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

Human rights in the response to HIV

Report of the United Nations High Commissioner for Human Rights*

Summary

In accordance with Human Rights Council resolution 38/8, a consultation on human rights in the response to HIV was held in Geneva on 12 and 13 February 2019. Participants discussed issues and challenges pertaining to the respect for and the promotion of human rights in the response to HIV, with a focus on regional and subregional strategies and best practices. The present report contains a summary of the discussions held and the recommendations made at the consultation.

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I. Introduction

1. In its resolution 38/8, the Human Rights Council requested the United Nations High Commissioner for Human Rights to organize a consultation, in coordination with the Joint United Nations Programme on HIV/AIDS (UNAIDS), to discuss all relevant issues and challenges pertaining to respect for and the protection and fulfilment of human rights in the context of the response to HIV, with a focus on regional and subregional strategies and best practices. The consultation was held, pursuant to that request, on 12 and 13 February 2019. It was attended by a wide range of stakeholders, including representatives of Member States and of United Nations agencies, funds and programmes, special procedure mandate holders, experts and members of civil society, including persons living with, presumed to be living with, at risk of or affected by HIV. During the consultation, participants examined best practices, evidence, lessons learned and the challenges faced when removing human rights barriers and the promotion of human rights in the response to HIV in regional and subregional strategies. They also considered regional human rights mechanisms in monitoring, accountability and empowerment in the field of human rights and health, and addressed current challenges to ending AIDS by 2030, including stigma, discrimination, violence and abuse.

II. High-level opening

2. The United Nations Deputy High Commissioner for Human Rights, Kate Gilmore, opened proceedings by welcoming Human Rights Council resolution 38/8 as a milestone that recognized – conceptually, legally and practically – the added value brought by the human rights framework to an effective and sustained response to the HIV epidemic. The Deputy High Commissioner invited participants to identify affordable, practical, doable and transformative solutions to the HIV epidemic. She commended the core group, comprising Brazil, Colombia, Mozambique, Portugal and Thailand, for its leadership during negotiations, which resulted in the adoption by the Council of resolution 38/8 by consensus. She also expressed her gratitude to civil society and human rights defenders, without whom little would have happened in the response to HIV. She described HIV as an epidemic of human rights loss, denial, derailment, abuse and violence. She noted with concern that HIV and AIDS attracted the deepest and worst kinds of discrimination and life-threatening exclusion. In particular, she expressed concern that women, young people and key populations continued to be directly and the most affected by the epidemic. She hoped participants in the consultation would consider the situation faced by key populations, children and young people, and develop concrete measures to eliminate stigma, discrimination, violence and abuse. Recalling the Universal Declaration of Human Rights, she stressed that there was no justification for the bigotry, homophobia, discrimination and exclusion affecting people living with HIV. According to the Deputy High Commissioner, human rights should be upheld in order to promote an inclusive and deliberate programme of dismantling toxic attitude and behaviour by governments and non-government actors alike to those living with the cost of the epidemic. Failure to do so would imply risking not meeting the UNAIDS 90-90-90 treatment target for 2020, or Sustainable Development Goal target 3.3. She stressed that monitoring, empowerment and accountability played a critical role in promoting human rights-based solutions.

3. The Executive Director of the Global Network of People Living with HIV (GNP+), Rico Gustav, commended civil society for its crucial work in the response to HIV. He recalled article 12 of the International Covenant on Economic, Social and Cultural Rights, and reminded States parties about their obligations to protect and promote the right to health, for all. He also referred to general comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights on the right to the highest attainable standard of health, in which the Committee called upon States to work together, through international cooperation and assistance, on the realization of the right to health. Mr. Gustav noted the decline in global health aid, including funding reductions to middle-income countries, which had an impact on the well-being of people living with HIV, particularly since many

States criminalized and excluded key populations, and refused to fund programmes to promote and respect their human rights. This decline had also contributed to the shrinking of civil society space. He called upon the Human Rights Council, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNAIDS, in consultation with communities and key populations and global health funding agencies, to develop a set of human rights-based guiding principles for health donors. After describing the violations of human rights, stigma and discrimination faced by key population groups, he urged United Nations agencies and Member States to join efforts to address this situation, and identified the Global Partnership for Action to Eliminate All Forms of HIV-related Stigma and Discrimination as a best practice in the response to HIV.

4. The Permanent Representative of Brazil to the United Nations Office at Geneva, Maria Nazareth Farani Azevêdo, spoke on behalf of the core group, which comprised Brazil, Colombia, Mozambique, Portugal and Thailand. She highlighted the centrality of human rights and of leaving no one behind in the response to HIV. She encouraged all stakeholders to join forces to address the challenge posed by HIV. Ms. Azevêdo recalled that, since 1990, the Commission on Human Rights, then the Human Rights Council, had consistently sought to address human rights challenges in the response to HIV. The relevant resolutions, initially proposed by Brazil and subsequently adopted by consensus, pioneered the adoption of a human rights-based approach in the response to HIV, until then promoted exclusively from a health perspective. Ms. Azevêdo recalled the importance of the International Guidelines on HIV/AIDS and Human Rights as a reference for HIV policies worldwide. Council resolution 38/8 affirmed the need to achieve universal health coverage for all in the context of HIV. Noting that different regions of the world faced different challenges, she encouraged stakeholders to work together to identify solutions to local realities, thus epitomizing the spirit of the consultation.

