Health and the Fifty-Eighth Session of the United Nations Commission on Human Rights


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World Health Organization
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Introduction

This report summarizes the main points of discussion relevant to health and human rights during the 58th Session of the United Nations Commission on Human Rights.

The Commission is the main policy-making body in the United Nations system on human rights. For the first 20 years (1947-1966), it concentrated its efforts on standard-setting, beginning with the Universal Declaration of Human Rights, and gradually creating a range of human rights treaties and declarations. In 1967, the Commission was specifically authorized to deal with violations of human rights. Since then, it has set up an elaborate machinery and procedures, country-oriented or thematic (operating through Special Rapporteurs and working groups), to monitor compliance by States with international human rights law and to investigate alleged violations of human rights.

Since the 1990s, the Commission has increasingly turned its attention to the need of States to be provided with advisory services and technical assistance to overcome obstacles to securing the enjoyment of human rights. At the same time more emphasis has been put on the promotion of economic, social and cultural rights, including the right to development and the right to an adequate standard of living. Increased attention is also being given to the protection of the rights of vulnerable groups in society, including minorities and indigenous peoples and to the protection of the rights of the child and of women, including the eradication of violence against women and the attainment of equal rights for women.

The 58th Session of the Commission on Human Rights was convened from 18 March to 26 April 2002 in the Palais des Nations, United Nations Office at Geneva (UNOG). It was deeply influenced by the events of September 11th and discussion was dominated by the theme of terrorism as a result.

The World Health Organization is an observer at the Commission. This year, WHO made statements under the following agenda items:

- Agenda Item 10: Economic, Social and Cultural Rights
- Agenda Item 12: Integration of the Human Rights of Women and the Gender Perspective, (a) Violence against women; and Agenda Item 13: Rights of the Child (statements under these two agenda items had to be made together due to time constraints).
- Agenda Item 14: Specific Groups and Individuals

WHO’s statements form annexes I to III of this report. Annexes IV and V are the resolutions on the right to health and access to drugs, two resolutions made at the Commission which are particularly relevant to health. Annexes VI to VIII are summaries of events held parallel to the Commission of relevancy to health.
Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination

Resolution 2002/68 on racism, racial discrimination, xenophobia and related intolerance, was adopted by a roll-call vote of 37 in favour, 11 opposed, and 5 abstentions. The resolution establishes two working groups. The first is an inter-governmental working group that will make recommendations with a view to the effective implementation of the Durban Declaration and Programme of Action and that will prepare complementary international standards to strengthen and update international instruments against racism, racial discrimination, and xenophobia. The second is a Working Group of Experts on People of African Descent, which will, amongst other things, study the problems of racial discrimination faced by people of African descent and elaborate short-, medium- and long-term proposals for the elimination of this discrimination.

The Right to Development

In his statement, Professor Arjun Sengupta, Independent Expert on the Right to Development, stressed that the Working Group on the Right to Development was not interested in just engaging in an academic study but rather wanted to discuss how to implement the right to development. His report was therefore designed to help the Working Group to make some concrete recommendations about:

a) How to examine these international issues within the framework of the Declaration on the Right to Development;

b) What national mechanisms states need to respond to the challenges posed by these international issues using a right to development approach;

c) How to formulate concrete measures of international action through which States can operationalize the international dimensions of the right to development.

Ambassador Joaquín Pérez-Villanueva y Tovar, of Spain, speaking on behalf of the European Union, stated that without women’s active participation in the civil, political, economic, social and cultural activities of a community, it is illusory to talk about the full realization of the right to development. He underlined that the HIV/AIDS epidemic poses a real threat to all efforts to achieve sustainable human development, and that measures must be taken at both national and international levels to fight the epidemic. National responses to HIV/AIDS should be designed within the context of universal human rights standards, norms and principles, including the right to development. He further said that the European Union supports the new Global Fund to Fight AIDS, Tuberculosis and Malaria.

Resolution 2002/69 on the right to development was adopted by a roll-call vote of 38 in favour, with 15 abstentions. The resolution recognizes that poverty eradication is one of the critical elements in the realization of the right to development and that measures must be taken at the national and international levels to fight HIV/AIDS and other communicable diseases.
The Occupied Arab Territories

Professor John Dugard, Special Rapporteur on the situation of human rights in the Palestinian Territories occupied by Israel since 1967, underlined that due to Israeli military occupation, the Palestinian health care system is seriously undermined, and the standard of living is drastically lowered by the blockade of cities and the destruction of homes and agricultural land.

Several dignitaries, delegations and NGOs were concerned by the negative effects of the violence between Israel and Palestine on the psychological well-being of both Israelis and Palestinians. They expressed alarm at Israeli destruction of health centres, water sources, livestock and humanitarian aid, such as food, clothes and medicines, and attacks on medical personnel, ambulances and humanitarian agencies. As a result, the wounded bleed to death, there is no access to medicine, and pregnant women deliver on their way to hospital. Médecins du Monde (NGO) reported that Palestinian children are facing increasing psychological trauma and exhibiting dyslexic symptoms.

Resolution 2002/1 on the situation of human rights in the occupied Palestinian territory was adopted by a roll-call vote of 44 in favour, 2 opposed, and 7 abstentions. The resolution condemns the restrictions on the movement of medical personnel, the International Committee of the Red Cross, and the Palestinian Red Crescent Society. It requests the High Commissioner for Human Rights to head a mission to the area.

