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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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

Report of the Secretary-General

Summary

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

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Introduction

1. In its resolution 2005/23, the Commission on Human Rights recognized that access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria 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. The Commission called upon the Secretary-General to solicit comments from Governments, United Nations organs, programmes and specialized agencies and international and non-governmental organizations (NGOs) on the steps they have taken to promote and implement, where applicable, the resolution and to report on these to the Commission at its sixty-second session.

2. The present report summarizes replies received from the Governments of Chile, Colombia, Costa Rica, Finland, Georgia, Germany, Israel, Jamaica, Japan, Kiribati, Lebanon, Mexico, Republic of Korea, Slovenia, Togo and Tunisia, the Holy See as an observer State, as well as from the Joint United Nations Programme on HIV/AIDS (UNAIDS), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the World Health Organization (WHO) and the World Trade Organization (WTO). Contributions were also received from Caritas Internationalis, Franciscans International, the Lutheran World Federation, VIVAT International and the International AIDS Vaccine Initiative. Complete replies are available for consultation with the secretariat. A number of responses were also directed to the request for information under Commission resolution 2005/84 on the protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS). The report on these responses will be submitted to the Commission at its sixty-third session in accordance with that resolution.

I. CONTRIBUTIONS FROM STATES

3. The Government of Chile drew attention to the work of the National AIDS Commission, established in 1990, which is responsible for formulating and coordinating the AIDS Prevention and Control Programme. The Commission's two principal areas of work are (a) preventing the transmission of HIV/AIDS and promoting non-discrimination towards persons living with the virus; and (b) improving the quality of life of persons infected with HIV/AIDS. Its work is guided by, inter alia, human rights norms and technical guidance of organizations such as WHO and UNAIDS. One of the central components of the Programme is the provision of comprehensive care to persons living with HIV/AIDS. Chile introduced antiretroviral therapies in 1992 through the use of monotherapy, moving to bitherapy (1997) and triple therapy (2001). In 2003, coverage was provided to all adults, children and pregnant women with HIV/AIDS who were registered with the public health system. This followed a law on AIDS and non-discrimination which stipulates that the State must provide health care to persons living with HIV/AIDS. The Explicit Health Guarantees System Act came into force in July 2005. The Act provides for 100 per cent coverage of antiretroviral treatment, access to treatment, financial protection, and preventive coverage targets include the ELISA test for all pregnant women.

4. A total of 6,700 persons in Chile are currently receiving antiretroviral treatment (triple drug therapy) through the public health system, funded by the national budget (80 per cent) and the Global Fund to Fight AIDS, Tuberculosis and Malaria. This has resulted in a decrease in the number of hospitalizations and a reduction in public health system expenditure. In 2003, the public health system saved 6,183 million Chilean pesos (with respect to 1999) by making the

hospitalization of persons living with HIV/AIDS unnecessary owing to their increased access to antiretroviral treatment. The Government also reports that psychosocial support is being provided with a view to preventing secondary infections and encouraging the social integration of persons living with HIV/AIDS. In this regard, joint efforts are being carried out with national organizations of persons living with HIV/AIDS. Efforts are also being made to promote adherence to treatment regimens in order to improve the quality of life of persons living with the HIV virus and to reduce the incidence of opportunistic illnesses. HIV/AIDS screening is being extended to all pregnant women with a view to reducing vertical transmission and achieving the health objectives established in international agreements and the Millennium Development Goals, which Chile has undertaken to fulfil. A 2001 act provides for all testing to be voluntary and requires a person's informed consent and that counselling should be provided both before and after testing.