5. The Deputy Executive Director a.i. of UNAIDS, Tim Martineau, pointed out that, globally, 37 million people lived with HIV; there were 1.8 million new HIV infections every year; some 22 million people were on treatment; there had been a drop in deaths of 34 per cent since 2010; and that 75 per cent of people living with HIV knew their status. There had been, however, decrease of only 18 per cent in new HIV infections since 2010. He expressed concern that people were being left behind: two thirds of all new infections were in sub-Saharan Africa, and one in four new infections among adolescent girls and young women. In Eastern Europe and Central Asia, new infections had doubled since 2000, and outside of sub-Saharan Africa, approximately 47 per cent of all new infections were among key populations and their sexual partners. Insufficient investment in HIV treatment, an uncertain funding environment and the shrinking of space available for civil society had resulted in slow or even no progress in efforts to address the human rights barriers in the response to HIV. Respecting, promoting and fulfilling human rights in the response to HIV was vital to ensuring that no one was left behind. He stressed that addressing laws, particularly criminal laws, policies, gender inequality and discrimination in all its forms was essential to ending HIV. All laws criminalizing HIV transmission, exposure and non-disclosure, same-sex sexual conduct, drug use and sex work had an effect on the response to HIV. Law reform was a key element in the response to HIV, particularly in order to ensure that criminalized populations had equal and quality access to universal health coverage. Decriminalizing sex work could prevent more than 33 per cent of new infections among sex workers and their clients. The decriminalization of drug use could significantly decrease HIV infections among people who inject drugs. Lowering the age of consent to testing and treatment was correlated with the higher uptake of testing by adolescents. Despite the existence of human rights norms, frameworks and commitments, their translation into real action was lagging. He called for effective partnerships among governments, civil society, accountability mechanisms, human rights groups and health professionals to initiate programmes to end human rights abuses and to remove stigma and discrimination.

6. The Assistant Director-General for Communicable Diseases at the World Health Organization (WHO), Dr. Ren Minghui, stated that the right to health could be realized by strengthening capacity-building in public health. He stressed that the right to health was essential to the identity and mandate of WHO, permeating all its strategies and actions, including its new five-year strategy, adopted by Member States in May 2018. A core

mandate of WHO was to ensure people-centred health care for everyone, including marginalized and overlooked groups of people. He reported that people living with HIV continued to face discrimination, including within the health sector, which prevented them from having access to HIV health services. According to Dr. Ren, “put simply, discrimination kills”. WHO supported the Global Partnership and would lead in addressing discrimination in the health sector, since universal health coverage would not be achieved while people were still marginalized, criminalized, stigmatized or denied access to health services for any reason. The Sustainable Development Goals offered a platform on which to improve health outcomes and to transform the health systems on which billions of people depended. He also highlighted Human Rights Council resolution 38/8, in which the Council urged States to bring their laws, policies and practices, including HIV strategies and other health-related Sustainable Development Goals, fully into compliance with their obligations under international human rights law. WHO was currently coordinating the development of a global action plan for healthy lives and well-being for all, with human rights and the right to health at its heart, to promote collaboration and accelerate progress in health determinants.

7. During the general debate, representatives of the European Union, Brazil, Portugal, the Gambia, the Global Fund to Fight AIDS, Tuberculosis and Malaria, the United Nations Development Programme (UNDP), the Elizabeth Glaser Pediatric AIDS Foundation, the International Network of People Who Use Drugs and Aidsfonds took the floor. All speakers pointed out that HIV was not only a health issue, but also a human rights issue, and highlighted the centrality of human rights in the response to HIV.

8. The representative of Brazil expressed its commitment to fighting stigma, discrimination and prejudice, and highlighted its focus on key populations. The representative of Portugal stressed that HIV would not be eliminated by 2030 if human rights were not the cornerstone of universal health coverage and the Sustainable Development Goals. The representative of the Gambia called upon the international community to step up its advocacy, and invited pharmaceutical companies to support the response to HIV through corporate social responsibility. The European Union affirmed its commitment to the promotion of human rights in the response to HIV, including through its global investment on non-discriminatory HIV initiatives and programmes, and also through its continued support for the Global Fund.

9. The representative of the Global Fund explained that its commitment to human rights was one of its objectives in its strategy for the period 2017–2022. Over the past two years, the Global Fund had provided support to 20 countries, having dedicated a total of \$77.3 million to addressing human rights-related barriers to HIV, tuberculosis and malaria, which represented a tenfold increase over the period 2014–2016. The representative of UNDP stressed that the response to HIV would not be effective or efficient without an environment that respected, promoted and fulfilled human rights for all, and recalled the recommendations made by the Global Commission on HIV and the Law.

10. The representative of the Elizabeth Glaser Pediatric AIDS Foundation called for prevention measures and for lowering new infections among adolescent girls by granting full access to testing and treatment services, reviewing laws on the age of consent that prevented access, and encouraging longer schooling for girls. The International Network of People Who Use Drugs called for decriminalizing sex work and drug use. Aidsfonds highlighted the strong linkages between health and human rights, and the essential role of local communities.

III. Summary of the proceedings

A. Ending AIDS by 2030: human rights in the response to HIV, challenges and opportunities

11. The panel comprised the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dr. Dainius Pūras; Dr. Stefan Baral, physician epidemiologist at Johns Hopkins University, Baltimore,

United States of America; Michaela Clayton, Executive Director of the AIDS and Rights Alliance for Southern Africa; and Dr. Olusegun Odumosu, the Executive Director of African Men for Sexual Health and Rights. All speakers emphasized the need to respect and promote human rights for all, including key populations, in the response to HIV. Despite the advances made, including in treatment and care, the HIV epidemic continued, and the target of ending HIV by 2030 would not be achieved unless the response to HIV adopted a human rights-based approach, including in addressing structural barriers (such as stigma, discriminatory or punitive laws and policies), which underlay human rights violations, stigma and discrimination, preventing access to prevention, testing, treatment and care services, information and goods.