Resolution 2002/3 on the situation in occupied Palestine was adopted by a role call vote of 44 in favour, 2 against and 7 abstentions. The resolution condemns, inter alia, the serious and systematic destruction of homes and infrastructure, and the restrictions on the movement of the International Committee of the Red Cross, the Palestinian Red Crescent Society, and medical staff. It authorizes the High Commissioner for Human Rights to head a mission to Palestine which will submit its findings and recommendations to the current session of the Commission. It also notes her proposal for the establishment of an international monitoring presence to deter violations of human rights in the occupied territory.

Resolution 2002/8 on the question of the violation of human rights in the occupied Arab territories, including Palestine was adopted by a roll-call vote of 40 in favour, 5 opposed, and 7 abstentions. The resolution condemns the Israeli army offensives against hospitals and sick persons, the opening of fire on ambulances and paramedical personnel, and the prevention of the ICRC from reaching the wounded and dead.
Human Rights and Fundamental Freedoms in Any Part of the World

Resolution 2002/19 on the situation of human rights in Afghanistan, adopted by consensus, calls upon the Interim Authority to take urgent measures to ensure respect for the effective and equal access of women and girls to the facilities necessary to protect their right to the highest attainable standard of physical and mental health.

Resolution 2002/15 on the situation of human rights in Iraq was adopted by a roll-call vote of 28 in favour, 4 opposed, and 21 abstentions. The resolution calls upon the Government of Iraq to continue its efforts to ensure the timely and equitable distribution, without discrimination, to the Iraqi population, of all humanitarian supplies purchased under the oil-for-food programme, in order to address the needs of person requiring special attention, such as children, pregnant women, the disabled, the elderly, and the mentally ill.

Economic, Social and Cultural Rights

Extreme Poverty

Ms Anne-Marie Lizin, Independent Expert on extreme poverty, focused her report on conditions in Bolivia and Benin. She said that the poverty-eradication programmes of the World Bank did not appear to match the needs expressed by groups most vulnerable to extreme poverty.

Mexico said that in its efforts to eliminate poverty, priority is placed on access to food, education, health, and housing. The Government is implementing various programs to combat poverty, such as an institutional coordination strategy called CONTIGO and a National Micro Regional Program.

Resolution 2002/30 on human rights and extreme poverty was adopted by consensus. It calls upon specialized agencies to take into account the links between human rights and extreme poverty.

Resolution 2002/24 on the question of the realization in all countries of economic, social and cultural rights, and study of special problems which the developing countries face in their efforts to achieve these human rights was adopted by consensus. The resolution calls upon all states to give particular attention to individuals, especially women and children, living in extreme poverty. It requests States to encourage relevant United Nations specialized agencies to enhance their cooperation and increase coordination with the Committee on Economic, Social and Cultural Rights in a manner that respects their distinctive mandates and promotes their projects.
Mr Jean Ziegler, Special Rapporteur on the right to food, said that although global wealth and resources exist to provide food for everyone, about 100,000 people die daily from hunger and 815 million are chronically and seriously undernourished. In his report (E/CN.4/2002/58), he recommended, among other things, that States establish and implement national legislation on the right to food. In an addendum (E/CN.4/2002/58 Add.1), Mr. Ziegler reviewed his mission to Niger. Since the 1970s, recurring drought and famine have become more severe, and between 1992 and 1998, malnutrition has increased. The average vitamin A clinical deficiency rate is 2.6% for children (worse than the threshold of 1% recommended by WHO). In Tibiri, 425 children have contracted skeletal fluorosis as a result of poisoning, a disease which causes terrible deformities of the bones and leaves the children paralyzed. He recommended that urgent attention be paid to the regression with respect to food security and increasing vulnerability to famine; ensuring that remedies for violations of the right to food and water can be sought in the courts in order to reduce impunity for these violations; and making Niger’s Food Crisis Unit and National Committee for Early Warning and Crisis Management fully independent to ensure effectiveness.

Iraq said that severe shortages in food and medicine are leading to grave health problems in their country. The Iraqi delegation stated that in Baghdad, twenty-two per cent of people aged 20-25 suffer chronic malnutrition. There are increasing rates of cancer from depleted uranium, and pollution of drinking water causes diseases, particularly among children.

The United Nations Development Programme (UNDP) said that at least 1.1 billion people, the majority in developing countries, lack access to safe water and adequate sanitation and that ninety-five percent of the sewage generated in developing countries is discharged untreated into rivers, lakes, and coastal areas. UNDP intends to increase efforts in facilitating processes of sharing water resources, such as in and among the countries of the Mekong, Niger, Nile and Senegal river basins. Furthermore, to deal with ecological and food security challenges, UNDP supports several ecological sanitation projects which promote the re-use of human waste matter to reduce environmental pollution and soil degradation.

Resolution 2002/25 on the right to food, adopted by consensus, reaffirms the right of everyone to safe and nutritious food. It invites, amongst others, relevant UN agencies, to give priority to and provide necessary funding to realize the aim to halve by the year 2015 the proportion of people who suffer from hunger. UN agencies are also invited to submit comments and suggestions on ways and means of realizing the right to food.

Resolution 2002/89 on the situation of human rights in Cambodia, adopted by consensus, calls upon the Government of Cambodia to provide proper food and health care to prisoners and detainees and to further improve the health conditions of children.
The Right to Housing

In his report (E/CN.4/2002/59), Mr Miloon Kothari, Special Rapporteur on adequate housing, examines housing conditions in Mexico and Romania, underlining the effects privatization of water services has on people living in poverty.

