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THE ROLE OF PARLIAMENTS IN ADVOCATING AND ENFORCING OBSERVANCE OF HUMAN RIGHTS IN THE STRATEGIES FOR THE PREVENTION, MANAGEMENT AND TREATMENT OF THE HIV/AIDS PANDEMIC

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1.0 BACKGROUND

- According to the *AIDS epidemic update 2004* published by the Joint United Nations Programme on HIV/AIDS and the World Health Organisation (WHO), by the end of 2004 there were an estimated 40 million persons living with HIV/AIDS worldwide, 95 per cent of whom lived in developing countries, and 91 per cent in sub-Saharan Africa, India and the rest of Asia. Sub-Saharan Africa has 10 per cent of the world's population, yet it is home to 70 per cent of all people living with HIV/AIDS. About 2.2 million people living with HIV/AIDS are children below the age of 15. On average, in 2004, nearly 10 people acquired HIV every minute, which amounts to some 13,500 people being infected every day. About 640,000 children under 15 acquired HIV in 2004, 90 per cent of whom contracted the virus from their mothers. Most of these infections could have been prevented using currently available methods.
- Over 50 per cent of new infections occur in people in the 15-24 year age group; every day nearly 7,000 young people are infected with HIV. Young women are biologically more vulnerable than young men to HIV infection. Moreover, women have a higher risk of contracting HIV because of economic, social, and cultural inequality, including poverty, violence, and a lack of education and employment opportunities. Three quarters of the young people acquiring HIV in sub-Saharan Africa are girls or young women. In some African countries, the female to male ratio of cases in the 15-19 year age group is more than 5:1. In many parts of the world, women do not have the legal power to make choices. Because of poverty, children in developing countries do not have access to education. Hence young women tend to fall prey to sex trafficking, which puts them at risk.
- Between 1981 and 2002, more than 60 million people acquired HIV worldwide, and over 20 million died as a result of contracting the virus. Some 85 per cent of these deaths occurred in sub-Saharan Africa. In 2002, an estimated 2.4 million Africans died of AIDS,

with only 30,000 on the continent receiving antiretroviral (ARV) therapy. If no significant action is taken, HIV will infect more than 100 million people in Africa and claim 50 million lives by 2020, thus orphaning more than 40 million children.

- An estimated 7.4 million people are living with HIV in Asia, where the epidemic is rapidly expanding, with 1.1 million new infections in 2003 alone. The epidemic is spreading through the sharing of drug users' needles, homosexual intercourse and relations between sex workers and their clients, and subsequently between the clients and their immediate sexual partners. India has 5.1 million people living with HIV/AIDS (PLWHAs) victims, the largest number of people living with the virus outside South Africa.
- Rates of infection are rising in many Eastern European and Central Asian countries, with about 1.3 million people living with HIV, compared to about 160,000 in 1995. Strikingly, more than 80 per cent of these people are under the age of 30. The main cause of the spread of the epidemic is drug use by injection, but in some countries sexual transmission is becoming increasingly common.
- According to the UNAIDS *2004 report on the global HIV/AIDS epidemic* of: 4th global report, around 1.6 million people are living with HIV/AIDS in Latin America. Injecting drug users and male homosexuals - people at high risk - are the most common victims.
- Around 430,000 people in the Caribbean region are living with HIV. The Caribbean epidemic is mainly spread through heterosexual sex and it is concentrated among sex workers. The most affected country is Haiti, with a national prevalence of around 5.6 per cent, the highest outside Africa.
- An estimated 1.6 million people are living with HIV in high-income countries. Infections are on the rise in the United States, where an estimated 950,000 people are living with HIV – 50,000 more than in 2001. In Western Europe, 580,000 people are living with HIV, compared with 540,000 in 2001. The majority of those living with HIV in these high-income countries have access to ARV therapy, and so are able to survive longer than infected people elsewhere.
- An estimated six million people living with HIV in developing countries are in need of ARV therapy. However, only 8 per cent have access to such therapy. The number of patients who, according to the World Health Organization (WHO) criteria, are clinically eligible for ARV therapy and accompanying treatment greatly exceeds current resources and capacity in many countries.
- The HIV/AIDS pandemic has serious security policy implications at the national and international levels. Indeed, the devastating socio-economic impact of HIV/AIDS can exacerbate political instability, worsen poverty and result in large-scale population displacement.