5. The Government of Colombia reported on its policy and legislative response to HIV/AIDS in the context of the General Assembly Declaration of Commitment on HIV/AIDS. Treatment for HIV and AIDS is administered through the social insurance regime. For those not covered by the scheme, funds for access to treatment and care are provided by the Government to regional health entities. At present, around 11,500 people are receiving antiretroviral therapy, at a cost of almost 57 billion pesos. This, however, represents only about 55 per cent of those in need of treatment. The Government's policy aims at guaranteeing universal access to medications from various sources (including generic), of a high quality and at a low cost. Weaknesses in the management and administration of the system represent a cost to the system. In particular, a failure of patients to stick to drug regimens raises the risk of new strains of the virus as well as drug resistance. A law adopted in 2005 provides for a fine to be levied where treatment is interrupted. Colombia has also participated in regional efforts to secure lower prices, and the Buenos Aires negotiations resulted in a lowering of prices by 90 per cent, which across the region represents a saving of US$ 35 million, or drugs for an extra 76,600 patients. The Government reports that it has also established a system of monitoring and evaluation which allows for close management of all actors in the system.

6. The Government of Costa Rica reported on the history of the spread of HIV and AIDS in the country, noting that 2,742 cases of AIDS have been registered since recording began in 1983. Access to medication and comprehensive care have been facilitated by a 1997 Constitutional Court ruling obliging the Costa Rican Social Security Fund to provide antiretroviral therapy to anyone requesting it. The introduction of antiretroviral therapy significantly altered the course of the disease and increased the length and improved the quality of life for people with HIV/AIDS. Comprehensive care is centralized in one regional and four national hospitals which have AIDS clinics and specialist services and offer antiretroviral treatment to which any Costa Rican or foreign national resident in the country and duly insured is entitled. There are currently 1,947 people receiving antiretroviral therapy.

7. Treatment and care is the focus of a number of initiatives reported by the Government, including the National Board for the Comprehensive Care of HIV/AIDS; the formation of an NGO network and the implementation of strategies on prevention and on comprehensive care for people with HIV/AIDS; and the Costa Rican Social Security Fund HIV/AIDS/STD programme (which runs training for groups of adolescents in cooperation with the Comprehensive Adolescent Care Programme (PAIA)). Costa Rica has a grant agreement with the Global Fund to Fight AIDS, Tuberculosis and Malaria for a project entitled "Strengthening Costa Rica's

response to HIV/AIDS". The project aims to strengthen work at the national level in the prevention and treatment of HIV/AIDS among vulnerable groups - children and adolescents who are at risk or are being sexually exploited for commercial purposes; adolescents; men who have sex with men; and prisoners.

8. A number of initiatives have been undertaken focusing on prevention of HIV infection, including a focus on girls and young women who are at risk or are being sexually exploited for commercial purposes, mobile populations in the border zone with Nicaragua, and the *maquila* worker population. The Costa Rican Association of People Living with HIV/AIDS coordinates self-help groups in cooperation with the AIDS clinics of two national hospitals and in hostels.

9. The Government identified a number of challenges it still faces, including the need to put in place ongoing, sustainable policies, plans and programmes; to improve the division of resources between prevention and treatment for vulnerable groups; to improve economic and financial information and analysis in respect of HIV/AIDS-related activities; to increase support, cooperation and coordination among the main national and international actors involved in the response to HIV/AIDS; to set national rights- and gender equity-based standards on comprehensive HIV/AIDS care within health services; and to maintain standing human rights prevention and promotion campaigns. The Government is of the view that international cooperation will be needed to address these challenges.

10. The Government of Finland reported that by August 2005, a total of 1,830 cases of HIV-infection were registered in the country. Health care in Finland is tax-based and all persons residing in Finland are entitled to social and health-care services on an equal basis. HIV-testing is voluntary and free of charge and treatment (including medication and hospital and outpatient fees) is free for people living with HIV/AIDS. The Act on the Status and Rights of Patients (1992/785) applies to people living with HIV/AIDS, providing them with the same rights as other patients, including the right to receive information, good care and treatment as well as to make decisions about their treatment, and a guarantee of confidentiality of all patient information received within the social and health services context. The Government is of the view that the public's trust in the confidentiality of patient information is a prerequisite for active testing behaviour and good compliance with the treatment, including counselling for prevention. Finland has a multisectoral advisory working group on HIV/AIDS linked to the Ministry of Social Affairs and Health. The group consists of experts from the field of epidemiology, clinical practice and education authorities, people with HIV/AIDS, and relevant NGOs working in the field. The group advises the Ministry and the Government on issues concerning HIV/AIDS.

