

# PART 3

## 8. AFRICAN REGIONAL DECLARATIONS, RESOLUTIONS & DECISIONS

### **Chapter 8: African Regional Declarations, Resolutions & Decisions**

The effectiveness of the human rights movement depends not only on instruments that articulate human rights ideals but also on instruments that capture the voice of the people whose struggle it reflects. Spanning the HIV/AIDS crisis and traditional oppressive practices, the selected documents in this chapter represent some of the most important regional documents related to human rights and women's rights. The *Declaration of the Sixth African Regional Conference on Women* acknowledges that the risk to HIV/AIDS infection is heightened by the lack of control and limited choices that women and girls have over their lives and the clear fact that access to quality health services cannot be underestimated.

In one of the included documents, it is noted that the inherent diversity of the continent should not hinder state action on violence against women, as perpetuated by local traditions and cultures. The *Joint Declaration of the Special Rapporteurs on Women's Rights* equates this to violence against the family and the community and thus seeks legislation and practices that eradicate discrimination against women. Complementing this approach is the resolution to appropriately represent women in the decision-making processes of the OAU as set out in the *Decision on Women and Gender*.

Other key documents relating to reproductive and sexual health rights in Africa in this chapter include: *Decision on the Report of the Secretary-General on Cooperation between the General Secretariat and UNAIDS within the Framework of the International Partnership to Control HIV/AIDS in Africa*, *Lome Declaration on HIV/AIDS in Africa*, *The Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases*, and the *Decision on the African Summit on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases*.

Perhaps best described as African statements of principles on women's rights, the documents in this section represent declarations, resolutions and decisions intended to guide the protection and promotion of women's rights in the region. These documents are from various African meetings and conferences and they have the combined effect of reading in greater protection and promotion of reproductive and sexual health rights when interpreting the *African Charter on Human and Peoples' Rights*. Each document in this chapter relates directly to the rights of women and/or health rights in the African region.

Most of the following regional declarations, resolutions and decisions may be accessed at the following websites:

- University of Minnesota, Human Rights Library (<http://www1.umn.edu/humanrts/instree/afrinst.htm>),
- the African Union (<http://www.africa-union.org/en/home.asp>)

- and the African Commission on Human and Peoples' Rights  
([http://www.achpr.org/english/info/news\\_en.html.org/html/basicinstruments.html](http://www.achpr.org/english/info/news_en.html.org/html/basicinstruments.html))
  
- 1. The Declaration of the 6<sup>th</sup> African Regional Conference on Women (1999) 177
  
- 2. Decision on the Report of the Secretary-General on Cooperation between the General Secretariat and UNAIDS within the Framework of the International Partnership to Control HIV/AIDS in Africa (1999) 181
  
- 3. Lome Declaration on HIV/AIDS in Africa (2001) 181
  
- 4. The Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases (2001) 184
  
- 5. Decision on the African Summit on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases (2001) 188
  
- 6. Decision on Women and Gender (2001) 189
  
- 7. Joint Declaration of the Special Rapporteurs on Women's Rights (2002) 190

## Declaration of the 6<sup>th</sup> African Regional Conference on women

This Declaration reaffirms and recognizes the prior commitments on Women made within the African region both at the Dakar and Beijing conferences. The risk of exposure to HIV/AIDS is increased by the lack of control and the limited choices that women and girls have over their lives. In recognition of this reality, the Sixth African Regional Conference on Women in November 1999 addressed the need for access to quality health services in general and reproductive health services in particular. Representatives from government, civil society, inter-governmental organizations and the international community participated as full partners in the deliberations. The conference also served as a review of the implementation of the *Dakar and Beijing Platforms for Action* in preparation for the global review of the Beijing Platform in 2000 (Beijing +5) wherein reports from each African country was presented.

## Declaration of the Sixth African Regional Conference on Women Mid-Term Review of the Implementation of the Dakar and Beijing Platforms for Action

Adopted by Sixth African Regional Conference on Women,  
representing governments and civil society;  
November 22-26, 1999, Addis Ababa, Ethiopia

We, the participants of the Sixth African Regional Conference on Women, representing governments and civil society; meeting in Addis Ababa, Ethiopia from 22-26 November, 1999,

Reaffirming the commitments made in Dakar and Beijing to the empowerment and advancement of women, their full participation in decision-making processes and access to resources;

Reaffirming also the explicit recognition of the inherent dignity and equal rights of women and men;

Recognising that efforts have been made to implement the Platforms for Action over the last five years, particularly in the following areas:

- To-date, forty-seven African countries have ratified the Convention on the

Elimination of All Forms of Discrimination against Women.

- There is an increase in the participation of women in politics and decision-making – one country has passed the 30% target in parliament and several others are on the path to reach this objective.
- In several countries, land tenure reform processes have led to legislation, which provides for women to own, use and inherit land. Also, there is a rise in women-specific mechanisms created by mainstream finance and banking organisations, to facilitate easier access to loans and credit schemes. There is also a greater understanding of women's life-cycle needs and efforts to provide basic services to address those needs.

- There is now a vibrant and growing women's activism and advocacy for peace, which has helped to mount pressure for the inclusion of women in mainstream peace-processes hence the formation of the OAU Women's Committee on Peace and Development. Using their community
- management skills and participatory approach to power, women are bringing a qualitatively different perspective to peace negotiations and peace building.
- A global consensus has been reached that women's rights are human rights and that violence against women is one of the most widespread violations of human rights.
- Positive steps have been taken, in countries' efforts to promote and protect the rights of the girl-child and to provide education, health and a better quality of life.
- The strong advocacy around female genital mutilation has led to the decrease of the practice, or its replacement with new positive rites of passage, within some rural communities across the continent.
- As a result of constitutional reviews and reforms new progressive legislation, which addresses specific concerns of women, have been enacted.
- Efforts to improve the effectiveness of national machineries for the advancement of women have increased, in order to ensure that gender is mainstreamed in all government institutions, sectors, policies and programmes.
- An enhanced recognition by some regional inter-governmental organisations of the importance of including a gender dimension in all their programmes and policies has been translated into concrete gender mechanisms.

Recognising with grave concern that, although these achievements give us hope, gaps and shortcomings persist, such as:

- The high incidence of wars and violent conflicts, marked by the increased targeting of civilian populations through various tactics, including the indiscriminate use of antipersonnel weapons, continues to drain the continent of its resources, contributes to the negative perception that protracted exile or displacement is an acceptable way of life for many Africans and legitimises the most abysmal forms of violence against women and children.
- Continuous violation of the basic human rights of women, children and men, including the right to life as wars and military engagements take priority over the promotion of sustainable development. In addition, embargoes and blockades are causing a lot of sufferings and agony to ordinary women and men and children.
- The systematic under-representation of women in decision-making and leadership positions persists, despite the gains made,
- Deepening poverty, namely feminised poverty, affects increasing numbers of women, particularly rural women,
- The lack of women and girls' control over their lives and their limited choices expose them particularly to the HIV/AIDS pandemic and further erodes their economic and social status; this is a severe constraint to women's advancement and Africa's development,
- Lack of quality health services, especially reproductive health services, has contributed to high maternal mortality and morbidity rates,
- Lack of attention and resources committed to the special needs of disabled and elderly women exacerbates their marginalization,
- Inadequate access by women and girls to education and information, leaves

them continuously deprived of any meaningful personal development, lagging far behind the scientific and technological advances that characterise the end of the twentieth century. As a result, scores of African women will enter the third millennium in a state of almost total deprivation and marginalization,

- Lack of adequate resources and inappropriate status for national machineries is a major constraint to the promotion of women's empowerment and gender equality.
- Lack of gender disaggregated data at the institutional level which can be used to influence policy-making and gender-responsive action.
- Lack of meaningful societal transformation in attitudes and policy-making structures towards women's power and participation.

Convinced that:

- The new millennium is a critical opportunity for transformative change in women's advancement towards equality – African leaders must see this transition as a test of their leadership;
- Women are key partners for development and their capabilities and leadership skills must be used if there is to be qualitative change and the achievement of an African Renaissance;
- The full participation of women in decision making will bring about an equitable sharing of resources and sustainable human development to the African Renaissance.
- African women must become partners in environmental management and protection and their wisdom and indigenous knowledge must be incorporated in this regard,
- The operationalization by all governments in Africa of their commitments towards the empowerment of women and gender

equality is a pre-condition to reverse the trend of underdevelopment,

We therefore urge all stakeholders in development on the African continent, including international organisations to:

- Expedite the transition from pledges to concrete action as we enter the twenty-first century;
- Strengthen their resolve, and re-affirm prior commitments to address all the root causes of discrimination against women, girls and gender inequality.
- Put in place, without further delay, appropriate resources and effective mechanisms to allow women to enjoy fully all their human rights and fundamental freedoms, empowerment and gender equality.
- Redouble efforts to achieve peace and human security in Africa and, recognising the catalytic role of women in local peace initiatives, to ensure their equal participation and influence in peace processes at higher national and regional levels,
- Ratify CEDAW if they have not already done so, remove reservations by June 2000 and accelerate its implementation
- Make the provisions of CEDAW part and parcel of the domestic law in each country so that women can claim and enforce their rights within their national courts.
- Ensure full and speedier implementation of both the Dakar and Beijing Platforms for Action.

**Decision on the Report of the Secretary-General on the Cooperation between the General Secretariat and UNAIDS Within the Framework of the International Partnership to Control HIV/AIDS in Africa**

Demonstrating the importance of cooperation between civil society organizations, UN agencies and governments, the *Decision on the Report of the Secretary-General on the Co-operation between the General Secretariat and UNAIDS within the Framework of the International Partnership to Control HIV/AIDS in Africa* reinforces the role of partnerships in redirecting national and international policies and resources, so as to address the evolving HIV/AIDS epidemic in Africa and its many compelling implications.

**Decision on the Report of the Secretary-General on Cooperation between the General Secretariat and UNAIDS within the Framework of the International Partnership to Control HIV/AIDS in Africa -**

OAU, Council of OAU Ministers, 70<sup>th</sup> Ordinary Session,  
Decision on the Report of the Secretary General on Cooperation between the General Secretariat and UNAIDS within the Framework of the International Partnership to Control HIV/AIDS in Africa,  
Adopted at its 70<sup>th</sup> Ordinary Session,  
Doc.CM/Dec.467 (LXX) (1999).

Council

control of the HIV/AIDS epidemic for the benefit of member states;

TAKES NOTE of the Report;

ENDORSES the new partnership as an innovative framework to mobilise, urgently, governments and civil societies to redirect national and international policies and resources so as to address the evolving HIV/AIDS epidemic in Africa and its many compelling implications;

WELCOMES the offer by the Government of Burkina Faso to organise in Ouagadougou in the year 2000, a meeting of African Ministers of Health to evaluate all the actions taken to control the AIDS pandemic in Africa.

REQUESTS the Secretary-General, in collaboration with UNAIDS and its co-sponsors (the World Bank, UNICEF, WHO, UNESCO, UNDP, UNFPA and UNDCP) to take all necessary measures to implement the new partnership and provide it with the necessary technical and financial assistance for successful

## **Lome Declaration on HIV/AIDS in Africa**

Emerging out of discussions on the measures taken by African governments thus far to address the HIV/AIDS pandemic, the Lome Declaration on HIV/AIDS in Africa reiterates the government's need to employ a holistic approach to combat the spread of the disease. As a result, the members of the Assembly of Heads of State and Government of the Organization of African Unity on its Thirty-sixth Ordinary Session in July 2000 committed to considering the issue of HIV/AIDS in their overall socio-economic policies, to allocate adequate resources, and to establish effective partnerships with regional and international organizations in the fight against HIV/AIDS. This was in addition to endorsing similar resolutions and declarations combating the grave consequences of the pandemic.

This document may be accessed online at: <http://www.onusida-aoc.org/Eng/Lome%20Declaration.htm>

### **Lome Declaration on HIV/AIDS in Africa**

OAU, The Assembly of Heads of State and Government of the OAU 36<sup>th</sup> Ordinary Session,  
Lome Declaration on HIV/AIDS in Africa  
Adopted July 12, 2000, at its 36<sup>th</sup> Ordinary Session.  
AHG/Decl.3(XXXVI)

WE, the Heads of State and Government of the Organization of African Unity (OAU), meeting at the Thirty-sixth Ordinary Session of our Assembly in Lome, Togo from 10 to 12 July, 2000,

Having devoted a full session of our meeting to deliberate frankly and extensively on the epidemic of HIV/AIDS in our countries and Bearing in Mind the daunting medical, socio-economic and political challenges posed by the HIV/AIDS scourge in our continent;

Recognizing that responding to those challenges requires inter-alia, intense awareness building campaign and an expression of political will of an exceptional nature at the highest possible level in all countries of our continent;

Recalling our previous Declaration AHG/Decl.(XXIII) on Health, as a Foundation for Socio-Economic Development, endorsed in 1987 in Addis Ababa, Ethiopia, as well as our Dakar (1992) and Tunis (1994) Declarations on HIV/AIDS in Africa in which we committed ourselves to mobilize all segments of the society in our countries, to fight against the HIV/AIDS pandemic;

Gravely Concerned about the rapid spread of HIV infection in our countries and the millions of deaths caused by AIDS throughout our continent in spite of the serious efforts being invested by our countries to combat this scourge, as well as infectious diseases particularly sexually transmitted diseases (STDs);

Further Concerned by the recurrence of diseases which had previously been eradicated from our continent, such as Tuberculosis, and the emergence of new diseases which have become prevalent in Africa, and are complicating the control of HIV/AIDS;

Commending the efforts made by our respective individual national governments, our Continental Organization, the United Nations and its Specialized Agencies, national and International NGOs, and some individuals, to sensitize our peoples to the threat of HIV/AIDS and Recognizing that progress made in this endeavour has remained largely limited, uneven, fragile and incomplete;

Further Recognizing that the sacrifices, and ability of our people mainly women to cope with the tragic consequences of this pandemic at the



individual, family, community and national levels, to confront and overcome the losses and threats of HIV/AIDS, need our greater attention and support;

SOLEMNLy DECIDE TO:

- RECOMMIT OURSELVES and our Governments to the principle of nationalization necessary for the fight against AIDS epidemic in Africa;
- COMMIT OURSELVES to take personal responsibility and provide leadership for the activities of the National AIDS Commission;
- RESOLVE to keep the question of HIV/AIDS high on national Government agenda, with economic activities and to mobilize all resources necessary for the fight against AIDS epidemic;
- ENHANCE capacities of our Governments, particularly one Ministry of Health, to develop and implement national strategies to deal with HIV/AIDS epidemic;

TO THAT EFFECT, WE RESOLVE TO ENDORSE:

- The Algiers Common Position and Plan of Action on Strategies to support HIV/AIDS Orphans, Vulnerable Children and children of HIV/AIDS infected parents;
- The Algiers Appeal by the OAU Labour and Social Affairs Commission with the International Commission of the Fight Against AIDS in Africa;
- The Ouagadougou Commitment for Action for the Implementation of the Declaration on Epidemics and Recommendations of the Health Sector Reform;
- The Framework of the International Partnership on AIDS particularly one to establish the research and training centres where African indigenous knowledge on health systems could be incorporated.

FURTHER COMMIT OURSELVES and PLEDGE TO TAKE all necessary measures to facilitate the implementation of the above instruments and to allocate resources within the framework of our national budgets to HIV/AIDS activities, particularly the prevention and the epidemiological study of the HIV/AIDS epidemic, public education on HIV/AIDS and its prevention and care, taking due recognition of the needs of HIV positive people and People

Living with AIDS, their rights and roles in the containment of the epidemic;

REQUEST the International Partnership against HIV/AIDS to collaborate with the OAU General Secretariat and our individual Member States in the implementation of the African Regional Declarations, Decision and Recommendations of the African Commission on Human and Peoples' Rights, and to provide resources for the fight against AIDS epidemic in Africa;

MANDATE our national Governments, with the assistance of International partners, to take all necessary measures to develop and implement Health Sector reform with a focus on all pandemics in general and HIV/AIDS in particular, as a basis for improving the standard of living of our populations;

FURTHER REQUEST our Secretary-General in collaboration with the International Commission of the Fight Against AIDS in Africa to set up a Plan of Action for acceleration of Health Sector Reform for the Declaration on Epidemics and Recommendations of the Health Sector Reform, particularly one to establish the research and training centres where African indigenous knowledge on health systems could be incorporated.

ALSO REQUEST our Secretary-General, in collaboration with WHO, UNAIDS, UNICEF and all other interested international partners, to follow-up on the implementation of this Declaration and report to our Assembly every year on progress achieved.

## **Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases**

Proclaiming the continent to be in a state of emergency because of the HIV/AIDS pandemic, the *Abuja Declaration On HIV/AIDS, Tuberculosis And Other Related Infectious Diseases* (*Abuja Declaration*) resolves to fight the disease at the forefront of national development plans, to mobilize all available resources and to increase HIV/AIDS information and education. Sponsored by the Organization of African Unity in April 2001, the Declaration was the product of the summit on HIV/AIDS, tuberculosis and other infectious diseases. The *Abuja Declaration* acknowledges that biologically, women and girls are particularly vulnerable to HIV infection. Further, it notes that economic and social inequalities and traditionally accepted gender roles leave women in a subordinate position to men.

Documents from the Abuja Summit are available at [www.oau-oua.org/afsummit/index.htm](http://www.oau-oua.org/afsummit/index.htm)

## **Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases**

Summit on HIV/AIDS, Tuberculosis and Other Infectious Diseases,  
Sponsored by the OAU and hosted by Nigeria's Federal Ministry of Health  
April 24-27 2001, Abuja, Nigeria.

1. We, the Heads of State and Government of the Organisation of African Unity (OAU) met in Abuja, Nigeria from 26-27 April 2001, at a Special Summit devoted specifically to address the exceptional challenges of HIV/AIDS, Tuberculosis and Other Related Infectious Diseases, at the invitation of H.E. President Olusegun Obasanjo of the Federal Republic of Nigeria and in accordance with the agreement reached at the Thirty-Sixth Ordinary Session of our Assembly in Lomé, Togo from 10 to 12 July 2000.

2. We gathered in Abuja to undertake a critical review and assessment of the situation and the consequences of these diseases in Africa, and to reflect further on new ways and means whereby we, the leaders of our Continent, can take the lead in strengthening current successful interventions and developing new and more appropriate policies, practical strategies, effective implementation mechanisms and concrete monitoring structures at national, regional and continental levels with a view to

ensuring adequate and effective control of HIV/AIDS, Tuberculosis and Other Related Infectious Diseases in our Continent.

3. We are deeply concerned about the rapid spread of HIV infection in our countries and the millions of deaths caused by AIDS, Tuberculosis and other related infectious diseases throughout the Continent, in spite of the serious efforts being made by our countries to control these diseases. Africa is exceptionally afflicted by the HIV/AIDS epidemic. This generalised epidemic is affecting a wide cross-section of our people, thus decimating the adult population, the most productive group, and leaving in its wake millions of orphans, and disrupted family structures.

4. We recognize the role played by poverty, poor nutritional conditions and underdevelopment in increasing vulnerability. We are concerned about the millions of African children who have died from AIDS and other preventable infectious diseases. We are equally concerned about the particular and severe impact that these diseases

have on children and youth who represent the future of our continent, the plight of millions of children orphaned by AIDS and the impact on the social system in our countries.

5. We are particularly concerned about the high incidence of mother to child transmission, especially given the challenges of infant breastfeeding in the context of HIV infection on the continent.

6. We recognize that special efforts are required to ensure that Africa's children are protected from these pandemics and their consequences and that the full and effective participation of young people in prevention and control programmes is essential to their success.

7. We recognise that biologically, women and girls are particularly vulnerable to HIV infection. In addition, economic and social inequalities and traditionally accepted gender roles leave them in a subordinate position to men.

8. We appreciate the special needs and challenges of the HIV/AIDS pandemic for the youth that make them vulnerable to infection and adverse impacts of the epidemic.

9. We recognize that the practice of injectable drug abuse with sharing of contaminated needles in some African countries is a major concern. The abuse of alcohol, marijuana and other mind-altering drugs, which is on the increase among the youth further enhances their vulnerability to HIV infection.

10. We recognize the essential place that education, in its widest sense has played and will continue to play in the fight against HIV/AIDS in Africa. Education constitutes the most powerful, cost effective tool for reaching the largest number of people with information and personal development strategies that promote long-term behaviour change.

11. We acknowledge that forced migrations due to war, conflicts, natural disasters and economic factors including unilateral sanctions imposed on some African countries, lead to an increased vulnerability and the spread of the disease; we note that special attention should be given to migrants, mobile populations, refugees and internally displaced persons in national and regional policies. We also note that special attention should be given to the problem

trafficking in human beings and its impact on HIV/AIDS.

12. We are aware that stigma, silence, denial and discrimination against people living with HIV/AIDS (PLWA) increase the impact of the epidemic and constitute a major barrier to an effective response to it. We recognize the importance of greater involvement of People Living with HIV/AIDS.

13. We recognise that the epidemic of HIV/AIDS, Tuberculosis and Other Related Infectious Diseases constitute not only a major health crisis, but also an exceptional threat to Africa's development, social cohesion, political stability, food security as well as the greatest global threat to the survival and life expectancy of African peoples. These diseases, which are themselves exacerbated by poverty and conflict situations in our Continent, also entail a devastating economic burden, through the loss of human capital, reduced productivity and the diversion of human and financial resources to care and treatment.

14. We recognize the need to intensify our efforts in all areas of research such as traditional medicines and vaccine development.

15. We are fully convinced that containing and reversing the HIV/AIDS epidemic, tuberculosis and other infectious diseases should constitute our top priority for the first quarter of the 21<sup>st</sup> Century. We are equally convinced that tackling these epidemics should constitute an integral part of our continental Agenda for promoting poverty reduction, sustainable development and ensuring durable peace and political security and stability consistent with the Millennium African Recovery Programme.

16. We recognise and commend the efforts by our respective national Governments, our continental Organisation and its Regional Economic Communities (RECs), the national and international NGOs, the civil society, including youth, women, people with disability, religious organisations, sport organizations, Trade Unions, Employers organizations, Traditional Health Practitioners, Traditional Rulers, people living with HIV/AIDS and individuals, who care for, support and sensitise our people to the threat of HIV/AIDS and the associated opportunistic infections including Sexually Transmitted Infections (STIs).

17. We acknowledge the support that the international Community, including the United Nations System, its Specialised Agencies and programmes, bilateral agencies, private sector and other communities and stakeholders have provided in raising awareness about and combating the scourge of HIV/AIDS, Tuberculosis and other related infectious diseases in Africa.

18. We further acknowledge that, to successfully implement a comprehensive and multisectoral approach and campaign to overcome HIV/AIDS, tuberculosis and other related infectious diseases, there is a need to secure adequate financial and human resources at national and international levels.

19. We recognize the need to establish a sustainable source of income to fund HIV/AIDS programmes.

20. We recognise the importance of leadership at all levels in the fight against HIV/AIDS, Tuberculosis and Other Related Infectious Diseases in our Continent. We, therefore, acknowledge the special importance of the "African Consensus and Plan of Action: Leadership to overcome HIV/AIDS" adopted at the African Development Forum 2000 as the outcome of a wide-ranging process of consultation with all stakeholders.

21. In this regard, we recall and reaffirm our commitment to all relevant decisions, declarations and resolutions in the area of health and development and on HIV/AIDS, particularly the "Lomé Declaration on HIV/AIDS in Africa" (July 2000) and the "Decision on the adoption of the International Partnership against HIV/AIDS" (Algiers 1999).

**WE SOLEMNLY DECLARE AS FOLLOWS:**

22. We consider AIDS as a State of Emergency in the continent. To this end, all tariff and economic barriers to access to funding of AIDS-related activities should be lifted.

23. To place the fight against HIV/AIDS at the forefront and as the highest priority issue in our respective national development plans. To that end, **WE ARE RESOLVED** to consolidate the foundations for the prevention and control of the scourge of HIV/AIDS, Tuberculosis and Other Related Infectious Diseases through a comprehensive multisectoral strategy which

involves all appropriate development sectors of our governments as well as a broad mobilisation of our societies at all levels, including community level organisations, civil society, NGOs, the private sector, trade unions, the media, religious organisations, schools, youth organisations, women organisations, people living with HIV/AIDS organizations and individuals who care for, support and sensitise our population to the threat of HIV/AIDS and associated opportunistic infections and also to protect those not yet infected, particularly the women, children and youth through appropriate and effective prevention programmes.

24. To that effect, **WE COMMIT OURSELVES TO TAKE PERSONAL RESPONSIBILITY AND PROVIDE LEADERSHIP** for the activities of the National AIDS Commissions/Councils. **WE THEREFORE RESOLVE** to lead from the front the battle against HIV/AIDS, Tuberculosis and Other Related Infectious Diseases by personally ensuring that such bodies were properly convened in mobilizing our societies as a whole and providing focus for unified national policy-making and programme implementation, ensuring coordination of all sectors at all levels with a gender perspective and respect for human rights, particularly to ensure equal rights for people living with HIV/AIDS (PLWA).

25. **WE ALSO COMMIT OURSELVES TO ENSURE** that leadership role is exercised by everyone in his/her area of responsibility in the fight against HIV/AIDS and other related diseases. **WE THEREFORE ENDORSE** the "African Consensus and Plan of Action: Leadership to overcome HIV/AIDS" adopted during the Second African Development Forum on "AIDS: The Greatest Leadership Challenge" organised by the United Nations Economic Commission for Africa (UNECA) in collaboration with the OAU, UNAIDS and ILO (Addis Ababa, 3-7 December 2000).

26. **WE COMMIT OURSELVES** to take all necessary measures to ensure that the needed resources are made available from all sources and that they are efficiently and effectively utilized. In addition, **WE PLEDGE** to set a target of allocating at least 15% of our annual budget to the improvement of the health sector. **WE ALSO PLEDGE** to make available the necessary resources for the improvement of the comprehensive multisectoral response, and that

an appropriate and adequate portion of this amount is put at the disposal of the National Commissions/Councils for the fight against HIV/AIDS, Tuberculosis and Other Related Infectious Diseases.

27. **WE REQUEST** the OAU Secretariat, in collaboration with ADB, ECA, and all other partner institutions, especially WHO and UNAIDS, to assist Member States in formulating a continental-wide policy for an international assistance strategy for the mobilisation of additional financial resources.

28. **WE CALL UPON** Donor countries to complement our resources mobilization efforts to fight the scourge of HIV/AIDS, Tuberculosis and Other Related Infectious Diseases. Bearing in mind that Africa cannot, from its weak resource base, provide the huge financial resources needed. In this regard, **WE URGE** those countries to, among others, fulfill the yet to be met target of 0.7% of their GNP as official Development Assistance (ODA) to developing countries.

29. We support the creation of a Global AIDS Fund capitalized by the donor community to the tune of US \$5 – 10 billion accessible to all affected countries to enhance operationalization of Action Plans, including accessing Anti-retroviral programmes in favour of the populations of Africa.

30. **WE UNDERTAKE** to mobilize all the human, material and financial resources required to provide **CARE** and **SUPPORT** and quality treatment to our populations infected with HIV/AIDS, Tuberculosis and Other Related Infections, and to organize meetings to evaluate the status of implementation of the objective of access to care.

31. **WE RESOLVE** to enact and utilize appropriate legislation and international trade regulations to ensure the availability of drugs at affordable prices and technologies for treatment, care and prevention of HIV/AIDS, Tuberculosis and Other Infectious Diseases. **WE ALSO RESOLVE** to take immediate action to use tax exemption and other incentives to reduce the prices of drugs and all other inputs in health care services for accelerated improvement of the health of our populations.

32. **WE COMMIT OURSELVES** to explore and further develop the potential of traditional

medicine and traditional health practitioners in the prevention, care and management of HIV/AIDS, Tuberculosis and Other Related Infectious Diseases.

33. **WE COMMIT OURSELVES** to support the development of effective affordable, accessible HIV vaccine relevant to Africa. We, therefore, support "The Africa; AIDS Vaccine Programme" (AAVP), its collaborative partners, International partners and Institutions committed to the facilitation of HIV vaccine research and testing in Africa.

34. **WE COMMIT OURSELVES** to documenting and sharing these successful and positive experiences with a view to sustaining and scaling them up for wider coverage; mindful that there are still challenges that confront us, particularly in the area of infant feeding.

35. **WE COMMIT OURSELVES** to scaling up the role of education and information in the fight against HIV/AIDS in recognition of the essential role education, in its widest sense plays as a cost-effective tool for reaching the largest number of people.

36. **WE COMMIT OURSELVES** to the strengthening and development of special youth programmes to ensure an AIDS-free generation.

37. WE, within the framework and spirit of our Sirte Declaration of 9 September 1999, **RENEW THE MANDATE** of our brothers, President Bouteflika of Algeria, President Mbeki of South Africa and President Obasanjo of Nigeria to continue discussion with our debt creditors, on our behalf, with the view to securing the total cancellation of Africa's external debt in favour of increased investment in the social sector.

38. **WE ENDORSE** the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases; and **WE PLEDGE** to promote advocacy at the national, regional and international levels; and **WE ALSO PLEDGE** to ensure massive participation of Heads of State and Government at the United Nations General Assembly Special Session (UNGASS) on HIV/AIDS slated for 25 – 27 June 2001 so as to ensure that the session comes up with concrete and urgent decisions for the fight against HIV/AIDS in Africa including the fight against poverty and deduction of Africa's debt.

39. WE REQUEST the OAU Secretary General, in collaboration with ECA, ADB, UNAIDS, WHO, UNICEF, UNDP, ILO, UNFPA, FAO, UNESCO, UNIFEM, IOM, UNDCP and other partners, to follow-up on the implementation of the outcome of this Summit and submit a report to the Ordinary Sessions of our Assembly.

40. WE MANDATE the Government of the Federal Republic of Nigeria to submit a report on the outcome of this African Summit on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases to the next Ordinary OAU Summit which will be held in Lusaka, Zambia in July 2001.

Abuja, Federal Republic of Nigeria

27 April 2001

## **Decision on the African Summit on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases**

Reinforcing the importance of previous Declarations on HIV/AIDS, the *Decision on the African Summit on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases* calls on member states to devote resources to the implementation of such Declarations, as well urges the Secretary General to develop a system for monitoring and follow-up of the *Abuja Framework Plan of Action*. In particular, it looks to develop a mechanism that will ensure that actions are well coordinated and that evaluation and feedback are continuous. The decision was adopted in 2001 on the 32<sup>nd</sup> Summit of the Organization of African Unity Assembly of Heads of State and Government.

### **Decision on the African Summit on HIV/AIDS, Tuberculosis and other Related Infectious Diseases**

OAU, Assembly of Heads of State and Government, 32<sup>nd</sup> Summit, Decision on the African Summit on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases, AHG/Dec.2 (XXXVII) (2001)

**The Assembly:**

1. TAKES NOTE of the Report on the African Summit on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases;

2. COMMENDS President Olusegun Obasanjo and the Government of the Federal Republic of Nigeria for successfully hosting the African Summit on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases.

3. REITERATES its Commitment on the fight against HIV/AIDS, Tuberculosis and Other Related Infectious Diseases as enshrined in the Abuja Declaration;

4. ENDORSES the Abuja Declaration, the Abuja Framework for Action and Framework Plan of Action for the implementation of the Abuja Declaration on the Control of HIV/AIDS, Tuberculosis and Other Related Infectious Diseases in Africa;

5. URGES Member States to immediately operationalize the Framework Plan of Action as a minimum programme of Action and adapt it to the national context;

6. APPEALS to Member States to commit adequate national resources in order to meet the

challenges posed by the epidemics and the implementation of the Plan of Action.

7. ALSO APPEALS to the International Community and to Donors and other Stakeholders to provide necessary financial support to Member States in the implementation of the Plan of Action either individually or through the Global Fund for the Control of HIV/AIDS. AHG/Dec.2 (XXXVII)  
Page 2

8. REQUESTS the Secretary General, in collaboration with all relevant institutions and stakeholders to develop a Mechanism for implementation, monitoring and follow-up which will ensure that the Plan of Action is implemented in a sustainable manner by ensuring that the actions are well-coordinated and that evaluation and feedback are continuous and FURTHER REQUESTS UNAIDS, WHO and UNICEF to assist the OAU to put in place a small unit which will service the mechanism on a daily basis;

9. ALSO REQUESTS the Secretary General in consultation with the Regional Economic Communities (RECs), and in collaboration with ECA, ADB, WHO, UNAIDS and UNICEF to follow up on the implementation of the Abuja Plan of Action and report annually to the Assembly.

## **Decision on Women and Gender**

In an effort to let women's voices be heard within the African regional system, the *Decision on Women and Gender* calls for the Secretary General and member states of the Organization of African Unity (OAU) to ensure that women are "appropriately represented in decision making processes in the OAU". Measures put forward include the participation in the consultative process with women's groups and economic organizations. The decision was adopted on the 73<sup>rd</sup> Ordinary Session of the Council of OAU Ministers in 2001.

### **Decision on Women and Gender**

OAU, Council of OAU Ministers, 73<sup>rd</sup> Ordinary Session,  
8<sup>th</sup> Ordinary Session of the African Economic Community,  
Decision on Women and Gender,  
Adopted at 8<sup>th</sup> Ordinary Session of the African Economic Community  
Doc. CM/Dec.580 (LXXIII) (2001)

#### Council

1. TAKES NOTE of the Report of the Secretary-General on the activities relating to women and gender;
2. REQUESTS the Secretary-General as well as member states, to take all appropriate measures to ensure that women are appropriately represented in decision-making processes in the OAU;
3. FURTHER REQUESTS the Secretary-General to support the consultative process through the African Women's Committee on Peace and Development (AWCPD), the Regional Economic Communities, the Economic Commission for Africa and other key stakeholders so as to mainstream women's effective participation and vision within the OAU.
4. ALSO REQUESTS the Secretary-General to present the outcome of the consultations to the 75th Ordinary Session of Council for consideration.



## **Joint Declaration of the Special Rapporteurs on Women's Rights**

The *Joint Declaration of the Special Rapporteurs on Women's Rights (Joint Declaration)* calls upon states to observe women's human rights as provided for in various international human rights instruments. It challenges states to put in place appropriate measures to apprehend private non-state actors that commit violence against women. Alongside ensuring women's access to effective judicial protection and remedies, and implementing educational system changes and awareness raising campaigns, states are encouraged to implement standards to prevent, punish, and eradicate violence and discrimination against women in domestic legislation and practices. Reasserting the commitment to coordinate their efforts in order to achieve greater effectiveness, the *Joint Declaration* was issued by the Special Rapporteur on Violence Against Women, its Causes and its Consequences from the UN Commission on Human Rights, the Special Rapporteur on Women's Rights from the Inter-American Commission on Human Rights, and the Special Rapporteur on the Rights of Women in Africa from the African Commission on Human and Peoples' Rights in March 2002.

### **Joint Declaration of the Special Rapporteurs on Women's Rights**

Special Rapporteur on Violence Against Women, its Causes and its Consequences from the UN Commission on Human Rights, Special Rapporteur on Women's Rights from the Inter-American Commission on Human Rights and the Special Rapporteur on the Rights of Women in Africa from the African Commission on Human and Peoples' Rights,  
February 28 to March 1, 2002  
Montreal, Canada.

(8 March 2002) The UN Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteurs on women's rights of the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights met for the first time on 28 February and 1 March 2002, in Montreal, at a meeting organized by Rights & Democracy. The Special Rapporteurs issued the following joint declaration:

Recalling that women's rights are human rights, we, the Special Rapporteurs, reaffirm our commitment to international standards of women's rights contained in, *inter alia*:

- the Universal Declaration of Human Rights;
- the International Covenant on Civil and Political Rights;
- the International Covenant on Economic, Social and Cultural Rights;
- the UN Declaration on the Elimination of Violence against Women;
- the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol;
- the Rome Statute of the International Criminal Court;

- the American Convention on Human Rights and its Additional Protocol in the Area of Economic, Social and Cultural Rights;
- the American Declaration of the Rights and Duties of Man;
- the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Pará);
- the African Charter on Human and Peoples' Rights, and
- the 1999 Grand Baie Declaration and Plan of Action on human rights.

We affirm that these international and regional instruments provide comprehensive protection against gender-based violence and discrimination against women. We call on all states that have not yet done so to ratify the relevant treaties and to ensure compliance with international norms.

We emphasize that violence against women is understood as violence perpetrated by any person within the home and the family, and within the community, as well as that perpetrated or condoned by the state, including during armed conflict. Violence against women is a manifestation of discrimination based on gender. We reaffirm that the right of every woman to be free from violence includes the right to be free from such discrimination and to enjoy equal protection under the law.

We recognize the diversity among women and the right of people in community and with other members of their group to enjoy their own culture. We recognize the particularities in the different regions regarding the application of women's rights. However, states must not invoke any custom, tradition or religious consideration to avoid their obligations with respect to the elimination of violence and discrimination against women. All women have the right to live in freedom, equality and dignity.

Violence against women and girls is perpetrated in every country in the world. This occurs in situations of peace and conflict. However, the state agents and private actors responsible are not held to account. This climate of impunity encourages the persistence of such violations. We urge states to take immediate action to end

such impunity and to bring perpetrators to justice.

We reiterate that international standards of human rights protect women from violence and discrimination by private non-state actors. States have a duty to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. States are held to a due diligence standard to prevent, prosecute and punish those who commit violence against women and to take measures to permanently eradicate violence against women in their societies.