2.0 HIV/AIDS, HUMAN RIGHTS AND THE LEGAL FRAMEWORK

People living with and affected by HIV/AIDS face stigmatisation and discrimination in practice, policy and law. Their economic, social, cultural, civil, and political rights are constantly violated. For instance, those applying for travel visas, seeking university enrolment or applying for jobs are sometimes obliged to undergo HIV/AIDS testing. AIDS patients are also often discriminated against on account of their social status. Protecting the rights of a person living with HIV/AIDS to employment will ensure that they have a source of income and will not be a burden to their families or society. Mandatory HIV testing for sex workers encourages them to go underground making it more difficult to reach them for prevention and treatment interventions. If the above

mentioned rights were safeguarded, more people could avoid infection, or - if already infected - more could cope successfully with the effects of HIV/AIDS.

Relevant laws and legal policies can help shape, change, support and reinforce societal norms and values. While laws cannot absolutely eliminate discrimination, they can foster an understanding about the nature of HIV/AIDS and the sources of vulnerability of individuals and the community to the pandemic. The promotion and protection of human rights should therefore take centre stage in reducing vulnerability, preventing new HIV infections, mitigating the individual and social impact of HIV/AIDS on people who are infected and otherwise affected, and empowering individuals and communities to mount appropriate responses.

The international community has developed a number of documents and treaties on human rights and HIV/AIDS. Parliaments have a duty to ensure that the principles of human rights contained in international human rights instruments are integrated into national policies, strategies and laws. The documents and treaties on human rights formulated by the international community include the following:

- (a) In 1998, UNAIDS and the Office of the United Nations High Commissioner for Human Rights (OHCHR) jointly published the International Guidelines on HIV/AIDS and Human Rights (revised in 2003). These guidelines set standards for upholding HIV/AIDS-related human rights, and provide explicit benchmarks to implement and measure performance in accordance with existing human rights instruments, including:
 - the United Nations Charter;
 - 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;
 - the Convention on the Rights of the Child;
 - the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
 - various conventions and recommendations of the International Labour Organization (ILO).

An essential step for parliamentarians to take in mainstreaming human rights into HIV/AIDS programmes is the ratification and implementation of international treaties domestically.

- (b) In 1999, UNAIDS and the Inter-Parliamentary Union (IPU) jointly published the *Handbook for Legislators on HIV/AIDS, Law and Human Rights*. It documents the principles in the International Guidelines, analyses the principles, sketches out possible legislative action and cites "best practices", outlining how some countries have successfully implemented the guidelines. The Handbook aims at assisting legislators in developing laws and policies on HIV/AIDS that are consistent with human rights and public health principles, by providing practical examples on how to implement the International Guidelines on HIV/AIDS and Human Rights.

(c) International Guidelines on HIV/AIDS and Human Rights (UNAIDS/OHCHR)

The guidelines, summarised below, explain links between HIV/AIDS and human rights in order to assist legislators in integrating HIV/AIDS and human rights in their mandates.

Guideline 1: National framework

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. This guideline suggests the following possible responses:

- The creation of inter-ministerial committees to ensure integrated development and high-level coordination of individual ministerial national action plans and to monitor and implement additional HIV/AIDS strategies;
- An informed and ongoing forum for briefing, policy discussion and law reforms to deepen the level of understanding of the epidemic, for example by establishing parliamentary or legislative committees with representation from major and minor political parties;
- Formation or strengthening of bodies advising governments on legal and ethical issues, such as a legal and ethical subcommittee of the inter-ministerial committee;
- Sensitisation of the judicial branch of government, in a manner consistent with judicial independence, on the legal, ethical and human rights issues related to HIV/AIDS;
- Ongoing interaction of government branches with United Nations theme groups on HIV/AIDS and other concerned international and bilateral bodies, so as to ensure that government responses to the HIV/AIDS epidemic will continue to make the best use of assistance available from the international community.

