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Panel on Human Rights and HIV

Statement by **the International HIV/AIDS Alliance**
Joined by the **International Lesbian and Gay Association (ILGA); Humanist Institute for Co-operation with Developing Countries (Hivos); International Council Of Aids Service Organizations (ICASO); the Canadian HIV/AIDS Legal Network; Grandmothers Advocacy Network; Global Network of People Living with HIV (GNP+); International AIDS Society (IAS); International Planned Parenthood Federation (IPPF).**

Delivered by David Ruiz Villafranca

Mr. President,

We welcome the HRC acknowledgment that the full realization of human rights is an essential element in the global AIDS response. Today, more than 30 years into the Aids epidemic, we have the knowledge, tools and the experience to end Aids; but it will be impossible to get there without a strong and real commitment towards the realisation of the human rights of all people living with and affected by HIV.

With this statement, supported by 52 HIV and human rights organisations, we call upon States to adopt the following four commitments as a basis to move towards the end of Aids.

1. States must r**espect, protect, and fulfil the rights of all persons living with or affected by HIV by prohibiting all forms of discrimination**, and taking all necessary steps to end gender inequality and gender-based violence, and ensuring full respect for the right to health, including sexual and reproductive health. All states' reports under the Universal Periodic Review process and all UN human rights treaty bodies should provide analysis of the human rights context of HIV in the countries reported and measures undertaken and planned to address it.
2. States must establish **quantifiable commitments to eliminate legislation that criminalise** people living with or affected by HIV. Today, at least 60 countries have laws that criminalize HIV non-disclosure, exposure or transmission, and 56 have travel restrictions. Criminalised populations, Gay people, other MSM, Transgender, SW and PWID, continue to face the greatest burden of the epidemic, because of the many barriers to accessing services.
3. States must **respect, protect and fulfil the rights to treatment and prevention** by removing all legal and societal barriers. States must ensure full use of TRIPS flexibilities and policies to provide immediate HIV treatment. Today, 21 million people do not have access to ARVs.
4. States share an obligation to finance the rights to health for all. They must **commit to increase quantifiable investments in human rights interventions**. That includes interventions led by civil society and affected populations on the ground.

Mr. President,

This panel offers a great opportunity to inform the negotiations up to the High Level Meeting on AIDS. We, people affected by and living with HIV, key populations and civil society will continue to

work hand in hand with communities, governments and the UN to ensure no one is left behind. Thank you.

Signatories

1. ACON
2. Action against AIDS, Germany
3. Africa Civil Society Platform for Health (CiSPHA)
4. African Services Committee
5. AIDS and Rights Alliance for Southern Africa (ARASA)
6. AIDS-Fondet/The Danish AIDS Foundation
7. Alliance Center for Adolescent Health and HIV, India
8. Alliance Côte d'Ivoire
9. Alliance for Public Health, Ukraine
10. Asia Pacific Coalition on Male Sexual Health (APCOM)
11. Asia Pacific Council of AIDS Service Organisations (APCASO)
12. Australian Federation of AIDS Organisations (AFAO)
13. Balance Promoción para el Desarrollo y Juventud
14. Collaborative Network of People Living with HIV (C-NET+) - Belize
15. European Red Cross and Red Crescent Network on HIV/AIDS, TB, HCV (ERNA)
16. Family Aids Support Organisation (F.A.S.O.)
17. Fundación Salud por Derecho
18. Global Network of People Living With HIV (GNP+)
19. Grandmothers Advocacy Network
20. Harm Reduction International
21. Health GAP
22. Health NGOS Network (HENNET)
23. Humanist Institute for Co-operation with Developing Countries (Hivos)
24. India HIV/AIDS Alliance
25. Interagency Coalition on AIDS and Development (ICAD)
26. International AIDS Society (IAS)
27. International Civil Society Support (ICSS)
28. International Community of Women Living with HIV (ICW) Global
29. International Council Of Aids Service Organizations (ICASO)
30. International HIV/AIDS Alliance
31. International Planned Parenthood Federation (IPPF)
32. International Treatment Preparedness Coalition (ITPC)
33. Latin American and the Caribbean Council of AIDS Organizations (LACCASO)
34. Loving Hand Zimbabwe
35. MAMTA Health Institute for Mother and Child
36. Network Medicus Mundi Switzerland
37. Osservatorio Italiano sull'Azione Globale contro l'AIDS
38. Pan African Centre for Social Development & Accountability PACSDA)
39. Partners in Sexual Health (PSH) South Africa
40. Positive Vibes
41. Soropositividade, Comunicação e Gênero (GESTOS)
42. Southern African AIDS Trust (SAT)
43. Stop AIDS Alliance (SAA)
44. STOP AIDS NOW!-Aids Fonds
45. The Canadian HIV/AIDS Legal Network
46. The Center for Reproductive Rights
47. The Global Forum on MSM & HIV (MSMGF)
48. The Grandmothers Advocacy Network (GRAN)
49. The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)
50. World Council of Churches-Ecumenical Advocacy Alliance (WCC-EAA)
51. Young Positive Generation Of Lesotho – YPGOL
52. Youth Voices Count