While the international and regional communities have established standards to prevent, punish and eradicate violence and discrimination against women, many states have yet to take the steps necessary to implement these standards in domestic legislation and practices. We urge states to take appropriate action to bring their laws and practices into conformity with these standards.

We highlight the fact that women who have been subjected to violence and discrimination generally lack access to effective judicial protection and remedies. Strategies must be implemented that involve law reform and, in particular, reform of the criminal justice system. Training is required for policy makers, police, judges, and prosecutors. There must also be provision of legal, medical and psychological counselling and adequate social services for the victims. States should use the education system and awareness-raising campaigns aimed at the general public to assist them in implementing international standards at the national level.

In light of these shared concerns we undertake to coordinate our efforts to achieve greater effectiveness in our work through: (a) exchange of information, including on laws and cases, as well as mission-related information; (b) sharing ideas and strategies on how to approach emerging issues and the violation of women's rights; (c) harmonizing our recommendations to states; (d) communicating regularly with regional and international NGOs, women's organizations and other representatives of civil society for whom the promotion and protection of women's human rights are central objectives.

## Chapter 8: African Regional Declarations

We undertake to keep each other informed of the latest developments.

Ms. Marta ALTOLAGUIRRE  
Special Rapporteur on Women's Rights  
Inter-American Commission on Human Rights

Ms. Radhika COOMARASWAMY  
Special Rapporteur on Violence Against Women,

its Causes and its  
Consequences UN Commission on Human  
Rights

Ms. Angela MELO  
Special Rapporteur on the Rights of Women in  
Africa  
African Commission on Human and Peoples'  
Rights

## 9. RESOLUTIONS ADOPTED BY THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

### **Chapter 9 Summary: Resolutions Adopted by the African Commission on Human and Peoples' Rights**

This chapter includes key African Commission resolutions relating to reproductive and sexual health rights and NGO advocacy. The documents in this chapter demonstrate that empowerment of advocates and NGOs, as well as the ability to participate in the African Commission process, are essential to advancing human rights within the African region.

The promotion and protection of human rights is a collective effort. Recognizing the significant role that NGOs and advocates play in the movement, the African Commission has issued resolutions which set out key information needed by NGOs to participate in the African Commission's process. Whether lawyers, judges or NGOs, the resolutions featured in this chapter benefit advocates by helping to position them to effectively interact with the Commission and utilize the *African Charter* in furthering their shared interests. The *Resolution on the Role of Lawyers and Judges in the Integration of the Charter and the Enhancement of the Commission's Work in National and Sub-Regional Systems* cites the utilization *African Charter* in national legal advocacy and judicial decisions as a vehicle for effectively implementing *African Charter* objectives. In turn, advocates' individual cases are strengthened by placing them in the context of both African and international human rights perspectives.

In the *Resolution on the Co-operation Between the African Commission on Human and Peoples' Rights and NGOs Having Observer Status with the Commission*, the African Commission sets out a procedure through which advocates and NGOs can interact with the institution, such as through the submission of reports. The African Commission has also issued a *Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organisations Working in the field of Human Rights with the African Commission on Human and Peoples' Rights* which imposes an application process meant to ensure NGO participation within the African Commission process. Finally, the African Commission's *Resolution on HIV/AIDS Pandemic – Threat Against Human Rights and Humanity* addresses the HIV/AIDS threat to human rights and related issues of discrimination.

Setting out the rules governing interaction with the African Commission on Human and Peoples' Rights (African Commission), it is important that NGOs and advocates familiarize themselves with the Resolutions featured in this chapter in order to interact effectively with the African Commission. The Resolutions reproduced below relate to several areas that provide useful information for reproductive and sexual health advocacy. These include: 1) the role of lawyers and judges in implementing the *African Charter* on

the national level; 2) the relationship and interaction between NGOs and the African Commission; and 3) the HIV Pandemic.

The African Commission resolutions reprinted in this chapter may be found at [http://www.achpr.org/english/\\_info/index\\_resolutions\\_en.html](http://www.achpr.org/english/_info/index_resolutions_en.html).

1. Resolution on the Role of Lawyers and Judges in the Integration of the Charter and the Enhancement of the Commission's Work in National and Sub-Regional Systems (1996) 195
2. Resolution on the Co-operation Between the African Commission on Human and Peoples' Rights and NGOs Having Observer Status with the Commission (1998) 197
3. Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organisations Working in the field of Human Rights with the African Commission on Human and People's Rights (1999) 200
4. Resolution on HIV/AIDS Pandemic – Threat Against Human Rights and Humanity (2001) 203

## **Resolution on the Role of Lawyers and Judges in the Integration of the Charter and the Enhancement of the Commission's Work in National and Sub-Regional Systems**

Greater reliance on the *African Charter on Human and Peoples' Rights (African Charter)* in national legal advocacy and judicial decisions increases the effectiveness of the *African Charter* at the national level. Intended to encourage judges and lawyers to pay more attention to the *African Charter* in their work, the *Resolution on the Role of Lawyers and Judges in the Integration of the Charter and the Enhancement of the Commission's Work in National and Sub-Regional Systems (Resolution on Role of Lawyers)* emphasizes the advocate's role in promoting and protecting human and peoples' rights. It also encourages the use of other international human rights instruments and human rights training so as to better integrate the *African Charter* and enhance the African Commission's work in the national and sub-regional levels. Lawyers advocating on reproductive and sexual health issues in the court system can refer to governments' commitments under the *African Charter* and to how it applies to the case being presented. It empowers the advocate by placing the individual case in the broader context of regional human rights principles. The *Resolution on Role of Lawyers* was adopted by the African Commission on Human and Peoples' Rights in March 1996.

## **Resolution on the Role of Lawyers and Judges in the Integration of the Charter and the Enhancement of the Commission's Work in National and Sub-Regional Systems**

OAU, African Commission On Human And Peoples' Rights,  
19<sup>th</sup> Ordinary Session,

Resolution on the Role of Lawyers and Judges in the Integration of the Charter and the Enhancement of the Commission's Work in National and Sub-regional System  
March 26<sup>th</sup> to April 4, at 19<sup>th</sup> Ordinary Session  
Ougadougou, Burkina Faso

The African Commission at its 19th Ordinary Session held from 26th March to 4th April at Ouagadougou, Burkina Faso;

Noting the central role that lawyers play in advocacy, judicial and other adjudicative processes in national legal systems and considering further how such roles can be used to promote reference to and reliance on the Charter in the Judicial and other adjudicative processes,

Considering the mandate and judicial competence of judges to base their reasoning and judgements on all relevant human rights

instruments, either as applicable authoritative laws or as persuasive aids to interpretation of constitutional and legislative provisions on fundamental rights, freedoms and duties,

Recognising the importance of specialised and continuing training in human and peoples' rights for legal practitioners, judges, magistrates and the commissioners,

Appreciating the initiative of Commonwealth judges to incorporate and further develop human rights instruments and principles in their work:

## Chapter 9- Resolutions Adopted by The African Commission on Human and Peoples' Rights

1. URGES Judges and magistrates to play a greater role in incorporating the Charter and future jurisprudence of the Commission in their judgements thereby promoting and protecting the rights and freedoms guaranteed by the Charter;

2. CALLS UPON lawyers to place greater reliance on the Charter and other international and regional human rights instruments in their various legal advocacy roles;

3. URGES law societies, legal and human rights Non-governmental Organisations with observer status with the Commission, associations or organisations of judges and magistrates, to initiate specialised and comprehensive training for judicial officers, lawyers at national and sub-regional levels.

## **Resolution on the Co-operation Between the African Commission on Human and Peoples' Rights and NGOs Having Observer Status with the Commission**

The following Resolution relates to co-operation between the African Commission on Human and Peoples' Rights (African Commission) and non-governmental organizations (NGOs) that have been granted observer status with the African Commission. Outlining the benefits of observer status, the *Resolution on the Co-operation Between Non-Governmental Organizations with Observer Status and the African Commission (Resolution on Co-operation)* discusses the mechanics behind direct participation in the African Commission's activities: receipt of all documents of African Commission sessions, and the submission of "shadow" reports on the human rights situation in their countries. Having observer status means that NGOs have more opportunities to make statements and proposals at African Commission sessions. The *Resolution on Co-operation* also highlights the obligation of NGOs to provide periodic activity reports to the African Commission and encourages the submission of such reports. Adopted on its 24<sup>th</sup> Ordinary Session in October 1998, it also resolves that the African Commission review its criteria for obtaining and enjoying observer status.

## **Resolution on the Co-operation Between the African Commission on Human and Peoples' Rights and NGOs Having Observer Status with the Commission**

OAU, African Commission on Human and Peoples' Rights, 24<sup>th</sup> Ordinary Session,  
Resolution on the Co-operation Between Non-Governmental Organizations with Observer  
Status and the African Commission  
October 31, 1998, 24<sup>th</sup> Ordinary Session,  
Banjul, The Gambia

### ***Background***

1. Article 45 of the African Charter on Human and Peoples' Rights maps out the mandate of the Commission as follows: (i) to promote human rights; (ii) to protect human rights; (iii) to interpret provisions of the African Charter; (iv) any other tasks that may be referred to the Commission by the OAU.
2. In the performance of its tasks and to enhance its efficiency, the Charter also makes provision for the Commission to work with other partners in the field of human rights. Article 45(1)(c) of the African Charter on Human and Peoples' Rights provides that the Commission shall co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights. In accordance with this article, the African Commission on Human and Peoples' Rights has since its inception granted observer status to 231 human rights NGOs.
3. The granting of this status enables the NGOs to participate directly in the Commission's activities. Rules 75 and 76 of the Rules of Procedure of the African Commission on Human and Peoples' Rights ensure this participation in the Commission's sessions by requesting the Secretary to the Commission to inform all NGOs with observer status of the days and agenda of the forthcoming session, at least four weeks before the session. NGOs with observer



status can then authorise their representatives to attend and participate in the public sessions of the Commission and its subsidiary bodies. Participation can be in either written or oral forms.

4. Apart from participating in the sessions, all documents such as final communiqués of the session and other relevant documents have to be sent by the Secretariat to all NGOs with observer status.
5. Another benefit enjoyed by NGOs with observer status is the preparation of “shadow” reports on the human rights situation in their countries. These “shadow” reports enable the Commission to have a constructive dialogue with a state representative when that country's periodic report is being considered.
6. During its 11th Ordinary Session held in Tunis, Tunisia, the Commission reiterated its desire to co-operate with NGOs in the promotion and protection of human and peoples' rights on the continent. In order to encourage and ensure reciprocal commitment on the part of its NGO partners, it was decided that all NGOs that have observer status with the Commission should submit their activity reports once every two (2) years from the date the said status was granted.
7. The Commission's readiness to co-operate with national, regional and international human rights NGOs is further emphasised, and its importance stressed in the Mauritius Plan of Action 1996-2001, which was adopted at the Commission's 20th Session. The said Plan proposes the creation of an exchange and communication network, especially with regards to NGOs operating in Africa, to establish an appropriate mechanism for promotional and protective activities in Africa. This network is intended to enhance co-operation amongst NGOs and the Commission concurrently.
8. The present status of submission of the activity reports of NGOs in compliance with the decision taken at the 11th Session of the Commission, indeed leaves much to be desired. Out of 231 NGOs that had been granted observer status by October 1998, 197 were expected to have submitted all due and overdue reports. Out of this number, only 26 have submitted all their reports up to date, 48 have submitted some of the reports and 114 have submitted none at all. This

clearly shows the extent of the lack of commitment on the part of these NGOs.

9. It is also clear that the Commission continues granting observer status to NGOs, while it is not adequately informed by most of them about what work they are doing in the sphere of human rights or how they are helping to promote and/or protect human rights in Africa. The very essence of having NGOs as partners in creating a culture of recognition of and respect for human rights on the African continent is thereby betrayed.
10. Note must also be taken of the fact that some of these NGOs on occasion, have been found to use their granted status to raise funds which [are] sometimes totally misused, or [are] used for purposes other than the promotion and protection of human rights. The fear, therefore, that some of them may have either changed their mandate or shifted their focus to issues other than human rights becomes legitimate.
11. To address this situation, it is hereby recommended that the Commission revise its criteria for granting and enjoying observer status.
12. The Conference of the Heads of State and Government of the Organization of African Unity (OAU), at its Thirty-Fourth Ordinary Session (AHG/Dec. 126 (XXXIV) para 3), requested the African Commission to review its criteria for granting and enjoying observer status to NGOs.

*Therefore*, the African Commission on Human and Peoples' Rights, meeting at its 24th Ordinary Session from 22 - 31 October 1998, in Banjul, The Gambia,

*Recalling* that the African Charter on Human and Peoples' Rights, which entered into force on 21 October 1986, mandates the African Commission on Human and Peoples' Rights under article 45 (1)(c) to co-operate with other African national and international institutions concerned with the promotion and protection of human and peoples' rights,

*Recalling* further its decision taken during its Second Ordinary Session held in Dakar, Senegal, in February 1988, to grant observer status to NGOs working in the field of human rights in Africa,

*Also recalling* rules 75 and 76 of the Commission's Rules of Procedure which further emphasise this co-operation,

*Aware* of the Mauritius Plan of Action which emphasises the importance of co-operation with NGOs,

*Convinced* that such co-operation will provide NGOs with the support and opportunity to work closely with the Commission, and recognising the invaluable role institutions such as NGOs can play in the enhancement of human rights in Africa,

*Further convinced* that for any meaningful co-operation to take place, there has to be commitment and reciprocity on the part of all parties,

*Bearing in mind* the decision taken at its 11th Ordinary Session requiring all NGOs having observer status to submit their activity reports to the Commission at least once every two years,

*Convinced* that the submission of activity reports by NGOs is a way of enhancing the protection of human rights, and the co-operation between the Commission and NGOs,

*Firmly convinced* that the said reports can be very invaluable not only to the Commission, but also to the ever increasing number of human rights workers around the world,

*Considering* the request of the Conference of Heads of State and Government of the OAU to review the criteria for granting observer status to NGOs:

1. EXPRESSES its profound appreciation to those NGOs which have submitted their reports regularly;
2. NOTES WITH CONCERN the fact that the majority of NGOs whose reports are due have not done so, and have ceased communicating with the Commission;
3. DECIDES that representatives of NGOs that have applied for observer status should be

present to be interviewed during the consideration of their application;

4. DECIDES ALSO to review, in conformity with the Decision AHG/Dec. 126 (XXXIV) by the Conference of the Heads of State and Government, the criteria for obtaining and enjoying observer status with the Commission;
5. INVITES NGOs which have observer status with the Commission but which have not yet submitted their overdue reports, to do so before the 27th Ordinary Session of the Commission;
6. DECIDES FINALLY to revoke observer status of any NGOs that do not submit any activity reports at the 27th Ordinary Session;
7. REQUESTS the Secretary to the Commission to submit a report on the implementation of this Resolution at each session.

Banjul, 31<sup>st</sup> October 1998.

## **Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organisations Working in the Field of Human Rights with the African Commission on Human and Peoples' Rights**

Adopted in 1999, the *Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the Field of Human Rights with the African Commission on Human and Peoples' Rights (Resolution on Observer Status)* came out of the African Commission on Human and Peoples' Rights' (African Commission) review on the criteria for granting and enjoying observer status. This Resolution establishes new criteria in several areas. NGOs seeking observer status must submit a documented application which demonstrates that they work in the field of human rights and that their objectives and activities are consistent with the fundamental principles of the OAU and the *African Charter on Human and Peoples' Rights*. This Resolution sets out details of what is to be included in the application, clarifies how NGOs may participate in the proceedings of the African Commission. Failure to meet the new criteria may result in the suspension or withdrawal of observer status.

Many debates surround the relative effectiveness of the new criteria, though the new criterion does not appear to be overly onerous and emphasis is placed on the determination that the NGO is legitimate. However, the new criteria's requirement on periodic reports, lists of members and financial information may be prohibitive for legitimate NGOs who are facing repression and opposition in their home countries. It remains to be seen how flexible the African Commission will be in interpreting the criteria where particular circumstances make it difficult for NGOs to comply.

## **Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the Field of Human Rights with the African Commission on Human and Peoples' Rights**

OAU, African Commission on Human and Peoples' Rights, 25<sup>th</sup> Ordinary Session,  
Resolution on the Criteria for Granting and Enjoying Observer Status to  
Non-Governmental Organisations Working in the Field of Human Rights  
with the African Commission on Human and Peoples' Rights  
April 26-May 1999, 25<sup>th</sup> Ordinary Session  
Bujambura, Burundi

The African Commission on Human and Peoples' Rights, meeting in its 25th Ordinary Session, held in Bujumbura, Burundi, from 26 April - 5 May 1999.

Considering the provisions of article 45 of the African Charter on Human and Peoples' Rights, which establishes the competence and determines the mandate of the Commission;

## Chapter 9- Resolutions Adopted by The African Commission on Human and Peoples' Rights

Considering the Grand Baie (Mauritius) declaration and plan of action, adopted at the 1st African Ministerial Conference on Human Rights (12-16 April 1999), which «recognises the contribution made by African NGOs to the promotion and protection of human rights in Africa ...»;

Considering the provisions of Chapter XIII (Articles 75 and 76) of the Rules of Procedure of the Commission regarding representation of, and consultation with NGOs by the African Commission on Human and Peoples' Rights;

Considering that since its establishment in October 1987, 231 African and international non-governmental organisations have been granted observer status with the African Commission on Human and Peoples' Rights;

Considering the Decision AHG/dec.126(XXXIV) of the Assembly of Heads of State and Government which requests the African Commission on Human and Peoples' Rights to «undertake a review of the criteria for observer status with the Commission, with a view to enhanced efficiency and co-operation, and to suspend the granting of the said status until the adoption of the new criteria ...»;

Convinced of the need to strengthen its co-operation and partnership with NGOs working the field of human rights;  
ADOPTS the new criteria for granting and enjoying observer status, the text of which is annexed to the present resolution;  
DECIDES that the new criteria shall immediately enter into force;

REQUESTS the Secretary to the Commission to report at every Ordinary Session on the implementation of the present resolution.

### ANNEX - CRITERIA FOR THE GRANTING OF AND FOR MAINTAINING OBSERVER STATUS WITH THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

#### Chapter I

1. All Non-Governmental Organisations applying for observer status with the African Commission on Human and Peoples' Rights shall be expected to submit a documented application to the Secretariat of the Commission,

with a view to showing their willingness and capability work for the realisation of the objectives of the African Charter on Human and Peoples' Rights.

2. All organisations applying for observer status with the African Commission shall consequently:

(a) Have objectives and activities in consonance with the fundamental principles and objectives enunciated in the OAU Charter and in the African Charter on Human and Peoples' Rights;

(b) Be organisations working in the field of human rights;

(c) Declare their financial resources.

3. To this effect, such an Organisation shall be requested to provide:

(a) A written application addressed to the Secretariat stating its intentions, at least three months prior to the Ordinary Session of the Commission which shall decide on the application, in order to give the Secretariat sufficient time in which to process the said application;

(b) Its statutes, proof of its legal existence, a list of its members, its constituent organs, its sources of funding, its last financial statement, as well as a statement on its activities.

4. The statement of activities shall cover the past and present activities of the Organisation, its plan of action and any other information that may help to determine the identity of the organisation, its purpose and objectives, as well as its field of activities.

5. No application for Observer Status shall be put forward for examination by the Commission without having been previously processed by the Secretariat.

6. The Commission's Bureau shall designate a rapporteur to examine the dossiers. The Commission's decision shall be notified without delay to the applicant NGO.

#### Chapter II: PARTICIPATION OF OBSERVERS IN PROCEEDINGS OF THE AFRICAN COMMISSION

## Chapter 9- Resolutions Adopted by The African Commission on Human and Peoples' Rights

1. a) All observers shall be invited to be present at the opening and closing sessions of all Sessions of the African Commission.  
b) An observer accredited by the Commission shall not participate in its proceedings in any manner other than as provided for in the Rules of Procedure governing the conduct of sessions of the African Commission.

2. All observers shall have access to the documents of the Commission subject to the condition that such documents:  
a) shall not be of a confidential nature;  
b) deal with issues that are of relevance to their interests.

The distribution of general information documents of the African Commission shall be free of charge; the distribution of specialised documents shall be on a paid-for basis, except where reciprocal arrangements are in place.

3. Observers may be invited specially to be present at closed sessions dealing with issues of particular interest to them.

4. Observers may be authorised by the Chairman of the African Commission to make a statement on an issue that concerns them, subject to the text of the statement having been provided, with sufficient lead-time, to the Chairman of the Commission through the Secretary to the Commission.

5. The Chairman of the Commission may give the floor to observers to respond to questions directed at them by participants.

6. Observers may request to have issues of a particular interest to them included in the provisional agenda of the African Commission, in accordance with the provisions of the Rules of Procedure.

### Chapter III: RELATIONS BETWEEN THE AFRICAN COMMISSION AND OBSERVERS

1. Organisations enjoying observer status shall undertake to establish close relations of co-operation with the African Commission and to engage in regular consultations with it on all matters of common interest.

2. NGOs enjoying observer status shall present their activity reports to the Commission every two years.

3. Administrative arrangements shall be made, whenever necessary, to determine the modalities of this co-operation.

### Chapter IV: FINAL PROVISIONS

1. The provisions of the General Convention on the privileges and immunities of the OAU and those of the Headquarters Agreement of the African Commission shall not apply to observers except as regards the granting of visas.

2. The Commission reserves the right to take the following measures against NGOs that are in default of their obligations:

- non-participation in sessions;
- denial of documents and information;
- denial of the opportunity to propose items to be included in the Commission's agenda and of participating in its proceedings.

3. Observer status may be suspended or withdrawn from any organisation that does not fulfil the present criteria, after deliberation by the Commission.

Bujumbura, 5 May 1999.

## **Resolution on HIV/AIDS Pandemic – Threat Against Human Rights and Humanity**

Consistent with the provisions of Article 16 of the *African Charter on Human and Peoples' Rights*, the *Resolution on HIV/AIDS Pandemic – Threat Against Human Rights and Humanity (Resolution on HIV/AIDS Pandemic)* links the issue of HIV/AIDS with the human right to the highest attainable state of physical and mental health. It also recognizes that those living with HIV/AIDS are often discriminated against, and seeks to end this discrimination. Governments are encouraged to devise public health care educational programmes and carry out public awareness campaigns as well as appropriate medical interventions. The *Resolution on HIV/AIDS Pandemic* was adopted by the African Commission on Human and Peoples' Rights on its 29<sup>th</sup> Ordinary Session in May 2001.

### **Resolution on HIV/AIDS Pandemic – Threat Against Human Rights and Humanity**

OAU, African Commission on Human and Peoples' Rights, 29<sup>th</sup> Ordinary Session,  
Resolution on HIV/AIDS Pandemic – Threat Against Human rights and Humanity.  
April 23 to May 7, 2001 at 29<sup>th</sup> Ordinary Session.

Tripoli, the Great Socialist Peoples' Libyan Arab Jamahiriya

The African Commission ...

*Noting* the rampant escalation of the HIV/AIDS pandemic in Africa especially in sub-Saharan Africa where estimates show that some 9 million people have died and within the next decade some 25 million people will become infected;

*Noting* with satisfaction the convening of the Africa Summit on HIV/AIDS in Abuja, Nigeria, from 24 - 26 April 2001 where the crisis was declared and interventions of emergency proportions called for;

*Welcoming* the statement of the Abuja Summit and the emergency measures declared there, especially the announcement by the Secretary-General of the UN on the establishment of a US\$10 billion war chest to fight HIV/AIDS in Africa;

*Welcoming* the forthcoming UN General Assembly Special Session on HIV/AIDS to be held in June 2001 and trusting that it will increase awareness of the need for international action to fight the pandemic and devise strategies by international co-operation against HIV/AIDS;

*Mindful* of the mandate of the Commission in terms of the Charter to “promote human and peoples' rights and ensure their protection in Africa” and especially in this regard allow the right of every individual to “enjoy the best attainable state of physical and mental health” (article 16);

1. DECLARES that the HIV/AIDS pandemic is a human rights issue which is a threat against humanity;
2. CALLS upon African governments, state parties to the Charter to allocate national resources that reflect a determination to fight the spread of HIV/AIDS, ensure human rights protection of those living with HIV/AIDS against discrimination, provide support to families for the care of those dying of AIDS, devise public health care programmes of education and carry out public awareness especially in view of free and voluntary HIV testing, as well as appropriate medical interventions;
3. CALLS upon the international pharmaceutical industries to make affordable and comprehensive health care available to African governments for urgent action against HIV/AIDS and invites international aid agencies to provide vastly increased donor partnership programmes for Africa including funding of research and development projects.

Done in Tripoli, 7th May 20.

## 10. OTHER INTERPRETIVE DOCUMENTS

### Chapter 10 Summary: International Interpretive Documents

Complementing the African region's legal perspective on human and women's rights, which are provided in earlier chapters, this chapter reproduces international resolutions and General Comments from the international sphere. In doing so, Chapter 10 effectively reconciles the African struggle for human and women's rights with the international movement. This chapter includes General Comments issued by treaty bodies or committees, which assist in the interpretation of key provisions relating to reproductive rights within international human rights instruments. Included are General Comments from the Committee on the Elimination of Discrimination Against Women (CEDAW) such as violence against women in *General Recommendation 12* and *19* as well as equality in marriage and family relations in *General Recommendation 21*. Through such documents as *General Comment 3: HIV/AIDS and the Rights of the Child* and the new *General Comment 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, the Committee on the Rights of the Child (CRC) continue to uphold the ideals of the *Children's Convention* as well as pursue their concern over the girl child. This chapter also includes relevant General Comments issued by the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Racial Discrimination (CERD) and the Human Rights Committee (HRC). At the end of the chapter, relevant resolutions issued by the Commission on Human Rights (CHR) are included such as *Resolution 2003/28: The right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, and *Resolution 2003/47: The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS)*.

Playing a significant role in reproductive and sexual health rights are committees or treaty bodies, created by international human rights conventions and covenants, tasked with monitoring compliance of international human rights instruments. Composed of experts from various countries, these committees produce General Comments or Recommendations which assist in the interpretation of various human rights provisions and state party obligations under particular articles of these human rights instruments. The documents featured in this chapter include General Comments or Recommendations produced by:

- ❖ the Committee on the Elimination of Discrimination Against Women (CEDAW) which monitors the *Convention on the Elimination of All Forms of Discrimination Against Women*,
- ❖ the Committee on the Elimination of Racial Discrimination (CERD) which monitors the *Convention on the Elimination of All Forms of Racial Discrimination*,

- ❖ Committee on Economic, Social and Cultural Rights (CESCR) which monitors the *International Covenant on Economic, Social and Cultural Rights*,
- ❖ Committee on the Rights of the Child (CRC) which monitors the *Convention on the Rights of the Child*, and
- ❖ the Human Rights Committee (HRC) which monitors the *International Covenant on Civil and Political Rights*.

After the General Comments/Recommendations, Resolutions issued by the UN Commission on Human Rights (CHR) related to reproductive and sexual health are also included.

The international interpretative documents featured in this chapter are available at: retrieved from <http://www.unhchr.ch/tbs/doc.nsf>:

1. CEDAW General Recommendation 12: Violence Against Women (1989)	207
1. CEDAW General Recommendation 14: Female Circumcision (1990)	208
2. CEDAW General Recommendation 15: Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS) (1990)	210
3. CEDAW General Recommendation 19: Violence Against Women (1992)	212
4. CEDAW General Recommendation 21: Equality in Marriage and Family Relations (1994)	217
5. CEDAW General Recommendation 24: Women and Health (1999)	224
6. CERD General Recommendation 25: Gender Related Dimensions of Racial Discrimination (2000)	230
7. CESCR General Comment 14: The Right to the Highest Attainable Standard of Health (2000)	232
8. CRC General Comment 1: The Aims of Education (2001)	247
9. CRC General Comment 3: HIV/AIDS and the Rights of the Child (2003)	254
10. CRC General Comment 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child (2003)	264
11. HRC General Comment 17: Rights of the child (1989)	274



12. HRC General Comment 18: Non-discrimination (1989)	277
13. HRC General Comment 19: Protection of the Family, the Right to Marriage and Equality of The Spouses (1990)	280
14. HRC General Comment 28: Equality of Rights Between Men and Women (2000)	282
15. CHR Resolution 1997/33: International Guidelines on HIV/AIDS and Human Rights (1996)	288
16. CHR Resolution 2001/50: Integrating the Human Rights of Women Throughout the United Nations System (2001)	290
17. CHR Resolution 2002/51: Traffic in Women and Girls (2002)	295
18. CHR Resolution 2003/28: The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (2003)	299
19. CHR Resolution 2003/29: Access to Medication in the Context of Pandemics Such as HIV/AIDS, Tuberculosis and Malaria (2003)	303
20. CHR Resolution 2003/47: The Protection of Human Rights in the Context of Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) (2003)	307

## **CEDAW General Recommendation 12: Violence Against Women**

Actions taken to counter the rising violence against women must encompass protection against harms of any kind occurring within the family, the workplace or in any other area of social life. The Committee on the Elimination of Discrimination Against Women (CEDAW), through its *General Recommendation 12: Violence Against Women*, calls for the reporting of measures taken against such violence through legislation, support services and statistical data. The Recommendation was presented on CEDAW's 8<sup>th</sup> session in March 1989.

### **Committee on the Elimination of Discrimination Against Women General recommendation 12: Violence Against Women**

Adopted March 6, 1989 (8<sup>th</sup> session)

CEDAW Doc. A/44/38 (1989).

The Committee on the Elimination of  
Discrimination against Women,

Considering that articles 2, 5, 11, 12 and 16 of  
the Convention require the States parties to act to  
protect women against violence of any kind  
occurring within the family, at the work place or  
in any other area of social life,

Taking into account Economic and Social  
Council resolution 1988/27,

Recommends to the States parties that they  
should include in their periodic reports to the  
Committee information about:

1. The legislation in force to protect women  
against the incidence of all kinds of violence in  
everyday life (including sexual violence, abuses  
in the family, sexual harassment at the work  
place etc.);

2. Other measures adopted to eradicate this  
violence;

3. The existence of support services for women  
who are the victims of aggression or abuses;

4. Statistical data on the incidence of violence of  
all kinds against women and on women who are  
the victims of violence.

## **CEDAW General Recommendation 14: Female Circumcision**

Encouraging public health policies to include measures to eliminate female genital cutting (also known as female genital mutilation or circumcision), the *CEDAW General Recommendation 14: Female Circumcision* concerns the eradication of this harmful traditional practice. In its 9<sup>th</sup> session in February 1990, CEDAW recommended that member states take such action including the collection and dissemination of data about the practice, and supporting women's organizations working to eliminate the practice. These measures must consider cultural, traditional and economic pressures that together perpetuate female genital cutting.

### **Committee on the Elimination of Discrimination Against Women, General Recommendation 14: Female Circumcision**

Adopted February 2, 1990 (9<sup>th</sup> session)  
CEDAW Doc. A/45/38 and Corrigendum (1990).

The Committee on the Elimination of  
Discrimination against Women,

Concerned about the continuation of the practice  
of female circumcision and other traditional  
practices harmful to the health of women,

Noting with satisfaction that Governments,  
where such practices exist, national women's  
organizations, non-governmental organizations,  
and bodies of the United Nations system, such as  
the World Health Organization and the United  
Nations Children's Fund, as well as the  
Commission on Human Rights and its Sub-  
Commission on Prevention of Discrimination  
and Protection of Minorities, remain seized of  
the issue having particularly recognized that such  
traditional practices as female circumcision have  
serious health and other consequences for  
women and children,

Taking note with interest the study of the Special  
Rapporteur on Traditional Practices Affecting  
the Health of Women and Children, and of the  
study of the Special Working Group on  
Traditional Practices,

Recognizing that women are taking important  
action themselves to identify and to combat  
practices that are prejudicial to the health and  
well-being of women and children,

Convinced that the important action that is being  
taken by women and by all interested groups  
needs to be supported and encourage by  
Governments,

Noting with grave concern that there are  
continuing cultural, traditional and economic  
pressures which help to perpetuate harmful  
practices, such as female circumcision,

Recommends that States parties:

(a) Take appropriate and effective measures with  
a view to eradicating the practice of female  
circumcision. Such measures could include:

(i) The collection and dissemination by  
universities, medical or nursing associations,  
national women's organizations or other bodies  
of basic data about such traditional practices;

(ii) The support of women's organizations at the  
national and local levels working for the  
elimination of female circumcision and other  
practices harmful to women;

(iii) The encouragement of politicians,  
professionals, religious and community leaders  
at all levels, including the media and the arts, to  
co-operate in influencing attitudes towards the  
eradication of female circumcision;

(iv) The introduction of appropriate educational and training programmes and seminars based on research findings about the problems arising from female circumcision;

(b) Include in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care. Such strategies could include the special responsibility of health personnel, including traditional birth attendants, to explain the harmful effects of female circumcision;

(c) Invite assistance, information and advice from the appropriate organizations of the United Nations system to support and assist efforts being deployed to eliminate harmful traditional practices;

(d) Include in their reports to the Committee under articles 10 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women information about measures taken to eliminate female circumcision.

**CEDAW General Recommendation 15: Avoidance of Discrimination Against Women in National Strategies for the Prevention and Control of Acquired Immunodeficiency Syndrome (AIDS)**

Calling on states to pay particular attention to the rights and needs of women and children infected with HIV, the *CEDAW General Recommendation 15: Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)* highlights the discrimination faced by individuals infected with the HIV virus and those particularly vulnerable to the disease. Adopted in its 9<sup>th</sup> session in February 1990, CEDAW's General Recommendation 15 recognizes the importance of achieving active participation of women in primary health care. Furthermore, it encourages information dissemination to increase public awareness of the risk of HIV infection and AIDS, especially in women and children, and of its effects on them.

**General Recommendation No. 15 (9<sup>th</sup> session, 1990) Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome**

Committee on the Elimination of Discrimination Against Women,  
Adopted February 3, 1990,  
CEDAW Doc. A/45/38

Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)

The Committee on the Elimination of Discrimination against Women,

Having considered information brought to its attention on the potential effects of both the global pandemic of acquired immunodeficiency syndrome (AIDS) and strategies to control it on the exercise of the rights of women,

Having regard to the reports and materials prepared by the World Health Organization and other United Nations organizations, organs and bodies in relation to human immunodeficiency virus (HIV), and, in particular, the note by the Secretary-General to the Commission on the Status of Women on the effects of AIDS on the advancement of women and the Final Document of the International Consultation on AIDS and Human Rights, held at Geneva from 26 to 28 July 1989,

Noting World Health Assembly resolution WHA 41.24 on the avoidance of discrimination in relation to HIV-infected people and people with AIDS of 13 May 1988, resolution 1989/11 of the Commission on Human Rights on non-discrimination in the field of health, of 2 March 1989, and in particular the Paris Declaration on Women, Children and AIDS, of 30 November 1989,

Noting that the World Health Organization has announced that the theme of World Aids Day, 1 December 1990, will be "Women and Aids",

Recommends:

(a) That States parties intensify efforts in disseminating information to increase public awareness of the risk of HIV infection and AIDS, especially in women and children, and of its effects on them;

(b) That programmes to combat AIDS should give special attention to the rights and needs of women and children, and to the factors relating

to the reproductive role of women and their subordinate position in some societies which make them especially vulnerable to HIV infection;

(c) That States parties ensure the active participation of women in primary health care and take measures to enhance their role as care providers, health workers and educators in the prevention of infection with HIV;

(d) That all States parties include in their reports under article 12 of the Convention information on the effects of AIDS on the situation of women and on the action taken to cater to the needs of those women who are infected and to prevent specific discrimination against women in response to AIDS.

## **CEDAW General Recommendation 19: Violence Against Women**

Focusing specifically on violence against women, *CEDAW General Recommendation 19: Violence Against Women* is a particularly useful document for advocates in countries that have ratified CEDAW. It acknowledges gender-based violence as a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. Adopted on 11<sup>th</sup> session in January 1992, CEDAW General Recommendation 19 urges state parties to take measures to suppress all forms of traffic and exploitation of the prostitution of women by addressing poverty and unemployment issues. As noted in Chapter 6 "Interpreting Rights" of this manual, international human rights instruments and regional human rights treaties carry significant weight in interpreting national laws and constitutions.

### **Committee on the Elimination of Discrimination against Women General Recommendation 19: Violence Against Women**

Adopted January 29, 1992 (11<sup>th</sup> session)  
CEDAW Doc. A/47/38 (1992).

#### Background

1. Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

2. In 1989, the Committee recommended that States should include in their reports information on violence and on measures introduced to deal with it (General recommendation 12, eighth session).

3. At its tenth session in 1991, it was decided to allocate part of the eleventh session to a discussion and study on article 6 and other articles of the Convention relating to violence towards women and the sexual harassment and exploitation of women. That subject was chosen in anticipation of the 1993 World Conference on Human Rights, convened by the General Assembly by its resolution 45/155 of 18 December 1990.

4. The Committee concluded that not all the reports of States parties adequately reflected the close connection between discrimination against

women, gender-based violence, and violations of human rights and fundamental freedoms. The full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women.

5. The Committee suggested to States parties that in reviewing their laws and policies, and in reporting under the Convention, they should have regard to the following comments of the Committee concerning gender-based violence.

#### General comments

6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- (a) The right to life;
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- (d) The right to liberty and security of person;
- (e) The right to equal protection under the law;
- (f) The right to equality in the family;
- (g) The right to the highest standard attainable of physical and mental health;
- (h) The right to just and favourable conditions of work.