Guideline 2: Supporting community partnership

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 organisations are enabled to carry out their activities, especially in the fields of ethics, law and human rights, effectively.

The guideline advocates the establishment of formal and regular mechanisms to facilitate ongoing dialogue with and inputs from such community organisations into HIV-related government policies and programmes. It calls for sufficient government funding to be allocated in order to support, sustain and enhance community organisations in areas of core support, capacity-building and implementation of activities.

Guideline 3: Public health legislation

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.

The guideline fully explores the following issues:

- Voluntary testing and informed consent;
- Notification of coded information in surveillance studies;
- Partner notification;
- The case against detention or isolation solely on the basis of HIV status;
- Blood safety;
- Infection control precautions in health care and similar settings.

Specific answers to the following questions are required:

- Does the legislation empower public health authorities to provide the following comprehensive prevention and treatment services: information and education, voluntary counselling and testing, sexual and reproductive health services, means of prevention, and appropriate medication?
- Does the legislation require specific informed consent to be obtained by individuals before HIV testing as well as require HIV pre-test counselling and post-test counselling to be given in circumstances where individuals will receive test results?
- Does the legislation specify that if there are any exceptions to the principle whereby individual testing must be carried out only with informed consent, this should be done only if judicial authorisation is obtained?
- Does the legislation only authorise the restriction of liberty or detention of persons living with HIV/AIDS on grounds relating to their behaviour of exposing others to a real risk of transmission, as opposed to their mere HIV status?
- Does the legislation provide, in such cases, due process protections: reasonable notice of the case to the individual, rights of review and appeal, fixed periods of duration and a right to legal representation?
- Does the legislation authorise healthcare professionals to notify sexual partners of their patients' HIV status in accordance with the following criteria: necessity of follow-up and a real risk of HIV transmission?
- Does the legislation provide for the protection of the blood, tissue and organ supply against HIV contamination?

Guideline 4: Criminal law and correctional systems

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.

This guideline handles the controversial subjects of legislating against intentional transmission, needle and syringe supplies, sexual acts, and commercial sex work. It also addresses the specific demands placed on prison authorities to protect the health of prisoners in overcrowded, violent and unsafe environments, and the case against mandatory testing of inmates.

Guideline 5: Anti-discrimination and protective laws

States should enact or strengthen anti-discrimination laws and other 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, emphasise education and conciliation, and provide for speedy and effective administrative and civil remedies.

The guideline stresses the need for anti-discrimination laws to be educative rather than punitive, to provide an environment which sensitises public opinion, exposes stereotypes, and changes attitudes and behaviour. It covers broad ground: health care, employment, education and training, sports, associations and clubs, accommodation, access to transport, provision of goods and services, etc.

The following anti-discrimination issues must be addressed:

- Does legislation provide for protection against discrimination on the grounds of HIV/AIDS?
- Does the legislation contain the following substantive feature: coverage of direct and indirect discrimination against those presumed to be infected in the public and private sectors?
- Does the legislation provide for the following administrative features: independence of a complaints body, representative complaints, speedy redress, access to free legal assistance, investigation powers to address systematic discrimination, and confidentiality protections?
- Does the legislation provide for the institution administering the legislation to have the following functions: advising government on human rights issues, monitoring compliance with domestic legislation and international treaties and norms?

Specific answers to the following employment issues are also required:

- Does the legislation prohibit HIV screening for general employment purposes, for example for appointment, promotion, training and benefits?
- Does the legislation prohibit mandatory testing of specific employment groups, as for example members of the military?
- Does the legislation require the implementation of universal infection control measures, including training and the provision of equipment in all settings involving exposure to blood and body fluids?
- Does the legislation require the provision of access to information and education about HIV/AIDS for purposes of occupational health and safety?
- Does the law provide for the maintenance of employment security, social security, and other benefits while HIV-positive workers are able to work?
- Does the law provide for the confidentiality of employees' medical and personal information, including their HIV status?
- Does the legislation governing workers' compensation recognise the possibility of occupational transmission of HIV?

Guideline 6: Regulation of goods, services and information

States should enact legislation to provide for the regulation of HIV/AIDS 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.