11. Finland does not have any separate legislation in respect of HIV/AIDS, but deals with the disease under the Communicable Diseases Act (1986/583). The classification of HIV/AIDS as a notifiable communicable disease does not allow testing or treatment without consent. HIV-positive injection drug users receive specially tailored treatment and care organized by a chain of services, including social support and counselling that work in close cooperation with specialized health care. A network of approximately 20 health counselling centres, including needle exchanges, is regarded as one of the reasons for the decline in the number of new HIV cases among this population.

12. In its response, the Government of Georgia underlines the importance of international assistance in providing access to medication. In respect of tuberculosis, essential medicines have been distributed in cooperation with the German Tuberculosis Project (supported by the German Credit Bank for Reconstruction and the German Society for Technical Cooperation (GTZ)). Medication for HIV and AIDS is provided within the framework of grants from the Global Fund to Fight AIDS, Tuberculosis and Malaria which will, by 2007, provide for first- and second-line medicines for people living with AIDS. The 257 registered malaria patients are provided with appropriate anti-malarial medication.

13. The Government of Germany reports that 90 per cent of the population is covered by statutory health insurance schemes which cover comprehensive benefits for people with HIV and AIDS (including access to specialized centres for counselling and care). Those falling outside these schemes are entitled to treatment when infection leads to the outbreak of an acute sickness. The Government adopted a new strategy "Response to HIV/AIDS" on 13 July 2005, which sees the fight against the disease as inseparable from respect for human rights and underlines the significance of international cooperation.

14. In the light of the extension of the deadline for least developed countries (LDCs) to comply with the TRIPS Agreement, the Government of Germany intends to explore opportunities for expanded local pharmaceutical manufacturing of essential generic drugs in selected LDCs, including helping to build or expand these facilities. The focus of support will vary according to the country's situation, and will rely on strong partnerships with a range of public and private sector entities. Financial viability will be a guiding criterion. The aim of the initiative is to improve access of large parts of the population to affordable medicines - primarily targeting HIV/AIDS, malaria and tuberculosis - and thus help in achieving the Millennium Development Goals. The Government underlined the importance of its recent comprehensive national and international strategy on HIV/AIDS, including its financial support to the Global Fund to Fight AIDS, Tuberculosis and Malaria and as the fourth largest bilateral donor on the issue. Germany will endeavour to mobilize a US$ 200 million contribution to the Global Fund for the replenishment period 2006/2007.

15. The Government of Israel reported that all inhabitants of Israel have full access to medication for HIV (including antiretroviral treatment), AIDS, tuberculosis and (for the rare cases) malaria.

16. In its response, the Government of Jamaica outlined its drive to increase access to medication in respect of HIV and AIDS in the country. Between October 2004 and September 2005 a total of 1,246 adults and 141 children started antiretroviral treatment; however, it is estimated that 3,000 people still require treatment. The Government has spent $1.5 million on antiretroviral drugs to date and will spend another $2 million by the end of June 2006. The Government's approach includes four elements. First, scaling up the number of people participating in voluntary counselling and testing. In respect of infection through sexual contact, a project called Priorities for Local AIDS Control Efforts helps identify sites where people are likely to meet new sex partners, and provides free rapid HIV testing (with pre- and post-test counselling) at those sites. A second element is the availability of state-of-the-art

technology for CD4 count testing and viral load testing (including Polymerase Chain Reaction technology). A third element is a programme to encourage regimen adherence among clients. A final element is the establishment of the Antiretroviral Tracking System to track the number of persons on antiretroviral therapies.