12. The Special Rapporteur addressed the progress made and challenges to human rights in the response to HIV. He called upon the global community, with the leadership of the United Nations, to be more active in sharing good practices to ensure their effective and sustainable replication. He highlighted the importance of a human rights-based approach in addressing non-discrimination, participation, empowerment, monitoring and accountability, and the synergy between a human rights-based approach and a modern public health approach based on scientific evidence, which were mutually reinforcing. He cautioned against the trend favouring the adoption of a selective approach to the application of human rights, including the right to health and the response to HIV. Poverty remained one of the main factors preventing an end to AIDS; he therefore reminded States to address the financial exclusion of the poor, without neglecting other forms of discrimination, in order to reach universal health coverage.

13. Dr. Baral described stigma as a barrier to access to health services and to the effectiveness and coverage of prevention and treatment programmes. He identified patterns of stigma across regions among key populations, such as men who have sex with men, and sex workers in sub-Saharan Africa and the United States of America, and the link between stigma and criminal laws. Stigma affected disclosure and access to treatment, increased vulnerability to violence and the likelihood of risky behaviour. With regard to mental health, stigma was an antecedent of depression. In Côte d'Ivoire, for instance, transgender women, who in general were subjected to more stigma than cisgender men who had sex with men, were also more vulnerable to mental health conditions. There was a strong link between criminalization, stigma and HIV; in countries where sex work was criminalized, HIV prevalence among sex workers was higher. Dr. Baral concluded that, while less research was conducted on stigma and rights violations as social determinants of health in HIV epidemiologic and prevention studies, they were quantitatively measurable and represented actionable risk factors for HIV acquisition and transmission.

14. Ms. Clayton identified human rights challenges in the response to HIV, starting with stigma and discrimination. She elaborated on other challenges, such as the drop in global funding of efforts to fight HIV, the "global gag rule", donors transitioning out of countries or the push for more domestic funding. All of these challenges could decrease the availability of HIV services, particularly for the removal of human rights barriers or programmes for key populations. Ms. Clayton also identified the shrinking of space available for civil society and the lack of political will to address human rights barriers in the response to HIV. Cooperation at the regional level allowed for information-sharing and collaboration between civil society, judges, members of parliament and human rights mechanisms. She identified some positive examples in addressing stigma and discrimination in Malawi, based on working with a wide range of partners and stakeholders, including judges, UNDP, members of Parliament and the Southern African Development Community Parliamentary Forum. She suggested combining top-down and bottom-up approaches to bring together different stakeholders, working with both communities and lawmakers. Lastly, she stressed the importance of not sidelining HIV in definitions of universal health coverage packages at the national level.

15. Dr. Odumosu presented the work of the African Men for Sexual Health and Rights in representing African key populations in global forums, and presented examples of civil society collaboration at the regional level. He stressed the importance of ensuring that community voices were heard and had a platform, supporting the concept of the top-down, bottom-up approach. He welcomed the decriminalization in Angola of same-sex consensual

relations and the prohibition of discrimination based on sexual orientation. He praised the African Commission on Human and Peoples' Rights, welcomed its resolution 275 and its report on HIV, human rights and the law. He also welcomed the key population strategy implemented by the Southern African Development Community. Dr. Odumosu elaborated on these examples, highlighting the important role played by civil society at the regional level, and praised regional funding programmes that supported joint advocacy.

16. During the interactive dialogue, representatives of Nigeria, France, India, Malaysia, Thailand, Egypt, the Republic of Moldova, Azerbaijan, the Geneva Platform on Human Rights, Health and Psychoactive Substances and the Global Network of People Living with HIV took the floor. The representative of Nigeria stated that the State provided HIV services to all, without discrimination, referring also to the strategy led by the National Agency for the Control of AIDS on prevention, care and treatment. The representative of France highlighted the State's efforts to fight stigma and to provide access to treatment, paying special attention to the situation of vulnerable populations, such as sex workers, and also expressed concern over the situation of migrants, often in an irregular situation and with limited access to the health system. In Malaysia, the National Strategy and Plan had the objective of ensuring that 90 per cent of key populations were screened, 90 per cent were offered treatment and 90 per cent adhered to a health plan; since screening and treatment had been provided to pregnant women, mother-to-child transmission of HIV had been eliminated. In Thailand, anti-retroviral treatment had been universally available since 2014, and the Government worked on reducing stigma, including through the training of health-care workers. The national strategy (2017–2030) had the objective of eliminating HIV. The representative of India highlighted the importance of prevention as part of the national strategy alongside inclusivity, equity and needs-based treatment, and shared the legal framework for 2017 to address stigma against persons living with HIV. The representative of Egypt highlighted the importance of promoting human rights in the response to HIV, and of the fight against discrimination, and asked how access to medicines and prevention could be integrated. The representative of the Republic of Moldova reiterated the State's commitment to the response to HIV and to ending the HIV epidemic by 2030 through an intersectoral approach rooted in human rights and prevention. The representative of Azerbaijan shared the State's HIV national action plan for 2020, and highlighted the importance of awareness-raising and training, including of young people and migrants.

17. The representative of the Geneva Platform on Human Rights, Health and Psychoactive Substances stressed the need to consider the rights of people who use drugs in the response to HIV as they often suffered from co-infections and co-morbidity. The Geneva Platform welcomed the uptake of harm reduction strategies, called for further programmes to be adopted, highlighted the fact that criminal and punitive laws tended to drive people away from health services, and also mentioned its concern at the reported extrajudicial killing of persons who use drugs in the Philippines. The Global Network of People Living with HIV alluded to the ongoing struggle to translate human rights into concrete interventions and policies in the response to HIV.