States should also take the measures necessary to ensure for all persons, on a sustained and equal basis, the availability and accessibility of quality goods, services and information for HIV/AIDS prevention, treatment, care and support, including ARV and other safe and effective medicines, diagnostics and related technologies for preventive, curative and palliative care of HIV/AIDS and related opportunistic infections and conditions.

States should take such measures at both the domestic and international levels, with particular attention to vulnerable individuals and populations.

The guideline stresses the need for a regulated framework to encompass existing and future HIV/AIDS interventions: regulation of therapeutic goods and services, deterrence of spurious claims to miracle cures, ethical research, the right to education and explicit information, and freedom of expression and association, especially in delivering HIV/AIDS information and treatment messages to people engaged in illegal behaviour.

The following consumer protection issues must be addressed:

- Does the legislation regulate the quality, accuracy and availability of HIV tests?
- Does the legislation provide for approval to be given only for the distribution and marketing of pharmaceuticals if they are deemed to be safe and efficacious?
- Does the legislation regulate the quality of condoms?
- Does the legislation provide consumers with protection against fraudulent claims regarding the safety of drugs?
- Does the legislation ensure the accessibility and free availability of condoms, bleach and needles?
- Does the legislation make HIV-related medication affordable through subsidies or tax-free schemes?

Specific answers to the following ethical human research issues must be provided:

- Does the law provide for the legal protection of human subjects involved in HIV/AIDS research?
- Does it require the establishment of ethical review boards to ensure the independent evaluation of ongoing research?
- Does the legislation require subjects to be provided before, during and after participation, with counselling, protection from discrimination and health and support services?
- Does the legislation provide for informed consent to be obtained from the subject?
- Is confidentiality of personal information guaranteed by the legislation?
- Does the legislation provide for subjects to be guaranteed equitable access to information and the benefits of research?

Guideline 7: Legal support services

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 issues, and utilise means of protection in addition to the courts, such as offices of ministries of justice, ombudspersons, health complaint units and human rights commissions.

The guideline recognises that law reform alone cannot achieve the realisation of human rights without corresponding assistance being extended to the affected persons so that they are aware of their rights and affordable channels of redress.

Guideline 8: Women, children and other vulnerable groups

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.

This guideline addresses the higher risk status of females that results from their increased biological susceptibility, lower social position in almost all facets of life, disproportionate illiteracy and poverty, gender roles and other factors. It also calls for the targeting of men, whose behaviour is the main determinant of how quickly and to whom the virus is spread "...because men have more sexual partners than women, and because men tend to control the frequency and form of intercourse." Young people and minorities are also covered in the guideline.

The following vulnerable-population issues must be addressed:

- Does the law ensure the equal status of men and women in ownership of property, marital relations, capacity to enter into contracts, protection from sexual and other violence, access to reproductive health information and services, and prohibition of harmful traditional practices?
- Does the legislation prohibit mandatory testing of vulnerable groups such as orphans, migrants, and refugees?
- Does the law require children to be provided with age-appropriate information, education and means of prevention?
- Does the law enable children and adolescents to be involved in decision-making corresponding to their evolving capacities in respect of their consenting to HIV testing, with pre-test and post-test counselling and access to confidential sexual and reproductive health services?
- Does the law provide protection for children against sexual abuse and exploitation?
- Is the aim of such legislation to rehabilitate and support survivors, rather than to victimise them by subjecting them to penalties?

Guideline 9: Changing discriminatory attitudes through education, training and the media

States should promote the wide and ongoing distribution of creative education, training and media programmes explicitly designed to change attitudes of discrimination and stigmatisation associated with HIV/AIDS into understanding and acceptance.

The guideline recommends that States support appropriate entities, such as media groups, non-governmental organisations (NGOs) and networks of people living with HIV/AIDS, to devise and distribute programming to promote respect for the rights and dignity of these people and members of vulnerable groups. The range of media that may be used includes film, theatre, television, radio, print, dramatic presentations, personal testimonies, Internet, pictures and bus posters. Educational institutions, trade unions and workplaces should be encouraged to include HIV/AIDS and human rights/non-discrimination issues in relevant curricula.