ANNEX

Progress and challenges in human rights and the AIDS epidemic

Introduction

This statement is addressed to the UN Human Rights Council (HRC) panel on progress and challenges of human rights in the AIDS epidemic, contributing to the HRC's position at the UN High Level Meeting on HIV/AIDS (HLM) scheduled for 8-10 June 2016. The panel also marks the twentieth anniversary of the International Guidelines on HIV/AIDS and Human Rights (International Guidelines).[1]

The civil society organisations subscribing to this statement salute the HRC acknowledgment that "the full realization of human rights and fundamental freedoms for all is an essential element in the global response to the HIV/AIDS pandemic."[2] In this statement we acknowledge e the progress made towards the realisation of the human rights of people living with and affected by HIV and highlight the important challenges still remaining, which we call on the HRC and UN Member states to address and to consider, when agreeing on the HLM outcome.

Unprecedented progress in the articulation of a human rights-based response to HIV

After decades of responding to the epidemic, human rights are resolutely at the core of the global response to HIV and AIDS. The latest UN General Assembly's political declaration on HIV and AIDS (2011 Political Declaration) reaffirmed "that the full realization of all human rights and fundamental freedoms for all is an essential element in the global response to the HIV epidemic".[3]

The International Guidelines established that "states should establish an effective national framework for their response to HIV" and "enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups".[4] A considerable number of countries have since introduced laws protecting populations affected by HIV, introduced targeted HIV services to reach marginalised populations, and established measures to combat discrimination and foster participation of people affected by and living with HIV in national HIV strategies. However, many countries have policies and laws that foster discrimination against people living with HIV and other key populations[5].

The recently adopted 2030 Agenda for Sustainable Development includes a strong political commitment to ending AIDS and promoting human rights, ensuring equality and leaving no-one behind as key drivers to the successful implementation of the 2030 Agenda.

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[1] Office of the UN High Commissioner for Human Rights & UNAIDS, *International Guidelines on HIV/AIDS and Human Rights*, Consolidated version, 2006.

[2] UN Human Rights Council, 'Contribution of the Human Rights Council to high-level meeting on HIV/AIDs in 2016', HRC/30.L70, 28 September, 2015.

[3] UNGA Resolution, Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS, A/RES/65/277, para. 77, 8 July 2011 (2011 Political Declaration).