8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this Convention.

9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2(e), 2(f) and 5). For example, under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

Comments on specific articles of the Convention

Articles 2 and 3

10. Articles 2 and 3 establish a comprehensive obligation to eliminate discrimination in all its

forms in addition to the specific obligations under articles 5-16.

Articles 2(f), 5 and 10(c)

11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.

12. These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.

Article 6

13. States parties are required by article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.

14. Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

15. Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal



protection of laws against rape and other forms of violence.

16. Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.

Article 11

17. Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

18. Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.

Article 12

19. States parties are required by article 12 to take measures to ensure equal access to health care. Violence against women puts their health and lives at risk.

20. In some States there are traditional practices perpetuated by culture and tradition that are harmful to the health of women and children. These practices include dietary restrictions for pregnant women, preference for male children and female circumcision or genital mutilation.

Article 14

21. Rural women are at risk of gender-based violence because traditional attitudes regarding the subordinate role of women that persist in many rural communities. Girls from rural communities are at special risk of violence and sexual exploitation when they leave the rural community to seek employment in towns.

Article 16 (and article 5)

22. Compulsory sterilization or abortion adversely affects women's physical and mental

health, and infringes the right of women to decide on the number and spacing of their children.

23. Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

Specific recommendation

24. In light of these comments, the Committee on the Elimination of Discrimination against Women recommends that:

(a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;

(b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;

(c) States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;

(d) Effective measures should be taken to ensure that the media respect and promote respect for women;

(e) States parties in their reports should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of violence that result. They should report on the measures that they have undertaken

to overcome violence and the effect of those measures;

(f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices that hinder women's equality (recommendation No. 3, 1987);

(g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;

(h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described;

(i) Effective complaints procedures and remedies, including compensation, should be provided;

(j) States parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the workplace;

(k) States parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling;

(l) States parties should take measures to overcome such practices and should take account of the Committee's recommendation on female circumcision (recommendation No. 14) in reporting on health issues;

(m) States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control;

(n) States parties in their reports should state the extent of these problems and should indicate the measures that have been taken and their effect;

(o) States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities;

(p) Measures to protect them from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers;

(q) States parties should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and the effectiveness of measures to overcome violence;

(r) Measures that are necessary to overcome family violence should include:

(i) Criminal penalties where necessary and civil remedies in cases of domestic violence;

(ii) Legislation to remove the defence of honour in regard to the assault or murder of a female family member;

(iii) Services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes;

(iv) Rehabilitation programmes for perpetrators of domestic violence;

(v) Support services for families where incest or sexual abuse has occurred;

(s) States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken;

(t) States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia:

(i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the workplace;

(ii) Preventive measures, including public information and education programmes to

change attitudes concerning the roles and status of men and women;

(iii) Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;

(u) States parties should report on all forms of gender-based violence, and such reports should

include all available data on the incidence of each form of violence and on the effects of such violence on the women who are victims;

(v) The reports of States parties should include information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures.

## **CEDAW General Recommendation 21: Equality in Marriage and Family Relations**

Imbalances and inequalities in the power relationships between men and women within the family have placed many women in a position of inequity. Adopted on its 13<sup>th</sup> session in February 1994, *CEDAW General Recommendation 21: Equality in Marriage and Family Relations* addresses the many disparities in family settings that lead to the abuse of women's rights, including legal status and legal rights, and the right to freely choose a spouse. Of particular note is CEDAW's concern about state reports, which disclose coercive practices, such as forced pregnancies, abortions or sterilization, all of which have serious consequences for women. As well, CEDAW's Recommendation 21 stresses the importance of guaranteed access to sex education and family planning services.

### **Committee on the Elimination of Discrimination Against Women, General Recommendation 21: Equality in Marriage and Family Relations**

Adopted February 4, 1994 (13<sup>th</sup> session),  
CEDAW Doc. A/47/38.

1. The Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180, annex) affirms the equality of human rights for women and men in society and in the family. The Convention has an important place among international treaties concerned with human rights.

2. Other conventions and declarations also confer great significance on the family and woman's status within it. These include the Universal Declaration of Human Rights (General Assembly resolution 217/A (III)), the International Covenant on Civil and Political Rights (resolution 2200 A (XXI), annex), the Convention on the Nationality of Married Women (resolution 1040 (XI), annex), the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (resolution 1763 A (XVII), annex) and the subsequent Recommendation thereon (resolution 2018 (XX)) and the Nairobi Forward-looking Strategies for the Advancement of Women.

3. The Convention on the Elimination of All Forms of Discrimination against Women recalls the inalienable rights of women which are already embodied in the above-mentioned conventions and declarations, but it goes further by recognizing the importance of culture and tradition in shaping the thinking and behaviour of men and women and the significant part they play in restricting the exercise of basic rights by women.

#### Background

4. The year 1994 has been designated by the General Assembly in its resolution 44/82 as the International Year of the Family. The Committee wishes to take the opportunity to stress the significance of compliance with women's basic rights within the family as one of the measures which will support and encourage the national celebrations that will take place.

5. Having chosen in this way to mark the International Year of the Family, the Committee wishes to analyze three articles in the

Convention that have special significance for the status of women in the family:

Article 9

1. States parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States parties shall grant women equal rights with men with respect to the nationality of their children.

Comment

6. Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.

Article 15

1. States parties shall accord to women equality with men before the law.

2. States parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States parties shall accord to men and women the same rights with regard to the law relating to

the movement of persons and the freedom to choose their residence and domicile.

Comment

7. When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding property as the sole owner and precludes her from the legal management of her own business or from entering into any other form of contract. Such restrictions seriously limit the woman's ability to provide for herself and her dependents.

8. A woman's right to bring litigation is limited in some countries by law or by her access to legal advice and her ability to seek redress from the courts. In others, her status as a witness or her evidence is accorded less respect or weight than that of a man. Such laws or customs limit the woman's right effectively to pursue or retain her equal share of property and diminish her standing as an independent, responsible and valued member of her community. When countries limit a woman's legal capacity by their laws, or permit individuals or institutions to do the same, they are denying women their rights to be equal with men and restricting women's ability to provide for themselves and their dependents.

9. Domicile is a concept in common law countries referring to the country in which a person intends to reside and to whose jurisdiction she will submit. Domicile is originally acquired by a child through its parents but, in adulthood, denotes the country in which a person normally resides and in which she intends to reside permanently. As in the case of nationality, the examination of States parties' reports demonstrates that a woman will not always be permitted at law to choose her own domicile. Domicile, like nationality, should be capable of change at will by an adult woman regardless of her marital status. Any restrictions on a woman's right to choose a domicile on the same basis as a man may limit her access to the courts in the country in which she lives or prevent her from entering and leaving a country freely and in her own right.

10. Migrant women who live and work temporarily in another country should be

permitted the same rights as men to have their spouses, partners and children join them.

#### Article 16

1. States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

#### Comment

Public and private life

11. Historically, human activity in public and private life has been viewed differently and regulated accordingly. In all societies women who have traditionally performed their roles in the private or domestic sphere have long had those activities treated as inferior.

12. As such activities are invaluable for the survival of society, there can be no justification for applying different and discriminatory laws or customs to them. Reports of States parties disclose that there are still countries where de jure equality does not exist. Women are thereby prevented from having equal access to resources and from enjoying equality of status in the family and society. Even where de jure equality exists, all societies assign different roles, which are regarded as inferior, to women. In this way, principles of justice and equality contained in particular in article 16 and also in articles 2, 5 and 24 of the Convention are being violated.

#### Various forms of family

13. The form and concept of the family can vary from State to State, and even between regions within a State. Whatever form it takes, and whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people, as article 2 of the Convention requires.

#### Polygamous marriages

14. States parties' reports also disclose that polygamy is practised in a number of countries. Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5 (a) of the Convention.

#### Article 16 (1) (a) and (b)

15. While most countries report that national constitutions and laws comply with the Convention, custom, tradition and failure to

enforce these laws in reality contravene the Convention.

16. A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties' reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law.

Article 16 (1) (c)

17. An examination of States parties' reports discloses that many countries in their legal systems provide for the rights and responsibilities of married partners by relying on the application of common law principles, religious or customary law, rather than by complying with the principles contained in the Convention. These variations in law and practice relating to marriage have wide-ranging consequences for women, invariably restricting their rights to equal status and responsibility within marriage. Such limitations often result in the husband being accorded the status of head of household and primary decision maker and therefore contravene the provisions of the Convention.

18. Moreover, generally a de facto union is not given legal protection at all. Women living in such relationships should have their equality of status with men both in family life and in the sharing of income and assets protected by law. Such women should share equal rights and responsibilities with men for the care and raising of dependent children or family members.

Article 16 (1) (d) and (f)

19. As provided in article 5 (b), most States recognize the shared responsibility of parents for the care, protection and maintenance of children. The principle that "the best interests of the child shall be the paramount consideration", has been included in the Convention on the Rights of the Child (General Assembly resolution 44/25,

annex) and seems now to be universally accepted. However, in practice, some countries do not observe the principle of granting the parents of children equal status, particularly when they are not married. The children of such unions do not always enjoy the same status as those born in wedlock and, where the mothers are divorced or living apart, many fathers fail to share the responsibility of care, protection and maintenance of their children.

20. The shared rights and responsibilities enunciated in the Convention should be enforced at law and as appropriate through legal concepts of guardianship, wardship, trusteeship and adoption. States parties should ensure that by their laws both parents, regardless of their marital status and whether they live with their children or not, share equal rights and responsibilities for their children.

Article 16 (1) (e)

21. The responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women. The number and spacing of their children have a similar impact on women's lives and also affect their physical and mental health, as well as that of their children. For these reasons, women are entitled to decide on the number and spacing of their children.

22. Some reports disclose coercive practices which have serious consequences for women, such as forced pregnancies, abortions or sterilization. Decisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government. In order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in article 10 (h) of the Convention.

23. There is general agreement that where there are freely available appropriate measures for the voluntary regulation of fertility, the health, development and well-being of all members of the family improves. Moreover, such services improve the general quality of life and health of the population, and the voluntary regulation of

population growth helps preserve the environment and achieve sustainable economic and social development.

Article 16 (1) (g)

24. A stable family is one which is based on principles of equity, justice and individual fulfilment for each member. Each partner must therefore have the right to choose a profession or employment that is best suited to his or her abilities, qualifications and aspirations, as provided in article 11 (a) and (c) of the Convention. Moreover, each partner should have the right to choose his or her name, thereby preserving individuality and identity in the community and distinguishing that person from other members of society. When by law or custom a woman is obliged to change her name on marriage or at its dissolution, she is denied these rights.

Article 16 (1) (h)

25. The rights provided in this article overlap with and complement those in article 15 (2) in which an obligation is placed on States to give women equal rights to enter into and conclude contracts and to administer property.

26. Article 15 (1) guarantees women equality with men before the law. The right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.

27. In countries that are undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.

28. In most countries, a significant proportion of the women are single or divorced and many have the sole responsibility to support a family. Any discrimination in the division of property that rests on the premise that the man alone is responsible for the support of the women and children of his family and that he can and will honourably discharge this responsibility is clearly unrealistic. Consequently, any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto

relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.

29. All of these rights should be guaranteed regardless of a woman's marital status.

Marital property

30. There are countries that do not acknowledge that right of women to own an equal share of the property with the husband during a marriage or de facto relationship and when that marriage or relationship ends. Many countries recognize that right, but the practical ability of women to exercise it may be limited by legal precedent or custom.

31. Even when these legal rights are vested in women, and the courts enforce them, property owned by a woman during marriage or on divorce may be managed by a man. In many States, including those where there is a community-property regime, there is no legal requirement that a woman be consulted when property owned by the parties during marriage or de facto relationship is sold or otherwise disposed of. This limits the woman's ability to control disposition of the property or the income derived from it.

32. In some countries, on division of marital property, greater emphasis is placed on financial contributions to property acquired during a marriage, and other contributions, such as raising children, caring for elderly relatives and discharging household duties are diminished. Often, such contributions of a non-financial nature by the wife enable the husband to earn an income and increase the assets. Financial and non-financial contributions should be accorded the same weight.

33. In many countries, property accumulated during a de facto relationship is not treated at law on the same basis as property acquired during marriage. Invariably, if the relationship ends, the woman receives a significantly lower share than her partner. Property laws and customs that discriminate in this way against married or unmarried women with or without children should be revoked and discouraged.

Inheritance



34. Reports of States parties should include comment on the legal or customary provisions relating to inheritance laws as they affect the status of women as provided in the Convention and in Economic and Social Council resolution 884 D (XXXIV), in which the Council recommended that States ensure that men and women in the same degree of relationship to a deceased are entitled to equal shares in the estate and to equal rank in the order of succession. That provision has not been generally implemented.

35. There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased's property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.

#### Article 16 (2)

36. In the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, States are urged to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child. Article 16 (2) and the provisions of the Convention on the Rights of the Child preclude States parties from permitting or giving validity to a marriage between persons who have not attained their majority. In the context of the Convention on the Rights of the Child, "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier". Notwithstanding this definition, and bearing in mind the provisions of the Vienna Declaration, the Committee considers that the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their

education is impeded. As a result their economic autonomy is restricted.

37. This not only affects women personally but also limits the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities.

38. Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a woman's right freely to choose her partner.

39. States parties should also require the registration of all marriages whether contracted civilly or according to custom or religious law. The State can thereby ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children.

#### Recommendations

##### Violence against women

40. In considering the place of women in family life, the Committee wishes to stress that the provisions of General Recommendation 19 (eleventh session) concerning violence against women have great significance for women's abilities to enjoy rights and freedoms on an equal basis with men. States parties are urged to comply with that general recommendation to ensure that, in both public and family life, women will be free of the gender-based violence that so seriously impedes their rights and freedoms as individuals.

##### Reservations

41. The Committee has noted with alarm the number of States parties which have entered reservations to the whole or part of article 16, especially when a reservation has also been entered to article 2, claiming that compliance may conflict with a commonly held vision of the family based, inter alia, on cultural or religious

beliefs or on the country's economic or political status.

42. Many of these countries hold a belief in the patriarchal structure of a family which places a father, husband or son in a favourable position. In some countries where fundamentalist or other extremist views or economic hardships have encouraged a return to old values and traditions, women's place in the family has deteriorated sharply. In others, where it has been recognized that a modern society depends for its economic advance and for the general good of the community on involving all adults equally, regardless of gender, these taboos and reactionary or extremist ideas have progressively been discouraged.

43. Consistent with articles 2, 3 and 24 in particular, the Committee requires that all States parties gradually progress to a stage where, by its resolute discouragement of notions of the inequality of women in the home, each country will withdraw its reservation, in particular to articles 9, 15 and 16 of the Convention.

44. States parties should resolutely discourage any notions of inequality of women and men which are affirmed by laws, or by religious or private law or by custom, and progress to the stage where reservations, particularly to article 16, will be withdrawn.

45. The Committee noted, on the basis of its examination of initial and subsequent periodic reports, that in some States parties to the Convention that had ratified or acceded without reservation, certain laws, especially those dealing with family, do not actually conform to the provisions of the Convention.

46. Their laws still contain many measures which discriminate against women based on norms, customs and socio-cultural prejudices. These States, because of their specific situation regarding these articles, make it difficult for the Committee to evaluate and understand the status of women.

47. The Committee, in particular on the basis of articles 1 and 2 of the Convention, requests that those States parties make the necessary efforts to examine the de facto situation relating to the issues and to introduce the required measures in their national legislations still containing provisions discriminatory to women.

Reports 48. Assisted by the comments in the present general recommendation, in their reports States parties should:

(a) Indicate the stage that has been reached in the country's progress to removal of all reservations to the Convention, in particular reservations to article 16;

(b) Set out whether their laws comply with the principles of articles 9, 15 and 16 and where, by reason of religious or private law or custom, compliance with the law or with the Convention is impeded.

#### Legislation

49. States parties should, where necessary to comply with the Convention, in particular in order to comply with articles 9, 15 and 16, enact and enforce legislation.

#### Encouraging compliance with the Convention

50. Assisted by the comments in the present general recommendation, and as required by articles 2, 3 and 24, States parties should introduce measures directed at encouraging full compliance with the principles of the Convention, particularly where religious or private law or custom conflict with those principles.

## **CEDAW General Recommendation 24: Women and Health**

Confirming that access to health care, including reproductive health, is a basic right under the *Convention for the Elimination of all Forms of Discrimination Against Women*, the *CEDAW General Recommendation 24: Women and Health* addresses specific reproductive and sexual health issues, their causes and the strategies to address these issues. CEDAW's comments on the right to health can be argued as persuasive authority in interpreting and applying the right to health in the *African Charter on Human and Peoples' Rights*. In this General Recommendation, CEDAW notes that the full realization of women's right to health can be achieved only when state parties fulfil their obligation to respect, protect and promote women's fundamental human right to health and well-being throughout their lifespan. Adopted on its 20<sup>th</sup> session in February 1999, this General Recommendation outlines several measures that may be taken to address the reality faced by women in regards to their health.

### **Committee On The Elimination Of Discrimination Against Women General Recommendation 24: Women And Health (Article 12)**

Adopted February 2, 1999(20<sup>th</sup> session),  
CEDAW Doc. A/54/38/Rev.1, chapter I.

#### **Introduction**

1. The Committee on the Elimination of Discrimination against Women, affirming that access to health care, including reproductive health is a basic right under the Convention on the Elimination of Discrimination against Women, determined at its 20th session, pursuant to article 21, to elaborate a general recommendation on article 12 of the Convention.

#### **Background**

2. States parties' compliance with article 12 of the Convention is central to the health and well-being of women. It requires States to eliminate discrimination against women in their access to health care services, throughout the life cycle, particularly in the areas of family planning, pregnancy, confinement and during the post-natal period. The examination of reports submitted by States parties pursuant to article 18 of the Convention demonstrates that women's health is an issue that is recognized as a central concern in promoting the health and well-being

of women. For the benefit of States parties and those who have a particular interest in and concern with the issues surrounding women's health, the present general recommendation seeks to elaborate the Committee's understanding of article 12 and to address measures to eliminate discrimination in order to realize the right of women to the highest attainable standard of health.

3. Recent United Nations world conferences have also considered these objectives. In preparing this general recommendation, the Committee has taken into account relevant programmes of action adopted at United Nations world conferences and, in particular, those of the 1993 World Conference on Human Rights, the 1994 International Conference on Population and Development and the 1995 Fourth World Conference on Women. The Committee has also noted the work of the World Health Organization (WHO), the United Nations Population Fund (UNFPA) and other United Nations bodies. It has also collaborated with a large number of non-governmental organizations with a special

expertise in women's health in preparing this general recommendation.

4. The Committee notes the emphasis which other United Nations instruments place on the right to health and to the conditions which enable good health to be achieved. Among such instruments are the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Racial Discrimination.

5. The Committee refers also to its earlier general recommendations on female circumcision, human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), disabled women, violence against women and equality in family relations, all of which refer to issues which are integral to full compliance with article 12 of the Convention.

6. While biological differences between women and men may lead to differences in health status, there are societal factors which are determinative of the health status of women and men and which can vary among women themselves. For that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.

7. The Committee notes that the full realization of women's right to health can be achieved only when States parties fulfil their obligation to respect, protect and promote women's fundamental human right to nutritional well-being throughout their life span by means of a food supply that is safe, nutritious and adapted to local conditions. Towards this end, States parties should take steps to facilitate physical and economic access to productive resources especially for rural women, and to otherwise ensure that the special nutritional needs of all women within their jurisdiction are met.

#### Article 12

*1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women,*

*access to health care services, including those related to family planning.*

*2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.*

8. States parties are encouraged to address the issue of women's health throughout the woman's lifespan. For the purposes of this general recommendation, therefore, *women* includes girls and adolescents. This general recommendation will set out the Committee's analysis of the key elements of article 12.

#### Key elements

##### Article 12 (1)

9. States parties are in the best position to report on the most critical health issues affecting women in that country. Therefore, in order to enable the Committee to evaluate whether *measures to eliminate discrimination against women in the field of health care are appropriate*, States parties must report on their health legislation, plans and policies for women with reliable data disaggregated by sex on the incidence and severity of diseases and conditions hazardous to women's health and nutrition and on the availability and cost-effectiveness of preventive and curative measures. Reports to the Committee must demonstrate that health legislation, plans and policies are based on scientific and ethical research and assessment of the health status and needs of women in that country and take into account any ethnic, regional or community variations or practices based on religion, tradition or culture.

10. States parties are encouraged to include in their reports information on diseases, health conditions and conditions hazardous to health that affect women or certain groups of women differently from men, as well as information on possible intervention in this regard.

11. Measures to eliminate discrimination against women are considered to be inappropriate if a health care system lacks services to prevent, detect and treat illnesses specific to women. It is discriminatory for a State party to refuse to legally provide for the performance of certain

reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.

12. States parties should report on their understanding of how policies and measures on *health care* address the health rights of women from the perspective of women's needs and interests and how it addresses distinctive features and factors which differ for women in comparison to men, such as:

(a) Biological factors which differ for women in comparison with men, such as their menstrual cycle and their reproductive function and menopause. Another example is the higher risk of exposure to sexually transmitted diseases which women face;

(b) Socio-economic factors that vary for women in general and some groups of women in particular. For example, unequal power relationships between women and men in the home and workplace may negatively affect women's nutrition and health. They may also be exposed to different forms of violence which can affect their health. Girl children and adolescent girls are often vulnerable to sexual abuse by older men and family members, placing them at risk of physical and psychological harm and unwanted and early pregnancy. Some cultural or traditional practices such as female genital mutilation also carry a high risk of death and disability;

(c) Psychosocial factors which vary between women and men include depression in general and post-partum depression in particular as well as other psychological conditions, such as those that lead to eating disorders such as anorexia and bulimia;

(d) While lack of respect for the confidentiality of patients will affect both men and women, it may deter women from seeking advice and treatment and thereby adversely affect their health and well-being. Women will be less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence.

13. The duty of States parties to *ensure, on a basis of equality between men and women,*

*access to health care* services, information and education implies an obligation to respect, protect and fulfil women's rights to health care. States parties have the responsibility to ensure that legislation and executive action and policy comply with these three obligations. They must also put in place a system which ensures effective judicial action. Failure to do so will constitute a violation of article 12.

14. The obligation to *respect rights* requires States parties to refrain from obstructing action taken by women in pursuit of their health goals. States parties should report on how public and private health care providers meet their duties to respect women's rights to have access to health care. For example, States parties should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried<sup>25</sup> or because they are women. Other barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures.

15. The obligation to *protect rights* relating to women's health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations. Since gender-based violence is a critical health issue for women, States parties should ensure:

(a) The enactment and effective enforcement of laws and the formulation of policies, including health care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services;

(b) Gender-sensitive training to enable health care workers to detect and manage the health consequences of gender-based violence;

(c) Fair and protective procedures for hearing complaints and imposing appropriate sanctions on health care professionals guilty of sexual abuse of women patients;

(d) The enactment and effective enforcement of laws that prohibit female genital mutilation and marriage of girl children.

16. States parties should ensure that adequate protection and health services, including trauma treatment and counselling, are provided for women in especially difficult circumstances, such as those trapped in situations of armed conflict and women refugees.

17. The duty to *fulfil rights* places an obligation on States parties to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to ensure that women realize their rights to health care. Studies such as those which emphasize the high maternal mortality and morbidity rates worldwide and the large numbers of couples who would like to limit their family size but lack access to or do not use any form of contraception provide an important indication for States parties of possible breaches of their duties to ensure women's access to health care. The Committee asks States parties to report on what they have done to address the magnitude of women's ill-health, in particular when it arises from preventable conditions, such as tuberculosis and HIV/AIDS. The Committee is concerned at the growing evidence that States are relinquishing these obligations as they transfer State health functions to private agencies. States parties cannot absolve themselves of responsibility in these areas by delegating or transferring these powers to private sector agencies. States parties should therefore report on what they have done to organize governmental processes and all structures through which public power is exercised to promote and protect women's health. They should include information on positive measures taken to curb violations of women's rights by third parties, to protect their health and the measures they have taken to ensure the provision of such services.

18. The issues of HIV/AIDS and other sexually transmitted disease are central to the rights of women and adolescent girls to sexual health. Adolescent girls and women in many countries lack adequate access to information and services necessary to ensure sexual health. As a consequence of unequal power relations based on gender, women and adolescent girls are often unable to refuse sex or insist on safe and responsible sex practices. Harmful traditional practices, such as female genital mutilation, polygamy, as well as marital rape, may also expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted

diseases. Women in prostitution are also particularly vulnerable to these diseases. States parties should ensure, without prejudice and discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, including those who have been trafficked, even if they are not legally resident in the country. In particular, States parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their rights to privacy and confidentiality.

19. In their reports States parties should identify the test by which they assess whether women have access to health care *on a basis of equality of men and women* in order to demonstrate compliance with article 12. In applying these tests, States parties should bear in mind the provisions of article 1 of the Convention. Reports should therefore include comments on the impact that health policies, procedures, laws and protocols have on women when compared with men.

20. Women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives.

21. States parties should report on measures taken to eliminate barriers that women face in gaining *access to health care services* and what measures they have taken to ensure women timely and affordable access to such services. Barriers include requirements or conditions that prejudice women's access such as high fees for health care services, the requirement for preliminary authorization by spouse, parent or hospital authorities, distance from health facilities and absence of convenient and affordable public transport.

22. States parties should also report on measures taken to ensure access to quality health care services, for example, by making them acceptable to women. Acceptable services are those which are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives. States parties should not permit forms of coercion, such as non-consensual

sterilization, mandatory testing for sexually transmitted diseases or mandatory pregnancy testing as a condition of employment that violate women's rights to informed consent and dignity.

23. In their reports, States parties should state what measures they have taken to ensure timely access to the range of services which are *related to family planning*, in particular, and to sexual and reproductive health in general. Particular attention should be paid to the health education of adolescents, including information and counselling on all methods of family planning.<sup>26</sup>

24. The Committee is concerned about the conditions of health care services for older women, not only because women often live longer than men and are more likely than men to suffer from disabling and degenerative chronic diseases, such as osteoporosis and dementia, but because they often have the responsibility for their ageing spouses. Therefore, States parties should take appropriate measures to ensure the access of older women to health services that address the handicaps and disabilities associated with ageing.

25. Women with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation. States parties should take appropriate measures to ensure that health services are sensitive to the needs of women with disabilities and are respectful of their human rights and dignity.

#### **Article 12 (2)**

26. Reports should also include what measures States parties have taken to ensure women appropriate services *in connection with pregnancy, confinement and the post-natal period*. Information on the rates at which these measures have reduced maternal mortality and morbidity in their countries, in general, and in vulnerable groups, regions and communities, in particular, should also be included.

27. States parties should include in their reports how they supply *free services where necessary* to ensure safe pregnancies, childbirth and post-

partum periods for women. Many women are at risk of death or disability from pregnancy-related causes because they lack the funds to obtain or access the necessary services, which include ante-natal, maternity and post-natal services. The Committee notes that it is the duty of States parties to ensure women's right to safe motherhood and emergency obstetric services and they should allocate to these services the maximum extent of available resources.

#### **Other relevant articles in the Convention**

28. When reporting on measures taken to comply with article 12, States parties are urged to recognize its interconnection with other articles in the Convention that have a bearing on women's health. Those articles include article 5 (b), which requires States parties to ensure that family education includes a proper understanding of maternity as a social function; article 10, which requires States parties to ensure equal access to education, thus enabling women to access health care more readily and reducing female students' drop-out rates, which are often due to premature pregnancy; article 10(h) which provides that States parties provide to women and girls specific educational information to help ensure the well-being of families, including information and advice on family planning; article 11, which is concerned, in part, with the protection of women's health and safety in working conditions, including the safeguarding of the reproductive function, special protection from harmful types of work during pregnancy and with the provision of paid maternity leave; article 14 (2) (b), which requires States parties to ensure access for rural women to adequate health care facilities, including information, counselling and services in family planning, and (h), which obliges States parties to take all appropriate measures to ensure adequate living conditions, particularly housing, sanitation, electricity and water supply, transport and communications, all of which are critical for the prevention of disease and the promotion of good health care; and article 16 (1) (e), which requires States parties to ensure that women have the same rights as men to decide freely and responsibly on the number and spacing of their children and to have access to information, education and means to enable them to exercise these rights. Article 16 (2) also proscribes the betrothal and marriage of children, an important factor in preventing the physical and emotional harm which arise from early childbirth.

**Recommendations for government action**

29. States parties should implement a comprehensive national strategy to promote women's health throughout their lifespan. This will include interventions aimed at both the prevention and treatment of diseases and conditions affecting women, as well as responding to violence against women, and will ensure universal access for all women to a full range of high-quality and affordable health care, including sexual and reproductive health services.

30. States parties should allocate adequate budgetary, human and administrative resources to ensure that women's health receives a share of the overall health budget comparable with that for men's health, taking into account their different health needs.

31. States parties should also, in particular:

(a) Place a gender perspective at the centre of all policies and programmes affecting women's health and should involve women in the planning, implementation and monitoring of such policies and programmes and in the provision of health services to women;

(b) Ensure the removal of all barriers to women's access to health services, education and

information, including in the area of sexual and reproductive health, and, in particular, allocate resources for programmes directed at adolescents for the prevention and treatment of sexually transmitted diseases, including HIV/AIDS;

(c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion;

(d) Monitor the provision of health services to women by public, non-governmental and private organizations, to ensure equal access and quality of care;

(e) Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice;

(f) Ensure that the training curricula of health workers includes comprehensive, mandatory, gender-sensitive courses on women's health and human rights, in particular gender-based violence.



## **CERD General Recommendation 25: Gender Related Dimensions of Racial Discrimination**

Racial discrimination does not always affect women and men in the same way. Sexual violence committed against women of particular racial or ethnic groups, the coerced sterilization of indigenous women, and the abuse of female employees in the informal sector are proof of consequences unique and specific to racialized women. Through the *CERD General Recommendation 25: Gender related dimensions of Racial Discrimination*, the Committee on the Elimination of Racial Discrimination (CERD) enhances its efforts to integrate gender perspectives, incorporate gender analysis, encourage the use of gender-inclusive language in its sessional working methods, as well as call for early warning mechanisms and urgent action procedures within this General Recommendation. CERD notes that practices in this regard would benefit from development of a more systematic and consistent approach to evaluating and monitoring racial discrimination against women, as well as the disadvantages, obstacles, and difficulties women face in the full exercise and enjoyment of their civil, political, economic, social, and cultural rights on grounds of race, colour, descent, national, or ethnic origin. General Recommendation 25 was presented by CERD and adopted in March 2000.

### **United Nations Commission on Human Rights- Committee on Elimination of Racial Discrimination, General Recommendation 25 (General Comments): Gender Related Dimensions of Racial Discrimination**

Adopted March 20, 2000 (56th session, 1391<sup>st</sup> meeting),  
CERD Gen. Recom. 25, UNCHR, 56<sup>th</sup> Session. (2000).

1. The Committee notes that racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life.

2. Certain forms of racial discrimination may be directed towards women specifically because of their gender, such as sexual violence committed against women members of particular racial or

ethnic groups in detention or during armed conflict; the coerced sterilization of indigenous women; abuse of women workers in the informal sector or domestic workers employed abroad by their employers. Racial discrimination may have consequences that affect primarily or only women, such as pregnancy resulting from racial bias-motivated rape; in some societies women victims of such rape may also be ostracized. Women may also be further hindered by a lack of access to remedies and complaint mechanisms for racial discrimination because of gender-related impediments, such as gender bias in the legal system and discrimination against women in private spheres of life.

3. Recognizing that some forms of racial discrimination have a unique and specific impact on women, the Committee will endeavour in its work to take into account gender factors or issues which may be interlinked with racial discrimination. The Committee believes that its practices in this regard would benefit from developing, in conjunction with the States parties, a more systematic and consistent approach to evaluating and monitoring racial discrimination against women, as well as the disadvantages, obstacles and difficulties women face in the full exercise and enjoyment of their civil, political, economic, social and cultural rights on grounds of race, colour, descent, or national or ethnic origin.

4. Accordingly, the Committee, when examining forms of racial discrimination, intends to enhance its efforts to integrate gender perspectives, incorporate gender analysis, and encourage the use of gender-inclusive language in its sessional working methods, including its review of reports submitted by States parties, concluding observations, early warning mechanisms and urgent action procedures, and general recommendations.

5. As part of the methodology for fully taking into account the gender-related dimensions of racial discrimination, the Committee will include in its sessional working methods and analysis of the relationship between gender and racial discrimination, by giving particular consideration to:

- (a) The form and manifestation of racial discrimination;
- (b) The circumstances in which racial discrimination occurs;
- (c) The consequences of racial discrimination; and
- (d) The availability and accessibility of remedies and complaint mechanisms for racial discrimination.

6. Noting that reports submitted by States parties often do not contain specific or sufficient information on the implementation of the Convention with respect to women, States parties are requested to describe, as far as possible in quantitative and qualitative terms, factors affecting and difficulties experienced in ensuring the equal enjoyment by women, free

from racial discrimination, of rights under the Convention. Data which have been categorized by race or ethnic origin, and which are then disaggregated by gender within those racial or ethnic groups, will allow the States parties and the Committee to identify, compare and take steps to remedy forms of racial discrimination against women that may otherwise go unnoticed and unaddressed.

1391st meeting  
20 March 2000

## **CESCR General Comment 14: The Right to the Highest Attainable Standard of Health**

The Committee On Economic, Social And Cultural Rights (CESCR) monitors state compliance with obligations under the *International Covenant On Economic, Social And Cultural Rights*. One of its functions is to provide guidance on the substance of state obligations under the CESCR. Expanding on the right to health, the *CESCR General Comment 14: The Right To The Highest Attainable Standard Of Health* looks at the specific obligations and types of violations affecting the issue. Given the Committee's expertise on economic, social and cultural rights, its interpretation of the content of the right to health is particularly persuasive. Of note for reproductive and sexual health advocates is the paragraph referring to the right to maternal, child and reproductive health, as well as provisions on non-discrimination, gender perspective, women's health rights and references to HIV/AIDS.

### **Committee on Economic, Social and Cultural Rights General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)**

Adopted August 11, 2000 (22nd session),  
E/C.12/2000/4, CESCR General comment 14, (2000).

1. Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programmes developed by the World Health Organization (WHO), or the adoption of specific legal instruments. Moreover, the right to health includes certain components which are legally enforceable. (1)

2. The human right to health is recognized in numerous international instruments. Article 25.1 of the Universal Declaration of Human Rights affirms: "Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services". The International Covenant on Economic, Social and Cultural Rights provides the most comprehensive article on the right to health in international human rights law. In accordance with article 12.1 of the Covenant, States parties

recognize "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health", while article 12.2 enumerates, by way of illustration, a number of "steps to be taken by the States parties ... to achieve the full realization of this right". Additionally, the right to health is recognized, *inter alia*, in article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, in articles 11.1 (f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and in article 24 of the Convention on the Rights of the Child of 1989. Several regional human rights instruments also recognize the right to health, such as the European Social Charter of 1961 as revised (art. 11), the African Charter on Human and Peoples' Rights of 1981 (art. 16) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (art. 10). Similarly, the right to health has been proclaimed by the Commission on Human Rights, (2) as well as in the Vienna Declaration

and Programme of Action of 1993 and other international instruments. (3)

3. The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.

4. In drafting article 12 of the Covenant, the Third Committee of the United Nations General Assembly did not adopt the definition of health contained in the preamble to the Constitution of WHO, which conceptualizes health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". However, the reference in article 12.1 of the Covenant to "the highest attainable standard of physical and mental health" is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

5. The Committee is aware that, for millions of people throughout the world, the full enjoyment of the right to health still remains a distant goal. Moreover, in many cases, especially for those living in poverty, this goal is becoming increasingly remote. The Committee recognizes the formidable structural and other obstacles resulting from international and other factors beyond the control of States that impede the full realization of article 12 in many States parties.

6. With a view to assisting States parties' implementation of the Covenant and the fulfilment of their reporting obligations, this General Comment focuses on the normative content of article 12 (Part I), States parties' obligations (Part II), violations (Part III) and implementation at the national level (Part IV), while the obligations of actors other than States

parties are addressed in Part V. The General Comment is based on the Committee's experience in examining States parties' reports over many years.

#### I. NORMATIVE CONTENT OF ARTICLE 12

7. Article 12.1 provides a definition of the right to health, while article 12.2 enumerates illustrative, non-exhaustive examples of States parties' obligations.

8. The right to health is not to be understood as a right to be *healthy*. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

9. The notion of "the highest attainable standard of health" in article 12.1 takes into account both the individual's biological and socio-economic preconditions and a State's available resources. There are a number of aspects which cannot be addressed solely within the relationship between States and individuals; in particular, good health cannot be ensured by a State, nor can States provide protection against every possible cause of human ill health. Thus, genetic factors, individual susceptibility to ill health and the adoption of unhealthy or risky lifestyles may play an important role with respect to an individual's health. Consequently, the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.

10. Since the adoption of the two International Covenants in 1966 the world health situation has changed dramatically and the notion of health has undergone substantial changes and has also widened in scope. More determinants of health are being taken into consideration, such as resource distribution and gender differences. A wider definition of health also takes into account such socially-related concerns as violence and armed conflict. (4) Moreover, formerly unknown

diseases, such as Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome (HIV/AIDS), and others that have become more widespread, such as cancer, as well as the rapid growth of the world population, have created new obstacles for the realization of the right to health which need to be taken into account when interpreting article 12.