Furthermore, States are encouraged to support HIV-related human rights/ethics training for government officials, the police, prison staff, politicians as well as village, community and religious leaders and for various professions. The media and advertising industries need to be urged and trained to be sensitive to HIV/AIDS and human rights issues and to refrain from sensationalism. Support for targeted training, peer education and information exchange is also recommended. In order to enhance access to information and training for persons and groups in remote locations or who are illiterate, homeless or marginalised, States are encouraged to use alternative efforts, such as radio programmes or facilitated group discussions.

Guideline 10: Development of public and private sector standards and mechanisms for implementing these standards

States should ensure that government and the private sector 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 these codes.

A good starting point for parliaments would be to expedite the formulation and passage of a national HIV/AIDS policy in public service employment and the adoption of the ILO's code of practice on HIV/AIDS and the world of work.

Guideline 11: State monitoring and enforcement of human rights

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.

Parliaments should establish the minimum package of care that an HIV-infected person should expect, and make it available as close to the person as possible.

Guideline 12: International cooperation

States should cooperate through all relevant programmes and agencies of the United National system, including UNAIDS, 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.

The guideline dwells not only on sharing knowledge and experience, but also on the need for constructive dialogue with religious groups opposed to sex education per se and sexually explicit education materials, NGOs and cross-border programming.

- (d) In 2004 UNAIDS and the WHO released a document entitled *Guidance on Ethics and Equitable Access to HIV Treatment and Care*. This document contains a number of recommendations relating to the issue of equity and fairness in accessing HIV treatment and care. It also notes that special care must be taken to ensure and monitor access for the most vulnerable, poor and marginalised populations and for women.
- (e) Declaration of Commitment on HIV/AIDS - This document was contained in a resolution adopted by the United Nations General Assembly in August 2001. The Declaration manifested a global commitment to enhance coordination, intensify national, regional and international efforts to curb the HIV/AIDS epidemic and set targets for concrete action that must be undertaken on the national, regional and international levels.
- (f) The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), as interpreted by General Comment No. 14 (2000) of the United Nations Committee on Economic, Social and Cultural Rights. The right to health is closely related to, and dependent upon, the realisation of other human rights. The General Comment recognised that HIV/AIDS is a disease that presents a new obstacle to the realisation of the right to health.
- (g) The protection of human rights in the context of HIV/AIDS - United Nations Commission on Human Rights resolution 2003/47. The resolution called on all States, United Nations agencies and international bodies to ensure the respect, protection and fulfilment of HIV-related human rights, as contained in the Guidelines on HIV/AIDS and Human Rights.
- (h) The relevant resolutions of the IPU, as follows:
 - The pandemic nature of Acquired Immune Deficiency Syndrome (AIDS): Its threat to world economic growth and political and social stability, especially in the Third World; the promotion of policies to transform scientific knowledge into public policy and social and political commitment to mitigate its effects, adopted without a vote by the 87th Inter-Parliamentary Conference, Yaoundé, 11 April 1992;
 - Action to combat HIV/AIDS in view of its devastating human, economic and social impact, adopted unanimously by the 99th Inter-Parliamentary Conference, Windhoek, 10 April 1998;

- Urgent action to combat HIV/AIDS and other pandemics which seriously endanger public health and economic, social and political development and even threaten the survival of many nations, adopted by consensus by the 106th Inter-Parliamentary Conference, Ouagadougou, 14 September 2001.

The above resolutions all recognised the debilitating effects of HIV/AIDS on socio-economic and political development, and called for an integrated and multisectoral approach to the prevention, treatment and care of HIV/AIDS. They also called for the protection of human rights of people living with HIV/AIDS (PLWHAs), and for affordable health care services to be made available to them. The resolutions further called for increased funding for HIV/AIDS programmes, especially in poor countries, research and development of microbicides, HIV/AIDS vaccines, improved access to AIDS drugs via price lowering and increased technology-sharing between rich and poor countries.

3.0 ANALYSING THE GLOBAL RESPONSE TO COMMITMENTS

- The flood of international treaties and declarations by leaders and stakeholders to explicitly articulate their intent to act on the problem of HIV/AIDS is a good indication that the issue merits serious attention. While commitment is present, actual interventions and the realisation of a global and regional consensus are lagging far behind.