17. The Government of Japan reported on its "Special Guidelines on Prevention of Infectious Diseases regarding HIV/AIDS", which aim to promote comprehensive measures for prevention and care. In particular, the Guidelines focus on the realization of a patient-orientated medical system through 369 medical institutions specializing in HIV and AIDS care. In the realm of international cooperation, the Government reports its assistance in the fight against HIV/AIDS, tuberculosis, malaria, polio and other infectious diseases under the Okinawa Infectious Diseases Initiative announced in 2000, for which US$ 4.1 billion have been disbursed in four years to its completion in March 2005. The subsequent "Health and Development Initiative", launched in June 2005, aims to contribute to achieving the health-related Millennium Development Goals. Japan has supported UNAIDS and its joint "3 by 5" Initiative with WHO, as well as contributing US$ 327 million to the Global Fund to Fight AIDS, Tuberculosis and Malaria, with a commitment to contribute an additional US$ 500 million in the coming years.

18. The Government of Kiribati reports that the country has cases of HIV/AIDS and high levels of tuberculosis, but no malaria. Medical services are provided free of charge to all Kiribatis. Antiretroviral treatment for the few cases of HIV and AIDS is being provided under a project of the Global Fund to Fight AIDS, Tuberculosis and Malaria rather than through provision by the Government. The Government, however, notes that it will have to absorb the costs of antiretroviral treatment for all Kiribatis.

19. The Government of the Republic of Korea stresses its belief that the fight against HIV/AIDS, tuberculosis and malaria is grounded in the right to the highest attainable standard of health. In respect of HIV/AIDS, the Government covers the costs of all medical treatment, including regular CD4+ cell counting, antiretroviral therapy and necessary hospitalization. The Government will provide sufficient funding to continue this approach in the face of a rising number of HIV infections. Tuberculosis continues to be a serious problem in the Republic of Korea, with 3,000 people dying of the disease each year, a figure which may rise. Primary anti-tuberculosis agents are provided free of charge and the Government is in the process of securing and providing free secondary level agents. Both the National Tuberculosis Control System and the Internet-based National Tuberculosis Surveillance System are being enhanced. In respect of malaria, the Government notes that, after eliminating the disease in the 1970s, it reappeared in the 1990s and peaked in 2000, and in 2004 there were no reported deaths from the disease. The Government is supporting the Malaria Control Project in the Democratic Republic of Korea through WHO.

20. The Government of Lebanon reaffirms the right of citizens to access to health care, and refers to efforts to combat any discrimination in access to health care in the country. A National Strategic Plan to fight HIV/AIDS aims to cover all aspects of treatment and support for people living with HIV/AIDS, along with plans in respect of tuberculosis and malaria. A clear policy has been established in respect of drug and related commodities within the national health policy. This includes ensuring adequate quantities of drugs (antiretroviral, anti-tuberculosis, anti-malarial), universal access for all Lebanese residents (including Palestinian refugees), and optimal quality control of drugs. An updated protocol aims to prevent

mother-to-child-transmission of HIV and provide access to drugs and counselling for pregnant women and those having given birth. Confidential testing and counselling is available with specific training for health-care providers. The Government indicates that it supports international cooperation, including in the case of emergencies and disasters, and continuously evaluates international trade treaties for their impact on national health policies. Lebanon has achieved the goals of the UNAIDS/WHO "3 by 5" initiative, supports the WHO tuberculosis and malaria campaigns and encourages the private sector to support the Global Fund to Fight AIDS, Tuberculosis and Malaria.

21. The Government of Mexico referred to the National Human Rights Commission, which has an HIV/AIDS and human rights programme through which it seeks to raise awareness in all sectors of Mexican society with regard to the human rights of people living with HIV/AIDS. To this end, Commission addresses the problems faced by this group of the population in two ways. First, it takes action to protect the rights of the members of this group by attending to complaints, seeking conciliation between the complainants and/or victims and the authorities, and issuing recommendations where necessary. The Commission receives and deals with complaints against public health institutions that refuse medication to persons infected with HIV/AIDS, and consequently promotes non-discriminatory access to pharmaceutical products to treat the pandemic. Second, the Commission works in the area of preventing violations by offering human rights training courses to civil servants who provide services to people with HIV/AIDS, developing general and targeted campaigns and producing and publishing posters, pamphlets and other materials.