Resolution 2002/21 on adequate housing as a component of the right to an adequate standard of living, adopted by consensus, calls upon all states to provide housing rights, particularly to women, children, and communities living in extreme poverty.

The Right to Health

Dr. Surakiart Sathirathai, Minister of Foreign Affairs of Thailand, said that for the first time, the notion of “health for all” has been implemented on a nation-wide basis. The Thai Government’s 30 baht health coverage (about 70 cents) scheme, begun last June, guarantees health services for Thai citizens, as well as non-citizens, migrants and illegal workers.

Mr. Juan Manual Suárez del Toro Rivero, President of the International Federation of the Red Cross and Red Crescent Societies, said that the Federation is dedicated to ensuring primary health care, water and food safety, as well as to combating preventable diseases and discrimination against people living with HIV/AIDS.

The World Bank emphasized that in Sub-Saharan Africa, fifty-five percent of people living with AIDS are women, and that women aged fifteen to twenty-five have prevalence rates up to six times higher than men of the same age. Together with UNICEF and WHO, the World Bank is developing a program for Focusing Resources on Effective School Health (FRESH) that will promote good health and nutrition, as well as educate adolescents on HIV/AIDS prevention.

Resolution 2002/31 on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Annex IV) was adopted by consensus. The resolution urges States to take steps, individually and through international assistance and co-operation, to achieve progressively the full realization of the right to health. It further calls upon the international community to assist, without discrimination, the developing countries to this end. The resolution appoints a Special Rapporteur on the right to health for a period of three years. The Special Rapporteur is to gather information from all relevant sources on the realization of this right; to develop a regular dialogue and discuss possible areas of cooperation with relevant actors, in particular WHO and UNAIDS; and to avoid duplication in health issues with other international bodies. The resolution welcomes recent initiatives by the Secretary-General and relevant UN bodies and programmes, including WHO, as well as public-private partnership initiatives, such as the Global Fund to Fight AIDS, Tuberculosis and Malaria, while noting that further progress should be achieved in this regard, including in the mobilization of resources.

In her closing statement, Mrs Mary Robinson, High Commissioner for Human Rights, said that the trend towards better implementation of economic, social and cultural
rights is continued with the resolution on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

**Structural Adjustment and Debt Relief**

Resolution 2002/29 on the **effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights** was adopted by a roll-call vote of 29 in favour, 15 opposed, and 9 abstentions. The resolution affirms that the basic rights to food, housing, clothing, employment, education, health services and a healthy environment cannot be subordinated to structural adjustment policies and economic reforms arising from debt. It urges governments, financial institutions and the private sector to alleviate the debt problems of developing countries afflicted with HIV/AIDS.

**The Movement and Dumping of Toxic Products and Waste**

Ms Fatma-Zohra Ouhachi-Vesely, Special Rapporteur on the **adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes**, said that there is a clear link between the illicit movement of dangerous products and poverty. In her Report, (E/CN.4/2002/61), she noted that developing countries are targeted as dumping sites since they do not know the content of such wastes and have no capacity to stop incoming shipments. Zones where poor and marginalized people live suffer greatly from the health and environmental consequences of such transfers and dumping. She lamented the seriousness of the problems relating to pesticides and persistent organic pollutants. According to a report published by the FAO in May 2001, the volume of pesticide wastes endangering the population and the environment is five times higher than estimated two years ago. Approximately 500,000 tonnes of expired or banned pesticides accumulate in fields, agricultural land and villages all over the world and contribute to the poisoning of soil and water.

Human Rights Advocates (NGO) called for more effort in reducing the transfer of toxic materials. In Colombia, the United States is assisting in eradicating cocaine production by spraying a highly toxic herbicide that is causing serious health problems among villagers and farmers.

Resolution 2002/27 on the **adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights** was adopted by a roll-call vote of 37 in favour, 14 opposed, and 2 abstentions. The resolution categorically condemns these activities, and reaffirms that they constitute a serious threat to the right to life and the right to health. The resolution invites, amongst others, WHO to intensify coordination and technical assistance on environmentally sound management of toxic chemicals and hazardous wastes, including the question of their transboundary movement. The resolution calls upon the Secretary-General to facilitate the Special Rapporteur’s consultations with specialized agencies, including WHO, in order to improve the provision of technical assistance to Governments and appropriate assistance to victims.
The Right to Education

In her report (E/CN.4/2002/60), Ms Katarina Tomasevki, Special Rapporteur on the right to education, said that the right to education has to be made more visible and that discrimination in access to education has to be reduced.

Resolution 2002/23 on the right to education, adopted by consensus, urges all States to take appropriate measures to eliminate obstacles limiting effective access to education, notably by girls, and to ensure that primary education was compulsory, accessible and available free to all.

The Rights of Women and the Girl Child

Mr Othman Jerandi, Chairperson of the Commission on the Status of Women, said that during its forty-sixth session, the Commission on the Status of Women adopted a resolution welcoming the measures taken and progress achieved in mainstreaming a gender perspective in entities of the United Nation. The Commission’s resolution also noted and welcomed the establishment of a regular sub-item on gender mainstreaming on the agenda of the Economic and Social Council, and the Council’s decision to devote a coordination segment, before 2005, to the review and appraisal of system-wide implementation of Economic and Social Council agreed conclusions 1997/2 on mainstreaming a gender perspective into all policies and programmes of the United Nations system. The Commission on the Status of Women also adopted a resolution on women, the girl child and HIV, highlighting the role of gender equality and the empowerment of women in reducing disease vulnerability. Furthermore, it adopted a draft resolution on the situation of women and girls in Afghanistan, underlining their right to work, to education, to property, and to the enjoyment of the highest standard of physical and mental health.