According to the UNAIDS *2004 Report on the global AIDS epidemic*, despite the increase in political commitment and the progress made in the prevention and medical treatment of HIV/AIDS, the global response has been outpaced by the rapid spread of the epidemic. The global efforts are inadequate to contain HIV spread because the epidemic is dynamic, fast-changing, and the conditions that contribute to its spread continue to exist.

- Global spending on HIV/AIDS has greatly increased, from US\$ 300 million in 1996 to about US\$ 5 billion in 2003. However, this falls short of the estimated requirements for funding of US\$ 12 billion in 2005 and US\$ 20 billion in 2007 for the prevention, care and treatment of HIV/AIDS in developing countries.
- The pandemic has continued to persist despite interventions. The campaign against HIV/AIDS has been hampered by the lack of an effective way to measure its impact on development. The Millennium Development Goals (MDGs), particularly MDGs 4 and 6, address the issue of HIV/AIDS as a parameter for development, projecting 2015 as the epidemic's endpoint.
- In the past 20 years, very few countries have shown success in curbing the spread of HIV/AIDS. When the epidemic struck the western industrialised world, its potential impact was cushioned by the established social safety nets in health and information and by benevolent policies and cultural sensitivities towards vulnerable populations. In developing countries, in contrast, HIV/AIDS devastated the ongoing construction of health and social systems. A handful of developing countries, including Senegal, Brazil, Uganda, Thailand and Cambodia, have registered significant achievements in the fight against HIV/AIDS. In

addition to those, a few more have also devised policies and systems that are helping to curb the spread of HIV/AIDS. The Philippines, for example enacted Republic Act 8504, entitled the Philippines AIDS Prevention and Control Act of 1998, and created the Philippine National AIDS Council, which has been mandated to spearhead policies and programmes related to HIV/AIDS prevention and control.

- There is a persistent dichotomous and inequitable distribution of resources for the response, with a slant towards prevention at the expense of care and support programmes. The "3 by 5" (3 million by 2005) programme of the WHO aims to cover 6 per cent of the currently estimated 50 million people who will be infected with HIV/AIDS by 2005. The United States Government has sought to reduce the impact of HIV/AIDS in specific countries in sub-Saharan Africa, Asia and the Americas. The President's Emergency Plan for AIDS Relief (PEPFAR), established in 2003, encompasses HIV/AIDS activities in more than 75 countries and focuses on 15 countries, with the aim of developing comprehensive and integrated prevention, care and treatment programmes. This US\$ 15 billion, five-year programme provides \$10 billion in new money, including up to \$1 billion for the Global Fund to fight AIDS, Tuberculosis and Malaria. The global goals of PEPFAR are to prevent 7 million new infections by 2010, and within five years to care for 10 million HIV-infected persons and AIDS orphans, and to treat at least 2 million HIV-infected persons with ARV therapy in the programme's 15 focus countries.
- Existing international instruments, such as the binding agreement on trade-related aspects of intellectual property rights (TRIPS) concluded under the auspices of the World Trade Organization (WTO), will limit the entry of affordable ARV medications that are essential for the survival of PLWHAs. Access to ARV drugs remains low, especially in resource-poor settings. WHO estimates that 90 per cent of people living with HIV do not have access to treatment, and around 6 million people in developing countries will die in the next two years if they do not receive ARV treatment. The Doha Declaration on the TRIPS agreement and public health adopted by the WTO's Fourth Ministerial Conference on 14 November 2001 provides an opportunity for AIDS-stricken developing countries to manufacture lower-priced ARV drugs, and countries like Brazil, India and Thailand as well as several African countries are moving in this direction. However, in many middle and low-income countries where HIV/AIDS is spreading, ARV drugs remain costly and unaffordable. In addition, fake or sub-standard ARVs with little or no effect are making their way into markets.