22. The Government of Slovenia pointed out that it has low rates of infection for HIV/AIDS, tuberculosis and malaria. The Government states that it has taken all necessary steps to provide universal and non-discriminatory access to safe and effective treatment to all individuals with HIV/AIDS, tuberculosis or malaria. High-quality clinical care is assured to all HIV and AIDS patients, both in hospitals and outpatient clinics, and medications are of high quality. Counselling is an integral part of care, and access is provided to voluntary testing with appropriate counselling. The Office of the Ombudsman for the Protection of Human Rights has no registered cases of violations relating to HIV/AIDS, tuberculosis or malaria.

23. In its reply, the Government of Togo outlined the aims of the National Council for the Fight against AIDS and the Coordination Committee of the Health Sector. The Government has agreed four projects with the Global Fund to Fight AIDS, Tuberculosis and Malaria and is committed to providing access to antiretroviral drugs, modern medicines for malaria and medicines for tuberculosis, which have been provided free of charge for some time. In respect of malaria, Togo supports the WHO "Stop TB" initiative, and with assistance from the Global Fund, has made progress in treating both simple and acute cases. In respect of HIV/AIDS, 2,000 individuals are receiving antiretroviral treatment under a cooperative effort with a number of United Nations agencies and donors. A further 6,500 people are being treated for opportunistic infections and almost half of the HIV-positive pregnant women have received the drug Nevirapine. The Government has entered into agreements with major drug companies to facilitate access to, including lower pricing of, antiretroviral drugs.

24. The Government of Tunisia reaffirmed that it considers the right to health as a fundamental human right, and that this has underpinned a gradual quantitative and qualitative improvement of health infrastructures in the country. All treatment and care, including

medicines, are distributed free of charge. Antiretroviral drugs have been free in Tunisia since 2000, and patients are treated without discrimination. Supply is maintained through the maintenance of emergency stocks of drugs. A similar approach is taken in respect of anti-tuberculosis and anti-malarial drugs.

II. CONTRIBUTIONS FROM NON-MEMBER STATES

25. The Holy See reported on the activities of its Good Samaritan Foundation, established in late 2004 to provide assistance to people living with HIV and AIDS. In its first phase of activity, the Foundation has concentrated on providing funds for the purchase of antiretroviral drugs in selected countries. The Foundation has also made contact with various pharmaceutical laboratories that manufacture antiretroviral drugs. The GlaxoSmithKline company indicated its willingness to help by providing a whole distribution chain in Africa and other poor regions. The company thereby ensured lower prices as well as a local supply of medicines in places where the health centres operate. The Holy See denounces the high-level corruption in some States that prevents the proper distribution of funds from the Global Fund to Fight AIDS, Tuberculosis and Malaria, and endorses the idea of facilitating access to funds for private organizations, particularly faith-based organizations, that provide assistance to people suffering from AIDS, tuberculosis and malaria. The Holy See also states that it does not agree with the demands for access to funds for the purchase and distribution of condoms, promoted as a means of disease prevention, but wishes to highlight the values of abstinence and fidelity.

III. CONTRIBUTIONS FROM UNITED NATIONS BODIES

A. Joint United Nations Programme on HIV/AIDS (UNAIDS)

26. The UNAIDS secretariat, as part of a comprehensive response to the HIV epidemic, reported that it engages in activities to mobilize the necessary means for national authorities and partners in countries to scale up AIDS treatment services through exceptional short-term measures (e.g. the “3 by 5 initiative”, initially launched by WHO and UNAIDS to support countries to expand access to HIV medicines to 3 million people by the end of 2005), while implementing longer-term strategies to advance towards universal access to prevention, treatment, care and support by 2010. The UNAIDS secretariat establishes and maintains partnerships and collaborative relationships with a wide range of stakeholders. For example, the secretariat provides technical and financial support to help associations of people living with HIV demand treatment access and mount treatment preparedness campaigns, and facilitates ongoing information exchange with treatment activists. It promotes the engagement of pharmaceutical companies in treatment access, involving both the research-based pharmaceutical industry and generic antiretroviral manufacturers. The secretariat also advocates for innovation and development towards an HIV vaccine, new prevention interventions such as microbicides, and paediatric formulations of antiretrovirals and simplified and less toxic therapeutic regimens.