18. In response to the issues raised by participants, Dr. Odumosu welcomed the progress made in Nigeria, but suggested that an assessment of the legal environment would be useful to ascertain how the law affected access to services. He observed that the criminalization of populations hindered their access to services, and called for training of health-care and law enforcement personnel. Ms. Clayton referred to the Fast-Track and Human Rights Guidance prepared by UNAIDS as a key resource for policymakers. The Special Rapporteur highlighted the need for consistency in the response to HIV, and pointed out the importance of a coordinated approach at the regional and global levels. Moreover, he emphasized the need to maintain a good balance between biomedical interventions and alternative community-based services, between prevention and treatment, and in cooperation between authorities and civil society. Dr. Baral emphasized the need to strengthen the accountability of physicians, spoke against stigma and discrimination, and called upon the health sector to respect confidentiality.

B. Improving human rights in the response to HIV through regional and subregional strategies

19. The panel was composed of Ralf Jürgens, Senior Coordinator for Human Rights at the Global Fund to Fight AIDS, Tuberculosis and Malaria; Adeolu Ogunrombi, Project Coordinator of YouthRISE Nigeria and West African Countries; Boemo Sekgoma, Acting Secretary-General for the Southern African Development Community Parliamentary Forum; and Marcela Romero, Regional Coordinator for RedLacTrans. Panellists agreed on the centrality of human rights in the response to HIV, including in access to antiretroviral treatment. They also highlighted the importance of addressing human rights for all, including key populations, to ensure that the most marginalized and criminalized populations were not left behind.

20. Mr. Jürgens presented the efforts made by the Global Fund to Fight AIDS, Tuberculosis and Malaria in integrating human rights into its grant cycle, having moved from ad hoc and small-scale investment in programmes to comprehensive programming in reducing the barriers facing human rights. The Global Fund now provided intensive support to 20 countries, with baseline assessments and multi-stakeholder meetings leading to country-owned plans, accompanied by a rigorous monitoring and evaluation framework. Mr. Jürgens also identified persisting challenges, such as limited capacity and ownership of the human rights agenda. Lastly, he referred to the Global Fund programmes operated at the regional level as regional or multi-country grants.

21. Mr. Ogunrombi reaffirmed the centrality of human rights in the response to HIV, including for persons who used drugs, who should have access to core reduction services, which were still lacking in many African countries. Mr. Ogunrombi called for the meaningful involvement and participation of key populations in HIV response initiatives. He also called for the repeal of punitive laws and policies that criminalized key populations, in particular for drug users, which hindered their access to health care. He emphasized the importance of regional efforts in the response to HIV, which made high-level advocacy more effective, especially where States were reluctant to promote a human rights-based approach to the epidemic.

22. Ms. Sekgoma discussed the role of parliaments in advancing human rights in the response to HIV. The Southern African Development Community Parliamentary Forum had developed normative content, such as a model law on HIV, to serve as a yardstick for national parliaments. The model law featured essential human rights principles relevant to the response to HIV, such as preserving patient confidentiality, a legal requirement for voluntary HIV testing, and also referred to comprehensive sexuality education within a life skills framework. She explained how the Southern African Development Community regional strategy was designed to build the capacity of parliamentarians and to strengthen interparliamentary cooperation, and referred to the work of its oversight committee, which had the task of monitoring the domestication of model laws. She concluded her presentation by calling for interparliamentary collaboration in facilitating the sharing of knowledge and experiences.

23. Ms. Romero presented the situation of human rights of key populations, particularly transgender persons, calling for the recognition and protection of their rights. She was concerned that transgender persons carried a disproportionate burden of HIV, faced violence and genocide, and lacked access to adequate and comprehensive health-care services. She pointed out that HIV, violence and hate crimes were the main causes of mortality among transgender persons who, every day, were criminalized and prosecuted around the world. She therefore called upon the Global Fund to invest in political advocacy for the protection and promotion of the rights of transgender persons. Poverty, migration and social exclusion were the main causes of HIV prevalence among transgender persons in Latin America. The States members of the Organization of American States had signed treaties on gender diversity but were not implementing them.

24. During the interactive dialogue, the representatives of Thailand, the Bahamas, Angola and the Gambia, and of the International Network of People Who Use Drugs, WHO and Aidsfonds took the floor. Thailand, on behalf of the Association of Southeast Asian

Nations (ASEAN), recalled the importance of regional dialogue and cooperation, underpinned by strong and sustained will, which were crucial in strengthening the response to HIV. ASEAN was committed to becoming a region free of new HIV infections, AIDS-related deaths and discrimination, and had pursued an inclusive strategy and multi-stakeholder partnerships, including with civil society and the private sector. The representative of the Bahamas stressed that ending the HIV epidemic by 2030 would require ending all forms of stigma and discrimination, providing prevention services and ensuring the fulfilment of the right to health for persons living with HIV. She also described the Pan-Caribbean Partnership against HIV/AIDS, which had been indispensable in strengthening the response to HIV in the region. The representative of Angola emphasized the need to address the burden of HIV, which was particularly disproportionate in the Southern African region, and expressed the State's commitment to reversing the HIV epidemic. Angola had also revised its legal instruments and adopted policies and strategies to effectively promote human rights for all, and to combat stigma and discrimination. The representative of the Gambia encouraged States to amend their constitutions to promote and protect the human rights of all rather than of specific populations alone.

25. The representative of WHO emphasized the need to make health facilities and HIV services accessible to everyone, and pointed out the multiple and intersecting forms of discrimination witnessed in health settings that have a disproportionate impact on key populations. The representative of the International Network of People Who Use Drugs called for standards to be set for governments to ensure minimum guarantees of rights for key populations. Aidsfonds praised the Robert Car Fund as the first international pooled funding mechanism aimed at strengthening global and regional HIV civil society and community networks.