4.0 HIV/AIDS AND HUMAN RIGHTS - AN ASSESSMENT

- (a) The importance of bringing HIV/AIDS policies and programmes into line with international human rights law is generally acknowledged; unfortunately, several countries have not translated their international commitments into specific laws, policies and programmes. Even where such laws and policies exist, they may not be harmonised. For instance, in the Philippines, sex workers are still penalised as sex work is considered a crime. Furthermore, such laws and policies may not even be enforced or implemented. They may be inconsistent with applicable laws in other jurisdictions. For example, mandatory HIV testing is prohibited, but Filipino workers seeking employment abroad are subjected to HIV testing because it is a requirement of foreign employers.

- (b) Furthermore, governments and international institutions have failed to enforce international trade agreements regarding pharmaceutical patents in a manner which recognises their importance in addressing health emergencies, and in recognition of the right to health as guaranteed in international human rights law.
- (c) The synergy that is made possible by combining efforts to promote and protect human rights with those aimed at addressing underlying social, cultural and economic conditions that make people vulnerable to HIV infection, and the gains that are possible when interventions (including health interventions) are guided by human rights principles, have yet to be fully recognised and appreciated by governments.
- (d) For human rights to remain relevant to legal and policy work in the context of HIV/AIDS, there must be mutually supportive contact between the conceptual work done by advocates and policy makers on the link between HIV/AIDS and human rights and the realities that they observe.
- (e) Discrimination, stigma and social exclusion leave vulnerable groups such as women, drug injectors and men who have sex with men without access to treatment and social services. Moreover, social conditions such as poverty, gender discrimination and cultural inequalities, violence and a lack of education persist in making women and young girls particularly vulnerable to HIV infection. This group also bears the burden of the epidemic, since the responsibility for taking care of the sick falls on their shoulders.
- (f) The lack of access to health and social support services and violations of the right to confidentiality discourage at-risk individuals from undergoing testing. This further hampers efforts to prevent or address the spread of HIV/AIDS.
- (g) Violations are pervasive of the right of people to have access to information and education in order to protect their health. Most governments, especially those in developing countries where the population is most vulnerable to infection, have not provided enough accurate and relevant information about HIV/AIDS.

To reduce vulnerability to HIV/AIDS, consistent and accurate information about reproductive health and the ways to prevent infection is required. Governments must respond through actions that enable individuals and communities to make and effectuate informed choices in their lives and thereby effectively modulate the health risks to which they may be exposed.

- (h) Governments have been criticised for being too slow in fulfilling their obligations to protect the right to health, and for falling short in planning, funding, and implementing programmes which aim to provide comprehensive prevention, treatment, and care to people living with HIV/AIDS. Furthermore, while highly effective treatment and prevention regimes to contain HIV/AIDS exist, only a small minority of people (mostly those living in rich countries) have access to these treatments.

- (i) Nations have also been accused of not fulfilling their obligations to protect the right to health through cooperative and supportive activities and of ignoring the precept that international assistance and cooperation are imperatives of human rights law.

From the broader perspective, the effects of the HIV/AIDS pandemic should be taken into consideration in all aspects of society. HIV/AIDS is not only a health problem. This issue needs to be mainstreamed in every political sector if it is to be managed and the epidemic is to be combated effectively.

5.0 WHAT PARLIAMENTARIANS CAN DO TO DEFEAT HIV/AIDS

Parliamentarians can and do contribute to the prevention, care, support and treatment continuum in several ways. Parliamentarians' efforts can be summarised as follows:

- (a) Breaking the silence: They can use the facts to convince their families, their colleagues and the public that HIV/AIDS is a real and present danger; showing how the disease is affecting families, communities and the country – and how it has overwhelmed many countries.
- (b) Educating, informing, and ending ignorance and fear: They can let their constituencies, their peers and the public know clearly and fully how one can and cannot contract HIV/AIDS and what social and cultural factors may put some people more at risk of infection, and make it known that people with HIV/AIDS can live many productive years, particularly if they receive medical treatment, care and compassion. They can let people know to whom they can turn for care, medical treatment and psychological support.
- (c) Preventing prejudice, discrimination and stigma: Parliamentarians can urge compassion and understanding within families and communities, in the workplace and across society. They can provide a visible example themselves.
- (d) Mobilising action: They can influence government, social, religious and traditional leaders and public officials to take positive action and to hold themselves accountable. They can establish parliamentary and public forums for debate about issues related to HIV/AIDS. They can use their constituency offices and political party meetings, and debate issues with communities to develop consensus on national policies.
- (e) Creating a parliamentary focal point for HIV/AIDS: Members of parliaments can establish parliamentary committees or strengthen an existing body to take on these responsibilities. They can elect or appoint a key person to champion the cause of responding to HIV/AIDS. As part of a comprehensive national strategy, they can detail the responsibilities of key ministries, such as the ministries of finance, health, education, labour and justice. Each parliament should have the latitude to organise such mechanisms as it sees fit.
- (f) Lobbying for HIV/AIDS legislation, national plans and budgetary allocations: Within a human rights framework, parliamentarians can push for new or reformed laws and