Ms Radhika Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences focused her report (E/CN.4/2002/83) on cultural practices in the family that cause violence and discrimination against women. She highlighted honour killings; female genital mutilation (FGM); and Sati (the pledging of young children as concubines or sex slaves), as examples of extreme physical violence and brutality. She emphasized the State’s duty to eradicate such practices.

Several dignitaries, delegations, inter-governmental organizations and NGOs expressed concern at violence against women and the girl child through systematic rape, sexual slavery, forced abortion, female infanticide and FGM. Yemen and Sudan stated that they have enacted laws to end the practice of FGM.

The International Federation of Red Cross and Red Crescent Societies stated that due to fear of stigma and discrimination, women of child-bearing age avoid the voluntary HIV/AIDS testing and treatment for the prevention of mother to child transmission, thereby increasing the population of infected children.

Resolution 2002/52 on the elimination of violence against women was adopted by consensus. It condemns physical, sexual and psychological violence against women in the family and in situations of armed conflict, and emphasizes that violence against
women can increase their vulnerability to HIV/AIDS and aggravate the conditions fostering the spread of the disease. The resolution urges States and the UN system to cooperate in the collection and analysis of data, including information disaggregated by sex and age, on the extent and consequences of violence, and on the effectiveness of policies to combat it.

The Rights of the Child

Mr Olara Otunnu, Special Representative of the Secretary-General on the impact of armed conflict on children, noted in his report (E/CN.4/2002/85) that the plight of children in situations of armed conflict will remain grave unless all parties adhere to international standards for protecting children. He lamented the severe loss of lives of children and women in the occupied Palestinian territories, and the abduction of children in northern Uganda.

Mr Juan Miguel Petit, Special Rapporteur on the sale of children, child prostitution and child pornography, remarked in his report (E/CN.4/2002/88) that when involved in prostitution, children, are at greater risk than adults in contracting HIV/AIDS, given children’s comparative physical weaknesses and lack of knowledge and experience in protecting themselves.

New Zealand stressed the importance of ensuring that children do not suffer from malnutrition and disease, and that they receive health care. At the upcoming General Assembly Special Session on Children, New Zealand plans to emphasize the particular needs of indigenous children and the importance of reproductive health services.

Togo emphasized that the sale, trafficking, and exploitation of children for commercial purposes harm the development and health of children.

Kenya said the HIV/AIDS pandemic results in unprecedented levels of poverty, an increasing number of orphans, and further deteriorating health standards.

Bahrain, China, the Syrian Arab Republic, Uganda and Vietnam outlined measures they have taken to promote and protect the rights of children. Bahrain has increased focus on adolescent health. It has set up hospitals and health care centres and with the help of WHO, and reviewed its health curriculum. China claimed that under their National Programme for the Development of the Child for the 1990s, the number of children vaccinated is increasing and malnutrition and infant mortality are decreasing. The Syrian Arab Republic said the Ministry of Health provides extensive care to pregnant women and to children. The Penal Law imposes severe penalties for sexual violence against children. Uganda stated that the Constitution protects children from social and economic exploitation and prohibits employment in work that is likely to interfere with their education or to harm their health. Vietnam said that nearly all communes in the country have health stations and that special care is given to disabled children. Basic vaccinations are free and compulsory for all children. Polio has been eliminated.
Resolution 2002/92 on the rights of the child was adopted by consensus. It calls upon States and the international community to, inter alia, participate in the global efforts for poverty eradication; to take all appropriate measures to develop sustainable health systems and social services; to provide rehabilitation to children and their families affected by HIV/AIDS; to ensure the effective prevention of the disease through correct information and access to affordable treatment; and to give due importance to the prevention of mother-to-child transmission. The resolution welcomes the request by the General Assembly to the Secretary-General in resolution 56/138 to conduct an in-depth study on violence against children and suggests that he appoint an independent expert to direct the study, in collaboration with OHCHR, UNICEF and WHO.

Vulnerable Groups

Persons with Disabilities

Mr Bengt Lindqvist, Special Rapporteur on Disability of the UN Commission for Social Development, said that 600 million people live with a disability and that all are being exposed to various forms of exclusion. He underlined that the report commissioned by the High Commissioner for Human Rights on the Human Rights of Persons with Disabilities contributes to the strengthening and monitoring of the rights of persons with disabilities. For a summary of this study, please see the report of the High Commissioner (E/CN.4/2002/18/Add1).

The Libyan Arab Jamahiriya stressed that the indiscriminate use of anti-personal mines in Libya causes disabilities and urged the international community to assist in their removal.

Mexico said that ten per cent of the world’s population is suffering from a physical or mental disability and that the economic and social integration of these people should urgently be considered by the international community.

Several delegations highlighted the steps taken by their countries to realize rights of persons with disabilities. Chile has recently ratified the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities. Bahrain said that over the last thirty years it has promulgated and amended laws to ensure that persons with mental and physical disabilities do not suffer from discrimination. Specialized centres provide the disabled with career opportunities and assist them in becoming independent in their daily lives. Kuwait stated that its constitution ensures that the State provides aid in times of sickness or inability to work to all people, including those with disabilities. Disability rights include access to housing, medical treatment both within the state and abroad, and rehabilitation centres.