[4] *International Guidelines on HIV/AIDS and Human Rights*, op.cit (Guideline 1, p. 17; Guideline 5, p. 18)

[5] UNAIDS Terminology Guidelines, 2015.
http://www.unaids.org/sites/default/files/media_asset/2015_terminology_guidelines_en.pdf

Zero discrimination targets are key in UNAIDS' strategy aimed to ending AIDS as a major global health crisis by 2030, and Human rights specific programmes are recognised as essential to the effective HIV response among key actors in HIV governance, including UNAIDS, WHO and the Global Fund to fight AIDS, TB and Malaria.[6] The Sustainable Development Goals adopted in 2015 by the UNGA also provide a unique framework for and commitment to a human rights-based response to the epidemic as they aim to "By 2030, end the epidemics of AIDS", and to reduce "all forms of violence and the promotion and enforcement of non-discriminatory laws and policies".[7]

The challenges of translating commitments into reality

1. Failing to uphold the right to life and to health without discrimination

The International Guidelines stated back in 1996 that "widespread access to antiretroviral (ARVs), as well as to HIV prevention, care and support, remains a major global health and human rights emergency".[8] Twenty years on, the right to health in the context of HIV remains a global human rights emergency. While nearly 16 million people living with HIV are taking life-saving ARV treatment[9], 21 million people[10] do not have access to ARVs, some because they are denied or cannot afford them. Discrimination and stigma in the provision of ARV, prevention and care rise exponentially in the case of people from affected populations at higher risk of institutional or social exclusion, such as sex workers, gay, bisexual, other men who have sex with men and transgender people, people who use drugs, migrants and displaced people, people with disabilities and other key populations[11]. The protracted treatment and prevention gap between children and adults and the high AIDS-related mortality among adolescents also point to an inadequate protection of children and adolescent's right to life and health.

In 2011, the United Nation's member states acknowledged that regulations, policies and practices, including those that limit legitimate trade of generic medicines limit access to affordable HIV treatment and other pharmaceutical products in low- and middle-income countries. States committed to remove before 2015 obstacles that limit the capacity of low- and middle-income countries to provide affordable and effective HIV prevention and treatment products including by the use of the TRIPS flexibilities[12]. Five years later, only two countries (Indonesia and Ecuador) issued compulsory licences to make antiretroviral drugs available[13]. All voluntary licences issued during the same period have failed to include several key middle-income countries where newer generations of ARVs remain unaffordable because of prices related to patent monopolies. While voluntary licences negotiated by the Medicines Patent Pool have enabled access and generic competition in a large number of countries, including many middle-income countries, some middle-income countries are still facing high prices for newer generation ARVs. Instead of reforming national patent laws and

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[6] UNAIDS, *On the Fast Track to End AIDS, 2016-2021 Strategy*; Global Fund Information Note, *Human Rights for HIV, TB, malaria and HSS grants*, February 2014.
[7] UNGA Resolution, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October, 2015.
[8] International Guidelines on HIV/AIDS and Human Rights, *op.cit*.(p.4).
[9] Aids by the numbers. World Aids Day Report, UNAIDS, 2015.
[10] World Aids Day, 2015. WHO. http://www.who.int/campaigns/aids-day/2015/infographics/en/
[11] UNAIDS Terminology Guidelines, 2015.
http://www.unaids.org/sites/default/files/media_asset/2015_terminology_guidelines_en.pdf
[12] 2011 Political Declaration on HIV and AIDS
[13] Access to antiretroviral drugs in low- and middle- income countries. WHO, 2014.

policies to make sure all TRIPS flexibilities are included and easy to use, several middle and low-income countries have engaged in trade negotiations under pressure of developed nations ending with free trade agreements containing intellectual property protection that go beyond what is requested by the TRIPS agreement. Examples include : ACTA, TPP, EU FTAs with Maghreb states etc.

Reinvigorating combination prevention is essential to achieve the ambitious targets agreed by member states to reduce HIV infections globally to fewer than 500,000 by 2020. This will require innovative service models capable of reaching key populations, based on the latest prevention technologies (for example PrEP) and science, including treatment as prevention studies.

In addition, this requires specific investment in human rights-based HIV interventions, as significant investments in biomedical and related HIV interventions are routinely undermined without due scrutiny in countries which enforce punitive laws against populations most affected by HIV and/or undermine their human rights through their policies and practices. Although Global HIV governance bodies, donors and governments now recognise the impact of that human rights context of people affected by HIV has on the HIV response, they thoroughly fail to factor in such impact and the interventions needed to uphold the rights of these populations when modelling the investments required to end AIDS.