11. The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.

12. The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party:

(a) *Availability*. Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs. (5)

(b) *Accessibility*. Health facilities, goods and services (6) have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without

discrimination on any of the prohibited grounds. (7)

Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

Information accessibility: accessibility includes the right to seek, receive and impart information and ideas (8) concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

(c) *Acceptability*. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

(d) *Quality*. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, *inter alia*, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

13. The non-exhaustive catalogue of examples in article 12.2 provides guidance in defining the

action to be taken by States. It gives specific generic examples of measures arising from the broad definition of the right to health contained in article 12.1, thereby illustrating the content of that right, as exemplified in the following paragraphs. (9)

Article 12.2 (a). The right to maternal, child and reproductive health

14. "The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child" (art. 12.2 (a)) (10) may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, (11) emergency obstetric services and access to information, as well as to resources necessary to act on that information. (12)

Article 12.2 (b). The right to healthy natural and workplace environments

15. "The improvement of all aspects of environmental and industrial hygiene" (art. 12.2 (b)) comprises, *inter alia*, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. (13) Furthermore, industrial hygiene refers to the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment. (14) Article 12.2 (b) also embraces adequate housing and safe and hygienic working conditions, an adequate supply of food and proper nutrition, and discourages the abuse of alcohol, and the use of tobacco, drugs and other harmful substances.

Article 12.2 (c). The right to prevention, treatment and control of diseases

16. "The prevention, treatment and control of epidemic, endemic, occupational and other diseases" (art. 12.2 (c)) requires the establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS, and those adversely affecting sexual and reproductive health, and the promotion of social determinants of good health,

such as environmental safety, education, economic development and gender equity. The right to treatment includes the creation of a system of urgent medical care in cases of accidents, epidemics and similar health hazards, and the provision of disaster relief and humanitarian assistance in emergency situations. The control of diseases refers to States' individual and joint efforts to, *inter alia*, make available relevant technologies, using and improving epidemiological surveillance and data collection on a disaggregated basis, the implementation or enhancement of immunization programmes and other strategies of infectious disease control.

Article 12.2 (d). The right to health facilities, goods and services (15)

17. "The creation of conditions which would assure to all medical service and medical attention in the event of sickness" (art. 12.2 (d)), both physical and mental, includes the provision of equal and timely access to basic preventive, curative, rehabilitative health services and health education; regular screening programmes; appropriate treatment of prevalent diseases, illnesses, injuries and disabilities, preferably at community level; the provision of essential drugs; and appropriate mental health treatment and care. A further important aspect is the improvement and furtherance of participation of the population in the provision of preventive and curative health services, such as the organization of the health sector, the insurance system and, in particular, participation in political decisions relating to the right to health taken at both the community and national levels.

Article 12. Special topics of broad application

Non-discrimination and equal treatment

18. By virtue of article 2.2 and article 3, the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health. The Committee stresses that many

measures, such as most strategies and programmes designed to eliminate health-related discrimination, can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information. The Committee recalls General Comment No. 3, paragraph 12, which states that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.

19. With respect to the right to health, equality of access to health care and health services has to be emphasized. States have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services, especially with respect to the core obligations of the right to health. (16) Inappropriate health resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favour expensive curative health services which are often accessible only to a small, privileged fraction of the population, rather than primary and preventive health care benefiting a far larger part of the population.

#### Gender perspective

20. The Committee recommends that States integrate a gender perspective in their health-related policies, planning, programmes and research in order to promote better health for both women and men. A gender-based approach recognizes that biological and socio-cultural factors play a significant role in influencing the health of men and women. The disaggregation of health and socio-economic data according to sex is essential for identifying and remedying inequalities in health.

#### Women and the right to health

21. To eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span. Such a strategy should include interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services. A major goal

should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence. The realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health. It is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.

#### Children and adolescents

22. Article 12.2 (a) outlines the need to take measures to reduce infant mortality and promote the healthy development of infants and children. Subsequent international human rights instruments recognize that children and adolescents have the right to the enjoyment of the highest standard of health and access to facilities for the treatment of illness. (17)

The Convention on the Rights of the Child directs States to ensure access to essential health services for the child and his or her family, including pre- and post-natal care for mothers. The Convention links these goals with ensuring access to child-friendly information about preventive and health-promoting behaviour and support to families and communities in implementing these practices. Implementation of the principle of non-discrimination requires that girls, as well as boys, have equal access to adequate nutrition, safe environments, and physical as well as mental health services. There is a need to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children. (18) Children with disabilities should be given the opportunity to enjoy a fulfilling and decent life and to participate within their community.

23. States parties should provide a safe and supportive environment for adolescents, that ensures the opportunity to participate in decisions affecting their health, to build life-skills, to acquire appropriate information, to receive counselling and to negotiate the health-behaviour choices they make. The realization of the right to health of adolescents is dependent on the development of youth-friendly health care,

which respects confidentiality and privacy and includes appropriate sexual and reproductive health services.

24. In all policies and programmes aimed at guaranteeing the right to health of children and adolescents their best interests shall be a primary consideration.

Older persons

25. With regard to the realization of the right to health of older persons, the Committee, in accordance with paragraphs 34 and 35 of General Comment No. 6 (1995), reaffirms the importance of an integrated approach, combining elements of preventive, curative and rehabilitative health treatment. Such measures should be based on periodical check-ups for both sexes; physical as well as psychological rehabilitative measures aimed at maintaining the functionality and autonomy of older persons; and attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity.

Persons with disabilities

26. The Committee reaffirms paragraph 34 of its General Comment No. 5, which addresses the issue of persons with disabilities in the context of the right to physical and mental health. Moreover, the Committee stresses the need to ensure that not only the public health sector but also private providers of health services and facilities comply with the principle of non-discrimination in relation to persons with disabilities.

Indigenous peoples

27. In the light of emerging international law and practice and the recent measures taken by States in relation to indigenous peoples, (19) the Committee deems it useful to identify elements that would help to define indigenous peoples' right to health in order better to enable States with indigenous peoples to implement the provisions contained in article 12 of the Covenant. The Committee considers that indigenous peoples have the right to specific measures to improve their access to health services and care. These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines. States should provide resources for indigenous peoples to design, deliver and control

such services so that they may enjoy the highest attainable standard of physical and mental health. The vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected. The Committee notes that, in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.

Limitations

28. Issues of public health are sometimes used by States as grounds for limiting the exercise of other fundamental rights. The Committee wishes to emphasize that the Covenant's limitation clause, article 4, is primarily intended to protect the rights of individuals rather than to permit the imposition of limitations by States. Consequently a State party which, for example, restricts the movement of, or incarcerates, persons with transmissible diseases such as HIV/AIDS, refuses to allow doctors to treat persons believed to be opposed to a government, or fails to provide immunization against the community's major infectious diseases, on grounds such as national security or the preservation of public order, has the burden of justifying such serious measures in relation to each of the elements identified in article 4. Such restrictions must be in accordance with the law, including international human rights standards, compatible with the nature of the rights protected by the Covenant, in the interest of legitimate aims pursued, and strictly necessary for the promotion of the general welfare in a democratic society.

29. In line with article 5.1, such limitations must be proportional, i.e. the least restrictive alternative must be adopted where several types of limitations are available. Even where such limitations on grounds of protecting public health are basically permitted, they should be of limited duration and subject to review.

II. STATES PARTIES' OBLIGATIONS

General legal obligations



30. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2.2) and the obligation to take steps (art. 2.1) towards the full realization of article 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to health. (20)

31. The progressive realization of the right to health over a period of time should not be interpreted as depriving States parties' obligations of all meaningful content. Rather, progressive realization means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of article 12. (21)

32. As with all other rights in the Covenant, there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources. (22)

33. The right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to *respect*, *protect* and *fulfil*. In turn, the obligation to fulfil contains obligations to facilitate, provide and promote. (23) The obligation to *respect* requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to *protect* requires States to take measures that prevent third parties from interfering with article 12 guarantees. Finally, the obligation to *fulfil* requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health.

#### Specific legal obligations

34. In particular, States are under the obligation to *respect* the right to health by, *inter alia*,

refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women's health status and needs. Furthermore, obligations to respect include a State's obligation to refrain from prohibiting or impeding traditional preventive care, healing practices and medicines, from marketing unsafe drugs and from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness or the prevention and control of communicable diseases. Such exceptional cases should be subject to specific and restrictive conditions, respecting best practices and applicable international standards, including the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. (24)

In addition, States should refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health, from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, as well as from preventing people's participation in health-related matters. States should also refrain from unlawfully polluting air, water and soil, e.g. through industrial waste from State-owned facilities, from using or testing nuclear, biological or chemical weapons if such testing results in the release of substances harmful to human health, and from limiting access to health services as a punitive measure, e.g. during armed conflicts in violation of international humanitarian law.

35. Obligations to *protect* include, *inter alia*, the duties of States to adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties; to ensure that privatization of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services; to control the marketing of medical equipment and medicines by third parties; and to ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct. States are also obliged to ensure that harmful

social or traditional practices do not interfere with access to pre- and post-natal care and family-planning; to prevent third parties from coercing women to undergo traditional practices, e.g. female genital mutilation; and to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence. States should also ensure that third parties do not limit people's access to health-related information and services.

36. The obligation to *fulfil* requires States parties, *inter alia*, to give sufficient recognition to the right to health in the national political and legal systems, preferably by way of legislative implementation, and to adopt a national health policy with a detailed plan for realizing the right to health. States must ensure provision of health care, including immunization programmes against the major infectious diseases, and ensure equal access for all to the underlying determinants of health, such as nutritiously safe food and potable drinking water, basic sanitation and adequate housing and living conditions. Public health infrastructures should provide for sexual and reproductive health services, including safe motherhood, particularly in rural areas. States have to ensure the appropriate training of doctors and other medical personnel, the provision of a sufficient number of hospitals, clinics and other health-related facilities, and the promotion and support of the establishment of institutions providing counselling and mental health services, with due regard to equitable distribution throughout the country. Further obligations include the provision of a public, private or mixed health insurance system which is affordable for all, the promotion of medical research and health education, as well as information campaigns, in particular with respect to HIV/AIDS, sexual and reproductive health, traditional practices, domestic violence, the abuse of alcohol and the use of cigarettes, drugs and other harmful substances. States are also required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline. Furthermore, States parties are required to formulate, implement and periodically review

a coherent national policy to minimize the risk of occupational accidents and diseases, as well as to provide a coherent national policy on occupational safety and health services. (25)

37. The obligation to *fulfil (facilitate)* requires States *inter alia* to take positive measures that enable and assist individuals and communities to enjoy the right to health. States parties are also obliged to *fulfil (provide)* a specific right contained in the Covenant when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal. The obligation to *fulfil (promote)* the right to health requires States to undertake actions that create, maintain and restore the health of the population. Such obligations include: (i) fostering recognition of factors favouring positive health results, e.g. research and provision of information; (ii) ensuring that health services are culturally appropriate and that health care staff are trained to recognize and respond to the specific needs of vulnerable or marginalized groups; (iii) ensuring that the State meets its obligations in the dissemination of appropriate information relating to healthy lifestyles and nutrition, harmful traditional practices and the availability of services; (iv) supporting people in making informed choices about their health.

#### International obligations

38. In its General Comment No. 3, the Committee drew attention to the obligation of all States parties to take steps, individually and through international assistance and cooperation, especially economic and technical, towards the full realization of the rights recognized in the Covenant, such as the right to health. In the spirit of article 56 of the Charter of the United Nations, the specific provisions of the Covenant (articles 12, 2.1, 22 and 23) and the Alma-Ata Declaration on primary health care, States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to health. In this regard, States parties are referred to the Alma-Ata Declaration which proclaims that the existing gross inequality in the health status of the people, particularly between developed and developing countries, as well as within countries, is politically, socially and economically unacceptable and is, therefore, of common concern to all countries. (26)

39. To comply with their international obligations in relation to article 12, States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law. Depending on the availability of resources, States should facilitate access to essential health facilities, goods and services in other countries, wherever possible and provide the necessary aid when required. (27) States parties should ensure that the right to health is given due attention in international agreements and, to that end, should consider the development of further legal instruments. In relation to the conclusion of other international agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to health. Similarly, States parties have an obligation to ensure that their actions as members of international organizations take due account of the right to health. Accordingly, States parties which are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these institutions.

40. States parties have a joint and individual responsibility, in accordance with the Charter of the United Nations and relevant resolutions of the United Nations General Assembly and of the World Health Assembly, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Each State should contribute to this task to the maximum of its capacities. Priority in the provision of international medical aid, distribution and management of resources, such as safe and potable water, food and medical supplies, and financial aid should be given to the most vulnerable or marginalized groups of the population. Moreover, given that some diseases are easily transmissible beyond the frontiers of a State, the international community has a collective responsibility to address this problem. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.

41. States parties should refrain at all times from imposing embargoes or similar measures restricting the supply of another State with adequate medicines and medical equipment. Restrictions on such goods should never be used as an instrument of political and economic pressure. In this regard, the Committee recalls its position, stated in General Comment No. 8, on the relationship between economic sanctions and respect for economic, social and cultural rights.

42. While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society - individuals, including health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities regarding the realization of the right to health. State parties should therefore provide an environment which facilitates the discharge of these responsibilities.

#### Core obligations

43. In General Comment No. 3, the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care. Read in conjunction with more contemporary instruments, such as the Programme of Action of the International Conference on Population and Development, (28) the Alma-Ata Declaration provides compelling guidance on the core obligations arising from article 12. Accordingly, in the Committee's view, these core obligations include at least the following obligations:

- (a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- (b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
- (c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
- (d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;

(e) To ensure equitable distribution of all health facilities, goods and services;

(f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.

44. The Committee also confirms that the following are obligations of comparable priority:

(a) To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care;

(b) To provide immunization against the major infectious diseases occurring in the community;

(c) To take measures to prevent, treat and control epidemic and endemic diseases;

(d) To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them;

(e) To provide appropriate training for health personnel, including education on health and human rights.

45. For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties and other actors in a position to assist, to provide "international assistance and cooperation, especially economic and technical" (29) which enable developing countries to fulfil their core and other obligations indicated in paragraphs 43 and 44 above.

### III. VIOLATIONS

46. When the normative content of article 12 (Part I) is applied to the obligations of States parties (Part II), a dynamic process is set in motion which facilitates identification of violations of the right to health. The following

paragraphs provide illustrations of violations of article 12.

47. In determining which actions or omissions amount to a violation of the right to health, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations under article 12. This follows from article 12.1, which speaks of the highest attainable standard of health, as well as from article 2.1 of the Covenant, which obliges each State party to take the necessary steps to the maximum of its available resources. A State which is unwilling to use the maximum of its available resources for the realization of the right to health is in violation of its obligations under article 12. If resource constraints render it impossible for a State to comply fully with its Covenant obligations, it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy, as a matter of priority, the obligations outlined above. It should be stressed, however, that a State party cannot, under any circumstances whatsoever, justify its non-compliance with the core obligations set out in paragraph 43 above, which are non-derogable.

48. Violations of the right to health can occur through the direct action of States or other entities insufficiently regulated by States. The adoption of any retrogressive measures incompatible with the core obligations under the right to health, outlined in paragraph 43 above, constitutes a violation of the right to health. Violations through *acts of commission* include the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to health or the adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to health.

49. Violations of the right to health can also occur through the omission or failure of States to take necessary measures arising from legal obligations. Violations through *acts of omission* include the failure to take appropriate steps towards the full realization of everyone's right to the enjoyment of the highest attainable standard of physical and mental health, the failure to have a national policy on occupational safety and health as well as occupational health services, and the failure to enforce relevant laws.

Violations of the obligation to respect

50. Violations of the obligation to respect are those State actions, policies or laws that contravene the standards set out in article 12 of the Covenant and are likely to result in bodily harm, unnecessary morbidity and preventable mortality. Examples include the denial of access to health facilities, goods and services to particular individuals or groups as a result of de jure or de facto discrimination; the deliberate withholding or misrepresentation of information vital to health protection or treatment; the suspension of legislation or the adoption of laws or policies that interfere with the enjoyment of any of the components of the right to health; and the failure of the State to take into account its legal obligations regarding the right to health when entering into bilateral or multilateral agreements with other States, international organizations and other entities, such as multinational corporations.

Violations of the obligation to protect

51. Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others; the failure to protect consumers and workers from practices detrimental to health, e.g. by employers and manufacturers of medicines or food; the failure to discourage production, marketing and consumption of tobacco, narcotics and other harmful substances; the failure to protect women against violence or to prosecute perpetrators; the failure to discourage the continued observance of harmful traditional medical or cultural practices; and the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.

Violations of the obligation to fulfil

52. Violations of the obligation to fulfil occur through the failure of States parties to take all necessary steps to ensure the realization of the right to health. Examples include the failure to adopt or implement a national health policy designed to ensure the right to health for everyone; insufficient expenditure or misallocation of public resources which results

in the non-enjoyment of the right to health by individuals or groups, particularly the vulnerable or marginalized; the failure to monitor the realization of the right to health at the national level, for example by identifying right to health indicators and benchmarks; the failure to take measures to reduce the inequitable distribution of health facilities, goods and services; the failure to adopt a gender-sensitive approach to health; and the failure to reduce infant and maternal mortality rates.

IV. IMPLEMENTATION AT THE NATIONAL LEVEL

Framework legislation

53. The most appropriate feasible measures to implement the right to health will vary significantly from one State to another. Every State has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances. The Covenant, however, clearly imposes a duty on each State to take whatever steps are necessary to ensure that everyone has access to health facilities, goods and services so that they can enjoy, as soon as possible, the highest attainable standard of physical and mental health. This requires the adoption of a national strategy to ensure to all the enjoyment of the right to health, based on human rights principles which define the objectives of that strategy, and the formulation of policies and corresponding right to health indicators and benchmarks. The national health strategy should also identify the resources available to attain defined objectives, as well as the most cost-effective way of using those resources.

54. The formulation and implementation of national health strategies and plans of action should respect, *inter alia*, the principles of non-discrimination and people's participation. In particular, the right of individuals and groups to participate in decision-making processes, which may affect their development, must be an integral component of any policy, programme or strategy developed to discharge governmental obligations under article 12. Promoting health must involve effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health. Effective provision of health services can only be assured if people's participation is secured by States.

55. The national health strategy and plan of action should also be based on the principles of accountability, transparency and independence of the judiciary, since good governance is essential to the effective implementation of all human rights, including the realization of the right to health. In order to create a favourable climate for the realization of the right, States parties should take appropriate steps to ensure that the private business sector and civil society are aware of, and consider the importance of, the right to health in pursuing their activities.

56. States should consider adopting a framework law to operationalize their right to health national strategy. The framework law should establish national mechanisms for monitoring the implementation of national health strategies and plans of action. It should include provisions on the targets to be achieved and the time-frame for their achievement; the means by which right to health benchmarks could be achieved; the intended collaboration with civil society, including health experts, the private sector and international organizations; institutional responsibility for the implementation of the right to health national strategy and plan of action; and possible recourse procedures. In monitoring progress towards the realization of the right to health, States parties should identify the factors and difficulties affecting implementation of their obligations.

Right to health indicators and benchmarks

57. National health strategies should identify appropriate right to health indicators and benchmarks. The indicators should be designed to monitor, at the national and international levels, the State party's obligations under article 12. States may obtain guidance on appropriate right to health indicators, which should address different aspects of the right to health, from the ongoing work of WHO and the United Nations Children's Fund (UNICEF) in this field. Right to health indicators require disaggregation on the prohibited grounds of discrimination.

58. Having identified appropriate right to health indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator. During the periodic reporting procedure the Committee will engage in a process of scoping with the State party. Scoping involves the joint consideration by the State party and the Committee of the indicators and

national benchmarks which will then provide the targets to be achieved during the next reporting period. In the following five years, the State party will use these national benchmarks to help monitor its implementation of article 12. Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered.

Remedies and accountability

59. Any person or group victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both national and international levels. (30) All victims of such violations should be entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, consumer forums, patients' rights associations or similar institutions should address violations of the right to health.

60. The incorporation in the domestic legal order of international instruments recognizing the right to health can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. (31) Incorporation enables courts to adjudicate violations of the right to health, or at least its core obligations, by direct reference to the Covenant.

61. Judges and members of the legal profession should be encouraged by States parties to pay greater attention to violations of the right to health in the exercise of their functions.

62. States parties should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting vulnerable or marginalized groups in the realization of their right to health.

V. OBLIGATIONS OF ACTORS OTHER THAN STATES PARTIES

63. The role of the United Nations agencies and programmes, and in particular the key function assigned to WHO in realizing the right to health at the international, regional and country levels, is of particular importance, as is the function of UNICEF in relation to the right to health of

children. When formulating and implementing their right to health national strategies, States parties should avail themselves of technical assistance and cooperation of WHO. Further, when preparing their reports, States parties should utilize the extensive information and advisory services of WHO with regard to data collection, disaggregation, and the development of right to health indicators and benchmarks.

64. Moreover, coordinated efforts for the realization of the right to health should be maintained to enhance the interaction among all the actors concerned, including the various components of civil society. In conformity with articles 22 and 23 of the Covenant, WHO, The International Labour Organization, the United Nations Development Programme, UNICEF, the United Nations Population Fund, the World Bank, regional development banks, the International Monetary Fund, the World Trade Organization and other relevant bodies within the United Nations system, should cooperate effectively with States parties, building on their respective expertise, in relation to the implementation of the right to health at the national level, with due respect to their individual mandates. In particular, the international financial institutions, notably the World Bank and the International Monetary Fund, should pay greater attention to the protection of the right to health in their lending policies, credit agreements and structural adjustment programmes. When examining the reports of States parties and their ability to meet the obligations under article 12, the Committee will consider the effects of the assistance provided by all other actors. The adoption of a human rights-based approach by United Nations specialized agencies, programmes and bodies will greatly facilitate implementation of the right to health. In the course of its examination of States parties' reports, the Committee will also consider the role of health professional associations and other non-governmental organizations in relation to the States' obligations under article 12.

65. The role of WHO, the Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross/Red Crescent and UNICEF, as well as non governmental organizations and national medical associations, is of particular importance in relation to disaster relief and humanitarian assistance in times of emergencies, including assistance to refugees and internally displaced

persons. Priority in the provision of international medical aid, distribution and management of resources, such as safe and potable water, food and medical supplies, and financial aid should be given to the most vulnerable or marginalized groups of the population.

*Adopted on 11 May 2000.*

#### Notes

1. For example, the principle of non-discrimination in relation to health facilities, goods and services is legally enforceable in numerous national jurisdictions.
2. In its resolution 1989/11.
3. The Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care adopted by the United Nations General Assembly in 1991 (resolution 46/119) and the Committee's General Comment No. 5 on persons with disabilities apply to persons with mental illness; the Programme of Action of the International Conference on Population and Development held at Cairo in 1994, as well as the Declaration and Programme for Action of the Fourth World Conference on Women held in Beijing in 1995 contain definitions of reproductive health and women's health, respectively.
4. Common article 3 of the Geneva Conventions for the protection of war victims (1949); Additional Protocol I (1977) relating to the Protection of Victims of International Armed Conflicts, art. 75 (2) (a); Additional Protocol II (1977) relating to the Protection of Victims of Non-International Armed Conflicts, art. 4 (a).
5. See WHO Model List of Essential Drugs, revised December 1999, WHO Drug Information, vol. 13, No. 4, 1999.
6. Unless expressly provided otherwise, any reference in this General Comment to health facilities, goods and services includes the underlying determinants of health outlined in paras. 11 and 12 (a) of this General Comment.
7. See paras. 18 and 19 of this General Comment.
8. See article 19.2 of the International Covenant on Civil and Political Rights. This General

Comment gives particular emphasis to access to information because of the special importance of this issue in relation to health.

9. In the literature and practice concerning the right to health, three levels of health care are frequently referred to: *primary health care* typically deals with common and relatively minor illnesses and is provided by health professionals and/or generally trained doctors working within the community at relatively low cost; *secondary health care* is provided in centres, usually hospitals, and typically deals with relatively common minor or serious illnesses that cannot be managed at community level, using specialty-trained health professionals and doctors, special equipment and sometimes in-patient care at comparatively higher cost; *tertiary health care* is provided in relatively few centres, typically deals with small numbers of minor or serious illnesses requiring specialty-trained health professionals and doctors and special equipment, and is often relatively expensive. Since forms of primary, secondary and tertiary health care frequently overlap and often interact, the use of this typology does not always provide sufficient distinguishing criteria to be helpful for assessing which levels of health care States parties must provide, and is therefore of limited assistance in relation to the normative understanding of article 12.

10. According to WHO, the stillbirth rate is no longer commonly used, infant and under-five mortality rates being measured instead.

11. *Prenatal* denotes existing or occurring before birth; *perinatal* refers to the period shortly before and after birth (in medical statistics the period begins with the completion of 28 weeks of gestation and is variously defined as ending one to four weeks after birth); *neonatal*, by contrast, covers the period pertaining to the first four weeks after birth; while *post-natal* denotes occurrence after birth. In this General Comment, the more generic terms pre- and post-natal are exclusively employed.

12. Reproductive health means that women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right of access to appropriate health-care services that will, for

example, enable women to go safely through pregnancy and childbirth.

13. The Committee takes note, in this regard, of Principle 1 of the Stockholm Declaration of 1972 which states: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being", as well as of recent developments in international law, including General Assembly resolution 45/94 on the need to ensure a healthy environment for the well-being of individuals; Principle 1 of the Rio Declaration; and regional human rights instruments such as article 10 of the San Salvador Protocol to the American Convention on Human Rights.

14. ILO Convention No. 155, art. 4.2.

15. See para. 12 (b) and note 8 above.

16. For the core obligations, see paras. 43 and 44 of the present General Comments.

17. Article 24.1 of the Convention on the Rights of the Child.

18. See World Health Assembly resolution WHA47.10, 1994, entitled "Maternal and child health and family planning: traditional practices harmful to the health of women and children".

19. Recent emerging international norms relevant to indigenous peoples include the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989); articles 29 (c) and (d) and 30 of the Convention on the Rights of the Child (1989); article 8 (j) of the Convention on Biological Diversity (1992), recommending that States respect, preserve and maintain knowledge, innovation and practices of indigenous communities; Agenda 21 of the United Nations Conference on Environment and Development (1992), in particular chapter 26; and Part I, paragraph 20, of the Vienna Declaration and Programme of Action (1993), stating that States should take concerted positive steps to ensure respect for all human rights of indigenous people, on the basis of non-discrimination. See also the preamble and article 3 of the United Nations Framework Convention on Climate Change (1992); and article 10 (2) (e) of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (1994). During recent years



an increasing number of States have changed their constitutions and introduced legislation recognizing specific rights of indigenous peoples.

20. See General Comment No. 13, para. 43.

21. See General Comment No. 3, para. 9; General Comment No. 13, para. 44.

22. See General Comment No. 3, para. 9; General Comment No. 13, para. 45.

23. According to General Comments Nos. 12 and 13, the obligation to fulfil incorporates an obligation to *facilitate* and an obligation to *provide*. In the present General Comment, the obligation to fulfil also incorporates an obligation to *promote* because of the critical importance of health promotion in the work of WHO and elsewhere.

24. General Assembly resolution 46/119 (1991).

25. Elements of such a policy are the identification, determination, authorization and control of dangerous materials, equipment, substances, agents and work processes; the provision of health information to workers and the provision, if needed, of adequate protective clothing and equipment; the enforcement of laws and regulations through adequate inspection; the requirement of notification of occupational accidents and diseases, the conduct of inquiries into serious accidents and diseases, and the production of annual statistics; the protection of workers and their representatives from disciplinary measures for actions properly taken by them in conformity with such a policy; and the provision of occupational health services with essentially preventive functions. See ILO Occupational Safety and Health Convention, 1981 (No. 155) and Occupational Health Services Convention, 1985 (No. 161).

26. Article II, Alma-Ata Declaration, Report of the International Conference on Primary Health Care, Alma-Ata, 6-12 September 1978, in: World Health Organization, "Health for All" Series, No. 1, WHO, Geneva, 1978.

27. See para. 45 of this General Comment.

28. Report of the International Conference on Population and Development, Cairo, 5-13 September 1994 (United Nations publication,

Sales No. E.95.XIII.18), chap. I, resolution 1, annex, chaps. VII and VIII.

29. Covenant, art. 2.1.

30. Regardless of whether groups as such can seek remedies as distinct holders of rights, States parties are bound by both the collective and individual dimensions of article 12. Collective rights are critical in the field of health; modern public health policy relies heavily on prevention and promotion which are approaches directed primarily to groups.

31. See General Comment No. 2, para. 9.

## CRC General Comment 1: The Aims of Education

Education extends beyond the formal structures of schooling, to include children's life and learning experiences. Seen to be a part of the core values of the *Convention on the Rights of the Child*, this General Recommendation issued by the Committee on the Rights of the Child (CRC) comments on the significance and function of Article 29 (1), which looks to preserve the human dignity and inalienable rights of the child. A holistic approach to education is advocated, as it is necessary to embrace the principles of non-discrimination and reflect "the social, cultural, environmental and economic context" of the child. Adopted in April 2001, *CRC General Comment 1: The Aims of Education* stresses that HIV/AIDS infected children are often discriminated against in their education. Thus, beyond basic skills in literacy and numeracy, childhood education must also include teaching in life skills. Although not specifically mentioned, sexual and reproductive health education can be viewed as one of these necessary life skills. This General Comment concludes by calling on states to take actions to implement and monitor Article 29 (1) of the *Convention on the Rights of the Child*

### Committee on the Rights of the Child General Comment No. 1: The Aims of Education Article 29(1)

Adopted April 17, 2001,  
CRC/GC/2001/1

Article 29 (1), Convention on the Rights of the Child

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic,

national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

Appendix

GENERAL COMMENT 1 (2001): THE AIMS OF EDUCATION

The significance of article 29 (1)

1. Article 29, paragraph 1, of the Convention on the Rights of the Child is of far-reaching importance. The aims of education that it sets out, which have been agreed to by all States parties, promote, support and protect the core value of the Convention: the human dignity innate in every child and his or her equal and inalienable rights. These aims, set out in the five subparagraphs of article 29 (1) are all linked directly to the realization of the child's human dignity and rights, taking into account the child's special developmental needs and diverse evolving capacities. The aims are: the holistic

development of the full potential of the child (29 (1) (a)), including development of respect for human rights (29 (1) (b)), an enhanced sense of identity and affiliation (29 (1) (c)), and his or her socialization and interaction with others (29 (1) (d)) and with the environment (29 (1) (e)).

2. Article 29 (1) not only adds to the right to education recognized in article 28 a qualitative dimension which reflects the rights and inherent dignity of the child; it also insists upon the need for education to be child-centred, child-friendly and empowering, and it highlights the need for educational processes to be based upon the very principles it enunciates. (1) The education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. "Education" in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.

3. The child's right to education is not only a matter of access (art. 28) but also of content. An education with its contents firmly rooted in the values of article 29 (1) is for every child an indispensable tool for her or his efforts to achieve in the course of her or his life a balanced, human rights-friendly response to the challenges that accompany a period of fundamental change driven by globalization, new technologies and related phenomena. Such challenges include the tensions between, inter alia, the global and the local; the individual and the collective; tradition and modernity; long- and short-term considerations; competition and equality of opportunity; the expansion of knowledge and the capacity to assimilate it; and the spiritual and the material. (2) And yet, in the national and international programmes and policies on education that really count the elements embodied in article 29 (1) seem all too often to be either largely missing or present only as a cosmetic afterthought.

4. Article 29 (1) states that the States parties agree that education should be directed to a wide

range of values. This agreement overcomes the boundaries of religion, nation and culture built across many parts of the world. At first sight, some of the diverse values expressed in article 29 (1) might be thought to be in conflict with one another in certain situations. Thus, efforts to promote understanding, tolerance and friendship among all peoples, to which paragraph (1) (d) refers, might not always be automatically compatible with policies designed, in accordance with paragraph (1) (c), to develop respect for the child's own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own. But in fact, part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.

The functions of article 29 (1)

5. Article 29 (1) is much more than an inventory or listing of different objectives which education should seek to achieve. Within the overall context of the Convention it serves to highlight, inter alia, the following dimensions.

6. First, it emphasizes the indispensable interconnected nature of the Convention's provisions. It draws upon, reinforces, integrates and complements a variety of other provisions and cannot be properly understood in isolation from them. In addition to the general principles of the Convention - non-discrimination (art. 2), the best interest of the child (art. 3), the right to life, survival and development (art. 6), and the right to express views and have them taken into account (art. 12) - many other provisions may be mentioned, such as but not limited to the rights and responsibilities of parents (arts. 5 and 18), freedom of expression (art. 13), freedom of thought (art. 14), the right to information (art. 17), the rights of children with disabilities (art. 23), the right to education for health (art. 24), the right to education (art. 28), and the linguistic and cultural rights of children belonging to minority groups (art. 30).

7. Children's rights are not detached or isolated values devoid of context, but exist within a

broader ethical framework which is partly described in article 29 (1) and in the preamble to the Convention. Many of the criticisms that have been made of the Convention are specifically answered by this provision. Thus, for example, this article underlines the importance of respect for parents, of the need to view rights within their broader ethical, moral, spiritual, cultural or social framework, and of the fact that most children's rights, far from being externally imposed, are embedded within the values of local communities.

8. Second, the article attaches importance to the process by which the right to education is to be promoted. Thus, efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the educational process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28 (2) and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline. Compliance with the values recognized in article 29 (1) clearly requires that schools be child-friendly in the fullest sense of the term and that they be consistent in all respects with the dignity of the child. The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights.

9. Third, while article 28 focuses upon the obligations of State parties in relation to the establishment of educational systems and in ensuring access thereto, article 29 (1) underlines the individual and subjective right to a specific quality of education. Consistent with the

Convention's emphasis on the importance of acting in the best interests of the child, this article emphasizes the message of child-centred education: that the key goal of education is the development of the individual child's personality, talents and abilities, in recognition of the fact that every child has unique characteristics, interests, abilities, and learning needs.<sup>(3)</sup> Thus, the curriculum must be of direct relevance to the child's social, cultural, environmental and economic context and to his or her present and future needs and take full account of the child's evolving capacities; teaching methods should be tailored to the different needs of different children. Education must also be aimed at ensuring that essential life skills are learnt by every child and that no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. Basic skills include not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.

10. Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child's access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect. To take an extreme example, gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls' participation. Discrimination against children with disabilities is also pervasive in many formal educational systems and in a great many informal educational settings, including in the home.<sup>(4)</sup> Children with HIV/AIDS are also heavily discriminated against in both settings.<sup>(5)</sup> All such discriminatory practices are in direct contradiction with the requirements in article 29 (1) (a) that education be directed to the

development of the child's personality, talents and mental and physical abilities to their fullest potential.

11. The Committee also wishes to highlight the links between article 29 (1) and the struggle against racism, racial discrimination, xenophobia and related intolerance. Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29 (1), including respect for differences, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena. Emphasis must also be placed upon the importance of teaching about racism as it has been practised historically, and particularly as it manifests or has manifested itself within particular communities. Racist behaviour is not something engaged in only by "others". It is therefore important to focus on the child's own community when teaching human and children's rights and the principle of non-discrimination. Such teaching can effectively contribute to the prevention and elimination of racism, ethnic discrimination, xenophobia and related intolerance.

12. Fourth, article 29 (1) insists upon a holistic approach to education which ensures that the educational opportunities made available reflect an appropriate balance between promoting the physical, mental, spiritual and emotional aspects of education, the intellectual, social and practical dimensions, and the childhood and lifelong aspects. The overall objective of education is to maximize the child's ability and opportunity to participate fully and responsibly in a free society. It should be emphasized that the type of teaching that is focused primarily on accumulation of knowledge, prompting competition and leading to an excessive burden of work on children, may seriously hamper the harmonious development of the child to the fullest potential of his or her abilities and talents. Education should be child-friendly, inspiring and motivating the individual child. Schools should foster a humane atmosphere and allow children to develop according to their evolving capacities.

13. Fifth, it emphasizes the need for education to be designed and provided in such a way that it promotes and reinforces the range of specific ethical values enshrined in the Convention, including education for peace, tolerance, and respect for the natural environment, in an integrated and holistic manner. This may require a multidisciplinary approach. The promotion and reinforcement of the values of article 29 (1) are not only necessary because of problems elsewhere, but must also focus on problems within the child's own community. Education in this regard should take place within the family, but schools and communities must also play an important role. For example, for the development of respect for the natural environment, education must link issues of environment and sustainable development with socio-economic, sociocultural and demographic issues. Similarly, respect for the natural environment should be learnt by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects.

14. Sixth, it reflects the vital role of appropriate educational opportunities in the promotion of all other human rights and the understanding of their indivisibility. A child's capacity to participate fully and responsibly in a free society can be impaired or undermined not only by outright denial of access to education but also by a failure to promote an understanding of the values recognized in this article.

#### Human rights education

15. Article 29 (1) can also be seen as a foundation stone for the various programmes of human rights education called for by the World Conference on Human Rights, held in Vienna in 1993, and promoted by international agencies. Nevertheless, the rights of the child have not always been given the prominence they require in the context of such activities. Human rights education should provide information on the content of human rights treaties. But children should also learn about human rights by seeing human rights standards implemented in practice, whether at home, in school, or within the community. Human rights education should be a comprehensive, life-long process and start with the reflection of human rights values in the daily life and experiences of children.<sup>(6)</sup>

16. The values embodied in article 29 (1) are relevant to children living in zones of peace but they are even more important for those living in situations of conflict or emergency. As the Dakar Framework for Action notes, it is important in the context of education systems affected by conflict, natural calamities and instability that educational programmes be conducted in ways that promote mutual understanding, peace and tolerance, and that help to prevent violence and conflict.<sup>(7)</sup> Education about international humanitarian law also constitutes an important, but all too often neglected, dimension of efforts to give effect to article 29 (1).