27. According to the UNAIDS secretariat, it provides support to the work of its co-sponsors - notably WHO, the World Bank and the United Nations Children’s Fund - by engaging in direct advocacy on a wide range of policy and technical issues with national AIDS programme managers and other senior government officials. It also convenes regular meetings with donors to exchange information, serves as a resource on scaling up treatment, and advocates for solutions to the human resource crisis in the health, education and social services sectors in

African and other low-income countries. The UNAIDS secretariat supports the development, dissemination and use of strategic information, policy guidance and best practice in scaling up access to comprehensive HIV care, treatment and support. For example, it produces policy guidance on trade, intellectual property and access to medicines, and on equitable access to treatment and care for women and girls. In July 2005, UNAIDS published *Expanding access to HIV treatment through community-based organizations* as part of its Best Practice series, together with WHO and Sidaction, as well as *Access to treatment in the private-sector workplace*, detailing the provision of antiretroviral therapy by three companies in South Africa. The UNAIDS secretariat, together with OHCHR, continues to promote the dissemination and use of revised guideline 6 of the International Guidelines on HIV/AIDS and Human Rights in the context of law and policy reform, as well as initiatives to expand access to prevention, treatment, care and support.

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

28. OHCHR works to underline the importance of access to medication in protecting the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. One means for doing so in relation to HIV/AIDS has been the dissemination of the revised guideline 6 (dealing with access to prevention, treatment, care and support) of the International Guidelines on HIV/AIDS and Human Rights, which was revised in 2002. Throughout 2005 OHCHR has worked with UNAIDS to draw attention to issues relating to access to medications in the context of periodic reporting by States parties to the human rights treaty bodies, and country missions of special procedures mandate holders.

C. World Health Organization

29. WHO drew attention to the activities of the WHO/UNAIDS Global "3 by 5" initiative, in particular a June 2005 report entitled "Progress on Global Access to HIV Antiretroviral Therapy".[1] The report indicated that the number of people receiving combination antiretroviral therapy for HIV/AIDS in developing countries is increasing significantly - more than doubling from 400,000 in December 2003 to approximately 1 million in June 2005. According to the report, the "3 by 5" target has been "a major catalyst for mobilizing international support and action around the global effort to expand HIV treatment access". WHO has developed simplified approaches to clinical management, health-care provider training, and monitoring and evaluation which are being implemented in many countries. The drug pre-qualification project and the AIDS Medicines and Diagnostics Service offer services which are helping to guide countries in their choice of safe, affordable and high-quality medicines, and to improve their procurement and supply management systems.[2] With respect to tuberculosis, the internationally recommended approach to tuberculosis control is DOTS (directly observed treatment short course), an inexpensive strategy that could prevent millions of tuberculosis cases and deaths over the coming decade. The DOTS strategy produces cure rates of up to 95 per cent even in the poorest countries. Since its introduction in 1991, more than 17 million patients have received treatment under the DOTS strategy.[3] As for malaria, WHO has, in collaboration with other United Nations agencies, taken several steps to assist member countries to purchase quality-assured artemisinin-based combination therapy (ACT). This is an initiative through which WHO, in collaboration with other United Nations agencies, will pre-qualify manufacturers of artemisinin compounds and ACTs on the basis of compliance with internationally recommended standards of manufacturing and quality.[4]

D. World Trade Organization

30. WTO referred to its efforts to ensure that the TRIPS Agreement is interpreted and implemented in a manner supportive of its members' right to protect public health and, in particular, to promote access to medicines for all. A considerable part of the WTO secretariat technical assistance and capacity-building activities in the area of the TRIPS Agreement is devoted to access to medicines, including a workshop on the "TRIPS Agreement and Public Health", held in Geneva from 26 to 28 September 2005. The main purpose of these activities is to provide "hands on" knowledge that will assist WTO developing country members in implementing and making effective use of the Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540 and Corr.1). The WTO Technical Assistance Plan for 2006, recently approved by WTO members, reinforces technical cooperation activities in the field of TRIPS and public health. Workshops will be held in Geneva as well as in regions, including the first specialized workshop in the African region.

