment, care and support services, including treatment, many of the millions still lacking access or dissuaded from taking up these services are still denied access because of discrimination, stigma and criminalization.**

45. **Commitments to prevent HIV-related discrimination are embodied in national AIDS strategies and many national laws, but discrimination in many spheres remains widespread. There are insufficient data from this exercise to know whether Governments are investing significantly in the enforcement of laws prohibiting discrimination based on HIV status. HIV-related stigma is amplified for many by the stigma of being associated with a criminalized behaviour while also being considered a "vector" of HIV transmission. These intersecting stigmas are deep-seated and have resisted programmatic efforts in many places. Stigma-reduction programmes are often not adequately funded or evaluated.**

46. **Sex workers, people who use illicit drugs, transgender persons, men who have sex with men, prisoners and former prisoners and migrants, among others, face structural factors beyond their control that exacerbate their vulnerability to HIV infection, including many associated with criminal law. Their right to meaningful participation in HIV decision-making — which would allow them to bring to the**

**policy table their unique and needed perspective on the structural and personal risks they face and how these can be addressed — is too often unfulfilled. Stigma, discrimination and criminalization directly undermine the provision and utilization of HIV services that key affected populations need. In spite of epidemiological imperatives and clear evidence of their effectiveness, basic HIV-prevention services for people who inject drugs are all too often simply unavailable.**

# IV. Recommendations

47. **A number of recommendations emerged as a result of the submissions received and the Geneva consultation.**

## A. Strategic reorientation of global and national HIV response

48. **Respecting, protecting and fulfilling the human rights of those living with and vulnerable to HIV are good in themselves and are essential to achieving universal access to HIV services, and thus to reversing the epidemic. As emphasized at the Geneva consultation, a fundamental strategic shift is needed in order to give human rights actions a more central place in national and global responses. The Human Rights Council, the treaty bodies and special procedures should do everything possible to establish legal and social environments in which HIV responses are effective and the human rights of people living with and vulnerable to HIV are respected, protected and fulfilled.**

49. **The information provided for the present study indicates that human rights-related programmes either do not exist in national HIV responses or, in many cases, are not brought to scale or are scattered and fragmented. UNAIDS summarized four pillars that require a strategic shift:**

- **Investing in better assessment of those who are the most vulnerable and why and how they are vulnerable to HIV**
- **Shifting programmes to ensure truly adequate coverage for those most vulnerable and for the range of their needs**
- **Shifting partnerships to ensure the meaningful engagement of ministries dealing with, inter alia, justice, law enforcement, prisons, human rights, gender, migration and labour**
- **Shifting the content of programmes and policies so that they focus on the legal and social environment necessary for universal access and for the empowerment of affected and vulnerable persons.**

50. **A number of concrete programme priorities are implied by such a realigned strategy, which would, if funded, implemented and taken to scale in national HIV responses, go a long way to reduce HIV-related stigma and discrimination, open up space for greater uptake of HIV services, and increase access to justice in the context of HIV. The priorities are:**

**(a) To reform and monitor laws that may impede effective HIV responses, including removing punitive criminal laws used repressively against sex workers, men who have sex with men, transgender persons and people who use drugs;**

**(b) To reform laws and policies to promote and protect the rights of children affected by HIV, including the rights to non-discrimination, property, education, health care and an adequate standard of living;**

**(c) To train police on non-discrimination, allowing outreach and other service activities, as well as non-harassment;**

**(d) To train health workers on non-discrimination, informed consent, confidentiality and the duty to provide treatment;**

**(e) To provide affordable legal services for affected and vulnerable persons to expose and reduce repressive practices and, over time, lead to court decisions that suggest directions for legislative change;**

**(f) To build legal literacy through "know your rights" programmes in order to mobilize public opinion and empower marginalized persons to claim their rights;**

**(g) To reduce HIV-related stigma;**

**(h) To realize the legal empowerment of women and reduce violence against them.**

## B. Decriminalization

51. **The reform of repressive laws that impede HIV responses is a long-term undertaking and seems to happen infrequently. At issue is the overly-broad application of criminal laws to people engaging in non-violent crimes, which then results in significant pretrial detention and incarceration. This criminalization has an impact on HIV in two ways: first, the chilling effect of these laws, as well as the stigma, discrimination and illegal police practices attached to them, drive people living with HIV and key populations at risk away from HIV services; secondly, if held in pre- or post-trial detention, people are further subjected to environments where the risk of HIV transmission is significantly higher than in communities. Pretrial detainees who have not been convicted of a crime make up a large proportion of persons in State custody in many countries. In these cases, minimizing the use of pretrial detention, in accordance with human rights norms, should be part of the enabling environment contributing to effective national HIV responses. Political leaders should be supported to enable them to confront issues involving decriminalization with data, conviction and courage. Much greater efforts must therefore be made by States to reconsider the widespread application of criminal law against sex work and drug use. Criminalizing homosexuality should be stopped.**

52. **In June 2010, UNDP launched the Global Commission on HIV and the Law, a body of eminent legal and policy experts established to study ways in which law or law enforcement could undermine, or protect, the rights of persons living with and vulnerable to HIV. The Global Commission plans to conduct regional dialogues in addition to considering evidence from Government, civil society and academic research. The Commission is expected to make bold recommendations for steps that all countries can take to reduce the impact of repressive laws and improve legal and policy protections for the human rights of people living with and affected by HIV.**