2. Eliminating criminalising and discriminatory legislation

While in many settings, HIV incidence in the general population has stabilized or fallen, key populations continue to experience a significant HIV burden. There is overwhelming evidence that laws criminalising same sex practices, sex work, drug use and specific laws to criminalise HIV transmission and non-disclosure and other punitive legislation against populations affected by HIV not only breach the human rights of these populations, but also impact negatively on the effectiveness of the HIV response.[14]

For example, virtual elimination of drug injection-related HIV transmission on a public health level is feasible through a combination of removal of penal sanctions and in some cases all criminal sanctions for minor possession (and sometimes sale) and scale-up of comprehensive HIV services, including prevention, harm reduction and treatment, among people who use drugs. Less than 10% of people who use drugs have access to effective and cost-effective life-saving prevention services and in most places the great majority are systematically excluded from ART.The 2011 Political Declaration committed to "intensifying national efforts to create enabling legal, social and policy frameworks in each national context in order to eliminate stigma, discrimination and violence related to HIV" (para 77).[15] However, as of January 2016, at least 60 countries had adopted laws that specifically criminalize HIV non-disclosure, exposure or transmission, and over 78 jurisdictions criminalize same-sex relations. In nine countries, same-sex acts may be punished by death. Sex work

[14] Global Commission on HIV and the Law, Risks, Rights and Health, July 2012. Also, for example: Schwartz, S., et al, 'The immediate effect of the Same-Sex Marriage Prohibition Act on stigma, discrimination, and engagement on HIV prevention and treatment services in men who have sex with men in Nigeria, Lancet HIV 2/7, 2015 (pp. e299-e306); Open Society Foundations, Criminalising condoms: *How policing practices put sex workers and HIV services at risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe* (OSF, 2012).

[15] 2011 Political Declaration on HIV and AIDS, *op.cit.*

is illegal and criminalised in 116 countries.[16] According to latest information available, 56 countries have special regulations on entry and residence for people living with HIV, 27 countries deport or threaten to deport people based on their HIV status [17].

3. Insufficient protection against discrimination, harassment and violations against and other human rights violations in the context of HIV

In 2009, the HRC acknowledged increasing forms of discrimination affecting the enjoyment of human rights of people affected by HIV/AIDS, calling on member states to increase their efforts to protect, respect and promote the rights of these populations.[18] However, populations who are most at risk, such as people living with HIV, men who have sex with men, transgender people, people who use drugs and sex workers and people in the move are particularly vulnerable and subject to violence, including harassment and intimidation, including at the hands of law enforcement officers, among other abuses of their human rights.[19] There are extensive evidence of the systematic nature and scope of human rights violations committed against transgender women by state actors. One community based research in Latin America reveals that around 80 per cent of the transgender activists interviewed reported having been subjected to violence or threats to their physical integrity allegedly emanating from State actors[20].

There is ample evidence of current widespread discrimination and violence across the world in the context of HIV even in countries which do not have punitive laws or policies against key populations. Law enforcement practices and impunity for gender-based violence and other violations of the human rights of people affected by HIV hinder their access to critical HIV prevention, treatment and care and support services, fuelling the HIV epidemic.[21]

4. The Impact of gender-based violence

Violence takes gendered forms across the life cycle, with most abuses experienced by women and girls sanctioned by their subordinate positions within their families, communities and societies.[22] Gender-based violence occurrence is unacceptably high, with some 35% of women globally experiencing either intimate partner or non-partner violence.[23] Little data is available documenting the extent and full scope of violence experienced by sexual minority and gender non-conforming women. GBV can be both a cause and a consequence of HIV.[24] Many girls and women, including

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[16] UNDP, Global Fund Programme: legislation and law reform, http://www.undp-globalfund-capacitydevelopment.org/home/cd-toolkit-for-hivaids,-tb-malaria-responses/enablers/4-programming/legislation-and-law-reform.aspx; accessed on 26 January 2016.