26. In response, panellists emphasized the need for political will to adopt a human rights-based approach in the response to HIV. Mr. Ogunrombi pointed out that general constitutional protections alone were not enough to address human rights violations, particularly with regard to key populations, and called for the revision of criminal and punitive laws that affected them. Mr. Jürgens shared the view of the Global Fund in creating incentives, requiring countries to dedicate a percentage of domestic funds to neglected key populations. Ms. Sekgoma noted the widespread effect of discrimination, and called for its end in the response to HIV. Ms. Romero drew attention to the regression witnessed in the promotion of human rights and to the emergence of anti-rights groups, and called for the inclusion, promotion and protection of the human rights of transgender persons.

C. Regional accountability mechanisms to uphold human rights to and through health

27. The panel was composed of Judge Patricio Pazmiño, of the Inter-American Court of Human Rights; Lucy Asuagbor, member of the African Commission on Human and Peoples' Rights; Evghenii Golosceapov, member of the Council for the Prevention and Elimination of Discrimination and Ensuring Equality (Republic of Moldova); and Bikash Gurung, of the Asian Network of People Who Use Drugs. The panellists reaffirmed the centrality of human rights in the response to HIV, and made presentations on the role played by regional human rights systems, national human rights institutions and civil society in ensuring accountability for human rights, particularly in the case of violations.

28. Judge Pazmiño provided a brief introduction of the inter-American system, and the recognition of economic, social and cultural rights in the American Convention on Human Rights and the Protocol of San Salvador. He focused on the right to health and its justiciability, and explained the jurisprudence of the Inter-American Court. In cases such as *Gonzalez Lluy v. Ecuador*, the right to health had been recognized indirectly, in connection with civil and political rights. Judge Pazmiño also described the evolution of the Court's interpretation leading to its current perspective on direct protection of the right to health. He presented the decision on *Cuscul Pivaral et al. v. Guatemala*, where the Court ruled against Guatemala, which had not provided proper treatment to the victims, who had had their rights to health, physical integrity and life violated. The Court found the principle of

progressive realization had also been violated. Judge Pazmiño concluded his presentation by referring to the challenge of developing efficient measures while respecting the sovereignty of the State in formulating public policies.

29. Ms. Asuagbor introduced the African Commission on Human and Peoples' Rights, its mandate and the rights recognized by the African Charter on Human and Peoples' Rights and the Protocol thereto on the Rights of Women, which were relevant to HIV and AIDS. She described the Committee for the Protection of the Rights of People Living with HIV and Those at Risk, Vulnerable to and Affected by HIV, its composition and methods of work. The Committee, which had been established by the Commission, was composed of two commissioners and six independent experts. It worked with a broad range of stakeholders to obtain and analyse information on the situation of people living with HIV. It could undertake fact-finding missions, and engaged with States regarding the rights of people living with HIV, and presented its reports to the Commission. The Committee had integrated a gender perspective and also focused on key populations. Ms. Asuagbor referred to the Committee's report on HIV and human rights in the African system, and its recommendations, promoted at the national level through dialogue, including on repealing laws (including criminal laws) that violated human rights and raised barriers, and on removing stigma and discrimination. She also identified challenges, such as the shrinking space for civil society, the criminalization of key populations, and the lack of funding.

30. Mr. Golosceapov explained that, although health and HIV status were not expressly mentioned in legislation on equality in the Republic of Moldova, the Council for the Prevention and Elimination of Discrimination and Ensuring Equality provided protection on those grounds, given the open-ended nature of the list of grounds for discrimination. The Council received complaints and delivered binding decisions. Although the decisions could be appealed in a court of law, the courts supported 93 per cent of the decisions, a fact that reflected their quality. Although the Council had received several cases relating to HIV, the fear of disclosing one's status probably prevented others from presenting their cases. The Council identified systemic human rights-related issues and the initiatives to address them, also proactively, by providing opinions on draft legislation and developing policy. Mr. Golosceapov noted with concern that surveys in the Republic of Moldova had shown that the right to health was being violated, and that lesbian, gay, bisexual and transgender persons and people living with HIV were often socially excluded. He invited external and local donors to support the Council's work.

31. Mr. Gurung drew attention to the violence and human rights violations committed against people who use drugs. Mr. Gurung shared his own experience and also spoke about the violence against family members of people who use drugs. He called for the decriminalization of drug use in order to address the situation of stigma and discrimination against people who use drugs. Instead of providing health care in hospitals for all, persons who use drugs were beaten and/or murdered, particularly in the context of the fight against drugs in the Philippines, Bangladesh and Indonesia. Mr. Gurung also suggested that the United Nations conventions on drug control had actually normalized human rights violations, and called for their repeal. In order to face the current challenge, more investment on human rights programmes and advocacy efforts for policy reform was needed. Mr. Gurung also called for the simplification of international complaint mechanisms to improve their accessibility. Lastly, he called for the inclusion of people who use drugs and their community in decision-making, as they were the experts of their own experiences.

32. During the interactive dialogue, representatives of Aidsfonds and of MPact Global Action for Gay Men's Health and Human Rights, Eszter Kismodi, editor of the journal *Sexual and Reproductive Health Matters*, and Suzanna Aho Assouma, member of the Committee on the Rights of the Child, took the floor. Aidsfonds and MPact called upon Member States to report annually to UNAIDS on their progress in the response to HIV, using the global AIDS monitoring and reporting framework. The speaker also called for the decriminalization of same-sex relations, sex work and drug use, and the legal recognition of gender identity, which would remove key barriers to the response to HIV. Ms. Kismodi drew attention to the gap between States' perceptions of their laws and policies and the reality of key populations. Ms. Assouma pointed out that, given that rights holders were

often not aware of their rights, they were unable to seek remedies when their rights were violated. Law enforcement and judicial officials themselves were not necessarily aware of relevant human rights provisions.