Resolution 2002/61 on the human rights of persons with disabilities, adopted by consensus, recalls that all persons with disabilities have the right to protection against discrimination and to the full and equal enjoyment of their human rights. UN organizations and specialized agencies are requested to address the problems that exist in creating equal opportunities for persons with disabilities and to report on how these problems are being solved.
Migrants

Ms Gabriela Rodriguez Pizarro, Special Rapporteur on the human rights of migrants, notes in her report (E/CN.4/2002/94) that the situation of female migrants and unaccompanied minors remains an issue of major concern, and that transit and destination countries need to develop efficient protection mechanisms for migrants’ human rights, including access to health services, education and family reunification programs.

Resolution 2002/54 on the human rights of migrants, adopted by consensus, condemns all forms of racial discrimination and xenophobia related to health and social services.

Human Rights in the Context of HIV/AIDS

The report of the Secretary-General on Access to medication in the context of pandemics such as HIV/AIDS (E/CN.4/2002/52), contains an outline of the steps that governments, intergovernmental and non-governmental organizations have taken in promoting resolution 2001/33 on access to medication in the context of pandemics such as HIV/AIDS. In its resolution 2001/33, the Commission on Human Rights recognized that access to medication in the context of pandemics such as HIV/AIDS is a fundamental element for achieving progressively the full realization of the right of everyone to the enjoyment of the highest available standard of physical and mental health.

Mr Wlodzimierz Cimoszewicz, Minister for Foreign Affairs of the Republic of Poland, said that Poland attaches special significance to human rights when dealing with the well-being and health of people living with HIV/AIDS.

Professor Paulo Sérgio Pinheiro, Secretary of State for Human Rights of Brazil, said the efforts of the Brazilian government to tackle HIV/AIDS are exemplary. He said that Brazil’s development of generic drugs was necessary to circumvent patents, which, he said, is necessary to fulfil economic, social and cultural rights, especially the right to health. He further noted that it was Brazil that drafted resolution 2001/33 on access to medication, which was adopted at the 57th session of the Commission.

Mr Hubert Védrine, Minister for Foreign Affairs of France, said that at Doha, France, along with the European Union, successfully supported access to medication for countries confronting AIDS, tuberculosis, and malaria.

Dr Peter Piot, Executive Director of UNAIDS, said that AIDS constitutes one of the most pervasive threats to the right to health. According to UNAIDS, it is unequal access to fundamental economic, social and cultural rights that facilitates the spread of the pandemic. When AIDS affects communities, it causes poverty levels to increase, and already marginalized groups find themselves facing conditions of ever increasing privation. This worsens the epidemic and causes a vicious cycle. Human rights promotion is essential in reversing the situation. Unequal access to treatment remains a global reality. Differential pricing and licensing for production and importation could
improve access to HIV treatment while protecting the intellectual property rights which the pharmaceutical industry needs in order to sustain new research. UNAIDS said that the international community has the responsibility to ensure continued innovation in HIV pharmaceutical research, and at the same time, to render new HIV/AIDS medication available and affordable in a non-discriminatory manner. Most notably, the price of triple antiretroviral therapy has dropped from around $12,000 two years ago to as low as $350 in the poorest countries. This price is, nevertheless, still too high for most people in severely affected countries. The Global Fund to Fight AIDS, Tuberculosis and Malaria will help countries enhance comprehensive care and affordable treatment. UNAIDS will continue to provide countries with technical and financial assistance, helping countries integrate human rights issues into their National HIV/AIDS Strategic Plans.

The International Labour Organization stressed that HIV/AIDS is a workplace issue because it decreases productivity and because the workplace serves as an area in which HIV/AIDS discrimination and prevention can be addressed.

UNDP believes that universal access to anti-retroviral treatment is achievable, provided national governments, the international community, and pharmaceutical industries make commensurate efforts concerning financial investments in research and in the production and commercialization of drugs.

The United Nations Populations Fund said that half of new HIV/AIDS infections afflict people 15-24 years of age, girls being the most vulnerable. In Africa, millions of young women have never heard of the virus and many have misconceptions about transmission. American Jewish Committee (NGO) voiced concern that although 2.3 million people had died from AIDS in Africa in 2001, the Commission had spent two days discussing the Israeli-Palestinian conflict and only two hours would be devoted to discussion of the AIDS pandemic.

Resolution 2002/32 on access to medication in the context of pandemics such as HIV/AIDS (Annex V) was adopted by consensus. It recognizes that access to medication in this context is a fundamental element for achieving progressively the right to health. It calls upon States to promote the accessibility to all, without discrimination, and the availability in sufficient quantities of pharmaceuticals and medical technologies, as well as to ensure that medication and treatment is scientifically and medically appropriate and of good quality. The resolution recognizes the gravity of public health problems affecting many developing countries and agrees that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health or to promote access to medication. The resolution bears in mind the World Health Assembly resolutions WHA54.10 entitled “Scaling up the response to HIV/AIDS” and WHA54.11 entitled “WHO medicines strategy”, and welcomes the recent initiatives by the Secretary-General and relevant UN agencies to make HIV/AIDS related drugs more accessible to developing countries. The Secretary-General is requested to solicit comments from UN agencies, on the steps taken to promote and implement the resolution.