IV. CONTRIBUTIONS FROM NON-GOVERNMENTAL ORGANIZATIONS

31. In their contribution, Caritas Internationalis, Franciscans International and the Lutheran World Federation affirmed that access to medications (especially in the context of pandemics such as HIV/AIDS, tuberculosis and malaria) is an important means of securing the progressive realization of the right to the highest attainable standard of physical and mental health. Reporting as faith-based organizations, these NGOs stated their common demand for guaranteed access to essential medicines - particularly for HIV and AIDS - in which protection of public health takes precedence over the protection of intellectual property rights. Urgent action must particularly be taken on the continuing and serious obstacles faced in the facilitation of access to treatment for hundreds of thousands of children living with HIV and AIDS. The organizations provided the following statistics: 660,000 children are in urgent need of antiretroviral treatment, 270,000 of whom are younger than 18 months; children represent only 6 per cent of overall HIV infections, yet they account for 17 per cent of deaths due to AIDS; 80 per cent of HIV-positive children die by age 5 without treatment, and 80 per cent are alive at age 6 with ART; and 1,400 children die needlessly of AIDS-related illnesses each day.[5] In addition to the lack of access to antiretroviral therapy, the situation is complicated by: a lack of access to HIV testing for children; lack of sufficient and appropriate paediatric dosages for antiretroviral drugs; higher prices for children's dosages than for adult dosages; lack of inclusion of children living with HIV and AIDS in the treatment plans and protocols by many Governments and major antiretroviral funding programmes; and a lack of research related to children living with HIV.

32. The organizations maintain that their operational experience confirms these trends. In addition, they report that a number of Governments systematically reject paediatric patients from their AIDS treatment protocols, leading to staggering numbers of premature and unnecessary deaths of children with AIDS-related illnesses. Not only are these deaths unnecessary and preventable, but they are an affront to the inherent dignity and fundamental human rights of all children, enshrined in international law. It is imperative that universal access to treatment, which is still only an ideal, becomes a reality for the millions of children whose lives depend on rapid and sustainable treatment. The organizations drew attention to the report of the Special Rapporteur on the right to health to the Commission on Human Rights at its sixteenth session on his mission to the World Trade Organization, where he stipulated that a State "has to do all it

reasonably can to make an essential medicine available in its jurisdiction e.g. by using, where appropriate, the TRIPS flexibilities, such as compulsory licences and parallel imports".[6] It must also do all it reasonably can "to ensure that the essential drug is not only available in the jurisdiction, but accessible to all".[7] In these organizations' view, in many contexts essential medications for treating HIV/AIDS are not available or accessible to children, and children are in fact discriminated against in this regard.

33. The International AIDS Vaccine Initiative referred to the importance of increased resources, including new financial mechanisms, for new drug, diagnostic, vaccine and microbicide research and development. The organization referred to an emerging broad understanding of detection, prevention and treatment of HIV/AIDS, tuberculosis and malaria. In doing so, it drew attention to the UNAIDS Prevention Policy Paper[8] endorsed by the 16th meeting of the UNAIDS Programme Coordinating Board in June 2005 and its references to the need to build global momentum for intensifying HIV prevention, both for the delivery of existing interventions and the research and development of new prevention technologies, such as microbicides and vaccines. Reference was also made to The Group of 8 Gleneagles Communiqué of 2005 (para. 18 (d)) and to the World Summit outcome document of the General Assembly, in particular the commitment to promote "long-term funding, including public-private partnerships where appropriate, for academic and industrial research as well as for the development of new vaccines and microbicides, diagnostic kits, drugs and treatments to address major pandemics, tropical diseases and other diseases, such as avian flu and severe acute respiratory syndrome, and taking forward work on market incentives where appropriate through such mechanisms as advance purchase commitments".[9]