Implementation, monitoring and review

17. The aims and values reflected in this article are stated in quite general terms and their implications are potentially very wide ranging. This seems to have led many States parties to assume that it is unnecessary, or even inappropriate, to ensure that the relevant principles are reflected in legislation or in administrative directives. This assumption is unwarranted. In the absence of any specific formal endorsement in national law or policy, it seems unlikely that the relevant principles are or will be used to genuinely inform educational policies. The Committee therefore calls upon all States parties to take the necessary steps to formally incorporate these principles into their education policies and legislation at all levels.

18. The effective promotion of article 29 (1) requires the fundamental reworking of curricula to include the various aims of education and the systematic revision of textbooks and other teaching materials and technologies, as well as school policies. Approaches which do no more than seek to superimpose the aims and values of the article on the existing system without encouraging any deeper changes are clearly inadequate. The relevant values cannot be effectively integrated into, and thus be rendered consistent with, a broader curriculum unless those who are expected to transmit, promote, teach and, as far as possible, exemplify the values have themselves been convinced of their importance. Pre-service and in-service training schemes which promote the principles reflected in article 29 (1) are thus essential for teachers, educational administrators and others involved in child education. It is also important that the teaching methods used in schools reflect the spirit and educational philosophy of the

Convention on the Rights of the Child and the aims of education laid down in article 29 (1).

19. In addition, the school environment itself must thus reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin called for in article 29 (1) (b) and (d). A school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29 (1). The term "human rights education" is too often used in a way which greatly oversimplifies its connotations. What is needed, in addition to formal human rights education, is the promotion of values and policies conducive to human rights not only within schools and universities but also within the broader community.

20. In general terms, the various initiatives that States parties are required to take pursuant to their Convention obligations will be insufficiently grounded in the absence of widespread dissemination of the text of the Convention itself, in accordance with the provisions of article 42. This will also facilitate the role of children as promoters and defenders of children's rights in their daily lives. In order to facilitate broader dissemination, States parties should report on the measures they have taken to achieve this objective and the Office of the High Commissioner for Human Rights should develop a comprehensive database of the language versions of the Convention that have been produced.

21. The media, broadly defined, also have a central role to play, both in promoting the values and aims reflected in article 29 (1) and in ensuring that their activities do not undermine the efforts of others to promote those objectives. Governments are obligated by the Convention, pursuant to article 17 (a), to take all appropriate steps to "encourage the mass media to disseminate information and material of social and cultural benefit to the child".<sup>(8)</sup>

22. The Committee calls upon States parties to devote more attention to education as a dynamic process and to devising means by which to measure changes over time in relation to article 29 (1). Every child has the right to receive an education of good quality which in turn requires a focus on the quality of the learning environment, of teaching and learning processes

and materials, and of learning outputs. The Committee notes the importance of surveys that may provide an opportunity to assess the progress made, based upon consideration of the views of all actors involved in the process, including children currently in or out of school, teachers and youth leaders, parents, and educational administrators and supervisors. In this respect, the Committee emphasizes the role of national-level monitoring which seeks to ensure that children, parents and teachers can have an input in decisions relevant to education.

23. The Committee calls upon States parties to develop a comprehensive national plan of action to promote and monitor realization of the objectives listed in article 29 (1). If such a plan is drawn up in the larger context of a national action plan for children, a national human rights action plan, or a national human rights education strategy, the Government must ensure that it nonetheless addresses all of the issues dealt with in article 29 (1) and does so from a child-rights perspective. The Committee urges that the United Nations and other international bodies concerned with educational policy and human rights education seek better coordination so as to enhance the effectiveness of the implementation of article 29 (1).

24. The design and implementation of programmes to promote the values reflected in this article should become part of the standard response by Governments to almost all situations in which patterns of human rights violations have occurred. Thus, for example, where major incidents of racism, racial discrimination, xenophobia and related intolerance occur which involve those under 18, it can reasonably be presumed that the Government has not done all that it should to promote the values reflected in the Convention generally, and in article 29 (1) in particular. Appropriate additional measures under article 29 (1) should therefore be adopted which include research on and adoption of whatever educational techniques might have a positive impact in achieving the rights recognized in the Convention.

25. States parties should also consider establishing a review procedure which responds to complaints that existing policies or practices are not consistent with article 29 (1). Such review procedures need not necessarily entail the creation of new legal, administrative, or

educational bodies. They might also be entrusted to national human rights institutions or to existing administrative bodies. The Committee requests each State party when reporting on this article to identify the genuine possibilities that exist at the national or local level to obtain a review of existing approaches which are claimed to be incompatible with the Convention. Information should be provided as to how such reviews can be initiated and how many such review procedures have been undertaken within the reporting period.

26. In order to better focus the process of examining States parties' reports dealing with article 29 (1), and in accordance with the requirement in article 44 that reports shall indicate factors and difficulties, the Committee requests each State party to provide a detailed indication in its periodic reports of what it considers to be the most important priorities within its jurisdiction which call for a more concerted effort to promote the values reflected in this provision and to outline the programme of activities which it proposes to take over the succeeding five years in order to address the problems identified.

27. The Committee calls upon United Nations bodies and agencies and other competent bodies whose role is underscored in article 45 of the Convention to contribute more actively and systematically to the Committee's work in relation to article 29 (1).

28. Implementation of comprehensive national plans of action to enhance compliance with article 29 (1) will require human and financial resources which should be available to the maximum extent possible, in accordance with article 4. Therefore, the Committee considers that resource constraints cannot provide a justification for a State party's failure to take any, or enough, of the measures that are required. In this context, and in light of the obligations upon States parties to promote and encourage international cooperation both in general terms (arts. 4 and 45 of the Convention) and in relation to education (art. 28 (3)), the Committee urges States parties providing development cooperation to ensure that their programmes are designed so as to take full account of the principles contained in article 29 (1).

Notes

1. In this regard, the Committee takes note of General Comment No. 13 (1999) of the Committee on Economic, Social and Cultural Rights on the right to education, which deals, inter alia, with the aims of education under article 13 (1) of the International Covenant on Economic, Social and Cultural Rights. The Committee also draws attention to the general guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention, (CRC/C/58), paras. 112-116.

2. United Nations Educational, Scientific and Cultural Organization, *Learning: The Treasure Within*, Report of the International Commission on Education for the 21st Century, 1996, pp. 16-18.

3. United Nations Educational, Scientific and Cultural Organization, *The Salamanca Statement and Framework for Action on Special Needs Education*, 1994, p. viii.

4. See General Comment No. 5 (1994) of the

Committee on Economic, Social and Cultural Rights on persons with disabilities.

5. See the recommendations adopted by the Committee on the Rights of the Child after its day of general discussion in 1998 on children living in a world with HIV/AIDS (A/55/41, para. 1536).

6. See General Assembly resolution 49/184 of 23 December 1994 proclaiming the United Nations Decade for Human Rights Education.

7. *Education for All: Meeting our Collective Commitments*, adopted at the World Education Forum, Dakar, 26-28 April 2000.

8. The Committee recalls the recommendations in this respect which emerged from its day of general discussion in 1996 on the child and the media (see A/53/41 para. 1396).



## **CRC GENERAL COMMENT 3: HIV/AIDS AND THE RIGHTS OF THE CHILD**

Noting the toll that HIV/AIDS has had on children, *CRC General Comment 3: HIV/AIDS and the Rights of the Child* looks at some of the measures that the international community has taken to raise awareness about and to combat the impact of the disease. It includes a list of objectives and recommendations consistent with the importance that the CRC attaches to a holistic child's rights based approach in combating HIV/AIDS. Adopted on its 32<sup>nd</sup> session in January 2003, this General Comment notes that the disease is not simply a health issue, as it affects all aspects of a child's life. Thus, discrimination against HIV/AIDS infected children must be recognized and effectively combated.

### **Committee on the Rights of the Child General Comment No. 3 (2003), HIV/AIDS and the Rights of the child**

January 13-31, 2003(32<sup>nd</sup> session)  
CRC/GC/2003/3

#### **I. INTRODUCTION**

1. The HIV/AIDS epidemic has drastically changed the world in which children live. Millions of children have been infected and have died and many more are gravely affected as HIV spreads through their families and communities. The epidemic impacts on the daily life of younger children, and increases the victimization and marginalization of children, especially those living in particularly difficult circumstances. HIV/AIDS is not a problem of some countries but of the entire world. To truly bring its impact on children under control will require concerted and well-targeted efforts from all countries at all stages of development.

2. Initially children were considered to be only marginally affected by the epidemic. However, the international community has discovered that, unfortunately, children are at the heart of the problem. According to the Joint United Nations Programme on HIV/AIDS (UNAIDS), the most recent trends are alarming: in most parts of the world the majority of new infections are among young people between the ages of 15 and 24, sometimes younger. Women, including young girls, are also increasingly becoming infected. In most regions of the world, the vast majority of infected women do not know that they are

infected and may unknowingly infect their children. Consequently, many States have recently registered an increase in their infant and child mortality rates. Adolescents are also vulnerable to HIV/AIDS because their first sexual experience may take place in an environment in which they have no access to proper information and guidance. Children who use drugs are at high risk.

3. Yet, all children can be rendered vulnerable by the particular circumstances of their lives, especially (a) children who are themselves HIV-infected; (b) children who are affected by the epidemic because of the loss of a parental caregiver or teacher and/or because their families or communities are severely strained by its consequences; and (c) children who are most prone to be infected or affected.

#### **II. THE OBJECTIVES OF THE PRESENT GENERAL COMMENT**

4. The objectives of the present General Comment are:

(a) To identify further and strengthen understanding of all the human rights of children in the context of HIV/AIDS;

(b) To promote the realization of the human rights of children in the context of HIV/AIDS, as guaranteed under the Convention on the Rights of the Child (hereafter “the Convention”);

(c) To identify measures and good practices to increase the level of implementation by States of the rights related to the prevention of HIV/AIDS and the support, care and protection of children infected with or affected by this pandemic;

(d) To contribute to the formulation and promotion of child-oriented plans of action, strategies, laws, policies and programmes to combat the spread and mitigate the impact of HIV/AIDS at the national and international levels.

### III. THE CONVENTION’S PERSPECTIVES ON HIV/AIDS: THE HOLISTIC CHILD RIGHTS BASED APPROACH

5. The issue of children and HIV/AIDS is perceived as mainly a medical or health problem, although in reality it involves a much wider range of issues. In this regard, the right to health (article 24 of the Convention) is, however, central. But HIV/AIDS impacts so heavily on the lives of all children that it affects all their rights - civil, political, economic, social and cultural. The rights embodied in the general principles of the Convention - the right to non discrimination (art. 2), the right of the child to have his/her interest as a primary consideration (art. 3), the right to life, survival and development (art. 6) and the right to have his/her views respected (art. 12) - should therefore be the guiding themes in the consideration of HIV/AIDS at all levels of prevention, treatment, care and support.

6. Adequate measures to address HIV/AIDS can be undertaken only if the rights of children and adolescents are fully respected. The most relevant rights in this regard, in addition to those enumerated in paragraph 5 above, are the following: the right to access information and material aimed at the promotion of their social, spiritual and moral well being and physical and mental health (art. 17); the right to preventive health care, sex education and family planning education and services (art. 24 (f)); the right to an appropriate standard of living (art. 27); the right to privacy (art. 16); the right not to be separated from parents (art. 9); the right to be protected from violence (art. 19); the right to special protection and assistance by the State (art. 20); the rights of children with disabilities

(art. 23); the right to health (art. 24); the right to social security, including social insurance (art. 26); the right to education and leisure (arts. 28 and 31); the right to be protected from economic and sexual exploitation and abuse, and from illicit use of narcotic drugs (arts. 32, 33, 34 and 36); the right to be protected from abduction, sale and trafficking as well as torture or other cruel, inhuman or degrading treatment or punishment (arts. 35 and 37); and the right to physical and psychological recovery and social reintegration (art. 39). Children are confronted with serious challenges to the above-mentioned rights as a result of the epidemic. The Convention, and in particular the four general principles with their comprehensive approach, provide a powerful framework for efforts to reduce the negative impact of the pandemic on the lives of children. The holistic rights-based approach required to implement the Convention is the optimal tool for addressing the broader range of issues that relate to prevention, treatment and care efforts.

#### A. The right to non-discrimination (art. 2)

7. Discrimination is responsible for heightening the vulnerability of children to HIV and AIDS, as well as seriously impacting the lives of children who are affected by HIV/AIDS, or are themselves HIV infected. Girls and boys of parents living with HIV/AIDS are often victims of stigma and discrimination as they too are often assumed to be infected. As a result of discrimination, children are denied access to information, education (see the Committee’s General Comment No. 1 on the aims of education), health or social care services or community life. At its extreme, discrimination against HIV infected children has resulted in their abandonment by their family, community and/or society. Discrimination also fuels the epidemic by making children in particular those belonging to certain groups like children living in remote or rural areas where services are less accessible, more vulnerable to infection. These children are thus doubly victimized.

8. Of particular concern is gender based discrimination combined with taboos or negative or judgemental attitudes to sexual activity of girls, often limiting their access to preventive measures and other services. Of concern also is discrimination based on sexual orientation. In the design of HIV/AIDS-related strategies, and in keeping with their obligations under the

Convention, States parties must give careful consideration to prescribed gender norms within their societies with a view to eliminating gender-based discrimination as these norms impact on the vulnerability of both girls and boys to HIV/AIDS. States parties should, in particular, recognize that discrimination in the context of HIV/AIDS often impacts girls more severely than boys.

9. All the above-mentioned discriminatory practices are violations of children's rights under the Convention. Article 2 of the Convention obliges States parties to ensure all the rights set forth in the Convention without discrimination of any kind, "irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". The Committee interprets "other status" under article 2 of the Convention to include HIV/AIDS status of the child or his/her parent(s). Laws, policies, strategies and practices should address all forms of discrimination that contribute to increasing the impact of the epidemic. Strategies should also promote education and training programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS.

B. Best interests of the child (art. 3)

10. Policies and programmes for the prevention, care and treatment of HIV/AIDS have generally been designed for adults with scarce attention to the principle of the best interests of the child as a primary consideration. Article 3, paragraph 1, of the Convention states "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". The obligations attached to this right are fundamental to guiding the action of States in relation to HIV/AIDS. The child should be placed at the centre of the response to the pandemic, and strategies should be adapted to children's rights and needs.

C. The right to life, survival and development (art. 6)

11. Children have the right not to have their lives arbitrarily taken, as well as to benefit from economic and social policies that will allow them to survive into adulthood and develop in

the broadest sense of the word. State obligation to realize the right to life, survival and development also highlights the need to give careful attention to sexuality as well as to the behaviours and lifestyles of children, even if they do not conform with what society determines to be acceptable under prevailing cultural norms for a particular age group. In this regard, the female child is often subject to harmful traditional practices, such as early and/or forced marriage, which violate her rights and make her more vulnerable to HIV infection, including because such practices often interrupt access to education and information. Effective prevention programmes are only those that acknowledge the realities of the lives of adolescents, while addressing sexuality by ensuring equal access to appropriate information, life skills, and to preventive measures.

D. The right to express views and have them taken into account (art. 12)

12. Children are rights holders and have a right to participate, in accordance with their evolving capacities, in raising awareness by speaking out about the impact of HIV/AIDS on their lives and in the development of HIV/AIDS policies and programmes. Interventions have been found to benefit children most when they are actively involved in assessing needs, devising solutions, shaping strategies and carrying them out rather than being seen as objects for whom decisions are made. In this regard, the participation of children as peer educators, both within and outside schools, should be actively promoted. States, international agencies and non governmental organizations must provide children with a supportive and enabling environment to carry out their own initiatives, and to fully participate at both community and national levels in HIV policy and programme conceptualization, design, implementation, coordination, monitoring and review. A variety of approaches are likely to be necessary to ensure the participation of children from all sectors of society, including mechanisms which encourage children, consistent with their evolving capacities, to express their views, have them heard, and given due weight in accordance with their age and maturity (art. 12, para. 1). Where appropriate, the involvement of children living with HIV/AIDS in raising awareness, by sharing their experiences with their peers and others, is critical both to effective prevention and to reducing stigmatization and discrimination.

States parties must ensure that children who participate in these awareness-raising efforts do so voluntarily, after being counselled, and that they receive both the social support and legal protection to allow them to lead normal lives during and after their involvement.

E. Obstacles

13. Experience has shown that many obstacles hinder effective prevention, delivery of care services and support for community initiatives on HIV/AIDS. These are mainly cultural, structural and financial. Denying that a problem exists, cultural practices and attitudes, including taboos and stigmatization, poverty and patronizing attitudes towards children are just some of the obstacles that may block the political and individual commitment needed for effective programmes.

14. With regard to financial, technical and human resources, the Committee is aware that such resources may not be immediately available. However, concerning this obstacle, the Committee wishes to remind States parties of their obligations under article 4. It further notes that resource constraints should not be used by States parties to justify their failure to take any or enough of the technical or financial measures required. Finally, the Committee wishes to emphasize in this regard the essential role of international cooperation.

IV. PREVENTION, CARE, TREATMENT AND SUPPORT

15. The Committee wishes to stress that prevention, care, treatment and support are mutually reinforcing elements and provide a continuum within an effective response to HIV/AIDS.

A. Information on HIV prevention and awareness-raising

16. Consistent with the obligations of States parties in relation to the rights to health and information (arts. 24, 13 and 17), children should have the right to access adequate information related to HIV/AIDS prevention and care, through formal channels (e.g. through educational opportunities and child-targeted media) as well as informal channels (e.g. those targeting street children, institutionalized children or children living in difficult circumstances). States parties are reminded that

children require relevant, appropriate and timely information which recognizes the differences in levels of understanding among them, is tailored appropriately to age level and capacity and enables them to deal positively and responsibly with their sexuality in order to protect themselves from HIV infection. The Committee wishes to emphasize that effective HIV/AIDS prevention requires States to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, and that, consistent with their obligations to ensure the right to life, survival and development of the child (art. 6), States parties must ensure that children have the ability to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality.

17. Dialogue with community, family and peer counsellors, and the provision of “life skills” education within schools, including skills in communicating on sexuality and healthy living, have been found to be useful approaches to delivering HIV prevention messages to both girls and boys, but different approaches may be necessary to reach different groups of children. States parties must make efforts to address gender differences as they may impact on the access children have to prevention messages, and ensure that children are reached with appropriate prevention messages even if they face constraints due to language, religion, disability or other factors of discrimination. Particular attention must be paid to raising awareness among hard to reach populations. In this respect, the role of the mass media and/or oral tradition in ensuring that children have access to information and material, as recognized in article 17 of the Convention, is crucial both to providing appropriate information and to reducing stigmatization and discrimination. States parties should support the regular monitoring and evaluation of HIV/AIDS awareness campaigns to ascertain their effectiveness in providing information, reducing ignorance, stigmatization and discrimination, as well as addressing fear and misperceptions concerning HIV and its transmission among children, including adolescents.

B. The role of education

18. Education plays a critical role in providing children with relevant and appropriate information on HIV/AIDS, which can contribute to increased awareness and better understanding

of this pandemic and prevent negative attitudes towards victims of HIV/AIDS (see also the Committee's General Comment No. 1 on the aims of education). Furthermore, education can and should empower children to protect themselves from the risk of HIV infection. In this regard, the Committee wishes to remind States parties of their obligation to ensure that primary education is available to all children, whether infected, orphaned or otherwise affected by HIV/AIDS. In many communities where HIV has spread widely, children from affected families, in particular girls, are facing serious difficulties staying in school and the number of teachers and other school employees lost to AIDS is limiting and threatening to destroy the ability of children to access education. States parties must make adequate provision to ensure that children affected by HIV/AIDS can stay in school and ensure the qualified replacement of sick teachers so that children's regular attendance at schools is not affected, and that the right to education (art. 28) of all children living within these communities is fully protected.

19. States parties must make every effort to ensure that schools are safe places for children, which offer them security and do not contribute to their vulnerability to HIV infection. In accordance with article 34 of the Convention, States parties are under obligation to take all appropriate measures to prevent, inter alia, the inducement or coercion of a child to engage in any unlawful sexual activity.

#### C. Child and adolescent sensitive health services

20. The Committee is concerned that health services are generally still insufficiently responsive to the needs of children under 18 years of age, in particular adolescents. As the Committee has noted on numerous occasions, children are more likely to use services that are friendly and supportive, provide a wide range of services and information, are geared to their needs, give them the opportunity to participate in decisions affecting their health, are accessible, affordable, confidential and non-judgemental, do not require parental consent and are not discriminatory. In the context of HIV/AIDS and taking into account the evolving capacities of the child, States parties are encouraged to ensure that health services employ trained personnel who fully respect the rights of children to privacy (art. 16) and non-discrimination in offering them access to HIV related information, voluntary

counselling and testing, knowledge of their HIV status, confidential sexual and reproductive health services, and free or low cost contraceptive, methods and services, as well as HIV-related care and treatment if and when needed, including for the prevention and treatment of health problems related to HIV/AIDS, e.g. tuberculosis and opportunistic infections.

21. In some countries, even when child- and adolescent-friendly HIV-related services are available, they are not sufficiently accessible to children with disabilities, indigenous children, children belonging to minorities, children living in rural areas, children living in extreme poverty or children who are otherwise marginalized within the society. In others, where the health system's overall capacity is already strained, children with HIV have been routinely denied access to basic health care. States parties must ensure that services are provided to the maximum extent possible to all children living within their borders, without discrimination, and that they sufficiently take into account differences in gender, age and the social, economic, cultural and political context in which children live.

#### D. HIV counselling and testing

22. The accessibility of voluntary, confidential HIV counselling and testing services, with due attention to the evolving capacities of the child, is fundamental to the rights and health of children. Such services are critical to children's ability to reduce the risk of contracting or transmitting HIV, to access HIV-specific care, treatment and support, and to better plan for their futures. Consistent with their obligation under article 24 of the Convention to ensure that no child is deprived of his or her right of access to necessary health services, States parties should ensure access to voluntary, confidential HIV counselling and testing for all children.

23. The Committee wishes to stress that, as the duty of States parties is first and foremost to ensure that the rights of the child are protected, States parties must refrain from imposing mandatory HIV/AIDS testing of children in all circumstances and ensure protection against it. While the evolving capacities of the child will determine whether consent is required from him or her directly or from his or her parent or guardian, in all cases, consistent with the child's

right to receive information under articles 13 and 17 of the Convention, States parties must ensure that, prior to any HIV testing, whether by health-care providers in relation to children who are accessing health services for another medical condition or otherwise, the risks and benefits of such testing are sufficiently conveyed so that an informed decision can be made.

24. States parties must protect the confidentiality of HIV test results, consistent with the obligation to protect the right to privacy of children (art. 16), including within health and social welfare settings, and information on the HIV status of children may not be disclosed to third parties, including parents, without the child's consent.

#### E. Mother-to-child transmission

25. Mother-to-child transmission (MTCT) is responsible for the majority of HIV infections in infants and young children. Infants and young children can be infected with HIV during pregnancy, labour and delivery, and through breastfeeding. States parties are requested to ensure implementation of the strategies recommended by the United Nations agencies to prevent HIV infection in infants and young children. These include: (a) the primary prevention of HIV infection among parents-to-be; (b) the prevention of unintended pregnancies in HIV-infected women, (c) the prevention of HIV transmission from HIV-infected women to their infants; and (d) the provision of care, treatment and support to HIV-infected women, their infants and families.

26. To prevent MTCT of HIV, States parties must take steps, including the provision of essential drugs, e.g. anti-retroviral drugs, appropriate antenatal, delivery and post-partum care, and making HIV voluntary counselling and testing services available to pregnant women and their partners. The Committee recognizes that anti-retroviral drugs administered to a woman during pregnancy and/or labour and, in some regimens, to her infant, have been shown to significantly reduce the risk of transmission from mother to child. However, in addition, States parties should provide support for mothers and children, including counselling on infant feeding options. States parties are reminded that counselling of HIV-positive mothers should include information about the risks and benefits of different infant feeding options, and guidance on selecting the option most likely to be suitable

for their situation. Follow-up support is also required in order for women to be able to implement their selected option as safely as possible.

27. Even in populations with high HIV prevalence, the majority of infants are born to women who are not HIV-infected. For the infants of HIV-negative women and women who do not know their HIV status, the Committee wishes to emphasize, consistent with articles 6 and 24 of the Convention, that breastfeeding remains the best feeding choice. For the infants of HIV positive mothers, available evidence indicates that breastfeeding can add to the risk of HIV transmission by 10-20 per cent, but that lack of breastfeeding can expose children to an increased risk of malnutrition or infectious diseases other than HIV. United Nations agencies have recommended that, where replacement feeding is affordable, feasible, acceptable, sustainable and safe, avoidance of all breastfeeding by HIV-infected mothers is recommended; otherwise, exclusive breastfeeding is recommended during the first months of life and should then be discontinued as soon as it is feasible.

#### F. Treatment and care

28. The obligations of States parties under the Convention extend to ensuring that children have sustained and equal access to comprehensive treatment and care, including necessary HIV related drugs, goods and services on a basis of non-discrimination. It is now widely recognized that comprehensive treatment and care includes anti-retroviral and other drugs, diagnostics and related technologies for the care of HIV/AIDS, related opportunistic infections and other conditions, good nutrition, and social, spiritual and psychological support, as well as family, community and home-based care. In this regard, States parties should negotiate with the pharmaceutical industry in order to make the necessary medicines locally available at the lowest costs possible. Furthermore, States parties are requested to affirm, support and facilitate the involvement of communities in the provision of comprehensive HIV/AIDS treatment, care and support, while at the same time complying with their own obligations under the Convention. States parties are called upon to pay special attention to addressing those factors within their societies that hinder equal access to treatment, care and support for all children.

G. Involvement of children in research

29. Consistent with article 24 of the Convention, States parties must ensure that HIV/AIDS research programmes include specific studies that contribute to effective prevention, care, treatment and impact reduction for children. States parties must, nonetheless, ensure that children do not serve as research subjects until an intervention has already been thoroughly tested on adults. Rights and ethical concerns have arisen in relation to HIV/AIDS biomedical research, HIV/ADS operations, and social, cultural and behavioural research. Children have been subjected to unnecessary or inappropriately designed research with little or no voice to either refuse or consent to participation. In line with the child's evolving capacities, consent of the child should be sought and consent may be sought from parents or guardians if necessary, but in all cases consent must be based on full disclosure of the risks and benefits of research to the child. States parties are further reminded to ensure that the privacy rights of children, in line with their obligations under article 16 of the Convention, are not inadvertently violated through the research process and that personal information about children, which is accessed through research, is, under no circumstances, used for purposes other than that for which consent was given. States parties must make every effort to ensure that children and, according to their evolving capacities, their parents and/or their guardians participate in decisions on research priorities and that a supportive environment is created for children who participate in such research.

V. VULNERABILITY AND CHILDREN NEEDING SPECIAL PROTECTION

30. The vulnerability of children to HIV/AIDS resulting from political, economic, social, cultural and other factors determines the likelihood of their being left with insufficient support to cope with the impact of HIV/AIDS on their families and communities, exposed to the risk of infection, subjected to inappropriate research, or deprived of access to treatment, care and support if and when HIV infection sets in. Vulnerability to HIV/AIDS is most acute for children living in refugee and internally displaced persons camps, children in detention, children living in institutions, as well as children living in extreme poverty, children living in situations of armed conflict, child soldiers,

economically and sexually exploited children, and disabled, migrant, minority, indigenous, and street children. However, all children can be rendered vulnerable by the particular circumstances of their lives. Even in times of severe resource constraints, the Committee wishes to note that the rights of vulnerable members of society must be protected and

that many measures can be pursued with minimum resource implications. Reducing vulnerability to HIV/AIDS requires first and foremost that children, their families and communities be empowered to make informed choices about decisions, practices or policies affecting them in relation to HIV/AIDS.

A. Children affected and orphaned by HIV/AIDS

31. Special attention must be given to children orphaned by AIDS and to children from affected families, including child-headed households, as these impact on vulnerability to HIV infection. For children from families affected by HIV/AIDS, the stigmatization and social isolation they experience may be accentuated by the neglect or violation of their rights, in particular discrimination resulting in a decrease or loss of access to education, health and social services. The Committee wishes to underline the necessity of providing legal, economic and social protection to affected children to ensure their access to education, inheritance, shelter and health and social services, as well as to make them feel secure in disclosing their HIV status and that of their family members when the children deem it appropriate. In this respect, States parties are reminded that these measures are critical to the realization of the rights of children and to giving them the skills and support necessary to reduce their vulnerability and risk of becoming infected.

32. The Committee wishes to emphasize the critical implications of proof of identity for children affected by HIV/AIDS, as it relates to securing recognition as a person before the law, safeguarding the protection of rights, in particular to inheritance, education, health and other social services, as well as to making children less vulnerable to abuse and exploitation, particularly if separated from their families due to illness or death. In this respect, birth registration is critical to ensuring the rights of the child and is also necessary to minimize the impact of HIV/AIDS on the lives of affected

children. States parties are, therefore, reminded of their obligation under article 7 of the Convention to ensure that systems are in place for the registration of every child at or immediately after birth.

33. The trauma HIV/AIDS brings to the lives of orphans often begins with the illness and death of one of their parents, and is frequently compounded by the effects of stigmatization and discrimination. In this respect, States parties are particularly reminded to ensure that both law and practice support the inheritance and property rights of orphans, with particular attention to the underlying gender-based discrimination which may interfere with the fulfilment of these rights. Consistent with their obligations under article 27 of the Convention, States parties must also support and strengthen the capacity of families and communities of children orphaned by AIDS to provide them with a standard of living adequate for their physical, mental, spiritual, moral, economic and social development, including access to psychosocial care, as needed.

34. Orphans are best protected and cared for when efforts are made to enable siblings to remain together, and in the care of relatives or family members. The extended family, with the support of the surrounding community, may be the least traumatic and therefore the best way to care for orphans when there are no other feasible alternatives. Assistance must be provided so that, to the maximum extent possible, children can remain within existing family structures. This option may not be available due to the impact HIV/AIDS has on the extended family. In that case, States parties should provide, as far as possible, for family-type alternative care (e.g. foster care). States parties are encouraged to provide support, financial and otherwise, when necessary, to child-headed households. States parties must ensure that their strategies recognize that communities are at the front line of the response to HIV/AIDS and that these strategies are designed to assist communities in determining how best to provide support to the orphans living there.

35. Although institutionalized care may have detrimental effects on child development, States parties may, nonetheless, determine that it has an interim role to play in caring for children orphaned by HIV/AIDS when family-based care within their own communities is not a possibility. It is the opinion of the Committee

that any form of institutionalized care for children should only serve as a measure of last resort, and that measures must be fully in place to protect the rights of the child and guard against all forms of abuse and exploitation. In keeping with the right of children to special protection and assistance when within these environments, and consistent with articles 3, 20 and 25 of the Convention, strict measures are needed to ensure that such institutions meet specific standards of care and comply with legal protection safeguards. States parties are reminded that limits must be placed on the length of time children spend in these institutions, and programmes must be developed to support any children who stay in these institutions, whether infected or affected by HIV/AIDS, to successfully reintegrate them into their communities.

#### B. Victims of sexual and economic exploitation

36. Girls and boys who are deprived of the means of survival and development, particularly children orphaned by AIDS, may be subjected to sexual and economic exploitation in a variety of ways, including the exchange of sexual services or hazardous work for money to survive, support their sick or dying parents and younger siblings, or to pay for school fees. Children who are infected or directly affected by HIV/AIDS may find themselves at a double disadvantage - experiencing discrimination on the basis of both their social and economic marginalization and their, or their parents', HIV status. Consistent with the right of children under articles 32, 34, 35 and 36 of the Convention, and in order to reduce children's vulnerability to HIV/AIDS, States parties are under obligation to protect children from all forms of economic and sexual exploitation, including ensuring they do not fall prey to prostitution networks, and that they are protected from performing any work likely to be prejudicial to, or to interfere with, their education, health, or physical, mental, spiritual, moral or social development. States parties must take bold action to protect children from sexual and economic exploitation, trafficking and sale and, consistent with the rights under article 39, create opportunities for those who have been subjected to such treatment to benefit from the support and caring services of the State and non governmental entities engaged in these issues.

#### C. Victims of violence and abuse



37. Children may be exposed to various forms of violence and abuse which may increase the risk of their becoming HIV-infected, and may also be subjected to violence as a result of their being infected or affected by HIV/AIDS. Violence, including rape and other forms of sexual abuse, can occur in the family or foster setting or may be perpetrated by those with specific responsibilities towards children, including teachers and employees of institutions working with children, such as prisons and institutions concerned with mental health and other disabilities. In keeping with the rights of the child set forth in article 19 of the Convention, States parties have the obligation to protect children from all forms of violence and abuse, whether at home, in school or other institutions, or in the community.

38. Programmes must be specifically adapted to the environment in which children live, to their ability to recognize and report abuses and to their individual capacity and autonomy. The Committee considers that the relationship between HIV/AIDS and the violence or abuse suffered by children in the context of war and armed conflict requires specific attention. Measures to prevent violence and abuse in these situations are critical, and States parties must ensure the incorporation of HIV/AIDS and child rights issues in addressing and supporting children - girls and boys - who were used by military or other uniformed personnel to provide domestic help or sexual services, or who are internally displaced or living in refugee camps. In keeping with States parties' obligations, including under articles 38 and 39 of the Convention, active information campaigns, combined with the counselling of children and mechanisms for the prevention and early detection of violence and abuse, must be put in place within conflict- and disaster-affected regions, and must form part of national and community responses to HIV/AIDS.

#### Substance abuse

39. The use of substances, including alcohol and drugs, may reduce the ability of children to exert control over their sexual conduct and, as a result, may increase their vulnerability to HIV infection. Injecting practices using unsterilized instruments further increase the risk of HIV transmission. The Committee notes that greater understanding of substance use behaviours among children is needed, including the impact that neglect and

violation of the rights of the child has on these behaviours. In most countries, children have not benefited from pragmatic HIV prevention programmes related to substance use, which even when they do exist have largely targeted adults. The Committee wishes to emphasize that policies and programmes aimed at reducing substance use and HIV transmission must recognize the particular sensitivities and lifestyles of children, including adolescents, in the context of HIV/AIDS prevention. Consistent with the rights of children under articles 33 and 24 of the Convention, States parties are obligated to ensure the implementation of programmes which aim to reduce the factors that expose children to the use of substances, as well as those that provide treatment and support to children who are abusing substances.

#### VI. RECOMMENDATIONS

40. The Committee hereby reaffirms the recommendations, which emerged at the day of general discussion on children living in a world with HIV/AIDS (CRC/C/80), and calls upon States parties:

- (a) To adopt and implement national and local HIV/AIDS-related policies, including effective plans of action, strategies, and programmes that are child-centred, rights-based and incorporate the rights of the child under the Convention, including by taking into account the recommendations made in the previous paragraphs of the present General Comment and those adopted at the United Nations General Assembly special session on children (2002);
- (b) To allocate financial, technical and human resources, to the maximum extent possible, to supporting national and community-based action (art. 4), and, where appropriate, within the context of international cooperation (see paragraph 41 below).
- (c) To review existing laws or enact new legislation with a view to implementing fully article 2 of the Convention, and in particular to expressly prohibiting discrimination based on real or perceived HIV/AIDS status so as to guarantee equal access for of all children to all relevant services, with particular attention to the child's right to privacy and confidentiality and to other recommendations made by the Committee in the previous paragraphs relevant to legislation;

(d) To include HIV/AIDS plans of action, strategies, policies and programmes in the work of national mechanisms responsible for monitoring and coordinating children's rights and to consider the establishment of a review procedure, which responds specifically to complaints of neglect or violation of the rights of the child in relation to HIV/AIDS, whether this entails the creation of a new legislative or administrative body or is entrusted to an existing national institution;

(e) To reassess their HIV-related data collection and evaluation to ensure that they adequately cover children as defined under the Convention, are disaggregated by age and gender ideally in five-year age groups, and include, as far as possible, children belonging to vulnerable groups and those in need of special protection;

(f) To include, in their reporting process under article 44 of the Convention, information on national HIV/AIDS policies and programmes and, to the extent possible, budgeting and resource allocations at the national, regional and local levels, as well as within these breakdowns the proportions allocated to prevention, care, research and impact reduction. Specific attention must be given to the extent to which these programmes and policies explicitly recognize children (in the light of their evolving capacities) and their rights, and the extent to which HIV-related rights of children are dealt with in laws, policies and practices, with specific attention to discrimination against children on the basis of their HIV status, as well as because they are orphans or the children of parents living with HIV/AIDS. The Committee requests States parties to provide a detailed indication in their reports of what they consider to be the most important priorities within their jurisdiction in relation to children and HIV/AIDS, and to outline the programme of activities they intend to pursue over the coming five years in order to address the problems identified. This would allow activities to be progressively assessed over time.