Resolution 2002/67 on the situation of human rights in Myanmar, was adopted by consensus. It welcomes, among other things, the launch of the United Nations Joint Action Plan on HIV/AIDS in Myanmar, and urges the government to promote and
protect the human rights of persons with HIV/AIDS and to ensure that sufficient funding is allocated to the health care system.

**Indigenous Issues**

In his report Mr Rodolfo Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, (E/CN.4/2002/97) stated that in many parts of the world, indigenous persons and communities are victims of discrimination, suffering from poverty and lower standards of living than the rest of the population.

**Conclusion**

Perhaps the most important development during the 58th Session of the Commission relevant to health was the adoption of resolution 2002/31 on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

In her closing statement, Mrs Mary Robinson recognized the distress voiced by the human rights movement over allegations of increased politicization of issues in the Commission to the detriment of true human rights concerns. She said that we need to remind ourselves of the essential role of the Commission in providing a forum for victims to raise their grievances and to see their issues addressed; heeding the voice of conscience from different parts of the world; and enabling NGOs to put forward alternative views from those of governments.
Annex I: WHO Statement on Agenda Item 10: Economic, Social and Cultural Rights

4 April 2002

Thank you, Chair,

It was in the aftermath of the Second World War, that the Constitution of the World Health Organization was adopted. It enshrined “health as a fundamental human right of every human being…” This was in 1946, more than fifty years ago, and the world, which created WHO, was a shaken and sober one. Two years later, the international community adopted the Universal Declaration of Human Rights. The preamble reads: "…disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy…freedom from fear and want…"

Poverty, hunger, and disease are more rampant than ever. The gap between rich and poor has grown both within and between countries. This is the bad news. The good news is that we are getting wiser and more committed to action. We know that any attempt to stimulate development and promote human security must be about investing in human beings - about investing in health - about promoting and protecting the right to health.

The Report of the Commission on Macroeconomics and Health, released last year, reflects the increasing recognition that poverty is both a cause and a consequence of ill health. It produces scientific evidence which demonstrates that improved health is a prerequisite for economic development in poor societies.

Any serious attempt to stimulate economic and social development and promote human security must, therefore, tackle major disease burdens: HIV/AIDS, tuberculosis and malaria, maternal and child conditions, and poor nutrition. The Global Fund to Fight AIDS, Tuberculosis and Malaria will provide an important vehicle to intensify responses to health conditions associated with poverty.

Last year we saw a process of cross fertilization - from access to essential drugs recognized as part of the right to health by the Committee on Economic, Social and Cultural Rights to the adoption of the Commission on Human Rights resolution on access to essential medications. WHO, alongside its UN partners, has played an important role in lowering the cost of AIDS medicines through the Accelerating Access Initiative. We are considerably closer to effective and safe use of antiretroviral medicines in places where the use of these drugs have until now been difficult, largely through the development of practical guidelines.

Finally, in reporting on recent developments, note that we are only a year away from our deadline of concluding the Framework Convention on Tobacco Control. This will provide a key weapon to tackle the chilling statistics of today - eight people die every minute due to tobacco, more than 4 million lives lost each year…

Mr. Chair,
Governments in this room have ratified a number of human rights instruments containing key provisions relevant to our battle towards securing health and prosperity worldwide for everyone. Freedom from discrimination on the basis of sex, social status, religion, race and ethnic origin; the right to seek, receive and impart health information and to health education; and the right to benefit from scientific progress and its applications are a few examples. Coupled with strong government leadership, these norms and standards generated by governments for governments are important tools to advance the international health agenda.

WHO looks forward to addressing the fifty-eighth session of the Commission under specific agenda items on children, gender and women’s health, and vulnerable groups, including people living with HIV/AIDS and persons with disabilities.

To conclude, human rights are a powerful force for mobilizing and empowering the most vulnerable and disadvantaged. Advancing health as a human right means making people conscious of both their oppression and the possibility of change. WHO is committed to doing both - raising awareness by building the evidence and making change possible by paving the way for action.

Thank you.
Annex II: WHO Statement on Agenda Item 12: Integration of the human rights of women and the gender perspective, a) violence against women; and Agenda item 13: Rights of the child.

Geneva, 18 April 2002

Thank you, Mr. Chairman,

Realizing the right to the highest attainable standard of health for women -- half of the world's population -- requires integrating a gender perspective in all aspects of the health enterprise. WHO's Gender Policy sets forth WHO’s commitment to incorporate gender considerations in all areas of our work - research, policy development, health promotion and so forth.

Unfortunately, too many governments do not see improvements in women's health as a priority, despite the goals set in the International Conference on Population and Development (Cairo, 1994) and the Fourth World Conference on Women (Beijing, 1995). For example, at the time of the mid-decade meeting 5 years after Beijing, fewer than half of the 121 country reports about activities implementing the Beijing Platform for Action identified women's health as a national priority. Some countries did not report on women's health at all.

Discrimination on the basis of sex and gender roles violates the fundamental human rights principle of non-discrimination. Discrimination manifests itself in neglect which in turn results in poor health. It can even manifest itself in violence. Violence against women, a major public health problem and serious human rights issue constitutes one of the gravest manifestations of inequality between men and women.

In response, WHO has several major initiatives underway. A multi-country, multi-cultural study on women's health and domestic violence will guide the development of policies and strategies to respond to this problem globally. Another initiative will strengthen the response of the health sector to sexual violence against women and children. And, for the first time, available knowledge on violence and health is being compiled in a publication to be released at the end of this year. More than 150 experts from around the world have worked with WHO on the World Report on Violence and Health. It will be an invaluable resource for preventing violence globally - a timely and urgent initiative as we are all concerned about human security and the future of our children.