34. Médecins sans Frontières reported on its activities and raised a number of concerns on access to medication. The organization's Access Campaign has four objectives. First, making new "life-saving and essential" medicines, vaccines and diagnosis tools affordable and accessible, including those products still patented in some countries. Second, securing the production and accessibility of quality essential medicines, vaccines and diagnosis tools that have either been abandoned, are in danger of being abandoned, or for which stock discontinuation is leading to access problems. Third, stimulating research and development activities with regard to new medicines, vaccines and diagnostic tools. The organization also highlighted a number of its concerns. With respect to HIV/AIDS, it noted that although prices for first-line antiretroviral therapies have dropped dramatically, there was no system for setting prices that people can afford, unlike the TRIPS system for patents, which has rules and enforcement mechanisms. Further, second-line drugs are 2 to 12 times more expensive than first-line drugs. The organization is working to bring newer drug prices down to the level of older multisource drugs so that treatment remains feasible and to ensure that new, adapted and more affordable ARVs for children are made available.

35. With respect to tuberculosis, Médecins sans Frontières noted that 2 million people die of the disease every year, and that one third of the world's population is infected with mycobacterium tuberculosis. The HIV/AIDS pandemic and the rise of (multi)drug-resistant tuberculosis have made "controlling" tuberculosis impossible and, with the current global strategies, tuberculosis incidence will continue to increase in the coming years. New vaccines, drugs and diagnostic tests are therefore urgently needed. The low level of tuberculosis drug development will increasingly become a major challenge. The organization is working to ensure that tuberculosis remains high on the political agenda and advocates for care for all tuberculosis

patients, in particular raising awareness of drug-resistant tuberculosis and improving access to second-line drugs and drug sensitivity tests. With regard to malaria, the organization referred to its policy to implement ACT in all its programmes. This represents a significant shift from the use of chloroquine and sulfadoxine-pyrimethamine. While financing for ACT has improved considerably in 2003-2004 with support from the Global Fund to Fight AIDS, Tuberculosis and Malaria, there is still a considerable shortfall, and growing demand for drugs is outstripping supply, leading to significant shortages.

36. VIVAT International reported on areas of their activities in 35 countries. These include medical and psychological care, establishing self-help programmes, education and awareness-raising work with orphans and home visits. The organization raised four concerns relating to access to medication. First, the benefit of research and medical development achieved in developed countries needs to be passed onto people living with HIV/AIDS in developing countries. Second, Governments are only managing to meet a fraction of the antiretroviral requirement of the poor. Third, poverty is a major factor adversely affecting the efficacy of antiretroviral treatment, in particular the lack of nutritious food, milk products and vitamins for people living with HIV and AIDS. Fourth, there is often a great deal of discrimination against people living with HIV and AIDS in the health-care sector, requiring education programmes for health-care workers.

Notes

[1] See www.who.int/3by5/fullreportJune2005.pdf.

[2] HIV/AIDS, tuberculosis and malaria (HTM) Newsletter; see www.who.int/3by5/en/newsletterHTM.pdf.

[3] WHO Facts Sheet Number 104 www.who.int/mediacentre/factsheets/fs104/en/.

[4] See An Update on Quality Assurance and Procurement through WHO for Improving Access to Artemisinin-based Combination Treatments (ACTs) for Malaria at http://rbm.who.int/cmc_upload/0/000/016/564/act_memo.pdf.

[5] Global AIDS Alliance, Advocacy Brief: *Treat the Children: Accelerative Action for Universal Antiretroviral Treatment for Children in Resource-Limited Countries by 2010*, by Vince Gennaro and Paul Zeitz, 29 July 2005.

[6] E/CN.4/2004/49/Add.1, para. 35.

[7] Ibid., para. 36.

[8] UNAIDS (June 2005). Intensifying HIV prevention: UNAIDS policy position paper. Geneva, Switzerland.

[9] A/60/L.1, para. 57 (h).