33. In response to the issues raised, Judge Pazmiño pointed out that courts alone would not bring change without pressure from rights holders, and called upon civil society, academia and the media to pressure States to implement courts' decisions. Ms. Asuagbor pointed out that, even though the State was the primary duty bearer for human rights, the promotion of human rights should not be left to States alone, given that the political will to prioritize human rights was often insufficient. In order to improve people's awareness of their rights, she called upon civil society to conduct awareness-raising campaigns and to empower rights holders so they could seek legal remedy for violations of their rights. Mr. Golosceapov called for improving national collection and disaggregation of data on gender, HIV and disability. Mr. Gurung called for the strengthening of human rights accountability mechanisms.

D. Delivering on the “leave no one behind” promise: addressing stigma, discrimination, violence and abuse

34. The panel was composed of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz; Suzanna Aho Assouma, member of the Committee on the Rights of the Child; Eszter Kismodi, editor of the journal *Sexual and Reproductive Health Matters*; and Ruth Morgan Thomas, of the Global Network of Sex Work Projects. The panellists highlighted the central role of human rights in leaving no one behind, and advocated for a people-centred and inclusive response to HIV, and called for an end to all forms of inequality, stigma, discrimination, violence and abuse.

35. The Independent Expert pointed out that the right to health lay at the intersection of a human rights-based approach and the Sustainable Development Goals, which also had the aim of leaving no one behind. Lesbian, gay, bisexual and transgender persons faced specific challenges and barriers that were at the root of discrimination and violence – demonization, pathologization and criminalization – which were the drivers of negation and stigma. Criminalizing environments had a negative impact on access to health-care services and health-related information. The 2030 Agenda could not be achieved while the criminalization of sexual orientation or gender identity remained the norm in 70 States. The Independent Expert then drew attention to the nefarious effects of the pathologization on health-related laws and policies, and called for measures to eradicate the conception of certain forms of gender as a pathology. The Independent Expert also pointed out that violations to the right to health of lesbian, gay, bisexual and transgender persons were enabled by denial. In a context of negation and criminalization, knowledge about a State's population and its diversity was lacking, and had a detrimental impact on health programming, including in the response to HIV/AIDS. Health programming required evidence-based interventions. The Independent Expert stressed that the majority of trans and gender-diverse persons did not have their gender recognized by the State. This legal vacuum encouraged discrimination and allowed for violence, leaving such acts unpunished and to de facto criminalization, with a serious impact on the right to health.

36. Ms. Assouma pointed out that the States members of the African Union had pledged at the Abuja summit to allocate 15 per cent of their national budget to health. Budget allocations to health, however, did not usually exceed 8 per cent, and how much was actually allocated to children was unclear. Ms. Assouma advocated for providing HIV-related health services to mothers and children, and suggested focusing on capital cities to prevent mother-to-child transmission of HIV. Remote rural areas in sub-Saharan African countries did not provide adequate HIV/AIDS health care. Lack of quality health-care services predisposed newborn children to the vertical transmission of HIV. Home births remained the norm in large territories, despite the risks of mother-to-child transmission. Stigma and discrimination prevented women from seeking or gaining access to HIV-related health services, and women did not always know where to obtain treatment. Discrimination affected follow-up, as mothers often did not return after the first visit. Ms. Assouma called

for steps to address stigma and discrimination in health settings, make information on HIV available to all, recognize and promote the right to health, invest in the training of health-care workers, and work with communities to raise awareness of HIV prevention. Ms. Assouma also called for an end to traditional practices.

37. Ms. Kismodi stressed that a human rights-based approach to the response to HIV should be recognized in all constitutions. All States had an obligation to respect, protect and fulfil the right to health for all. HIV was an epidemic that thrived in a context of violations of human rights. Strengthening the response to HIV would therefore require addressing structural factors. Sexual education was an important element of the right to health, and the goal of ending HIV could not be achieved without fulfilling it. Ms. Kismodi called upon States to stop obstructing a comprehensive health agenda that included the promotion of sexual and reproductive health and rights. She also called for non-discrimination and decriminalization actions across the world, for consent laws to be revised with immediate effect, and for the abolition of laws or policies on mandatory HIV testing, starting with a moratorium on their enforcement and a short time frame for their repeal.

38. Ruth Morgan Thomas stressed that the impact of HIV on adult sex workers was clear, as they were 13 times more at risk of HIV infection and had clearly been left behind. She described the sex worker community as a diverse and often neglected one, which had and continued to suffer significantly from the HIV epidemic. Sex workers had been particularly affected by criminal law. Sex workers were the most vulnerable to sexually-based violence. They were dehumanized and denied the right to effectively fight for their rights in countries that criminalized any aspect of sex work. Discriminatory laws denied sex workers their rights to have equal access to health, to migrate and to have access to employment in the labour market. Sex workers were also treated differently and stigmatized every day, including in the response to HIV. Ms. Thomas called upon States to decriminalize sex work, and to end the impunity of perpetrators of abuse and violence, including State actors, such as the police. The decriminalization of sex work would lower the rate of new HIV infections among sex workers and their clients by between 33 and 46 per cent over the next 10 years. Following the conclusions of the *Lancet* in 2014 with regard to sex work, she also called for sex work to be recognized as work. Ms. Thomas concluded that sex workers were not expendable and that they should be able to organize themselves.

39. During the interactive dialogue, statements were made by representatives of the Gambia, India, the Islamic Republic of Iran, the Netherlands, Colombia, Switzerland, the Dominican Republic, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), UNDP, the International Commission of Jurists, Choice for Youth and Sexuality, INPUD, the Global Network of People Living with HIV and RedLacTrans.