41. In order to promote international cooperation, the Committee calls upon UNICEF, World Health Organization, United Nations Population Fund, UNAIDS and other relevant international bodies, organizations and agencies to contribute systematically, at the national level, to efforts to ensure the rights of children in the context of HIV/AIDS, and also to continue to

work with the Committee to improve the rights of the child in the context of HIV/AIDS. Further, the Committee urges States providing development cooperation to ensure that HIV/AIDS strategies are so designed as to take fully into account the rights of the child.

42. Non-governmental organizations, as well as community-based groups and other civil society actors, such as youth groups, faith-based organizations, women's organizations and traditional leaders, including religious and cultural leaders, all have a vital role to play in the response to the HIV/AIDS pandemic. States parties are called upon to ensure an enabling environment for participation by civil society groups, which includes facilitating collaboration and coordination among the various players, and that these groups are given the support needed to enable them to operate effectively without impediment (in this regard, States parties are specifically encouraged to support the full involvement of people living with HIV/AIDS, with particular attention to the inclusion of children, in the provision of HIV/AIDS prevention, care, treatment and support services).

## **CRC General Comment 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child**

Many adolescents may be treated as adults before they reach the legal age of majority in their respective regions, leaving them vulnerable to many dangers. Adopted on CRC's 33<sup>rd</sup> session in June 2003, *CRC General Comment 4: Adolescent Health and Development in the Context of the Convention of the Rights of the Child* looks at the special challenges faced by adolescents, particularly while in the process of developing an individual identity and dealing with their sexuality. It emphasizes the importance of setting an appropriate minimum age for sexual consent, marriage and the possibility of medical treatment without parental consent, as important measures to safeguarding adolescents' sexual and reproductive health rights. Adolescent parents are also in need of support and guidance both for their own health, and for their children's. Appropriate legislation, improving access to information for adolescents and awareness-raising are stressed as mechanisms that will improve adolescent health and development.

### **CRC General Comment 4: Adolescent Health and Development in the context of the Convention on the Rights of the Child**

Adopted May 19 –June 6 2003 (33<sup>rd</sup> session),  
CRC/GC/2003/4

#### Introduction

1. The Convention on the Rights of the Child defines a child as “every human being below the age of 18 years unless, under the law applicable, majority is attained earlier” (art. 1). Consequently, adolescents up to 18 years old are holders of all the rights enshrined in the Convention; they are entitled to special protection measures and, according to their evolving capacities, they can progressively exercise their rights (art. 5).

2. Adolescence is a period characterized by rapid physical, cognitive and social changes, including sexual and reproductive maturation; the gradual building up of the capacity to assume adult behaviours and roles involving new responsibilities requiring new knowledge and skills. While adolescents are in general a healthy population group, adolescence also poses new challenges to health and development owing to their relative

vulnerability and pressure from society, including peers, to adopt risky health behaviour. These challenges include developing an individual identity and dealing with one's sexuality. The dynamic transition period to adulthood is also generally a period of positive changes, prompted by the significant capacity of adolescents to learn rapidly, to experience new and diverse situations, to develop and use critical thinking, to familiarize themselves with freedom, to be creative and to socialize.

3. The Committee on the Rights of the Child notes with concern that in implementing their obligations under the Convention, States parties have not given sufficient attention to the specific concerns of adolescents as rights holders and to promoting their health and development. This has motivated the Committee to adopt the present general comment in order to raise awareness and provide States parties with guidance and support in their efforts to guarantee the respect for, protection

and fulfilment of the rights of adolescents, including through the formulation of specific strategies and policies.

4. The Committee understands the concepts of “health and development” more broadly than being strictly limited to the provisions defined in articles 6 (right to life, survival and development) and 24 (right to health) of the Convention. One of the aims of this general comment is precisely to identify the main human rights that need to be promoted and protected in order to ensure that adolescents do enjoy the highest attainable standard of health, develop in a well-balanced manner, and are adequately prepared to enter adulthood and assume a constructive role in their communities and in society at large. This general comment should be read in conjunction with the Convention and its two Optional Protocols on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, as well as other relevant international human rights norms and standards.<sup>1</sup>

I. Fundamental principles and other obligations of states parties

5. As recognized by the World Conference on Human Rights (1993) and repeatedly stated by the Committee, children’s rights too are indivisible and interrelated. In addition to articles 6 and 24, other provisions and principles of the Convention are crucial in guaranteeing that adolescents fully enjoy their right to health and development.

The right to non-discrimination

6. States parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention without discrimination (art. 2), including with regard to “race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”. These grounds also cover adolescents’ sexual orientation and health status (including HIV/AIDS and mental health). Adolescents who are subject to discrimination are more vulnerable to abuse, other types of violence and exploitation, and their health and development are put at greater risk. They are therefore entitled to special attention and protection from all segments of society.

Appropriate guidance in the exercise of rights

7. The Convention acknowledges the responsibilities, rights and duties of parents (or other persons legally responsible for the child) “to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention” (art. 5). The Committee believes that parents or other persons legally responsible for the child need to fulfil with care their right and responsibility to provide direction and guidance to their adolescent children in the exercise by the latter of their rights. They have an obligation to take into account the adolescents’ views, in accordance with their age and maturity, and to provide a safe and supportive environment in which the adolescent can develop. Adolescents need to be recognized by the members of their family environment as active rights holders who have the capacity to become full and responsible citizens, given the proper guidance and direction.

Respect for the views of the child

8. The right to express views freely and have them duly taken into account (art. 12) is also fundamental in realizing adolescents’ right to health and development. States parties need to ensure that adolescents are given a genuine chance to express their views freely on all matters affecting them, especially within the family, in school, and in their communities. In order for adolescents to be able safely and properly to exercise this right, public authorities, parents and other adults working with or for children need to create an environment based on trust, information-sharing, the capacity to listen and sound guidance that is conducive for adolescents’ participating equally including in decision-making processes.

Legal and judicial measures and processes

9. Under article 4 of the Convention, “States parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized” therein. In the context of the rights of adolescents to health and development, States parties need to ensure that specific legal provisions are guaranteed under domestic law, including with regard to setting a minimum age for sexual consent, marriage and the possibility of medical treatment without parental consent. These minimum ages should be the same for boys and girls (article 2 of the Convention) and

closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity (arts. 5 and 12 to 17). Further, adolescents need to have easy access to individual complaint systems as well as judicial and appropriate non-judicial redress mechanisms that guarantee fair and due process, with special attention to the right to privacy (art. 16).

#### Civil rights and freedoms

10. The Convention defines the civil rights and freedoms of children and adolescents in its articles 13 to 17. These are fundamental in guaranteeing the right to health and development of adolescents. Article 17 states that the child has the right to “access information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health”. The right of adolescents to access appropriate information is crucial if States parties are to promote cost-effective measures, including through laws, policies and programmes, with regard to numerous health-related situations, including those covered in articles 24 and 33 such as family planning, prevention of accidents, protection from harmful traditional practices, including early marriages and female genital mutilation, and the abuse of alcohol, tobacco and other harmful substances.

11. In order to promote the health and development of adolescents, States parties are also encouraged to respect strictly their right to privacy and confidentiality, including with respect to advice and counselling on health matters (art. 16). Health-care providers have an obligation to keep confidential medical information concerning adolescents, bearing in mind the basic principles of the Convention. Such information may only be disclosed with the consent of the adolescent, or in the same situations applying to the violation of an adult’s confidentiality. Adolescents deemed mature enough to receive counselling without the presence of a parent or other person are entitled to privacy and may request confidential services, including treatment.

Protection from all forms of abuse, neglect, violence and exploitation<sup>2</sup>

12. States parties must take effective measures to ensure that adolescents are protected

from all forms of violence, abuse, neglect and exploitation (arts. 19, 32-36 and 38), paying increased attention to the specific forms of abuse, neglect, violence and exploitation that affects this age group. In particular, they should adopt special measures to ensure the physical, sexual and mental integrity of adolescents with disabilities, who are particularly vulnerable to abuse and neglect. States parties should also ensure that adolescents affected by poverty who are socially marginalized are not criminalized. In this regard, financial and human resources need to be allocated to promote research that would inform the adoption of effective local and national laws, policies and programmes. Policies and strategies should be reviewed regularly and revised accordingly. In taking these measures, States parties have to take into account the evolving capacities of adolescents and involve them in an appropriate manner in developing measures, including programmes, designed to protect them. In this context, the Committee emphasizes the positive impact that peer education can have, and the positive influence of proper role models, especially those in the worlds of arts, entertainment and sports.

#### Data collection

13. Systematic data collection is necessary for States parties to be able to monitor the health and development of adolescents. States parties should adopt data-collection mechanisms that allow desegregation by sex, age, origin and socio-economic status so that the situation of different groups can be followed. Data should also be collected to study the situation of specific groups such as ethnic and/or indigenous minorities, migrant or refugee adolescents, adolescents with disabilities, working adolescents, etc. Where appropriate, adolescents should participate in the analysis to ensure that the information is understood and utilized in an adolescent-sensitive way.

#### II. Creating a safe and supportive environment

14. The health and development of adolescents are strongly determined by the environments in which they live. Creating a safe and supportive environment entails addressing attitudes and actions of both the immediate environment of the adolescent - family, peers, schools and services - as well as the wider environment created by, inter alia, community and religious leaders, the media, national and

local policies and legislation. The promotion and enforcement of the provisions and principles of the Convention, especially articles 2-6, 12-17, 24, 28, 29 and 31, are key to guaranteeing adolescents' right to health and development. States parties should take measures to raise awareness and stimulate and/or regulate action through the formulation of policy or the adoption of legislation and the implementation of programmes specifically for adolescents.

15. The Committee stresses the importance of the family environment, including the members of the extended family and community or other persons legally responsible for the child or adolescent (arts. 5 and 18). While most adolescents grow up in well-functioning family environments, for some the family does not constitute a safe and supportive milieu.

16. The Committee calls upon States parties to develop and implement, in a manner consistent with adolescents' evolving capacities, legislation, policies and programmes to promote the health and development of adolescents by (a) providing parents (or legal guardians) with appropriate assistance through the development of institutions, facilities and services that adequately support the well-being of adolescents, including, when needed, the provision of material assistance and support with regard to nutrition, clothing and housing (art. 27 (3)); (b) providing adequate information and parental support to facilitate the development of a relationship of trust and confidence in which issues regarding, for example, sexuality and sexual behaviour and risky lifestyles can be openly discussed and acceptable solutions found that respect the adolescent's rights (art. 27 (3)); (c) providing adolescent mothers and fathers with support and guidance for both their own and their children's well-being (art. 24 (f), 27 (2-3)); (d) giving, while respecting the values and norms of ethnic and other minorities, special attention, guidance and support to adolescents and parents (or legal guardians), whose traditions and norms may differ from those in the society where they live; and (e) ensuring that interventions in the family to protect the adolescent and, when necessary, separate her/him from the family, e.g. in case of abuse or neglect, are in accordance with applicable laws and procedures. Such laws and procedures should be reviewed to ensure that they conform to the principles of the Convention.

17. The school plays an important role in the life of many adolescents, as the venue for learning, development and socialization. Article 29 (1) states that education must be directed to "the development of the child's personality, talents and mental and physical abilities to their fullest potential". In addition, general comment No. 1 on the aims of education states that "Education must also be aimed at ensuring that ... no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. Basic skills should include ... the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle [and] good social relationships ...". Considering the importance of appropriate education for the current and future health and development of adolescents, as well as for their children, the Committee urges States parties, in line with articles 28 and 29 of the Convention to (a) ensure that quality primary education is compulsory and available, accessible and free to all and that secondary and higher education are available and accessible to all adolescents; (b) provide well-functioning school and recreational facilities which do not pose health risks to students, including water and sanitation and safe journeys to school; (c) take the necessary actions to prevent and prohibit all forms of violence and abuse, including sexual abuse, corporal punishment and other inhuman, degrading or humiliating treatment or punishment in school, by school personnel as well as among students; (d) initiate and support measures, attitudes and activities that promote healthy behaviour by including relevant topics in school curricula.

18. During adolescence, an increasing number of young people are leaving school to start working to help support their families or for wages in the formal or informal sector. Participation in work activities in accordance with international standards, as long as it does not jeopardize the enjoyment of any of the other rights of adolescents, including health and education, may be beneficial for the development of the adolescent. The Committee urges States parties to take all necessary measures to abolish all forms of child labour, starting with the worst forms, to continuously review national regulations on minimum ages for employment with a view to making them compatible with international standards, and to regulate the working environment and conditions for adolescents who are working (in accordance with

article 32 of the Convention, as well as ILO Conventions Nos. 138 and 182), so as to ensure that they are fully protected and have access to legal redress mechanisms.

19. The Committee also stresses that in accordance with article 23 (3) of the Convention, the special rights of adolescents with disabilities should be taken into account and assistance provided to ensure that the disabled child/adolescent has effective access to and receives good quality education. States should recognize the principle of equal primary, secondary and tertiary educational opportunities for disabled children/adolescents, where possible in regular schools.

20. The Committee is concerned that early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS. Both the legal minimum age and actual age of marriage, particularly for girls, are still very low in several States parties. There are also non-health-related concerns: children who marry, especially girls, are often obliged to leave the education system and are marginalized from social activities. Further, in some States parties married children are legally considered adults, even if they are under 18, depriving them of all the special protection measures they are entitled under the Convention. The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys. The Committee on the Elimination of Discrimination against Women has made a similar recommendation (general comment No. 21 of 1994).

21. In most countries accidental injuries or injuries due to violence are a leading cause of death or permanent disability among adolescents. In that respect, the Committee is concerned about the injuries and death resulting from road traffic accidents, which affect adolescents disproportionately. States parties should adopt and enforce legislation and programmes to improve road safety, including driving education for and examination of adolescents and the adoption or strengthening of legislation known to be highly effective such as the obligations to have a valid driver's licence, wear seat belts and crash helmets, and the designation of pedestrian areas.

22. The Committee is also very concerned about the high rate of suicide among this age group. Mental disorders and psychosocial illness are relatively common among adolescents. In many countries symptoms such as depression, eating disorders and self-destructive behaviours, sometimes leading to self-inflicted injuries and suicide, are increasing. They may be related to, inter alia, violence, ill-treatment, abuse and neglect, including sexual abuse, unrealistically high expectations, and/or bullying or hazing in and outside school. States parties should provide these adolescents with all the necessary services.

23. Violence results from a complex interplay of individual, family, community and societal factors. Vulnerable adolescents such as those who are homeless or who are living in institutions, who belong to gangs or who have been recruited as child soldiers are especially exposed to both institutional and interpersonal violence. Under article 19 of the Convention, States parties must take all appropriate measures<sup>3</sup> to prevent and eliminate: (a) institutional violence against adolescents, including through legislation and administrative measures in relation to public and private institutions for adolescents (schools, institutions for disabled adolescents, juvenile reformatories, etc.), and training and monitoring of personnel in charge of institutionalized children or who otherwise have contact with children through their work, including the police; and (b) interpersonal violence among adolescents, including by supporting adequate parenting and opportunities for social and educational development in early childhood, fostering non-violent cultural norms and values (as foreseen in article 29 of the Convention), strictly controlling firearms and restricting access to alcohol and drugs.

24. In light of articles 3, 6, 12, 19 and 24 (3) of the Convention, States parties should take all effective measures to eliminate all acts and activities which threaten the right to life of adolescents, including honour killings. The Committee strongly urges States parties to develop and implement awareness-raising campaigns, education programmes and legislation aimed at changing prevailing attitudes, and address gender roles and stereotypes that contribute to harmful traditional practices. Further, States parties should facilitate the establishment of multidisciplinary information and advice centres regarding the

harmful aspects of some traditional practices, including early marriage and female genital mutilation.

25. The Committee is concerned about the influence exerted on adolescent health behaviours by the marketing of unhealthy products and lifestyles. In line with article 17 of the Convention, States parties are urged to protect adolescents from information that is harmful to their health and development, while underscoring their right to information and material from diverse national and international sources. States parties are therefore urged to regulate or prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents<sup>4</sup>.

### III. Information, skills development, counselling, and health services

26. Adolescents have the right to access adequate information essential for their health and development and for their ability to participate meaningfully in society. It is the obligation of States parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours. This should include information on the use and abuse, of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity.

27. In order to act adequately on the information, adolescents need to develop the skills necessary, including self-care skills, such as how to plan and prepare nutritionally balanced meals and proper personal hygiene habits, and skills for dealing with particular social situations such as interpersonal communication, decision-making, and coping with stress and conflict. States parties should stimulate and support opportunities to build such skills through, inter alia, formal and informal education and training programmes, youth organizations and the media.

28. In light of articles 3, 17 and 24 of the Convention, States parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early

pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs). In addition, States parties should ensure that they have access to appropriate information, regardless of their marital status and whether their parents or guardians consent. It is essential to find proper means and methods of providing information that is adequate and sensitive to the particularities and specific rights of adolescent girls and boys. To this end, States parties are encouraged to ensure that adolescents are actively involved in the design and dissemination of information through a variety of channels beyond the school, including youth organizations, religious, community and other groups and the media.

29. Under article 24 of the Convention, States parties are urged to provide adequate treatment and rehabilitation for adolescents with mental disorders, to make the community aware of the early signs and symptoms and the seriousness of these conditions, and to protect adolescents from undue pressures, including psychosocial stress. States parties are also urged to combat discrimination and stigma surrounding mental disorders, in line with their obligations under article 2. Every adolescent with a mental disorder has the right to be treated and cared for, as far as possible, in the community in which he or she lives. Where hospitalization or placement in a psychiatric institution is necessary, this decision should be made in accordance with the principle of the best interests of the child. In the event of hospitalization or institutionalization, the patient should be given the maximum possible opportunity to enjoy all his or her rights as recognized under the Convention, including the rights to education and to have access to recreational activities.<sup>5</sup> Where appropriate, adolescents should be separated from adults. States parties must ensure that adolescents have access to a personal representative other than a family member to represent their interests, when necessary and appropriate.<sup>6</sup> In accordance with article 25 of the Convention, States parties should undertake periodic review of the placement of adolescents in hospitals or psychiatric institutions.

30. Adolescents, both girls and boys, are at risk of being infected with and affected by STDs, including HIV/AIDS<sup>7</sup>. States should ensure that appropriate goods, services and information for the prevention and treatment of



STDs, including HIV/AIDS, are available and accessible. To this end, States parties are urged (a) to develop effective prevention programmes, including measures aimed at changing cultural views about adolescents' need for contraception and STD prevention and addressing cultural and other taboos surrounding adolescent sexuality; (b) to adopt legislation to combat practices that either increase adolescents' risk of infection or contribute to the marginalization of adolescents who are already infected with STDs, including HIV; (c) to take measures to remove all barriers hindering the access of adolescents to information, preventive measures such as condoms, and care.

31. Adolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs. States parties should take measures to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices, and to support adolescent parents. Young mothers, especially where support is lacking, may be prone to depression and anxiety, compromising their ability to care for their child. The Committee urges States parties (a) to develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services where abortion is not against the law, adequate and comprehensive obstetric care and counselling; (b) to foster positive and supportive attitudes towards adolescent parenthood for their mothers and fathers; and (c) to develop policies that will allow adolescent mothers to continue their education.

32. Before parents give their consent, adolescents need to have a chance to express their views freely and their views should be given due weight, in accordance with article 12 of the Convention. However, if the adolescent is of sufficient maturity, informed consent shall be obtained from the adolescent her/himself, while informing the parents if that is in the "best interest of the child" (art. 3).

33. With regard to privacy and confidentiality, and the related issue of informed consent to treatment, States parties should (a) enact laws or regulations to ensure that

confidential advice concerning treatment is provided to adolescents so that they can give their informed consent. Such laws or regulations should stipulate an age for this process, or refer to the evolving capacity of the child; and (b) provide training for health personnel on the rights of adolescents to privacy and confidentiality, to be informed about planned treatment and to give their informed consent to treatment.

#### IV. Vulnerability and risk

34. In ensuring respect for the right of adolescents to health and development, both individual behaviours and environmental factors which increase their vulnerability and risk should be taken into consideration. Environmental factors, such as armed conflict or social exclusion, increase the vulnerability of adolescents to abuse, other forms of violence and exploitation, thereby severely limiting adolescents' abilities to make individual, healthy behaviour choices. For example, the decision to engage in unsafe sex increases adolescents' risk of ill-health.

35. In accordance with article 23 of the Convention, adolescents with mental and/or physical disabilities have an equal right to the highest attainable standard of physical and mental health. States parties have an obligation to provide adolescents with disabilities with the means necessary to realize their rights.<sup>8</sup> States parties should (a) ensure that health facilities, goods and services are available and accessible to all adolescents with disabilities and that these facilities and services promote their self-reliance and their active participation in the community; (b) ensure that the necessary equipment and personal support are available to enable them to move around, participate and communicate; (c) pay specific attention to the special needs relating to the sexuality of adolescents with disabilities; and (d) remove barriers that hinder adolescents with disabilities in realizing their rights.

36. States parties have to provide special protection to homeless adolescents, including those working in the informal sector. Homeless adolescents are particularly vulnerable to violence, abuse and sexual exploitation from others, self-destructive behaviour, substance abuse and mental disorders. In this regard, States parties are required to (a) develop policies

and enact and enforce legislation that protect such adolescents from violence, e.g. by law enforcement officials; (b) develop strategies for the provision of appropriate education and access to health care, and of opportunities for the development of livelihood skills.

37. Adolescents who are sexually exploited, including in prostitution and pornography, are exposed to significant health risks, including STDs, HIV/AIDS, unwanted pregnancies, unsafe abortions, violence and psychological distress. They have the right to physical and psychological recovery and social reintegration in an environment that fosters health, self-respect and dignity (art. 39). It is the obligation of States parties to enact and enforce laws to prohibit all forms of sexual exploitation and related trafficking; to collaborate with other States parties to eliminate intercountry trafficking; and to provide appropriate health and counselling services to adolescents who have been sexually exploited, making sure that they are treated as victims and not as offenders.

38. Additionally, adolescents experiencing poverty, armed conflicts, all forms of injustice, family breakdown, political, social and economic instability and all types of migration may be particularly vulnerable. These situations might seriously hamper their health and development. By investing heavily in preventive policies and measures States parties can drastically reduce levels of vulnerability and risk factors; they will also provide cost-effective ways for society to help adolescents develop harmoniously in a free society.

#### V. Nature of States' obligations

39. In exercising their obligations in relation to the health and development of adolescents, States parties shall always take fully into account the four general principles of the Convention. It is the view of the Committee that States parties must take all appropriate legislative, administrative and other measures for the realization and monitoring of the rights of adolescents to health and development as recognized in the Convention. To this end, States parties must notably fulfil the following obligations:

(a) To create a safe and supportive environment for adolescents, including within their family, in schools, in all types of

institutions in which they may live, within their workplace and/or in the society at large;

(b) To ensure that adolescents have access to the information that is essential for their health and development and that they have opportunities to participate in decisions affecting their health (notably through informed consent and the right of confidentiality), to acquire life skills, to obtain adequate and age-appropriate information, and to make appropriate health behaviour choices;

(c) To ensure that health facilities, goods and services, including counselling and health services for mental and sexual and reproductive health, of appropriate quality and sensitive to adolescents' concerns are available to all adolescents;

(d) To ensure that adolescent girls and boys have the opportunity to participate actively in planning and programming for their own health and development;

(e) To protect adolescents from all forms of labour which may jeopardize the enjoyment of their rights, notably by abolishing all forms of child labour and by regulating the working environment and conditions in accordance with international standards;

(f) To protect adolescents from all forms of intentional and unintentional injuries, including those resulting from violence and road traffic accidents;

(g) To protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation;

(h) To ensure that adolescents belonging to especially vulnerable groups are fully taken into account in the fulfilment of all aforementioned obligations;

(i) To implement measures for the prevention of mental disorders and the promotion of mental health of adolescents.

40. The Committee draws the attention of States parties to the general comment No. 14 on the right to the highest attainable standard of health of the Committee on Economic, Social and Cultural Rights which states that, "States parties should provide a safe and supportive

environment for adolescents that ensures the opportunity to participate in decisions affecting their health, to build life skills, to acquire appropriate information, to receive counselling and to negotiate the health-behaviour choices they make. The realization of the right to health of adolescents is dependent on the development of youth-sensitive health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services.”

41. In accordance with articles 24, 39 and other related provisions of the Convention, States parties should provide health services that are sensitive to the particular needs and human rights of all adolescents, paying attention to the following characteristics:

(a) *Availability.* Primary health care should include services sensitive to the needs of adolescents, with special attention given to sexual and reproductive health and mental health;

(b) *Accessibility.* Health facilities, goods and services should be known and easily accessible (economically, physically and socially) to all adolescents, without discrimination. Confidentiality should be guaranteed, when necessary;

(c) *Acceptability.* While fully respecting the provisions and principles of the Convention, all health facilities, goods and services should respect cultural values, be gender sensitive, be respectful of medical ethics and be acceptable to both adolescents and the communities in which they live;

(d) *Quality.* Health services and goods should be scientifically and medically appropriate, which requires personnel trained to care for adolescents, adequate facilities and scientifically accepted methods.

42. States parties should, where feasible, adopt a multisectoral approach to the promotion and protection of adolescent health and development by facilitating effective and sustainable linkages and partnerships among all relevant actors. At the national level, such an approach calls for close and systematic collaboration and coordination within Government, so as to ensure the necessary involvement of all relevant government entities. Public health and other services utilized by

adolescents should also be encouraged and assisted in seeking collaboration with, inter alia, private and/or traditional practitioners, professional associations, pharmacies and organizations that provide services to vulnerable groups of adolescents.

43. A multisectoral approach to the promotion and protection of adolescent health and development will not be effective without international cooperation. Therefore, States parties

should, when appropriate, seek such cooperation with United Nations specialized agencies, programmes and bodies, international NGOs and bilateral aid agencies, international professional associations and other non-State actors.

## Notes

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<sup>1</sup> These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Elimination of All Forms of Discrimination Against Women.

<sup>2</sup> See also the reports of the Committee's days of general discussion on "Violence against

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children" held in 2000 and 2001 and the Recommendations adopted in this regard (see CRC/C/100, chap. V and CRC/C/111, chap. V).

<sup>3</sup> Ibid.

<sup>4</sup> As proposed in the Framework Convention on Tobacco Control (2003) of the World Health Organization.

<sup>5</sup> For further guidance on this subject, refer to the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, (General Assembly resolution 46/119 of 17 December 1991, annex).

<sup>6</sup> Ibid., in particular principles 2, 3 and 7.

<sup>7</sup> For further guidance on this issue, see general comment No. 3 (2003) on HIV/AIDS and the rights of children.

<sup>8[8]</sup> United Nations Standard Rules on Equal Opportunities for Persons with Disabilities.

## HRC General Comment 17: Rights of the Child

As individuals, children should benefit from the civil rights enunciated in Article 24 and the *International Covenant on Civil and Political Rights* by and large. Article 24 recognizes the right of every child, without any discrimination, to receive from his family, society and the state the protection required by his status as a minor. The Human Rights Committee (HRC) issued *General Comment 17: Rights of the Child, intended to interpret the rights addressed in Article 24* in a manner which calls for measures to be adopted with a view to affording minors greater protection in various areas. Thus, for example, the right is defined to prohibit the application of the death penalty for crimes committed by persons under 18 years of age. As well, children's rights within the family and in the court system are addressed. The General Comment was issued by the HRC and adopted on its 35<sup>th</sup> session in July 1989.

### Human Rights Committee - International Covenant on Civil and Political Rights, General Comment 17: Rights of the child (Art. 24)

Adopted 4 July 1989 (35<sup>th</sup> session),  
CCPR Gen. Com. 17, UNCHR, 35<sup>th</sup> session (1989).

1. Article 24 of the International Covenant on Civil and Political Rights recognizes the right of every child, without any discrimination, to receive from his family, society and the State the protection required by his status as a minor. Consequently, the implementation of this provision entails the adoption of special measures to protect children, in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant. The reports submitted by States parties often seem to underestimate this obligation and supply inadequate information on the way in which children are afforded enjoyment of their right to a special protection.

2. In this connection, the Committee points out that the rights provided for in article 24 are not the only ones that the Covenant recognizes for children and that, as individuals, children benefit from all of the civil rights enunciated in the Covenant. In enunciating a right, some provisions of the Covenant expressly indicate to States measures to be adopted with a view to affording minors greater protection than adults.

Thus, as far as the right to life is concerned, the death penalty cannot be imposed for crimes committed by persons under 18 years of age. Similarly, if lawfully deprived of their liberty, accused juvenile persons shall be separated from adults and are entitled to be brought as speedily as possible for adjudication; in turn, convicted juvenile offenders shall be subject to a penitentiary system that involves segregation from adults and is appropriate to their age and legal status, the aim being to foster reformation and social rehabilitation. In other instances, children are protected by the possibility of the restriction - provided that such restriction is warranted - of a right recognized by the Covenant, such as the right to publicize a judgement in a suit at law or a criminal case, from which an exception may be made when the interest of the minor so requires.

3. In most cases, however, the measures to be adopted are not specified in the Covenant and it is for each State to determine them in the light of the protection needs of children in its territory and within its jurisdiction. The Committee notes in this regard that such measures, although

intended primarily to ensure that children fully enjoy the other rights enunciated in the Covenant, may also be economic, social and cultural. For example, every possible economic and social measure should be taken to reduce infant mortality and to eradicate malnutrition among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means. In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression. Moreover, the Committee wishes to draw the attention of States parties to the need to include in their reports information on measures adopted to ensure that children do not take a direct part in armed conflicts.

4. The right to special measures of protection belongs to every child because of his status as a minor. Nevertheless, the Covenant does not indicate the age at which he attains his majority. This is to be determined by each State party in the light of the relevant social and cultural conditions. In this respect, States should indicate in their reports the age at which the child attains his majority in civil matters and assumes criminal responsibility. States should also indicate the age at which a child is legally entitled to work and the age at which he is treated as an adult under labour law. States should further indicate the age at which a child is considered adult for the purposes of article 10, paragraphs 2 and 3. However, the Committee notes that the age for the above purposes should not be set unreasonably low and that in any case a State party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.

5. The Covenant requires that children should be

protected against discrimination on any grounds such as race, colour, sex, language, religion, national or social origin, property or birth. In this connection, the Committee notes that, whereas non-discrimination in the enjoyment of the rights provided for in the Covenant also stems, in the case of children, from article 2 and their equality before the law from article 26, the non-discrimination clause contained in article 24 relates specifically to the measures of protection referred to in that provision. Reports by States parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field, including inheritance, particularly as between children who are nationals and children who are aliens or as between legitimate children and children born out of wedlock.

6. Responsibility for guaranteeing children the necessary protection lies with the family, society and the State. Although the Covenant does not indicate how such responsibility is to be apportioned, it is primarily incumbent on the family, which is interpreted broadly to include all persons composing it in the society of the State party concerned, and particularly on the parents, to create conditions to promote the harmonious development of the child's personality and his enjoyment of the rights recognized in the Covenant. However, since it is quite common for the father and mother to be gainfully employed outside the home, reports by States parties should indicate how society, social institutions and the State are discharging their responsibility to assist the family in ensuring the protection of the child. Moreover, in cases where the parents and the family seriously fail in their duties, ill-treat or neglect the child, the State should intervene to restrict parental authority and the child may be separated from his family when circumstances so require. If the marriage is dissolved, steps should be taken, keeping in view the paramount interest of the children, to give them necessary protection and, so far as is possible, to guarantee personal relations with both parents. The Committee considers it useful that reports by States parties should provide information on the special measures of

protection adopted to protect children who are abandoned or deprived of their family environment in order to enable them to develop in conditions that most closely resemble those characterizing the family environment.

7. Under article 24, paragraph 2, every child has the right to be registered immediately after birth and to have a name. In the Committee's opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child's legal personality. Providing for the right to have a name is of special importance in the case of children born out of wedlock. The main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant. Reports by States parties should indicate in detail the measures that ensure the immediate registration of children born in their territory.

8. Special attention should also be paid, in the context of the protection to be granted to children, to the right of every child to acquire a nationality, as provided for in article 24, paragraph 3. While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents. The measures adopted to ensure that children have a nationality should always be referred to in reports by States parties.

## HRC General Comment 18: Non-Discrimination

Noting the definition of discrimination against women as expressed by CEDAW, this General Comment issued by the Human Rights Committee (HRC) concerns the right to non-discrimination and equality before the law. It further notes that it is states responsibility to ensure non-discrimination and equality in marriage. Adopted on the HRC's 37<sup>th</sup> session in November 1989, General Comment 18 also acknowledges that, despite legislative and administrative measures taken by states, discrimination may still occur in practice and thus it urges states to report on measures taken to combat this discrimination.

### Human Rights Committee, General Comment 18, Non-Discrimination:

Adopted November 10, 1989 (37<sup>th</sup> session),  
U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994).

1 Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights. Thus, article 2, paragraph 1, of the International Covenant on Civil and Political Rights obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Indeed, the principle of non-discrimination is so basic that article 3 obligates each State party to ensure the equal right of men and women to the enjoyment of the rights set forth in the Covenant. While article 4, paragraph 1, allows States parties to take measures derogating from certain obligations under the Covenant in time of public emergency, the same article requires, *inter alia*, that those measures should not involve discrimination solely on the ground of race,

colour, sex, language, religion or social origin. Furthermore, article 20, paragraph 2, obligates States parties to prohibit, by law, any advocacy of national, racial or religious hatred which constitutes incitement to discrimination.

3. Because of their basic and general character, the principle of non-discrimination as well as that of equality before the law and equal protection of the law are sometimes expressly referred to in articles relating to particular categories of human rights. Article 14, paragraph 1, provides that all persons shall be equal before the courts and tribunals, and paragraph 3 of the same article provides that, in the determination of any criminal charge against him, everyone shall be entitled, in full equality, to the minimum guarantees enumerated in subparagraphs (a) to (g) of paragraph 3. Similarly, article 25 provides for the equal participation in public life of all citizens, without any of the distinctions mentioned in article 2.

4. It is for the States parties to determine appropriate measures to implement the relevant provisions. However, the Committee is to be informed about the nature of such measures and their conformity with the principles of non-discrimination and equality before the law and equal protection of the law.

5. The Committee wishes to draw the attention of States parties to the fact that the Covenant



sometimes expressly requires them to take measures to guarantee the equality of rights of the persons concerned. For example, article 23, paragraph 4, stipulates that States parties shall take appropriate steps to ensure equality of rights as well as responsibilities of spouses as to marriage, during marriage and at its dissolution. Such steps may take the form of legislative, administrative or other measures, but it is a positive duty of States parties to make certain that spouses have equal rights as required by the Covenant. In relation to children, article 24 provides that all children, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, have the right to such measures of protection as are required by their status as minors, on the part of their family, society and the State.

6. The Committee notes that the Covenant neither defines the term "discrimination" nor indicates what constitutes discrimination. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Similarly, article 1 of the Convention on the Elimination of All Forms of Discrimination against Women provides that "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

7. While these conventions deal only with cases of discrimination on specific grounds, the Committee believes that the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other

status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

8. The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance. In this connection, the provisions of the Covenant are explicit. For example, article 6, paragraph 5, prohibits the death sentence from being imposed on persons below 18 years of age. The same paragraph prohibits that sentence from being carried out on pregnant women. Similarly, article 10, paragraph 3, requires the segregation of juvenile offenders from adults. Furthermore, article 25 guarantees certain political rights, differentiating on grounds of citizenship.

9. Reports of many States parties contain information regarding legislative as well as administrative measures and court decisions which relate to protection against discrimination in law, but they very often lack information which would reveal discrimination in fact. When reporting on articles 2 (1), 3 and 26 of the Covenant, States parties usually cite provisions of their constitution or equal opportunity laws with respect to equality of persons. While such information is of course useful, the Committee wishes to know if there remain any problems of discrimination in fact, which may be practised either by public authorities, by the community, or by private persons or bodies. The Committee wishes to be informed about legal provisions and administrative measures directed at diminishing or eliminating such discrimination.

10. The Committee also wishes to point out that the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.

11. Both article 2, paragraph 1, and article 26 enumerate grounds of discrimination such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Committee has observed that in a number of constitutions and laws not all the grounds on which discrimination is prohibited, as cited in article 2, paragraph 1, are enumerated. The Committee would therefore like to receive information from States parties as to the significance of such omissions.

12. While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the

Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.

13. Finally, the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.

## **HRC General Comment 19: Protection of the Family, the Right to Marriage and Equality of the Spouses (Article 23)**

Concerned over the protection of the family as the ‘natural and fundamental group unit of society’, the HRC's General Comment 19 emphasizes the responsibility of the state to ensure equality in marriage. Adopted at the HRC's 39<sup>th</sup> session in July 1990, it recognizes that each spouse should have the same rights with regards to ‘matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets.’ State parties are encouraged to adopt family planning policies, which should not be discriminatory nor compulsory, and that are compatible with the provisions of the *International Covenant on Civil and Political Rights*.

### **Human Rights Committee General Comment 19: Protection of the Family, the Right to Marriage and Equality of the Spouses (Article 23)**

Adopted July 27, 1990 (39<sup>th</sup> session),  
U.N. Doc. HRI\GEN\1\Rev.1 at 28 (1994).

1. Article 23 of the International Covenant on Civil and Political Rights recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Protection of the family and its members is also guaranteed, directly or indirectly, by other provisions of the Covenant. Thus, article 17 establishes a prohibition on arbitrary or unlawful interference with the family. In addition, article 24 of the Covenant specifically addresses the protection of the rights of the child, as such or as a member of a family. In their reports, States parties often fail to give enough information on how the State and society are discharging their obligation to provide protection to the family and the persons composing it.