[17] Lemmen Karl, Wiessner, Peter: Schnellfinder, Einreisebestimmungen für Menschen mit HIV und AIDS, 11. Auflage, Berlin, Dezember 2015

[18] UN Human Rights Council resolution, *The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS),* A/HRC/RES/12/27, 22 October, 2009.

[19] Global Commission on HIV and the Law, Risks, Rights and Health, July 2012.

[20] The Night is Another Country. A human rights report on impunity and violence against transgender women human rights defenders in Latin America. The International HIV/AIDS Alliance and REDLACTRANS. 2012

[21] See for example, REDLACTRANS and International HIV/AIDS Alliance, *The night is another country*: impunity and violence against transgender women human rights defenders in Latin America, 2012 ; Booth, R.E., et al, 'Law enforcement practices associated with HIV infection among injection drug users in Odessa, ADIS Behav, 2013 (pp 2604-2624).

[22] UN Women: Violence Against Women, available o: http://www.unwomen.org/en/what-we-do/hiv-and-aids/violence-against-women

[23] WHO 2013: Violence against women: a 'global health problem of epidemic proportions' http://www.who.int/mediacentre/news/releases/2013/violence_against_women_20130620/en

[24] Jewkes, RK. et al 2010. Intimate partner violence, relationship power inequity, and incidence of HIV infection in young women in South Africa: a cohort study. The Lance, Vol 376, Issue 9734.

those in relationships, are subject to sexual coercion and violence, while women in relationships may exercise little control over the use of condoms in their relationships, as well as the timing and circumstances of sex. Some women do not reveal their status for fear of violence, while others experience actual violence once their status is known.[25] Violence, or fear of violence, also makes it difficult for women and girls to access essential HIV prevention, care, and treatment services.[26]

5. A shrinking space for civil society and for affected populations to be at the centre a human rights-based response

Civil society and human rights defenders in general are targeted and constrained by governments that will not tolerate dissent. So-called NGO and foreign agent laws prevent civil society organisations from legal registration and access to external funding. In 2014 there were serious threats to civic freedoms and rights in at least 96 countries, including the right of people to health, privacy, and freedom of association. The continuity of effective HIV programmes form criminalised and marginalised populations and the sustainability of effective civil society are compounded.[27] Civil society organisations providing specific human rights responses to HIV in low income countries achieving MIC status are finding it harder to access funding as their countries become ineligible for international development assistance. An estimated of 70% of such organisations have no access to domestic funding, particularly from governments who see them as a political threat.[28]

6. Poor investment in human rights HIV interventions

Although global HIV governance bodies and funders recognise the importance of addressing human rights barriers as crucial part of an effective HIV response, they have failed to factor in human rights barriers and the interventions to protect and promote human rights and reduce these barriers when modelling scenarios to respond effectively to the epidemic and decide where to invest their resources. Because of human rights-related barriers to services, many people cannot access services and/or are not retained in services. Investments in biomedical and other interventions therefore fail to achieve the impact they could otherwise have.

Recognising the importance of addressing human rights-related barriers to accessing HIV-services, UNAIDS and the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund) strongly encourages countries to include the seven key programs to address stigma and discrimination and increase access to justice. These are: 1. programmes to reduce stigma and discrimination; 2. programmes to sensitize law enforcement agents and law and policy makers; 3. HIV-related legal services 4. programmes to train health care workers in non-discrimination, confidentiality and informed consent; 5. programmes to monitor and reform laws, regulations and policies relating to HIV; 6. legal literary programs (such as “know your rights/laws” campaigns, patients’ rights); 7.

[25] Jewkes RK et al 2010: Intimate partner violence, power inequity, and incidence of HIV infection in young women in South Africa: a cohort study; also Luciano D et al (2013) Addressing Violence Against Women Living With HIV in Latin America and the Caribbean. RH Reality Check

[26] Violence against women and HIV. UNAIDS. http://www.unaids.org/en/resources/presscentre/featurestories/2009/november/20091110vaw

[27] CIVICUS, *Civil Society Watch Report*, June 2015.