40. The representative of the Gambia called for further advocacy efforts to eliminate stigma and discrimination. The representative of India noted with concern the discrimination against persons living with HIV, and called for laws that ensured respect for and protection of the human rights of all persons living with or affected by HIV. The representative of the Islamic Republic of Iran emphasized the need to address the issue of HIV/AIDS from a health perspective, and through cooperation and financial support, which would be more helpful than forcing human rights obligations on States. The representative also asked how the universality of the right to health could be reconciled with the fact that the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity did not enjoy universal support within the Human Rights Council. The representative of the Netherlands called for an end to stigma and discrimination against key populations, and stressed that the science to prevent new infections existed, even though political will was still required to deliver on a more just and inclusive response to HIV. The representative of Colombia referred to the national law of 1997 that prohibited discrimination against persons living with HIV, and highlighted the fact that women and children were particularly affected by HIV. The representative of Switzerland stressed that leaving no one behind was at the core of the 2030 Agenda, and that the UNAIDS strategy for 2016–2021 and the Political Declaration on HIV and AIDS had affirmed the importance of human rights in the response to HIV. The representative

also shared the experience of Switzerland in awareness-raising campaigns, including on safe sex, addressing sexual diversity openly. The representative of the Dominican Republic presented the efforts made by the State in its response to HIV, such as the HIV/AIDS Act and the establishment in 2011 of the National Council for HIV/AIDS. The representative of the Republic of Moldova explained that people living with HIV received free health care and antiretroviral treatment, without discrimination.

41. The representative of UN-Women stated that women and girls faced multiple forms of stigma, discrimination, rejection, prejudice and violence from families and the community based on, inter alia, age, race, ethnicity and socioeconomic status owing to structural gender inequality, and that attention should be focused more on the intersecting forms of discrimination that young women and girls faced. The representative of UNDP explained the work done since 2012 on HIV and human rights, the Programme having established partnerships in 89 States to work on legal frameworks to end discrimination. The representative called for the repeal of new punitive and non-enabling laws, such as the global gag rule and anti-propaganda laws.

42. The representative of the International Commission of Jurists stated that certain punitive laws, particularly those on sexual and reproductive health, drug use, HIV transmission and sexual orientation, violated the obligations of States under international human rights law. There was a need for principles and guidance on when and how criminal law was being used. The Commission therefore called for organizations to join it in the creation of these principles. The representative of Choice for Youth and Sexuality called for more sexual and reproductive health services for young persons, who were disproportionately affected by HIV, and the repeal of laws and practices that impeded the response to HIV. The representative called for the involvement of young people when making decisions on matters that affected their lives. The representative of the International Network of People Who Use Drugs expressed concern at the use of biometrics in data collection, which was potentially dangerous to key populations, particularly criminalized ones. Furthermore, the criminalization of key populations would leave them behind in the response to HIV. The representative of RedLacTrans condemned the recurring situation whereby transgender women were treated and provided services as men in countries where transgender identity was not recognized. She called upon States to promote the rights of transgender persons, including economic and social rights, and highlighted the effectiveness of peer-to-peer service delivery in the response to HIV. She commented on the lack of support and attention by the United Nations for trans children, and commended Argentina for its leadership with regard to its respect for and protection of the rights of transgender persons.

43. In response, panellists affirmed that stigma and discrimination hindered the response to HIV, which should be based on human rights. They reiterated the need for community participation in the response to HIV, the involvement of all key stakeholders in decision-making, and the repeal of laws that impeded the promotion of human rights. They also emphasized the need for advocacy and the protection and promotion of civil society space, and health services for key populations, and called for the elimination of stigma and discrimination in health settings. The Independent Expert stressed that the work of the mandate was firmly grounded in international human rights law, and that human rights were universal and indivisible. Violence and discrimination based on sexual orientation and gender identity hindered an effective response to HIV. The Independent Expert expressed concern at the current pushback on human rights and its effect on trans persons, leading to greater violence. He welcomed the recent decision of the Supreme Court of India ordering the repeal of section 377.

IV. Conclusions

44. **At the concluding meeting, presentations were made by the representative for Zimbabwe Young Positives, Annah Sango-Page and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. According to the speakers, human rights and HIV were interlinked and indeed had a symbiotic relationship. They also stressed the importance of adopting a**

human rights-based approach to the response to HIV as a condition to achieve the end of new HIV infections and AIDS-related deaths.

45. Ms. Sango-Page described best practices in human rights-related work in Southern Africa. The People Living with HIV Stigma Index was led by people living with HIV who documented their own experiences, including with regard to discrimination, using their own data in advocacy with government and other stakeholders to address human rights violations. The Rights – Evidence – Action (REAct) tool was a monitoring system designed by the International HIV/AIDS Alliance to document human rights violations. Punitive and discriminatory laws, such as those criminalizing same-sex relations, sex work and drug use, and also consent laws and lack of legal gender recognition were serious barriers to the response to HIV leading to people being left behind; the speaker therefore called upon States to review and repeal such laws. She also called upon Member States, WHO and other stakeholders to consider the concerns of people living with HIV and key populations in discussions regarding universal health coverage, and to integrate their rights and views. Ms. Sango-Page called upon OHCHR and WHO to cooperate to ensure that human rights were recognized in the political declaration on universal health coverage, which the General Assembly is expected to adopt at the beginning of its seventy-fourth session.

46. The Special Rapporteur identified several key issues that had been raised during the discussions, noting that a better understanding of challenges would facilitate the replication of good practices. He suggested that a combination of “top-down” and “bottom-up” approaches would strengthen efforts as long as the necessary conditions were met, such as the attainment of the correct balance between international assistance and government funding, an enabling civil society space, and emphasis on data and evidence. Data should be used in a useful and accessible way, and should address not only human rights issues, such as discrimination and stigma, but also classical epidemiological indicators as well. During discussions, participants had considered the good practices followed by regional mechanisms; but good institutions alone were inadequate, and all stakeholders had a role to play in ensuring that regional mechanisms were accessible and that their decisions were implemented. Participants had noted the need to strengthen accountability in the response to HIV, and its relationship with the 2030 Agenda for Sustainable Development. The Special Rapporteur concluded that three policy actions should be strengthened in the response to HIV: popularizing participation, eliminating discrimination and making use of data. These three were particularly useful in resisting the current trends against human rights and the use of evidence.