53. **One example of the efforts needed in this area involved the joint work of the United Nations Development Fund for Women, UNICEF, the United Nations Population Fund, UNDP, the Open Society Initiative for West Africa and the Economic Community of West African States to convene consultations in West and Central Africa, from 2007 to 2009, to encourage Governments to revisit certain provisions of recently passed HIV laws in the region, particularly those relating to the criminalization of HIV transmission, restrictions of sexuality education and the failure to address HIV-related rights or needs of women and key populations. Coordinated efforts of this type should be encouraged, expanded and supported, leading in ongoing**

**engagement and follow-up at the country level, with capacity-building activities for legislators and technical and financial support for law reform.**

## C. Increasing participation of those vulnerable to and living with HIV

54. **The Greater Involvement of People Living with or Affected by HIV/AIDS is a long-standing principle of the HIV response and one of its human rights successes. However, as the HIV epidemic confronts a new generation of people vulnerable to HIV and of leaders to address it, it is critical to renew, expand and improve the participation of those vulnerable to and living with HIV. Much has been done to support the capacity of people living with HIV and that of women to participate, but more still needs to be done. The efforts to involve members of key populations at risk are insufficient.**

55. **In its deliberative processes, the United Nations should set an example for the world of facilitating meaningful participation of people living with and vulnerable to HIV. Further consideration should be given to granting status of the United Nations Economic and Social Council to organizations of people living with HIV and key affected population along the lines of the principle of the Greater Involvement of People Living with or Affected by HIV/AIDS to ensure the meaningful participation of these persons in HIV response.**

## D. Eliminating gender-based discrimination

56. **Many gender analyses show how subordination of and violence against women and girls drive HIV transmission and raise gender-based barriers to care, treatment and support; funded programmes to address intersections between HIV and gender inequality nonetheless do not seem to be of the quantity or quality commensurate with the enormity of this problem. Many human rights violations directly undermine access to HIV services for children and young people. Human rights protections around HIV testing, including informed consent, confidentiality, and being able to ask questions of a knowledgeable person in a private setting, are not adequately supported. Criminalization of HIV transmission and exposure is enshrined in laws and court decisions that depart significantly from international guidance and human rights norms. Such laws also risk affecting women more than men, as women are subjected to mandatory prenatal HIV testing.**

57. **The mobilization of Government, civil society and donors to scale-up programmes that address gender-based subordination and violence is an essential priority. At the Geneva consultation, representatives of non-governmental organizations called for robust funding of the Agenda for Accelerated Country Action for Women, Girls, Gender Equality and HIV launched by UNAIDS in February 2010. The Agenda, which has a five-year time frame, calls for investing in better data collection to document the impact of HIV on women and girls, dramatically scaled-up efforts to eliminate gender-based violence, and greater understanding and attention to the social and economic factors that contribute to the HIV risk faced by women and girls. The leadership of United Nations, regional and national human rights bodies, as well as of UN Women, will be crucial to this effort.**

## E. Financing national programmes

58. **Several Member States reported that human rights-centred programmes figured in the goals of their national plans, but they had not been realized owing to a lack of both financial and technical resources. Progress in most of these areas also required civil society and community-based organizations had the political support and financial resources to undertake human rights advocacy and activities, which was all too often not the case. The mobilization of both Governments and donors to invest in these areas is urgently needed, as are resources for transparent and independent evaluation of these measures as they are taken.**

59. **The rights of children affected by HIV are violated in many ways, and millions of children are without access to comprehensive HIV services and education. More resources should be committed to the development and implementation of appropriate and comprehensive HIV education for children in their different stages of development and maturity, and to ensure children's access to HIV prevention, treatment and care services.**

60. **Health-service providers should be examples of tolerance and respect, but their workplaces and conditions of work are often not conducive to those ideals. Well-funded programmes are needed to enable health professionals to provide the best possible service to those living with and at risk of HIV, to protect confidentiality and to ensure informed consent, and have functioning mechanisms for redress when people are mistreated.**

[English only]

# Annex

## Respondents

| *Member States* | *Non-governmental organizations* | *United Nations* |
|---|---|---|
| Azerbaijan | Asia Catalyst | Economic and Social Commission for Asia and the Pacific |
| Bahrain | Global Action on Widowhood | International Labour Organization |
| Belarus | Sex Workers Forum, Vienna | International Organization for Migration |
| Bosnia and Herzegovina | Canadian Legal Network | Joint United Nations Programme on HIV/AIDS |
| Brazil | Danish Institute for Human Rights | United Nations Development Programme |
| Bulgaria | Alliance International, United Kingdom | United Nations Educational, Scientific and Cultural Organization |
| Costa Rica | Association of Young Lawyers, Niger | United Nations Children's Fund |
| Cyprus | First Lady's Save Our Youth Campaign, Nigeria | Office of the United Nations High Commissioner for Refugees |
| Estonia | Caritas Internationalis | United Nations World Food Programme |
| Finland | Civil Society Organisations in Belize | |
| Georgia | | |
| Guyana | | |
| Iraq | | |
| Kyrgyzstan | | |
| Lebanon | | |
| Lithuania | | |
| Mauritius | | |
| Mexico | | |

| *Member States* | *Non-governmental organizations* | *United Nations* |
|---|---|---|
| Myanmar | | |
| Norway | | |
| Oman | | |
| Poland | | |
| Portugal | | |
| Republic of Moldova | | |
| Russian Federation | | |
| Slovenia | | |
| Spain | | |
| Sweden | | |
| Switzerland | | |
| Ukraine | | |