This brings us, Mr. Chairman, to agenda item 13 on the rights of the child -- to the plight of millions of infants and young children who die prematurely or do not have a fair chance to develop to their full potential. We know effective and affordable interventions exist to address this shocking problem. So why does it persist?

It persists because current health service delivery strategies do not reach children most in need, especially the poor; because their families lack the knowledge or financial resources to provide good nutrition; because families do not have access to the solutions that can save lives; and because governments and the international community have not made sufficient and sustained commitments to the realization of the rights of children, including their rights to survival, development and health.
Mr. Chairman, we would like to raise today one issue which highlights the intersection of our concerns related to the health of women and children and our concern with human rights -- it is the issue of how we respond to the challenge of Mother to Child Transmission (MTCT) of HIV, the virus which leads to AIDS. WHO advocates a three pronged strategy for prevention:

♦ prevention of HIV infection in women, especially young women
♦ prevention of unintended pregnancies in HIV-infected women
♦ prevention of transmission from an HIV-infected woman to her infant

Sadly, at all three stages neglect and violation of human rights place obstacles in the way of this strategy. For example, poverty and inequities in gender roles and decision making force millions of young women into unprotected, non consensual, often violent, high risk sex. Each occurrence violates the dignity and rights of the woman concerned and each places her at risk of infection with HIV. If she is pregnant or is nursing a baby, these violations of her rights place her child at risk, as well.

The up-coming UN General Assembly Special Session on Children will offer an opportunity to renew our commitment to improving the lives of the world's children. It is clear that we must put knowledge into action without delay. WHO is strongly committed to do so and calls upon all governments to make the rights of children a reality. Governments and the international community must act now to address the rights and needs of all children, including those most in need, their families and communities. This means:

1) Sustaining a strong political commitment to strengthen and expand efforts to respect, protect and fulfil the rights of children and address their health needs, in order to meet international targets for the reduction of poverty, infant and child mortality, and malnutrition;

2) Improving health outcomes among poor children by devoting increased resources to the delivery of essential health services to the poor and by ensuring that governments have the necessary capacity for effective stewardship of the health system;

3) Increasing the proportion of infant and child populations with access to interventions known to be effective, especially interventions that help families and communities care for their young, and that improve the quality of health services;

4) Supporting continuing efforts to understand and address the underlying risks and other factors that influence child health, including gender issues, and the behaviour of those who care for them.

Working towards ensuring the survival and healthy development of young children is one of the most important long-term investments that any society can make. The social and economic costs of failing to do this are enormous.

Thank you.
Annex III: WHO Statement on Agenda Item 14: Specific Groups and Individuals

Geneva, 24 April 2002

Thank you, Mr. Chair,

In addressing the Commission on Human Rights under Agenda item 14 on vulnerable groups, WHO would like to draw attention to the link between the lack of enjoyment of human rights and vulnerability to, and impact of, ill health. In our efforts to tackle health in the context of poverty reduction, we know that the faces of the most vulnerable in society are many and diverse. We understand how the denial of, or lack of attention to, human rights can increase and exacerbate vulnerability. And, conversely, we know that steps to respect, protect and fulfil human rights, can reduce vulnerability to ill-health. A human rights perspective helps us identify those groups likely to be forgotten, marginalized, stigmatized, excluded… And it helps us untangle the many layers of vulnerability when different grounds of discrimination intersect - sex, race, ethnicity, property, health status and so on. It also provides us with key guiding principles for our actions such as freedom from discrimination and the right to participation.

Now let me give you some examples on how WHO is operationalizing a human rights perspective. Giving voice to persons with disabilities in both high- and low-income countries, WHO launched, on international disabled people’s day, last year, a report called Rethinking Care containing personal testimonies of people with disabilities about their view of health care and what should be done to improve their quality of life. For WHO’s work in the particular area of mental health 2001 was, indeed, a landmark year. The World Health Report: New Understanding, New Hope provides countries with guidance and recommendations on how to transform science into action. This means heightened awareness of mental health, decreased stigma attached to mental disabilities and a substantial reduction in the gap between those who receive treatment and those who do not. Member States are called to establish mental health policies, programmes and legislation based on current knowledge and considerations regarding human rights, in consultation with all stakeholders in mental health.

Underscoring these initiatives and others, we have one resounding message: end the stigma and discrimination that undermine efforts to prevent and treat mental illness and put an end to the isolation of people with mental disabilities within society.

Another much neglected form of discrimination was just recently the subject of major debate at the Second World Assembly on Ageing in Madrid1: ageism. WHO recently published a study of 10 countries drawing attention to neglect, abuse and violence against older persons. WHO stresses that healthy ageing is more than the absence of disease. A new policy framework ‘Active Ageing’ launched by WHO in Madrid is grounded on the human rights of older people as reflected in the UN Principles of Older Persons.

This brings me, Mr. Chair, to the greatest health and human rights challenge of our time: HIV/AIDS. HIV/AIDS is transmitted mainly through unprotected sex and the sharing of injecting equipment. As a result, it touches upon issues and behaviours which many societies find ‘taboo’, disproportionately affecting groups and individuals

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1 held in Madrid from 8 to 12 April 2002
already marginalized by society and the health care system. These include sex workers, injecting drug users, women, men who have sex with men, and young people. The abuse of human rights and fundamental freedoms of people living with, or merely suspected of having HIV/AIDS, has been widespread in all parts of the world since the beginning of the epidemic and continues to this day. Twenty years of experience has shown, however, that the most effective responses to the HIV/AIDS epidemic are those which work to prevent the stigma and discrimination associated with HIV/AIDS and protect the human rights - civil, cultural, economic, political and social, of people living with HIV/AIDS and those most at risk of infection.