V. Recommendations

47. Participants made a number of recommendations during the consultation, particularly with regard to regional and subregional strategies and best practices:

(a) States should remove structural barriers, including discriminatory laws and policies, and apply human rights-based approaches to the response to HIV, putting people living with HIV at the centre of their policies, programmes and practices. In order not to leave anyone behind, States should increase their efforts to reach the most marginalized women and adolescents, key populations vulnerable to HIV, including gay men and other men who have sex with men, sex workers, people who use drugs, transgender people, and persons in prisons and other closed settings. Communities should be involved in the design, implementation and delivery of policies, programmes and practices.

(b) States should review their laws in accordance with international human rights law. In order to improve the human rights aspect in the response to HIV, States and their parliaments could collaborate at the regional and subregional levels to develop human rights-based normative content to inspire the domestication of laws at the national level. In order to reach Sustainable Development Goal target 3.3 and to

leave no one behind, States should adopt legislation, policies and practices that decriminalize sex work, drug use, same-sex relations, and gender identity and expression, and provide access to gender recognition.

(c) In order to improve the effectiveness of the response to HIV, States should strengthen cooperation at the regional, subregional and global levels to support and invest in programmes and services that promote the right to health and the rights of people living with HIV.

(d) Strengthened accountability is vital to ensure that the rights of people living with HIV, including the right to health, are promoted and respected. States should collaborate with regional human rights mechanisms and engage with them in good faith, and follow up on decisions and sentences made by such bodies with a view to effectively implementing them.

(e) National human rights institutions and civil society have an important role to play in strengthening human rights accountability. The shrinking space for civil society is a key driver in leaving behind people living with HIV, particularly key populations. States should respect, protect and promote civil society space, provide an enabling regulatory and funding environment that allows civil society to work at the national, regional and subregional levels, and repeal laws that create barriers to the activities of civil society bodies. Civil society should be empowered to collect data, address human rights violations, participate in policymaking and decision-making, implementation and monitoring, including on issues relating to HIV and the rights of people living with HIV. In order to improve its effectiveness, civil society could cooperate at the regional level on joint advocacy efforts, including with regional mechanisms.

(f) In the current context of shrinking donor funding for HIV and health programmes, including in newly transitioned middle-income States, programmes aimed at removing barriers to human rights can be affected, particularly with regard to the rights of key populations. The retraction of global health funding in States transitioning to middle-income, without corresponding investment by domestic funds, can lead to the loss of funding for services and rights programmes and advocacy for key populations, making them even more vulnerable. The Human Rights Council could develop guiding principles for health donors, which would be based on human rights and should be formulated in coordination with UNAIDS and in consultation with States, key populations, communities and donors.

(g) States should review and adopt legislation, programmes and policies to combat stigma and discrimination, violence and abuse against people living with or at risk of HIV, with particular attention to key populations. States should work with United Nations agencies, civil society, communities and key populations to invest in programmes, education and other actions to eliminate HIV-related stigma and discrimination in all areas of life, including through the Global Partnership for Action to Eliminate All Forms of HIV-related Stigma and Discrimination. Regional and subregional networks have an important role to play in raising awareness and eliminating stigma and discrimination.

(h) States should ensure that universal health coverage promotes both the health and rights of all persons, including the most marginalized, such as people living with HIV and key populations, and addresses human rights barriers to health. States should ensure that human rights, including the right to health of persons living with HIV, are integrated into discussions on universal health coverage, including in the lead-up to the high-level meeting of the General Assembly on universal health coverage and in its outcome document.

Annex

List of attendance

States Members of the Human Rights Council

Angola, Australia, Austria, Bahamas, Brazil, China, Croatia, Cuba, Czechia, Denmark, Egypt, Fiji, India, Iraq, Italy, Mexico, Nepal, Nigeria, Rwanda, Somalia, Spain, United Kingdom of Great Britain and Northern Ireland

States Members of the United Nations

Azerbaijan, Belgium, Canada, Cambodia, Colombia, Côte d'Ivoire, Djibouti, Dominican Republic, Ecuador, France, Gambia, Ghana, Greece, Indonesia, Iran (Islamic Republic of), Ireland, Lao People's Democratic Republic, Lebanon, Liechtenstein, Lithuania, Malaysia, Mauritania, Monaco, Morocco, Mozambique, Myanmar, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Slovenia, Switzerland, Thailand, Trinidad and Tobago, Sweden, Venezuela (Bolivarian Republic of)

Intergovernmental organizations

African Commission on Human and Peoples' Rights, European Union, Global Fund to Fight AIDS, Tuberculosis and Malaria, Inter-American Court of Human Rights, Joint United Nations Programme on HIV/AIDS, International Organization of la Francophonie, Southern African Development Community Parliamentary Forum, United Nations Development Programme, United Nations Entity for Gender Equality and the Empowerment of Women, World Health Organization

Non-governmental organizations in consultative status with the Economic and Social Council

Elizabeth Glaser Pediatric AIDS Foundation, Global Network of People Living with HIV/AIDS, Global Network of Sex Work Projects the International Commission of Jurists

Other non-governmental organizations

Aidsfonds, AIDS and Rights Alliance for Southern Africa, African Men for Sexual Health and Rights, Asian Network of People who Use Drugs, Choice for Youth and Sexuality, Geneva Platform on Human Rights, Health and Psychoactive Substances, International Network of People who Use Drugs, RedLacTrans, Sexual and Reproductive Health Matters, YouthRise, Zimbabwe Young Positives