policies that strengthen HIV prevention, protect those most vulnerable to HIV, and improve care for those living with or affected by HIV/AIDS. They can ensure that budgetary allocations make the realisation of these goals possible, including by advocating government allocations for HIV/AIDS-related prevention, treatment, care and impact mitigation measures and by ensuring that funds are spent appropriately.

- (g) Giving top priority to protecting the people most vulnerable to HIV and people living with HIV/AIDS: Parliamentarians can advocate for policies that prevent discrimination, intolerance and human right violations. They can fight to secure the full human rights of people living with HIV/AIDS and others who are stigmatised. They can include people living with HIV/AIDS as equal partners in all their work on HIV/AIDS, and give special attention to tackling both the root causes and the immediate problems that make commercial sex workers, sexually active male homosexuals, drug injectors, migrant workers and refugees and internally displaced people most vulnerable.
- (h) Advocating effective HIV/AIDS education and counselling: Education and counselling are important for parliamentarians, religious and social leaders and communities, and are vital for school-age children and young people before they become sexually active. Young people have the right to have access to the knowledge and skills that will enable them to make informed, responsible choices and to save their lives, including using preventive methods such as condoms. The State has a special responsibility to provide, in an open manner, accurate information on HIV/AIDS and its prevention.
- (i) Improving access to AIDS drugs: Parliamentarians can press their national governments, international organisations and the pharmaceutical industry to address the issue of pharmaceutical patents in order to improve access to AIDS drugs, in particular in developing countries. If people understand that AIDS is a treatable disease like other infectious diseases that humanity has overcome in the past, prejudice against and violation of the rights of people living with AIDS will decrease.
- (j) Advocating more financial and technical support for intensified research and development of better and more efficacious ARVs, HIV/AIDS vaccines and effective women-controlled HIV prevention technologies such as microbicides.
- (k) Developing comprehensive AIDS care and support measures that also address opportunistic infections and other related illnesses. What people living with HIV most dread is pneumonia and opportunistic infections resulting from their compromised immune function. Comprehensive measures that address such complications are indispensable in treating AIDS patients, and parliamentarians can appeal to the appropriate organisations to make sure their countries' AIDS control measures are comprehensive, and also address all infections associated with AIDS.
- (l) Pushing for strong health and social services: Health and social services must provide universal, non-discriminatory access to voluntary, confidential counselling and HIV testing; control of sexually transmitted infections; youth-friendly and gender-sensitive sexual, reproductive health and family planning services; condoms; blood screening; drug and alcohol rehabilitation; and needle-exchange for injecting drug users. Every

effort must be made to increase access to ARV treatment for all who need it, including pregnant women living with HIV. Social services should help strengthen community and home-based counselling and bolster support for people living with HIV/AIDS, their families and caretakers; child protection services; and shelters for women, commercial sex workers and children living on the street.

- (m) Fighting poverty and deprivation: HIV/AIDS and related diseases such as tuberculosis thrive on economic hardship, inequality and deprivation. The spread of HIV/AIDS makes even more pressing the need for broad-based human development. More than ever, parliamentarians need to forge national, regional and international partnerships that address the constraints to development, whether these stem from gender inequality, budgetary shortfalls, adverse terms of trade or international debt.

Parliamentarians in developed countries need to advocate for continuing and increasing the financial and technical assistance that they provide to developing countries and least developed countries (LDCs). In particular, countries with effective human rights bodies should be encouraged to share their expertise with those countries that seek to create or strengthen their own human rights institutions.