2. The Committee notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition. However, the Committee emphasizes that, when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in article 23.

Consequently, States parties should report on how the concept and scope of the family is construed or defined in their own society and legal system. Where diverse concepts of the family, "nuclear" and "extended", exist within a State, this should be indicated with an explanation of the degree of protection afforded to each. In view of the existence of various forms of family, such as unmarried couples and their children or single parents and their children, States parties should also indicate whether and to what extent such types of family and their members are recognized and protected by domestic law and practice.

3. Ensuring the protection provided for under article 23 of the Covenant requires that States parties should adopt legislative, administrative or other measures. States parties should provide detailed information concerning the nature of such measures and the means whereby their effective implementation is assured. In fact, since the Covenant also recognizes the right of the family to protection by society, States parties' reports should indicate how the necessary protection is granted to the family by the State and other social institutions, whether and to what extent the State gives financial or other support

to the activities of such institutions, and how it ensures that these activities are compatible with the Covenant.

4. Article 23, paragraph 2, of the Covenant reaffirms the right of men and women of marriageable age to marry and to found a family. Paragraph 3 of the same article provides that no marriage shall be entered into without the free and full consent of the intending spouses. States parties' reports should indicate whether there are restrictions or impediments to the exercise of the right to marry based on special factors such as degree of kinship or mental incapacity. The Covenant does not establish a specific marriageable age either for men or for women, but that age should be such as to enable each of the intending spouses to give his or her free and full personal consent in a form and under conditions prescribed by law. In this connection, the Committee wishes to note that such legal provisions must be compatible with the full exercise of the other rights guaranteed by the Covenant; thus, for instance, the right to freedom of thought, conscience and religion implies that the legislation of each State should provide for the possibility of both religious and civil marriages. In the Committee's view, however, for a State to require that a marriage, which is celebrated in accordance with religious rites, be conducted, affirmed or registered also under civil law is not incompatible with the Covenant. States are also requested to include information on this subject in their reports.

5. The right to found a family implies, in principle, the possibility to procreate and live together. When States parties adopt family planning policies, they should be compatible with the provisions of the Covenant and should, in particular, not be discriminatory or compulsory. Similarly, the possibility to live together implies the adoption of appropriate

measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.

6. Article 23, paragraph 4, of the Covenant provides that States parties shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

With regard to equality as to marriage, the Committee wishes to note in particular that no sex-based discrimination should occur in respect of the acquisition or loss of nationality by reason of marriage. Likewise, the right of each spouse to retain the use of his or her original family name or to participate on an equal basis in the choice of a new family name should be safeguarded.

During marriage, the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets. Such equality continues to be applicable to arrangements regarding legal separation or dissolution of the marriage.

Thus, any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance or alimony, visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interest of the children in this connection. States parties should, in particular, include information in their reports concerning the provision made for the necessary protection of any children at the dissolution of a marriage or on the separation of the spouses.

## **HRC General Comment 28: Equality of Rights Between Men and Women**

The HRC General Comment 28 is an update on the HRC's General Comment on Article 3 and a replacement for General Comment 4. This General Comment urges states to take all necessary steps to eliminate discrimination on the basis of sex in both public and private spheres. Significant to reproductive and sexual health rights of women, paragraph 10 urges states to include in their reports steps taken to improve the reproductive rights of women, such as measure taken to assist women in avoiding unwanted pregnancies. As well, paragraph 11 urges states to report on laws and practices in place to combat violence against women, including rape. The General Comment was adopted at the HRC's 68<sup>th</sup> session in March 2000.

### **General Comment 28: Equality of Rights Between Men and Women (Article 3), General Comments Adopted by the Human Rights Committee under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights, Addendum**

Adopted March 29, 2000 (68<sup>th</sup> session),  
CCPR/C/21/Rev.1/Add.10 (2000).

1. The Committee has decided to update its General Comment on Article 3 of this Covenant and to replace General Comment 4 (thirteenth session 1981), in the light of the experience it has gathered in its activities over the last 20 years. This revision seeks to take account of the important impact of this article on the enjoyment by women of the human rights protected under the Covenant.

2. Article 3 implies that all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality. The full effect of this provision is impaired whenever any person is denied the full and equal enjoyment of any right. Consequently, States should ensure to men and women equally the enjoyment of all rights provided for in the Covenant.

3. The obligation to ensure to all individuals the rights recognized in the Covenant, established in articles 2 and 3 of the Covenant, requires that State parties take all necessary steps to enable every person to enjoy those rights. These steps include

the removal of obstacles to the equal enjoyment each of such rights, the education of the population and of state officials in human rights and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant. The State party must not only adopt measures of protection but also positive measures in all areas so as to achieve the effective and equal empowerment of women. States parties must provide information regarding the actual role of women in society so that the Committee may ascertain what measures, in addition to legislative provisions, have been or should be taken to give effect to these obligations, what progress has been made, what difficulties are encountered and what steps are being taken to overcome them.

4. State parties are responsible for ensuring the equal enjoyment of rights without any discrimination. Articles 2 and 3 mandate States parties to take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions both in the public and the private sector which impair the

equal enjoyment of rights.

5. Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes. The subordinate role of women in some countries is illustrated by the high incidence of pre-natal sex selection and abortion of female fetuses. States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights. States parties should furnish appropriate information on those aspects of tradition, history, cultural practices and religious attitudes which jeopardise, or may jeopardise, compliance with article 3, and indicate what measures they have taken or intend to take to overcome such factors.

6. In order to fulfil the obligation set forth in article 3 States parties should take account of the factors which impede the equal enjoyment by women and men of each right specified in the Covenant. To enable the Committee to obtain a complete picture of the situation of women in each State party as regards the implementation of the rights in the Covenant, this general comment identifies some of the factors affecting the equal enjoyment by women of the rights under the Covenant, and spells out the type of information that is required with regard to these various rights.

7. The equal enjoyment of human rights by women must be protected during a state of emergency (article 4). States parties which take measures derogating from their obligations under the Covenant in time of public emergency, as provided in article 4, should provide information to the Committee with respect to the impact on the situation of women of such measures and should demonstrate that they are non-discriminatory.

8. Women are particularly vulnerable in times of internal or international armed conflicts. States parties should inform the Committee of all measures taken during these situations to protect women from rape, abduction and other forms of gender based violence.

9. In becoming parties to the Covenant, States undertake, in accordance with article 3, to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth

in the Covenant, and in accordance with article 5, nothing in the Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights provided for in article 3, or at limitations not covered by the Covenant. Moreover, there shall be no restriction upon or derogation from the equal enjoyment by women of all fundamental human rights recognized or existing pursuant to law, conventions, regulations or customs, on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent.

10. When reporting on the right to life protected by article 6, States parties should provide data on birth rates and on pregnancy and childbirth-related deaths of women. Gender-disaggregated data should be provided on infant mortality rates. States parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undertake life-threatening clandestine abortions. States parties should also report on measures to protect women from practices, that violate their right to life, such as female infanticide, the burning of widows and dowry killings. The Committee also wishes to have information on the particular impact on women of poverty and deprivation that may pose a threat to their lives.

11. To assess compliance with article 7 of the Covenant, as well as with article 24, which mandates special protection for children, the Committee needs to be provided information on national laws and practice with regard to domestic and other types of violence against women, including rape. It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape. The States parties should also provide the Committee information on measures to prevent forced abortion or forced sterilization. In States parties where the practice of genital mutilation exists information on its extent and on measures to eliminate it should be provided. The information provided by States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated.

12. Having regard to their obligations under article 8, States parties should inform the Committee of

measures taken to eliminate trafficking of women and children, within the country or across borders, and forced prostitution. They must also provide information on measures taken to protect women and children, including foreign women and children, from slavery, disguised *inter alia* as domestic or other kinds of personal service. States parties where women and children are recruited, and from which they are taken, and States parties where they are received should provide information on measures, national or international, which have been taken in order to prevent the violation of women's and children's rights.

13. States parties should provide information on any specific regulation of clothing to be worn by women in public. The Committee stresses that such regulations may involve a violation of a number of rights guaranteed by the Covenant, such as: article 26, on non-discrimination; article 7, if corporal punishment is imposed in order to enforce such a regulation; article 9, when failure to comply with the regulation is punished by arrest; article 12, if liberty of movement is subject to such a constraint; article 17, which guarantees all persons the right to privacy without arbitrary or unlawful interference; articles 18 and 19, when women are subjected to clothing requirements that are not in keeping with their religion or their right of self-expression; and, lastly, article 27, when the clothing requirements conflict with the culture to which the woman can lay a claim.

14. With regards to article 9 States parties should provide information on any laws or practices which may deprive women of their liberty on an arbitrary or unequal basis, such as by confinement within the house. (See General Comment No 8 paragraph 1.)

15. As regards articles 7 and 10, States parties must provide all information relevant to ensuring that the right of persons deprived of their liberty are protected on equal terms for men and women. In particular, States parties should report on whether men and women are separated in prisons and whether women are guarded only by female guards. States parties should also report about compliance with the rule that accused juvenile females shall be separated from adults and on any difference in treatment between male and female persons deprived of liberty, such as, for example, access to rehabilitation and education programmes and to conjugal and family visits. Pregnant women

who are deprived of their liberty should receive humane treatment and respect for their inherent dignity at all times surrounding the birth and while caring for their newly-born children; States parties should report on facilities to ensure this and on medical and health care for such mothers and their babies.

16. As regards article 12, States parties should provide information on any legal provision or any practice which restricts women's right to freedom of movement as, for example, the exercise of marital powers over the wife or parental powers over adult daughters, legal or *de facto* requirements which prevent women from travelling such as the requirement of consent of a third party to the issuance of a passport or other type of travel documents to an adult woman. States parties should also report on measures taken to eliminate such laws and practices and to protect women against them, including reference to available domestic remedies (See General Comment No 27 paragraphs 6 and 18)

17. States parties should ensure that alien women are accorded on an equal basis the right to submit reasons against their expulsion, and to have their case reviewed as provided in article 13. In this regard, they should be entitled to submit reasons based on gender specific violations of the Covenant such as those mentioned in paragraphs [10 and 11] above.

18. State parties should provide information to enable the Committee to ascertain whether access to justice and the right to a fair trial, provided for in article 14, are enjoyed by women on equal terms to men. In particular States parties should inform the Committee whether there are legal provisions preventing women from direct and autonomous access to the courts (Case 202/1986, *Ato del Avellanal v. Peru* (views of 28 October 1988).; whether women may give evidence as witnesses on the same terms as men; and whether measures are taken to ensure women equal access to legal aid, in particular in family matters. States parties should report on whether certain categories of women are denied the enjoyment of the presumption of innocence under article 14, paragraph 2, and on the measures which have been taken to put an end to this situation.

19. The right of everyone under article 16 to be recognized everywhere as a person before the law

is particularly pertinent for women, who often see it curtailed by reason of sex or marital status. This right implies that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given together with the property of the deceased husband to his family. States must provide information on laws or practices that prevent women from being treated or from functioning as full legal persons and the measures taken to eradicate laws or practices that allow such treatment.

20. States parties must provide information to enable the Committee to assess the effect of any laws and practices that may interfere with women's right to enjoy privacy and other rights protected by article 17 on the basis of equality with men. An example of such interference arises where the sexual life of a woman is taken into consideration to decide the extent of her legal rights and protections, including protection against rape. Another area where States may fail to respect women's privacy relates to their reproductive functions, for example, where there is a requirement for the husband's authorization to make a decision in regard to sterilization, where general requirements are imposed for the sterilization of women, such as having a certain number of children or being of a certain age, or where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion. In these instances, other rights in the Covenant, such as those of articles 6 and 7, might also be at stake. Women's privacy may also be interfered with by private actors, such as employers who request a pregnancy test before hiring a woman. States parties should report on any laws and public or private actions that interfere with the equal enjoyment by women of the rights under article 17, and on the measures taken to eliminate such interference and to afford women protection from any such interference.

21. States parties must take measures to ensure that freedom of thought, conscience and religion, and the freedom to adopt the religion or belief of one's choice -- including the freedom to change religion or belief and to express one's religion or belief -- will be guaranteed and protected in law and in practice for both men and women, on the same terms and without discrimination. These freedoms

protected by article 18, must not be subject to restrictions other than those authorized by the Covenant, and must not be constrained by, inter alia, rules requiring permission from third parties, or by interference from fathers, husbands, brothers or others. Article 18 may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion; States parties should therefore provide information on the status of women as regards their freedom of thought, conscience and religion, and indicate what steps they have taken or intend to take both to eliminate and prevent infringements of these freedoms in respect of women and to protect their rights against any discrimination.

22. In relation to article 19 States parties should inform the Committee of any laws or other factors which may impede women from exercising the rights protected under this provision on an equal basis. As the publication and dissemination of obscene and pornographic material which portrays women and girls as objects of violence or degrading or inhuman treatment is likely to promote these kinds of treatment of women and girls, States parties should provide information about legal measures to restrict the publication or dissemination of such material.

23. States are required to treat men and women equally in regard to marriage in accordance with article 23, which has been elaborated further by General Comment 19 (1990). Men and women have the right to enter into marriage only with their free and full consent, and States have an obligation to protect the enjoyment of this right on an equal basis. Many factors may prevent women from being able to make the decision to marry freely. One factor relates to the minimum age for marriage. That age should be set by the State on the basis of equal criteria for men and women. These criteria should ensure women's capacity to make an informed and uncoerced decision. A second factor in some States may be that either by statutory or customary law a guardian, who is generally male, consents to the marriage instead of the woman herself, thereby preventing women from exercising a free choice.

24. A different factor that may affect women's right to marry only when they have given free and full consent is the existence of social attitudes which tend to marginalize women victims of rape and put pressure on them to agree to marriage. A



woman's free and full consent to marriage may also be undermined by laws which allow the rapist to have his criminal responsibility extinguished or mitigated if he marries the victim. States parties should indicate whether marrying the victim extinguishes or mitigates criminal responsibility and in the case in which the victim is a minor whether the rape reduces the marriageable age of the victim, particularly in societies where rape victims have to endure marginalization from society. A different aspect of the right to marry may be affected when States impose restrictions on remarriage by women as compared to men. Also the right to choose one's spouse may be restricted by laws or practices that prevent the marriage of a woman of a particular religion with a man who professes no religion or a different religion. States should provide information on these laws and practices and on the measures taken to abolish the laws and eradicate the practices which undermine the right of women to marry only when they have given free and full consent. It should also be noted that equality of treatment with regard to the right to marry implies that polygamy is incompatible with this principle. Polygamy violates the dignity of women. It is an inadmissible discrimination against women. Consequently, it should be definitely abolished wherever it continues to exist.

25. To fulfill their obligations under article 23, paragraph 4, States must ensure that the matrimonial regime contains equal rights and obligations for both spouses, with regard to the custody and care of children, the children's religious and moral education, the capacity to transmit to children the parent's nationality, and the ownership or administration of property, whether common property or property in the sole ownership of either spouse. States should review their legislation to ensure that married women have equal rights in regard to the ownership and administration of such property, where necessary. Also, States should ensure that no sex-based discrimination occurs in respect of the acquisition or loss of nationality by reason of marriage, of residence rights and of the right of each spouse to retain the use of his or her original family name or to participate on an equal basis in the choice of a new family name. Equality during marriage implies that husband and wife should participate equally in responsibility and authority within the family.

26. States must also ensure equality in regard to

the dissolution of marriage, which excludes the possibility of repudiation. The grounds for divorce and annulment should be the same for men and women, as well as decisions with regard to property distribution, alimony and the custody of children. The need to maintain contact between children and the non-custodian parent, should be based on equal considerations. Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.

27. In giving effect to recognition of the family in the context of article 23, it is important to accept the concept of the various forms of family, including unmarried couples and their children and single parents and their children and to ensure the equal treatment of women in these contexts (General Comment 19 paragraph 2 last sentences). Single parent families frequently consist of a single woman caring for one or more children, and States parties should describe what measures of support are in place to enable her to discharge her parental functions on the basis of equality with a man in a similar position.

28. The obligation of states to protect children (article 24) should be carried out equally for boys and girls. States should report on measures taken to ensure that girls are treated equally to boys in education, in feeding and in health care, and provide the Committee with disaggregated data in this respect. States should eradicate, both through legislation and any other appropriate measures, all cultural or religious practices which jeopardize the freedom and well-being of female children.

29. The right to participate in the conduct of public affairs is not fully implemented everywhere on an equal basis. States must ensure that the law guarantees to women article 25 rights on equal terms with men and take effective and positive measures to promote and ensure women's participation in the conduct of public affairs and in public office, including appropriate affirmative action. Effective measures taken by States parties to ensure that all persons entitled to vote are able to exercise that right should not be discriminatory on the grounds of sex. The Committee requires States parties to provide statistical information on the percentage of women in publicly elected offices including the legislature as well as in high-ranking civil service positions and the judiciary.

30. Discrimination against women is often intertwined with discrimination on other grounds such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status. States parties should address the ways in which any instances of discrimination on other grounds affect women in a particular way, and include information on the measures taken to counter these effects.

31. The right to equality before the laws and freedom from discrimination, protected by article 26, requires States to act against discrimination by public and private agencies in all fields. Discrimination against women in areas such as social security laws - Case 172/84, Broeks v. Netherlands (views of 9 April 1987; case 182/84, Zwaan de Vries v. The Netherlands, (views of 9 April 1987); case 218/1986, Vos v. The Netherlands (views of 29 March 1989) -, as well as in the area of citizenship or rights of non-citizens in a country - Case 035/1978, Aumeeruddy-Cziffra et al v. Mauritius (views adopted 9 April 1981) -, violates article 26. The commission of so called "honour crimes" which remain unpunished, constitutes a serious violation of the Covenant and in particular of articles 6, 14 and 26. Laws which impose more severe penalties on women than on men for adultery or other offences also violate the requirement of equal treatment. The Committee has also often observed in reviewing States reports that a large proportion of women are employed in areas which are not protected by labor laws, that prevailing customs and traditions discriminate against women, particularly with regard to access to better paid employment and to equal pay for work of equal value. States should review their legislation and

practices and take the lead in implementing all measures necessary in order to eliminate discrimination against women, in all fields, for example by prohibiting discrimination by private actors in areas such as employment, education, political activities and the provision of accommodation, goods and services. States parties should report on all these measures and provide information on the remedies available to victims of such discrimination.

32. The rights which persons belonging to minorities enjoy under article 27 of the Covenant in respect of their language, culture and religion do not authorize any State, group or person to violate the right to equal enjoyment by women of any Covenant rights, including the right to equal protection of the law. States should report on any legislation or administrative practices related to membership in a minority community that might constitute an infringement of the equal rights of women under the Covenant - Case 24/1977 Lovelace v. Canada, (views adopted July 1981) - and on measures taken or envisaged to ensure the equal right of men and women to enjoy all civil and political rights in the Covenant. Likewise, States should report on measures taken to discharge their responsibilities in relation to cultural or religious practices within minority communities that affect the rights of women. In their reports, States parties should pay attention to the contribution made by women to the cultural life of their communities.

*1834<sup>th</sup> meeting*  
*(68<sup>th</sup> session)*  
*29 March 2000*  
 [Adopted by the Committee]

## **CHR Resolution 1997/33: International Guidelines on HIV/AIDS and Human Rights**

Adopted at the Second International Consultation on HIV/AIDS held in September 1996, the *CHR Resolution 1997/33: International Guidelines on HIV/AIDS and Human Rights (Guidelines)* is a product of a consultation among experts from governments, non-governmental organizations, academic and research organizations, agencies involved in the UNAIDS programme and representatives from networks of people living with HIV/AIDS. The *Guidelines* apply international human rights to the reality of the HIV/AIDS epidemic and include both general human rights principles and practical measures to be taken by states. Three broad areas covered are: government responsibilities, laws and legal support services, and private sector and community participation. In stating that governments should “promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities,” the *Guidelines* recognize that women’s social disadvantage makes them more vulnerable to HIV/AIDS.

### **Commission on Human Rights Resolution 1997/33 International Guidelines on HIV/AIDS and Human Rights**

Adopted September 25, 1996,  
U.N.C.H.R.Res.1997/33, UN.Doc.E/CN.4/

The Commission on Human Rights,

Recalling its resolution 1996/43 of 19 April 1996 and other relevant resolutions and decisions adopted by organizations of the United Nations system, as well as by other competent forums,

Emphasizing, in view of the continuing challenges presented by HIV/AIDS, the need for intensified efforts to ensure universal respect for and observance of human rights and fundamental freedoms for all, to reduce vulnerability to HIV/AIDS and to prevent HIV/AIDS-related discrimination and stigma,

Welcoming the report of the Secretary-General on the Second International Consultation on HIV/AIDS and Human Rights (E/CN.4/1997/37), which presents the outcome of the Consultation, including the Guidelines recommended by the expert participants for States on the promotion and protection of fundamental rights and freedoms in the context of HIV/AIDS, and strategies for their dissemination and implementation,

1. Invites all States to consider the Guidelines recommended by the experts who participated in the Second International Consultation on HIV/AIDS and Human Rights, as contained in document E/CN.4/1997/37 and summarized in the annex to the present resolution;

2. Calls upon the United Nations High Commissioner for Human Rights, the Joint United Nations Programme on HIV/AIDS (UNAIDS), its co-sponsors and other partners to provide technical cooperation to States, upon the request of Governments when required, from within existing resources, for the promotion and protection of human rights in the context of HIV/AIDS;

3. Requests the Secretary-General to solicit the opinion of Governments, specialized agencies and international and non-governmental organizations and to prepare for consideration by the Commission at its fifty-fifth session a progress report on the follow-up to the present resolution.

Annex

Guideline 1: States should establish an effective national framework for their response to HIV/AIDS which ensures a coordinated, participatory, transparent and accountable approach, integrating HIV/AIDS policy and programme responsibilities across all branches of government.

Guideline 2: States should ensure, through political and financial support, that community consultation occurs in all phases of HIV/AIDS policy design, programme implementation and evaluation and that community organizations are enabled to carry out their activities, including in the field of ethics, law and human rights, effectively.

Guideline 3: States should review and reform public health laws to ensure that they adequately address public health issues raised by HIV/AIDS, that their provisions applicable to casually transmitted diseases are not inappropriately applied to HIV/AIDS and that they are consistent with international human rights obligations.

Guideline 4: States should review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV/AIDS or targeted against vulnerable groups.

Guideline 5: States should enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV/AIDS and people with disabilities from discrimination in both the public and private sectors, ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation, and provide for speedy and effective administrative and civil remedies.

Guideline 6: States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of qualitative prevention measures and services, adequate HIV prevention and care information and safe and effective medication at an affordable price.

Guideline 7: States should implement and support legal support services that will educate people affected by HIV/AIDS about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues and utilize means of protection in addition to the courts, such as offices of ministries of justice, ombudsmen, health complaint units and human rights commissions.

Guideline 8: States, in collaboration with and through the community, should promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups.

Guideline 9: States should promote the wide and ongoing distribution of creative education, training and media programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS to understanding and acceptance.

Guideline 10: States should ensure that government and private sectors develop codes of conduct regarding HIV/AIDS issues that translate human rights principles into codes of professional responsibility and practice, with accompanying mechanisms to implement and enforce those codes.

Guideline 11: States should ensure monitoring and enforcement mechanisms to guarantee the protection of HIV-related human rights, including those of people living with HIV/AIDS, their families and communities.

Guideline 12: States should cooperate through all relevant programmes and agencies of the United Nations system, including the Joint United Nations Programme on HIV/AIDS, to share knowledge and experience concerning HIV-related human rights issues and should ensure effective mechanisms to protect human rights in the context of HIV/AIDS at the international level.

57th meeting  
11 April 1997

## **CHR Resolution 2001/50: Integrating the Human Rights of Women Throughout the United Nations System**

Acknowledging the need for a comprehensive and integrated approach to the promotion and protection of the human rights of women and girls, *CHR Resolution 2001/150: Integrating The Human Rights Of Women Throughout The United Nations System* calls upon states, NGOs and women's groups to help fully implement international humanitarian and human rights law in affirmation of the equal rights of men and women. It also recognizes the importance of examining the intersection of multiple forms of discrimination, including their root causes, from a gender perspective, and their impact on women's advancement in order to develop and implement strategies, policies and programmes aimed at the elimination of all forms of discrimination, as well as to increase the role that women play in the design, implementation and monitoring of gender-sensitive anti-discrimination policies. For example, the use of gender-inclusive language in the formulation, interpretation and application of human rights instruments and mechanisms of the Commission on Human Rights (CHR) and the Office of the High Commissioner on Human Rights is urgently recommended. The resolution was presented by the CHR and adopted on its 75<sup>th</sup> meeting in April 2001.

### **Commission on Human Rights resolution 2001/50: Integrating the Human Rights of Women throughout the United Nations system**

Adopted April 24 2001 (75<sup>th</sup> meeting),  
CHR Res. 2001/50, UNCHR, 75<sup>th</sup> Mtg (2001)

*The Commission on Human Rights,*

*Reaffirming* that the equal rights of women and men are enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments,

*Recalling* all previous resolutions on this subject,

*Recalling also* that, in the Vienna Declaration and Programme of Action adopted in June 1993 (A/CONF.157/23), the World Conference on Human Rights affirmed that the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights and called for action to integrate the equal status and human rights of women into the mainstream of United Nations system-wide activity,

*Emphasizing* that all entities of the United

Nations system, as well as the major United Nations conferences and summits, including in the process of implementation of their outcome, should further mainstream a gender perspective at all levels, bearing in mind the need for integrated and coordinated follow-up,

*Bearing in mind* that the Fourth World Conference on Women, held in Beijing in September 1995, in its Platform for Action (A/CONF.177/20, chap. I, annex II), and the General Assembly, in the outcome document of its twenty-third special session, entitled "Women 2000: gender equality, development and peace for the twenty-first century", called upon all relevant organs, bodies and agencies of the United Nations system, all human rights bodies of the United Nations system, as well as the United Nations High Commissioner for Human Rights and the United Nations High Commissioner for Refugees, to give full, equal and sustained attention to the human rights of women in the exercise of their respective

mandates,

*Welcoming* the entry into force of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 22 December 2000,

*Emphasizing* the pivotal role of the Commission on the Status of Women in promoting equality between women and men, and welcoming its agreed conclusions on the human rights of women and on the other critical areas of concern of the Platform for Action,

*Acknowledging* the need to integrate further the human rights of women and a gender perspective into all aspects of the work of the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights and all other subsidiary mechanisms,

*Acknowledging also* the need for a comprehensive and integrated approach to the promotion and protection of the human rights of women, which includes the integration of the human rights of women into the mainstream of United Nations activities system-wide,

*Reaffirming* the need to implement fully international humanitarian and human rights law in order to protect fully the human rights of women and girls,

*Reaffirming also* the important role that women's groups and non-governmental organizations play in promoting and protecting the human rights of women,

1. *Welcomes* the report of the Secretary-General (E/CN.4/2001/71);

2. *Emphasizes* that the goal of mainstreaming a gender perspective is to achieve gender equality and that this includes ensuring that all United Nations activities integrate the human rights of women;

3. *Recognizes* the importance of examining the intersection of multiple forms of discrimination, including their root causes, from a gender perspective, and their impact on women's advancement, in order to develop and implement strategies, policies and programmes aimed at the elimination of all forms of discrimination against women and to increase the role that women play

in the design, implementation and monitoring of gender-sensitive anti-discrimination policies;

4. *Invites* the Economic and Social Council to give attention to the implementation of its agreed conclusions 1997/2 on mainstreaming the gender perspective into all policies and programmes of the United Nations system and 1998/2 related to the coordinated follow-up and implementation of the Vienna Declaration and Programme of Action, in particular point II.B.3 on the equal status and human rights of women, *inter alia* through the conference reviews, in the promotion of an integrated and coordinated implementation of and follow-up to major United Nations conferences and summits in the economic, social and related fields;

5. *Welcomes* the resolution of the Commission on the Status of Women on mainstreaming the gender perspective into all policies and programmes in the United Nations system, adopted at its forty-fifth session, which, *inter alia*, requests the Economic and Social Council to devote a future coordination segment, by 2005, to the review and appraisal of the system-wide implementation of agreed conclusions 1997/2 and to identify further strategies to accelerate the implementation of these policies and programmes, and, as part of this review and appraisal, to invite the functional commissions to report on progress made to implement the agreed conclusions in their work;

6. *Encourages* the continued commitment of the United Nations High Commissioner for Human Rights to integrating the human rights of women throughout the United Nations system, including through continued cooperation with the Special Adviser on Gender Issues and Advancement of Women;

7. *Welcomes* the continued cooperation between the Commission on the Status of Women and the Commission on Human Rights, including through joint bureau meetings and the participation of the Chair of the Commission on the Status of Women in the work of the Commission on Human Rights and, similarly, the participation of the Chair of the Commission on Human Rights in the sessions of the Commission on the Status of Women, and encourages the continuation of this reciprocal collaboration;

8. *Also welcomes* the cooperation and coordination between the Division for the Advancement of Women and the Office of the United Nations High Commissioner for Human Rights aimed at mainstreaming the human rights of women and the report of the Secretary-General on the joint work plan for the year 2001 (E/CN.4/2001/70-E/CN.6/2001/3), and encourages the Secretary-General to ensure its implementation, to continue to elaborate this plan, reflecting all aspects of work under way and the lessons learned, to identify obstacles/impediments and areas for further collaboration and to make it available to the Commission on Human Rights at its fifty-eighth session and to the Commission on the Status of Women at its forty-sixth session;

9. *Draws attention* to the need to develop practical strategies to implement the recommendations contained in the report of the expert group meeting on the development of guidelines for the integration of a gender perspective into United Nations human rights activities and programmes (E/CN.4/1996/105, annex) and, in this regard, urges the full implementation of those recommendations and notes with interest the workshop on gender integration in the human rights system, organized jointly by the Office of the High Commissioner, the Division for the Advancement of Women and the United Nations Development Fund for Women and held from 26 to 28 May 1999;

10. *Urges* the relevant organs, bodies and agencies of the United Nations system, including all human rights bodies, the Office of the United Nations High Commissioner for Human Rights and the Office of the United Nations High Commissioner for Refugees to bear in mind, in the recruitment of staff, including for peacekeeping operations and humanitarian and human rights missions, the need for expertise in the enjoyment by women and girls of human rights;

11. *Emphasizes* the need for further activities in the United Nations system to strengthen expertise concerning the equal status and human rights of women through, *inter alia*, the provision of training on the human rights of women and on gender mainstreaming, including

through gender impact analysis, to all United Nations personnel and officials at Headquarters and in the field, especially in field operations;

12. *Stresses* the importance of mainstreaming a gender perspective into the preparations, work and the outcome of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which will take place in Durban, South Africa, from 31 August to 7 September 2001, and urges the inclusion of women in delegations to the Conference;

13. *Recognizes* that gender mainstreaming will strongly benefit from the enhanced and full participation of women, including at the higher levels of decision-making in the United Nations system, and in this regard strongly encourages Member States to promote gender balance by, *inter alia*, regularly nominating more women candidates for election to the human rights treaty bodies and for appointment to United Nations bodies, including international courts and tribunals, the specialized agencies and other organs, and calls upon all relevant actors to implement General Assembly resolution 55/69 of 4 December 2000 on improvement of the status of women in the United Nations system;

14. *Encourages* United Nations bodies and agencies to increase cooperation with other organizations in developing activities to address, within their respective mandates, violations of the human rights of women and to promote the full enjoyment of all human rights and fundamental freedoms by women, including by developing activities with other organizations;

15. *Requests* all special procedures and other human rights mechanisms of the Commission on Human Rights and the Sub-Commission for the Promotion and Protection of Human Rights, and invites human rights treaty bodies, regularly and systematically to take a gender perspective into account in the implementation of their mandates and to include in their reports information on and qualitative analysis of human rights of women and girls, and encourages the strengthening of cooperation and coordination, welcomes in this regard the adoption by the Committee on the Elimination of Racial Discrimination of its general recommendation XXV on gender-related dimensions of racial discrimination at its fifty-

sixth session in March 2000, and also welcomes General Comment No. 28 of the Human Rights Committee on equality of rights between men and women adopted at its sixty-eighth session in March 2000, and General Comment No. 14 (2000) on the right to the highest attainable standard of health (art. 12 of the International Covenant on Economic, Social and Cultural Rights) adopted by the Committee on Economic, Social and Cultural Rights in May 2000;

16. *Welcomes* the proposal to update the study on integrating a gender perspective into the work of the human rights treaty bodies (HRI/MC/1998/6);

17. *Recalls* the paper prepared for the meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Commission and of the advisory services programme held from 28 to 30 May 1996 (E/CN.4/1997/3, annex) and the description therein of gender-specific analysis and reporting as an examination of the effects of gender on the form which a human rights violation takes, the circumstances in which a particular violation occurs, the consequences for the victim and the availability and accessibility of remedies, and urges the implementation of the recommendations pertaining to working methods and reporting methodology, including sources of information and gender-specific analysis in conclusions and recommendations;

18. *Notes with appreciation* the request made by the Economic and Social Council in its agreed conclusions 1998/2 that the Commission make explicit the integration of a gender perspective when establishing or renewing human rights mandates;

19. *Urges* the use of gender-inclusive language in the formulation, interpretation and application of human rights instruments, as well as in reports, resolutions and/or decisions of the Commission, the Sub-Commission and the various human rights mechanisms, and requests the Office of the United Nations High Commissioner for Human Rights to utilize gender-inclusive language in the preparation of all of its communications, reports and publications, and to work with the United Nations conference services to ensure gender-inclusive language and interpretation in the proceedings of the Office;

20. *Encourages* the efforts of the treaty bodies to monitor more effectively the human rights of women in their activities, bearing in mind the workshops on gender integration, and reaffirms that it is the responsibility of all treaty bodies, in their work, to integrate a gender perspective, bearing in mind also the need:

(a) To develop gender-sensitive guidelines to be used in the review of reports of States parties;

(b) To develop, as a matter of priority, a common strategy towards mainstreaming the human rights of women into their work, so that each body, within its mandate, monitors the human rights of women;

(c) To incorporate a gender analysis and to exchange information regularly in the development of general comments and recommendations, with a view to the preparation of general comments which reflect a gender perspective;

(d) To incorporate a gender perspective in concluding observations so that the concluding observations of each treaty body delineate the strengths and weaknesses of each State party insofar as enjoyment by women of the rights guaranteed by a particular treaty is concerned;

21. *Encourages* all entities charged with the promotion and protection of human rights, especially United Nations human rights bodies and mechanisms, to identify, collect and use sex-disaggregated data and gender-specific information in their activities and to apply gender analysis in monitoring and reporting;

22. *Welcomes* the submission of reports by specialized agencies, at the invitation of the Committee on the Elimination of Discrimination against Women, on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women in areas falling within the scope of their activities and the contribution of non-governmental organizations to the work of the Committee;

23. *Encourages* all entities of the United Nations system to pay systematic, increased and sustained attention to the recommendations of the Committee, in order to ensure that its



concluding observations and general recommendations are better utilized in their respective work;

24. *Urges* all States that have not yet ratified or acceded to the Convention to do so, so that universal ratification of the Convention can be achieved as soon as possible, and urges all States parties that have not yet done so to consider signing, ratifying or acceding to the Optional Protocol to the Convention;

25. *Urges* States to limit the extent of any reservations to the Convention on the Elimination of All Forms of Discrimination against Women, to formulate any such reservations as precisely and as narrowly as possible, to ensure that no reservations are incompatible with the object and purpose of the Convention or otherwise incompatible with international treaty law and regularly to review them with a view to withdrawing them, and to withdraw reservations that are contrary to the object and purpose of the Convention or which are otherwise incompatible with international treaty law;

26. *Urges* States that have ratified or acceded to the Convention to take action to implement the Convention fully, *inter alia* through national legislation, policies and practice, and to take account of the recommendations of the Committee on the Elimination of Discrimination against Women in this regard;

27. *Notes* the first resolution on women and peace and security adopted by the Security Council, resolution 1325 (2000), which, *inter alia*, calls on actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, *inter alia*,

measures that ensure the protection of and respect for the human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary;

28. *Welcomes* the 1999 Inter-Agency Standing Committee policy statement for the integration of a gender perspective in humanitarian assistance, and encourages the Committee to evaluate its implementation and impact;

29. *Also welcomes* General Assembly resolution 55/71 of 4 December 2000, in which the Assembly, *inter alia*, encouraged the Economic and Social Council to request the regional commissions, within their respective mandates and resources, to build up a database, to be updated regularly, in which all programmes and projects carried out in their respective regions by agencies or organizations of the United Nations system are listed, and to facilitate their dissemination, as well as the evaluation of their impact on the empowerment of women through the implementation of the Platform for Action adopted by the Fourth World Conference on Women;

30. *Requests* the Secretary-General to report, at its fifty-eighth session, on the implementation of the present resolution;

31. *Decides* to integrate a gender perspective into all of its agenda items;

32. *Also decides* to continue its consideration of the question at its fifty-eighth session.

*75th meeting  
24 April 2001*

[Adopted without a vote. .]