[28] UNAIDS, *Sustaining the human rights response to HIV: An analysis of the funding landscape and voices from community service providers*, 2015.

programmes to reduce harmful gender norms and violence against women and increase their legal, social and economic empowerment in the context of HIV.[29]

The Global Fund and other actors consider as well the essential contribution of the interventions carried out by civil society organisations adding community-based monitoring and community led advocacy and social accountability.[30]

However, there remains little investment in these interventions in Global Fund grants. Many countries do not include any of the key programs to address human rights barriers. Even where they are included, they are rarely scaled up, reaching only a small number of those in need. It is urgent that Global Fund country grants include much greater funding for programs that reduce human rights barriers to services. Other donors also need to fund these programs to a much greater extent. UNAIDS estimates that the annual global spending for the human rights response to HIV is less than 0.13% of the total AIDS spending in low and middle-income countries.[31] Finally, countries themselves need to recognize the centrality of these programs, to the overall success of their response, to achieving greater impact, and to protecting and promoting human rights.

An urgent call for action

This years' UNGA High Level Meeting on HIV/AIDS should guide an HIV/AIDS response which could foresee the end of the AIDS epidemic by 2030. It will be a historic event if UN Member states commit to accelerate a comprehensive universal and integrated response to HIV/AIDS. But this will never be achieved without an unequivocal commitment towards the realisation of the human rights of all people living with and affected by HIV and AIDS.
We call on the political declaration that will ensue from the High Level Meeting to establish the following concrete and measurable commitments underpinned by a clear accountability system:

- States must adequately respect, protect, and fulfil the rights of all persons living with or affected by HIV by clearly prohibiting all forms of discrimination and ending impunity for any such acts and establishing mechanisms for redress, creating programs to end HIV-related social and institutional stigma and discrimination, taking all necessary steps to end gender inequality and gender-based violence, ensuring full respect for their right to health, including sexual and reproductive health, and demanding that all states' reports under the Universal Periodic Review process and all UN human rights treaty bodies provide analysis of the human rights context of HIV in the countries reported and measures undertaken and planned to address it.
- States must ensure that the political declaration agreed upon at the High Level Meeting establishes quantifiable commitments by UN Members States to eliminate criminalising and discriminatory legislation punishing people living with or affected by HIV and legislation restricting the work and freedom of civil society organisations.
- States must ensure all persons living with HIV have equal access to effective and affordable treatment, prevention and diagnostics, including by removing all legal and societal barriers to

[29]UNAIDS, 'Key programmes to reduce stigma and discrimination and increase access to justice in national HIV responses', 2012.
[30]Global Fund, Information Note: Human Rights for HIV, TB, Malaria and HSS Grants, February 2014; International HIV/AIDS Alliance and ARASA, Good Practice Guide on HIV and Human Rights, 2014.
[31] UNAIDS, Sustaining the human rights response to HIV: An analysis of the funding landscape and voices from community service providers, 2015.

access and by making full use of the "existing flexibilities under the Agreement on Trade-Related Aspects of Intellectual Property Rights specifically geared to promoting access to and trade in medicines", "to ensure that intellectual property rights provisions in trade agreements do not undermine these existing flexibilities" and "promoting generic competition".[32]

- States must commit to eliminate gender inequalities and gender-based abuse and violence, increase the capacity of women and adolescent girls to protect themselves from the risk of HIV infection, principally through the provision of health care and services, including, inter alia, sexual and reproductive health, as well as full access to comprehensive information and education.
- Finally, States must ensure that the High Level Meeting Political Declaration establishes quantifiable commitments for much increased investment in the programs aimed at reducing the human rights-related barriers to accessing services by all affected populations, including interventions led by civil society and affected populations on the ground.

[32] 2011 Political Declaration, Op.Cit (para.71.a,b).