## **CHR Resolution 2002/51: Traffic in Women and Girls**

The concern over transnational organized crime and the trafficking of human beings have reached a new level through the unabated use of new information technologies, including the Internet, for the purposes of prostitution, child pornography, pedophilia, sex tourism as well as the trafficking in women as brides. The *Commission on Human Rights Resolution 2002/51: Traffic in women and girls* stresses the urgent need to eliminate all forms of sexual violence and trafficking which both violate, impair and nullify the enjoyment by women and girls of their human rights and fundamental freedoms, and are incompatible with the dignity and worth of the human person, through the adoption of effective measures nationally, regionally and internationally. These measures include systematic data collection, comprehensive studies on the modus operandi of trafficking syndicates as well as the greater allocation of resources and better coordination of programmes and activities. *Resolution 2001/51* was presented by the CHR and adopted on its 51<sup>st</sup> meeting in April 2002.

### **Sub-Commission on Human Rights Resolution 2002/51: Traffic in women and girls**

Adopted April 23 2002 (51<sup>st</sup> meeting),  
CHR Res. 2002/51, UNCHR, 51<sup>st</sup> Mtg. (2002).

*The Commission on Human Rights,*

*Recalling* the United Nations Millennium Declaration, particularly the resolve expressed by heads of State and Government to intensify efforts to fight transnational organized crime in all its dimensions, including trafficking in human beings,

*Recalling also* all previous resolutions on the problem of the traffic in women and girls adopted by the General Assembly and the Commission on Human Rights, as well as the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,

*Reaffirming* the provisions pertaining to the traffic in women and children adopted by the World Conference on Human Rights, the International Conference on Population and Development, the World Summit for Social Development, the Fourth World Conference on Women, the Ninth and Tenth United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, the twenty-third special session of the General Assembly entitled

"Women 2000: gender equality, development and peace for the twenty-first century", the twenty-fourth special session of the General Assembly entitled "World Summit on Social Development and beyond: achieving social development for all in a globalizing world", the Second World Congress against Commercial Sexual Exploitation of Children and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,

*Stressing once again* the urgent need to eliminate all forms of sexual violence and trafficking, including for prostitution, which both violate and impair or nullify the enjoyment by women and girls of their human rights and fundamental freedoms and are incompatible with the dignity and worth of the human person, through the adoption of effective measures nationally, regionally and internationally,

*Recognizing* that victims of trafficking are particularly exposed to racism, racial discrimination, xenophobia and related intolerance,

*Noting with concern* that women and girls are often subject to multiple forms of discrimination on the grounds of their gender as well as their origin, particularly when they are victims of trafficking,

*Welcoming* the adoption by the General Assembly in resolution 55/25 of 15 November 2000 of the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention,

*Welcoming also* the entry into force of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,

*Recognizing* the importance of bilateral, subregional and regional cooperation mechanisms and initiatives to address the problem of trafficking in women and children, in particular girls, and taking note of the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution adopted in January 2002 by the South Asian Association for Regional Cooperation; the Declaration on the Fight against Trafficking in Persons and the Initial Plan of Action against Trafficking in Persons (2002-2003) adopted at Dakar in December 2001 of the Economic Community of West African States; the Asia-Europe Meeting Action Plan to Combat Trafficking in Persons, Especially Women and Children, held at Beijing in May 2001; the Europe against Trafficking in Persons Conference of the Organization for Security and Cooperation in Europe, held at Berlin in October 2001; and the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, held in Bali, Indonesia, in February 2002,

*Recognizing also* that global efforts, including international cooperation and technical assistance programmes, to eradicate trafficking in persons, particularly women and children, demand strong political commitment by and the active cooperation of all Governments of countries of origin, transit and destination,

*Stressing* the need for a global approach to eradicate trafficking in women and children and the importance, in this regard, of systematic data collection and comprehensive studies, including

on the modus operandi of trafficking syndicates,

*Acknowledging* the work done by intergovernmental and non-governmental organizations in compiling information on the scale and complexity of the problem of trafficking, in providing shelter for trafficked women and children, and in effecting their voluntary repatriation to their countries of origin,

*Recognizing* the need to address the impact of globalization on the problem of trafficking in women and children, in particular girls,

*Seriously concerned* at the increasing number of women and girl children from developing countries and from some economies in transition who are being trafficked to developed countries, as well as within and between regions and States, and acknowledging that the problem of trafficking also includes the victimizing of boys,

*Gravely concerned* at the increasing activities of transnational criminal organizations and others that profit from international trafficking in women and children without regard to dangerous and inhumane conditions and in flagrant violation of domestic laws and international standards,

*Convinced* of the need to protect and assist all victims of trafficking, with full respect for their human rights,

*Deeply concerned* about the unabated use of new information technologies, including the Internet, for purposes of exploitation of the prostitution of others and for child pornography, paedophilia and any other forms of sexual exploitation of children, trafficking in women as brides and sex tourism,

1. *Welcomes* the report of the Secretary-General (E/CN.4/2002/80) on activities of United Nations bodies and other international organizations pertaining to the problem of trafficking in women and girls;

2. *Takes note* of resolution 2001/14 of 15 August 2001 of the Sub-Commission on the Promotion and Protection of Human Rights;

3. *Invites* Governments as well as donors, the Office of the United Nations High Commissioner for Human Rights and international, regional and non-governmental organizations to consider the need for comprehensive anti-trafficking

strategies, greater allocation of resources and better coordination of programmes and activities in tackling the problem of trafficking in persons, particularly women and girls;

4. *Invites* human rights treaty bodies, the special rapporteurs and subsidiary bodies of the Commission, the Office of the High Commissioner, other United Nations bodies and international organizations to continue to address within their mandates the problem of trafficking in women and girls, and to share their knowledge and best practices as widely as possible;

5. *Urges* Governments to take appropriate measures to address the root factors, including external factors, that encourage trafficking in women and children, in particular girls, for prostitution and other forms of commercialized sex, forced marriages and forced labour, so as to eliminate trafficking in women, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing perpetrators, through both criminal and civil measures;

6. *Also urges* Governments to adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and that leads to trafficking;

7. *Calls upon* Governments to criminalize trafficking in women and children in all its forms and to condemn and penalize traffickers and intermediaries, while ensuring protection and assistance to the victims of trafficking with full respect for their human rights;

8. *Encourages* Governments to take steps to ensure for victims of trafficking respect for all their human rights and fundamental freedoms, including taking steps to ensure that all legislation related to combating trafficking is gender-sensitive and provides protection for the human rights of women and girls and against violations committed against women and girls;

9. *Calls upon* Governments to ensure that the treatment of victims of trafficking, especially women and girls, as well as all measures taken against trafficking in persons, in particular those that affect the victims of such trafficking, are

consistent with internationally recognized principles of non-discrimination, including the prohibition of racial discrimination and the availability of appropriate legal redress;

10. *Encourages* Governments to conclude bilateral, subregional, regional and international agreements to address the problem of trafficking in women and children, in particular girls;

11. *Urges* Governments to consider signing and ratifying the United Nations Convention against Transnational Organized Crime and the protocols supplementing the Convention, particularly the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

12. *Also urges* Governments to consider signing and ratifying the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, as a matter of priority, and to consider signing and ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the 1999 Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labour (No. 182) of the International Labour Organization;

13. *Invites* Governments to encourage Internet service providers to adopt or strengthen self-regulatory measures to promote the responsible use of the Internet with a view to eliminating trafficking in women and children, in particular girls;

14. *Encourages* the business sector, in particular the tourist industry and Internet providers, to develop codes of conduct, with a view to preventing trafficking in persons and protecting the victims of such traffic, especially those in prostitution, against gender-based and racial discrimination and promoting their rights, dignity and security;

15. *Encourages* Governments, in cooperation with intergovernmental organizations and non-governmental organizations, to undertake information campaigns, targeted at women and girls, aimed at clarifying opportunities, limitations and rights in the event of migration so

as to enable women to make informed decisions and to prevent them from becoming victims of trafficking;

16. *Calls upon* concerned Governments to allocate resources, as appropriate, to provide comprehensive programmes designed to heal and rehabilitate into society victims of trafficking, including through job training, legal assistance and health care, and by taking measures to cooperate with non-governmental organizations to provide for the social, medical and psychological care of the victims;

17. *Requests* Governments to establish comprehensive policies, programmes and other measures, including through the collection of quantitative and qualitative data, to prevent victimization of women and girls and to protect victims of trafficking from revictimization;

18. *Urges* Governments to provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons which should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of victims, including protecting the victims from traffickers; the training should also take into account the need to consider human rights and child-and-gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society;

19. *Takes note* of the establishment of the Intergovernmental Organization Contact Group on Trafficking and Migrant Smuggling, under the coordination of the Trafficking Adviser of the United Nations High Commissioner for Human Rights and co-chaired by the Office of the United Nations High Commissioner for Refugees and the International Labour Organization, which brings together representatives of the major Geneva-based intergovernmental organizations working on trafficking, as well as relevant non-governmental organizations, for cooperation and collaboration on the issue of trafficking;

20. *Invites* the United Nations High Commissioner for Human Rights, in cooperation with participating organizations of the Contact Group, to brief delegations and other interested parties on the Office of the United Nations High Commissioner for Human rights Trafficking

Programme and the activities of the Contact Group during the fifty-ninth session of the Commission;

21. *Requests* the Secretary-General to provide the Commission, at its fifty-ninth session, with an update on the report on activities of the United Nations bodies and other international organizations pertaining to the problem of trafficking in women and girls;

22. *Decides* to continue its consideration of this question at its fifty-ninth session under the appropriate agenda item.

*51st meeting  
23 April 2002*

[Adopted without a vote.  
E/2002/23 - E/CN.4/2002/200, see chap. XII.]

## **CHR Resolution 2003/28: The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health**

Based on the premise that the enjoyment of the highest attainable standard of physical and mental health is a human right, *CHR Resolution 2003/28: The right of everyone to the enjoyment to the highest attainable standard of physical and mental health* puts forward the challenge to create favorable conditions at the national, regional and international levels that will ensure the full and effective realization of the right. It calls for states, in cooperation with international organizations and civil society, including non-governmental organizations and the private sector, to adopt relevant legislative measures to respond to violence by strengthening prevention efforts, and to assist developing countries through financial and technical support as well as training of personnel. The Resolution was presented by the CHR and adopted on its 56<sup>th</sup> meeting in April 2003.

### **Commission on Human Rights Resolution 2003/28: The right of Everyone To The Enjoyment Of The Highest Attainable Standard Of Physical And Mental Health**

Adopted April 22 2003 (56<sup>th</sup> meeting),  
CHR Res. 2003/28, UNCHR, 56<sup>th</sup> Mtg. (2003).

*The Commission on Human Rights,*

*Reaffirming* the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

*Reaffirming also* that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health is a human right, as reflected, inter alia, in article 25, paragraph 1, of the Universal Declaration of Human Rights, article 12 of the International Covenant on Economic, Social and Cultural Rights and article 24 of the Convention on the

Rights of the Child, as well as, with respect to non discrimination, in article 5 (e) (iv) of the

International Convention on the Elimination of All Forms of Racial Discrimination and in article

12, paragraph 1, of the Convention on the Elimination of all Forms of Discrimination against Women, and that such a right derives from the inherent dignity of the human person,

*Recalling* that, according to the Constitution of the World Health Organization, health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity,

*Recalling also* the relevant provisions of declarations and programmes of action adopted by the major United Nations conferences, summits and special sessions and their follow-up meetings,

*Recalling further* all its previous resolutions concerning the realization of the right of

everyone to the enjoyment of the highest attainable standard of physical and mental health,

*Recalling* General Comment No. 14 (2000) on the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-second session in May 2000,

*Noting* General Comment No. 15 (2002) on the right to water, adopted by the Committee on Economic, Social and Cultural Rights at its twenty-ninth session in November 2002,

*Noting also* General Comment No. 3 (2003) on HIV/AIDS and the rights of the child, adopted by the Committee on the Rights of the Child at its thirty-second session in January 2003,

*Noting further* General Recommendation No. 24 (1999) on women and health (art. 12), adopted by the Committee on the Elimination of Discrimination against Women at its twentieth session,

*Welcoming* the work of the Intergovernmental Negotiating Body in finalizing a draft text for a World Health Organization framework convention on tobacco control for adoption by the fifty-sixth World Health Assembly in May 2003,

*Concerned* at the findings of the World Report on Violence and Health released in 2002 by the World Health Organization, according to which over 1.3 million people died from interpersonal or self-directed violence in 2000,

*Noting* that violence can have detrimental consequences for health and under some circumstances can be an obstacle to the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as well as to the enjoyment of other human rights,

*Aware* that, for millions of people throughout the world, the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health still remains a distant goal and that, in many cases, especially for those living in poverty, this goal is becoming increasingly remote,

*Recognizing* a need for States, in cooperation with international organizations and civil society, including non-governmental organizations and the private sector, to create favourable conditions at the national, regional and international levels to ensure the full and effective realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

*Recognizing also* the indispensable role that health professionals play in the promotion and protection of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

*Welcoming* the initiatives by the Secretary-General and relevant United Nations bodies and programmes, such as the World Health Organization and the Joint United Nations Programme on HIV/AIDS (UNAIDS), as well as public-private partnership initiatives, such as the Global Fund to Fight AIDS, Tuberculosis and Malaria, which contribute to improvements in addressing health issues worldwide, including in developing countries, while noting that further progress should be achieved in this regard, including in the mobilization of resources,

*Mindful* of the need to promote and protect the progressive realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

*Concerned* about the interrelationships between poverty and the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in particular that ill-health can be both a cause and a consequence of poverty,

*Recalling* the development goals of the United Nations Millennium Declaration, in particular the four health-related development goals,

*Considering* that sexual and reproductive health are integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

1. *Urges* States to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources, with a view to achieving progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health by all appropriate

means, including particularly the adoption of legislative measures;

2. *Calls upon* the international community to continue to assist the developing countries in promoting the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including through financial and technical support as well as training of personnel, while recognizing that the primary responsibility for promoting and protecting all human rights rests with States;

3. *Calls upon* States to guarantee that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health will be exercised without discrimination of any kind;

4. *Invites* States to consider adopting a framework convention on tobacco control at the fifty-sixth World Health Assembly;

5. *Calls upon* States to pay special attention to the situation of vulnerable groups, including by the adoption of positive measures, in order to safeguard the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

6. *Also calls upon* States to protect and promote sexual and reproductive health as integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

7. *Considers* it of the utmost importance to enhance all States' efforts for effective prevention of violence causing physical and mental injury that constitutes a human rights violation, particularly with a view to reducing its possible negative impact on the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as well as on the enjoyment of other human rights;

8. *Recommends* the following draft resolution to the Economic and Social Council for adoption:

*"The Economic and Social Council,*

*"Taking note of Commission on Human Rights resolution 2003/28 of 22 April 2003, in which the Commission highlighted the importance of*

enhancing the international community's response to violence by strengthening prevention efforts at the national level and through international cooperation,

"1. *Recommends* that the General Assembly declare 2007 the United Nations Year for Violence Prevention;

"2. *Requests* the Commission on Human Rights to submit to the Council a draft programme of action for the Year.";

9. *Requests* the United Nations High Commissioner for Human Rights to solicit proposals from Governments, non-governmental organizations and United Nations bodies programmes, and specialized agencies, in particular the World Health Organization, for possible measures to be taken and activities to be carried out during such a year and to submit a compilation thereof to the Commission at its sixtieth session;

10. *Invites* the Office of the High Commissioner for Human Rights, the World Health Organization and other relevant United Nations bodies and programmes, and specialized agencies to organize an international expert consultation on violence prevention and human rights, with the aim of developing guidelines on violence, based on human rights instruments;

11. *Invites* all relevant special rapporteurs who so wish to report, in fulfilling their mandates, on the issue of violence prevention and to make recommendations thereon to the Commission at its sixtieth session;

12. *Invites* all relevant treaty bodies that so wish to submit their contribution on the issue of violence prevention to the Commission at its sixtieth session;

13. *Affirms* that good governance, sound economic policies and solid democratic institutions responsive to the needs of the people are also key to the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

14. *Takes note with interest* of the preliminary report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (E/CN.4/2003/58);



15. *Invites* the Special Rapporteur, within the framework of his mandate, to pay particular attention to the linkages between poverty reduction strategies and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as well as between the realization of this right and aspects of discrimination and stigma, and to give particular attention to the identification of best practices for the effective operationalization of this right;

16. *Requests* the Special Rapporteur to pursue his analysis of the issues of neglected diseases, including very neglected diseases, and the role of health impact assessments;

17. *Requests* the United Nations High Commissioner for Human Rights to continue providing all the necessary resources for the effective fulfilment of the Special Rapporteur's mandate from within existing resources;

18. *Calls upon* Governments to cooperate fully with the Special Rapporteur in the implementation of his mandate, to provide all information requested and to respond promptly to his communications;

19. *Requests* the Special Rapporteur to submit annually a report to the Commission and an interim report to the General Assembly on the activities performed under his mandate;

20. *Decides* to continue consideration of this matter at its sixtieth session under the same agenda item.

*56th meeting  
22 April 2003*

[Adopted by a recorded vote of 39 votes to 1,  
with 13 abstentions. See chap. X.]

## **CHR Resolution 2003/29: Access to Medication in the Context of Pandemics such as HIV/AIDS, Tuberculosis and Malaria**

The human right to the highest standard of physical and mental health recognizes the need to reduce vulnerability to pandemics such as HIV/AIDS, tuberculosis and malaria and to prevent related discrimination and stigma. *CHR Resolution 2003/29: Access to Medication in the Context of Pandemics such as HIV/AIDS, Tuberculosis and Malaria* resolves to pursue policies in accordance with applicable international laws and agreements, which would promote availability in sufficient quantities of pharmaceutical products and medical technologies for all without discrimination, as well as promote research and development of new and more effective preventive, curative or palliative pharmaceutical products and diagnostic tools. This *Resolution* was adopted at the CHR's 56<sup>th</sup> meeting in April 2003.

### **Commission On Human Rights Resolution 2003/29: Access To Medication In The Context Of Pandemics Such As HIV/AIDS, Tuberculosis And Malaria**

Adopted April 22 2003 (56<sup>th</sup> Meeting),  
CHR Res. 2003/29, UNCHR, 56<sup>th</sup> Mtg. (2003).

*The Commission on Human Rights,*

*Reaffirming* the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights,

*Reaffirming also* that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health is a human right,

*Recalling further* its resolutions 1999/49 of 27 April 1999, 2001/33 of 23 April 2001, 2001/51 of 24 April 2001 and 2002/32 of 22 April 2002,

*Bearing in mind* World Health Assembly resolutions WHA55.12 entitled "Contribution of WHO to the Follow-Up of the United Nations General Assembly Special Session on HIV/AIDS" and WHA55.14 entitled "Ensuring accessibility of essential medicines", both adopted on 18 May 2002, as well as the ILO Code of Practice on HIV/AIDS and the World of Work, adopted by the Governing Body of the International Labour Organization in June 2001,

*Acknowledging* that prevention and comprehensive care and support, including

treatment and access to medication for those infected and affected by pandemics such as HIV/AIDS, tuberculosis and malaria are inseparable elements of an effective response and must be integrated into a comprehensive approach to respond to such pandemics,

*Recalling* the guidelines elaborated at the Second International Consultation on HIV/AIDS and Human Rights held in Geneva from 23 to 25 September 1996 (E/CN.4/1997/37, annex I), as well as the revision of guideline 6 at the third international expert consultation on HIV/AIDS and human rights, held on 25 and 26 July 2002,

*Recalling* General Comment No. 14 (2000) on the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-second session in May 2000,

*Noting* General Comment No. 3 (2003) on HIV/AIDS and the rights of the child, adopted

by the Committee on the Rights of the Child at its thirty-second session in January 2003,

*Noting with great concern* that, according to the Joint United Nations Programme on HIV/AIDS, the HIV/AIDS pandemic claimed 3.1 million lives in 2002,

*Alarmed* that, according to the same source, about 42 million people were living with HIV by the end of 2002,

*Alarmed also* that, according to information provided jointly by the Joint United Nations Programme on HIV/AIDS, the United Nations Children's Fund and the United States Agency for International Development in July 2002, 25 million children under the age of 15 are projected to lose one or both parents owing to HIV/AIDS by 2010, 20 million of whom will reside in Africa,

*Recalling* United Nations General Assembly resolution 57/294, entitled "2001-2010: Decade to Roll Back Malaria in Developing Countries, particularly in Africa", adopted by the Assembly on 20 December 2002,

*Alarmed* that, according to the global Roll Back Malaria partnership, malaria annually causes more than 1 million deaths, around 90 per cent of which are in Africa, that malaria is the leading cause of death in young children and that malaria causes at least 300 million cases of acute illness each year,

*Alarmed also* that, according to the World Health Organization Global Tuberculosis Control report of 2003, tuberculosis kills about 2 million people each year, 7 to 8 million people around the world become sick with tuberculosis each year and it is projected that between 2002 and 2020, 36 million people will die of tuberculosis if control is not further strengthened,

*Acknowledging* the significance of HIV/AIDS in the increase in tuberculosis and other opportunistic infections,

*Welcoming* the initiatives of the Secretary-General and relevant United Nations agencies, developed and developing countries, and the private sector to make drugs related to HIV/AIDS, tuberculosis and malaria more accessible to developing countries, and noting that much more can be done in this regard,

*Recalling* the Declaration on the Agreement on Trade-Related Aspects of Intellectual Property Rights and Public Health adopted at the Fourth World Trade Organization Ministerial Conference in Doha in November 2001,

*Recognizing* the need to find an expeditious solution to the problem faced by members of the World Trade Organization with insufficient or no manufacturing capacities in the pharmaceutical sector, as referred to in paragraph 6 of the above-mentioned Declaration, and supporting ongoing efforts in the World Trade Organization in this regard,

*Stressing* the importance of fully implementing the Declaration of Commitment on HIV/AIDS "Global Crisis - Global Action", adopted by the General Assembly in its resolution S-26/2 of 27 June 2001 at its special session on HIV/AIDS, and taking note of the report of the Secretary-General to the General Assembly at its fifty-seventh session on progress towards implementation of the Declaration of Commitment on HIV/AIDS (A/57/227),

*Expressing* its support for the work of the Global Fund to Fight HIV/AIDS, Tuberculosis and Malaria and of other international bodies combating such pandemics,

*Recognizing* that the spread of HIV/AIDS can have a uniquely devastating impact on all sectors and levels of society and stressing that the HIV/AIDS pandemic, if unchecked, may pose a risk to stability and security, as stated in Security Council resolution 1308 (2000) of 17 July 2000,

*Emphasizing*, in view of the increasing challenges presented by pandemics such as HIV/AIDS, tuberculosis and malaria, the need for intensified efforts to ensure universal respect for and observance of human rights and fundamental freedoms for all, including by reducing vulnerability to pandemics such as HIV/AIDS, tuberculosis and malaria and by preventing related discrimination and stigma,

1. *Recognizes* 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;

2. *Calls upon* States to develop and implement national strategies, in accordance with applicable international law, including international agreements acceded to, in order progressively to realize access for all to prevention-related goods, services and information as well as access to comprehensive treatment, care and support for all individuals infected and affected by pandemics such as HIV/AIDS, tuberculosis and malaria;

3. *Also calls upon* States to establish or strengthen national health and social infrastructures and health-care systems, with the assistance of the international community as necessary, for the effective delivery of prevention, treatment, care and support to respond to pandemics such as HIV/AIDS, tuberculosis and malaria;

4. *Further calls upon* States to pursue policies, in accordance with applicable international law, including international agreements acceded to, which would promote:

(a) The availability in sufficient quantities of pharmaceutical products and medical technologies used to treat pandemics such as HIV/AIDS, tuberculosis and malaria or the most common opportunistic infections that accompany them;

(b) The accessibility and affordability for all without discrimination, including the most vulnerable or socially disadvantaged groups of the population, of pharmaceutical products or medical technologies used to treat pandemics such as HIV/AIDS, tuberculosis, malaria or the most common opportunistic infections that accompany them;

(c) The assurance that pharmaceutical products or medical technologies used to treat pandemics such as HIV/AIDS, tuberculosis, malaria or the most common opportunistic infections that accompany them, irrespective of their sources and countries of origin, are scientifically and medically appropriate and of good quality;

5. *Calls upon* States, at the national level, on a non-discriminatory basis, in accordance with applicable international law, including international agreements acceded to:

(a) To refrain from taking measures which would deny or limit equal access for all persons to preventive, curative or palliative pharmaceutical

products or medical technologies used to treat pandemics such as HIV/AIDS, tuberculosis, malaria or the most common opportunistic infections that accompany them;

(b) To adopt and implement legislation or other measures, in accordance with applicable international law, including international agreements acceded to, to safeguard access to such preventive, curative or palliative pharmaceutical products or medical technologies from any limitations by third parties;

(c) To adopt all appropriate positive measures, to the maximum of the resources allocated for this purpose, to promote effective access to such preventive, curative or palliative pharmaceutical products or medical technologies;

6. *Also calls upon* States, in furtherance of the Declaration of Commitment on HIV/AIDS, to address factors affecting the provision of drugs related to the treatment of pandemics such as HIV/AIDS and the most common opportunistic infections that accompany them, as well as to develop integrated strategies to strengthen health-care systems, including voluntary counselling and testing, laboratory capacities and the training of health-care providers and technicians, in order to provide treatment and monitor the use of medications, diagnostics and related technologies;

7. *Further calls upon* States to take all appropriate measures, nationally and through cooperation, to promote research and development of new and more effective preventive, curative or palliative pharmaceutical products and diagnostic tools, in accordance with applicable international law, including international agreements acceded to;

8. *Calls upon* States, at the international level, to take steps, individually and/or through international cooperation, in accordance with applicable international law, including international agreements acceded to, such as:

(a) To facilitate, wherever possible, access in other countries to essential preventive, curative or palliative pharmaceutical products or medical technologies used to treat pandemics such as HIV/AIDS, tuberculosis and malaria or the most common opportunistic infections that accompany them, as well as to extend the necessary cooperation, wherever possible, especially in times of emergency;

(b) To ensure that their actions as members of international organizations take due account of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and that the application of international agreements is supportive of public health policies which promote broad access to safe, effective and affordable preventive, curative or palliative pharmaceutical products and medical technologies;

9. *Welcomes* the financial contributions made to date to the Global Fund to Fight AIDS, Tuberculosis and Malaria, urges that further contributions be made to sustain the Fund and also calls upon all States to encourage the private sector to contribute to the Fund as a matter of urgency;

10. *Calls upon* the Joint United Nations Programme on HIV/AIDS to mobilize further resources to combat the HIV/AIDS pandemic and upon all Governments to take measures to ensure that the necessary resources are made available to the Joint United Nations Programme on HIV/AIDS, in line with the Declaration of Commitment on HIV/AIDS;

11. *Also calls upon* States to ensure that those at risk of contracting malaria, in particular pregnant women and children under 5 years of age, benefit from the most suitable combination of personal and community protective measures, such as insecticide treated bed nets and other interventions that are accessible and affordable, to prevent infection and suffering;

12. *Further calls upon* States to provide the necessary support for the World Health Organization Roll Back Malaria and Stop TB partnerships in ongoing measures to combat malaria and tuberculosis;

13. *Calls upon* the international community, the developed countries in particular, to continue to assist the developing countries in the fight against pandemics such as HIV/AIDS, tuberculosis and malaria through financial and technical support, as well as through the training of personnel;

14. *Invites* the Committee on Economic, Social and Cultural Rights also to give attention to the issue of access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria and invites States to include appropriate information thereon in the reports they submit to the Committee;

15. *Takes note with interest* of the report of the Secretary-General on access to medication in the context of pandemics such as HIV/AIDS (E/CN.4/2003/48 and Add.1);

16. *Requests* the Secretary-General to solicit comments from Governments, United Nations organs, programmes and specialized agencies and international and non-governmental organizations on the steps they have taken to promote and implement, where applicable, the present resolution, as well as to report thereon to the Commission at its sixtieth session;

17. *Decides* to continue its consideration of this matter at its sixtieth session, under the same agenda item.

*56th meeting  
22 April 2003*

[Adopted without a vote.]

See chap. X. - E/CN.4/2003/L.11/Add.3]

## **CHR Resolution 2003/47: The Protection of Human Rights in the Context of Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS)**

Access to medication in the context of the HIV/AIDS pandemic, including the reduction of vulnerability to it and the prevention of related discrimination, is a fundamental freedom for all. In recognition of this freedom and in response to the pandemic, *CHR Resolution 2003/47: The Protection of Human Rights in the Context of Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS)* calls upon states to establish or strengthen national health and social infrastructures for the effective delivery of prevention, treatment and support to the public. It also encourages the development and implementation of national strategies, in accordance with international law and agreements, in order to progressively realize access to prevention-related goods, services and information for all as well as to comprehensive treatment, care and support for individuals infected and affected by the pandemic. The *Resolution* was presented by the CHR and adopted at its 56<sup>th</sup> meeting in April 2003.

### **Commission on Human Rights Resolution 2003/47: The Protection of Human Rights in the Context of Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS)**

Adopted April 22 2003 (56<sup>th</sup> meeting),  
CHR Res. 2003/47, UNCHR, 56<sup>th</sup> Mtg. (2003)

*The Commission on Human Rights,*

*Recalling* its resolutions 2001/51 of 24 April 2001 and 1999/49 of 27 April 1999 and other relevant resolutions and decisions adopted by organizations of the United Nations system, as well as by other competent forums,

*Welcoming* the Declaration of Commitment on HIV/AIDS "Global Crisis - Global Action", adopted by the General Assembly at its special session on HIV/AIDS held in June 2001, and noting in particular that this Declaration affirms that realization and safeguarding of human rights and fundamental freedoms for all are essential to reduce vulnerability to HIV/AIDS,

*Taking note with interest* of the preliminary report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health E/CN.4/2003/58,

*Taking note also with interest* of the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (E/CN.4/2003/67) which addresses access to information in the context of HIV/AIDS prevention and care,

*Taking note further with interest* of General Comment No. 3, "HIV/AIDS and the rights of the child", adopted by the Committee on the Rights of the Child at its thirty-second session in January 2003, the first-ever general comment on HIV/AIDS, adopted by a treaty monitoring mechanism,

*Welcoming* the fact that many positive steps in implementing its previous resolutions have been taken, including the enactment of legislation in some countries to promote human rights in the context of HIV/AIDS and to prohibit discrimination against persons infected or

presumed to be infected and members of vulnerable groups,

*Encouraging* the continuation of national, regional and international consultations in the field of HIV/AIDS and human rights,

*Noting with concern* that, according to estimates by the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the World Health Organization, by the end of 2002 the number of people living with HIV increased to 42 million, the number of people newly infected with HIV was 5 million and the number of people who died from AIDS was 3.1 million,

*Noting with particular concern* that more than 95 per cent of all people infected with HIV live in the developing world, mostly in conditions of poverty, underdevelopment, conflict and inadequate measures for the prevention, treatment and care of HIV/AIDS infection and noting that an increasing proportion of people living with HIV/AIDS are women,

*Noting* the devastating impact of HIV/AIDS, including increased mortality and morbidity among the working-age population, losses in family income, greater numbers of orphans, the disproportionate burden borne by women at the personal, family and community levels and higher health and social costs,

*Welcoming* the creation of and the progress made by the Global Fund to Fight AIDS, Tuberculosis and Malaria,

*Emphasizing*, in view of the increasing challenges presented by HIV/AIDS, the need for intensified efforts to ensure universal respect for and observance of human rights and fundamental freedoms for all so as to reduce vulnerability to HIV/AIDS and to prevent HIV/AIDS-related discrimination and stigma,

*Concerned* that lack of full enjoyment of human rights by persons suffering from economic, social or legal disadvantage heightens the vulnerability of such persons to the risk of HIV infection and to its impact, if infected,

*Also concerned* that, in many countries, many people infected and affected by HIV, as well as those presumed to be infected, continue to be discriminated against in law, policy and practice,

*Welcoming* the significant role of UNAIDS in cooperation with relevant bodies of the United Nations system, in particular the Office of the United Nations High Commissioner for Human Rights, and of national and international non-governmental organizations, in particular organizations of people living with HIV/AIDS, in promoting and protecting human rights in the context of HIV/AIDS, including fighting discrimination against people living with HIV/AIDS, and in the full range of prevention, treatment and care activities,

*Noting* that stigma and discrimination on the basis of HIV or AIDS status are obstacles to an effective HIV/AIDS response and reiterating that discrimination on the basis of HIV or AIDS status, actual or presumed, is prohibited by existing international human rights standards, and that the term "or other status" in non-discrimination provisions in international human rights texts should be interpreted to cover health status, including HIV/AIDS,

*Recalling HIV/AIDS and Human Rights International Guidelines Revised Guideline 6: Access to prevention, treatment, care and support*, an outcome of the Third International Consultation on HIV/AIDS and Human Rights, convened jointly by the Office of the High Commissioner for Human Rights and UNAIDS, which provides guidance to ensuring the respect, protection and fulfilment of human rights in the context of HIV/AIDS,

*Welcoming* the report of the Secretary-General on the protection of human rights in the context of HIV and AIDS (E/CN.4/2003/81), which provides an overview of action taken by Governments, specialized agencies and international and non-governmental organizations on the implementation of the Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37, annex I) and their dissemination, and which addresses issues of technical cooperation for the promotion and protection of human rights in the context of HIV/AIDS,

1. *Invites* States, United Nations organs, programmes and specialized agencies and international and non-governmental organizations to continue to take all necessary steps to ensure the respect, protection and fulfilment of HIV-related human rights as

contained in the Guidelines on HIV/AIDS and Human Rights;

2. *Invites* States, United Nations organs, programmes and specialized agencies and international and non-governmental organizations to contribute to international cooperation in the context of HIV/AIDS-related human rights through, inter alia, working on advancing HIV/AIDS prevention and care programmes, including facilitating access to treatment and care in the context of HIV/AIDS, and through sharing knowledge, experiences and achievements concerning HIV-related issues;

3. *Invites* States to strengthen national mechanisms for protecting HIV/AIDS-related human rights and to take all necessary measures to eliminate stigmatization of and discrimination against those infected and affected by HIV/AIDS, especially for women, children and vulnerable groups, so that infected persons who reveal their HIV status, those presumed to be infected and other affected persons are protected from violence, stigmatization and other negative consequences;

4. *Invites* States, United Nations organs, programmes and specialized agencies and international and non-governmental organizations to assist developing countries, in particular the least developed countries and those in Africa, in their efforts to prevent the spread of the epidemic, alleviate and control the detrimental impact of HIV/AIDS on the human rights of their populations and care for those infected;

5. *Urges* States to ensure that their laws, policies and practices respect human rights in the context of HIV/AIDS, prohibit HIV/AIDS-related discrimination, promote effective programmes for the prevention of HIV/AIDS, including through education and awareness-raising campaigns and improved access to high-quality goods and services for preventing transmission of the virus, and promote effective programmes for the care and support of persons infected and affected by HIV, including through improved and equitable access to safe and effective medication for the treatment of HIV infection and HIV/AIDS-related illnesses;

6. *Requests* States to establish coordinated, participatory, gender-sensitive, transparent and accountable national policies and programmes for HIV/AIDS response and to translate national

policies to district level and local action, involving in all phases of development and implementation non-governmental and community-based organizations and people living with HIV/AIDS;

7. *Also requests* States to develop and support services, including legal aid where appropriate, to educate people infected and affected by HIV/AIDS about their rights and to assist them in realizing their rights;

8. *Further requests* States to take all the necessary steps, including appropriate education, training and media programmes, to combat discrimination, prejudice and stigma, and to ensure the full enjoyment of civil, political, economic, social and cultural rights by people infected and affected by HIV/AIDS;

9. *Requests* States, in consultation with the relevant national professional bodies, to ensure that codes of professional conduct, responsibility and practice respect human rights and dignity in the context of HIV/AIDS, including access to care for people infected and affected by HIV/AIDS;

10. *Also requests* States, in consultation with relevant national bodies, including national human rights institutions, to develop and support appropriate mechanisms to monitor and enforce HIV/AIDS-related human rights;

11. *Invites* the human rights treaty bodies, when considering reports submitted by States parties, to give particular attention to HIV/AIDS-related rights and invites States to include appropriate HIV/AIDS-related information in the reports they submit to the relevant treaty bodies;

12. *Invites* States when preparing their progress reports to the General Assembly on the implementation of the Declaration of Commitment on HIV/AIDS "Global Crisis - Global Action" to include information on human rights in the context of HIV/AIDS;

13. *Requests* all special representatives, special rapporteurs and working groups of the Commission, inter alia, the special rapporteurs on the right to education, on the promotion and protection of freedom of opinion and expression, on violence against women, its causes and consequences, and on the sale of children, child prostitution and child pornography, to integrate the protection of HIV-related human rights



within their respective mandates and invites in particular the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in the discharge of his mandate to pay appropriate attention to relevant issues concerning this resolution;

14. *Requests* the Secretary-General to invite the United Nations organs and programmes, as well as the specialized agencies and Member States, to integrate HIV-related human rights into their policies, programmes and activities, including those involving regional intergovernmental human rights and other bodies, and to involve non-governmental and community-based organizations in all phases of development and implementation, to help ensure a system-wide approach, stressing the coordinating and catalytic role of UNAIDS;

15. *Also requests* the Secretary-General to solicit comments from Governments, United Nations organs, programmes and specialized agencies and international and non-governmental organizations on the steps they have taken to promote and implement, where applicable, the Guidelines on HIV/AIDS and Human Rights and the present resolution, and to submit, in consultation with interested parties, a progress report for consideration at its sixty-first session.

*59th meeting*

*23 April 2003*

[Adopted without a vote.

See chap. XIV. - E/CN.4/2003/L.11/Add.4]