The health sector has a responsibility in ensuring that its actions engage and support, rather than alienate or discriminate against, those most in need of HIV/AIDS prevention, treatment and care. Health systems which respect confidentiality, ensure equality in access to care, provide testing and care only with informed consent and observe universal precautions, are more effective in their performance and play an exemplary and catalyzing role in society at large. In this context, WHO’s HIV/AIDS Department recently committed in its Mission Statement to the guiding principle of respect for human rights in all aspects of HIV/AIDS prevention, care and support, and specifically to promoting respect for human rights in the development of health sector responses to the epidemic.

The stigma of HIV/AIDS extends also to older people, mostly older women, who care for their children dying from HIV/AIDS and subsequently their orphaned grandchildren. WHO is working to identify the barriers that prevent them from providing adequate and fulfilling care - and to promote policies and programmes that sustain older people as key assets in the care of the terminally ill patients and orphaned children. For that to be accomplished it is crucial that they are maintained in good health.

We also want to recall the Declaration of Commitment adopted by 189 nations at the United Nations General Assembly on HIV/AIDS in June 2001 in which Member States committed themselves to enacting, strengthening or enforcing, as appropriate, by 2003, legislation, regulations and other measures to eliminate all forms of discrimination against and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV/AIDS and members of vulnerable groups.

To conclude, Mr. Chair, there is much that can be done by governments with leadership and political will that does not cost a great deal of money. Making sure that laws and policies enhance participation of vulnerable groups rather than discriminating and alienating them from society and speaking out for tolerance and respect for every individual’s human dignity regardless of their health status, be it disability or disease, are two examples. And there is much that can be done by each and everyone of us in this room – through tolerance, respect, engagement, openness and dialogue. In fact, our slogan for Mental Health, last year, applies to all health conditions associated with stigma and discrimination: Stop exclusion: dare to care!

Thank you.
Annex IV: Resolution 2002/31: The right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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 and that such right derives from the inherent dignity of the human person,

Recalling the declarations and programmes of action adopted by the major United Nations conferences and summits and their follow-up meetings,

Recalling also its previous resolutions on the realization of economic, social and cultural rights, in particular resolutions 2001/30 of 20 April 2001, 2001/33 of 23 April 2001 and 2001/51 of 24 April 2001,

Taking note with interest of 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 at its twenty-second session in May 2000,

Aware that, for millions of people throughout the world, the full enjoyment of the right to 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 enjoyment of the right of everyone to the highest attainable standard of physical and mental health,
Welcoming the recent 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, 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,

1. Urges States to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources for this purpose, 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. Decides to appoint, for a period of three years, a special rapporteur whose mandate will focus on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as reflected in article 25, paragraph 1, of the Universal Declaration of Human Rights, article 12 of the International Covenant on Economic, Social and Cultural Rights, article 24 of the Convention on the Rights of the Child and article 12 of the Convention on the Elimination of All Forms of Discrimination against Women, as well as on the right to non-discrimination as reflected in article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination;
5. Requests the Special Rapporteur:

(a) To gather, request, receive and exchange information from all relevant sources, including Governments, intergovernmental organizations and non-governmental organizations, on the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

(b) To develop a regular dialogue and discuss possible areas of cooperation with all relevant actors, including Governments, relevant United Nations bodies, specialized agencies and programmes, in particular the World Health Organization and the Joint United Nations Programme on HIV/AIDS, as well as non-governmental organizations and international financial institutions;

(c) To report on the status, throughout the world, of the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in accordance with the provisions of the instruments listed in paragraph 4 above, and on developments relating to this right, including on laws, policies and good practices most beneficial to its enjoyment and obstacles encountered domestically and internationally to its implementation;

(d) To make recommendations on appropriate measures to promote and protect the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, with a view to supporting States' efforts to enhance public health;

6. Requests the Special Rapporteur to avoid in her or his work any duplication or overlapping with the work, competence and mandate of other international bodies active in health issues;

7. Invites the Special Rapporteur to apply a gender perspective in her or his work and to pay special attention to the needs of children in the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

8. Also invites the Special Rapporteur to take into account in her or his work the relevant provisions of the Durban Declaration and Programme of Action, as well as of the declarations and programmes of action adopted by the major United Nations conferences and summits and their follow-up meetings, and to bear in mind General Comment No. 14 of the Committee on Economic, Social and Cultural Rights and General Recommendation No. 24 of the Committee on the Elimination of Discrimination against Women, as well as any other general comment that treaty bodies adopt on related provisions of relevant instruments;
9. Requests the United Nations High Commissioner for Human Rights to provide all
the necessary resources for the effective fulfilment of
the Special Rapporteur's mandate from within existing resources;

10. Calls upon Governments to cooperate fully with the Special Rapporteur in the
implementation of her or his mandate, to provide all
information requested and to respond promptly to her or his communications;

11. Requests the Special Rapporteur to submit an annual report to the Commission on
the activities performed under her or his mandate;

12. Decides to continue consideration of this matter at its fifty-ninth session under the
same agenda item.

49th meeting
22 April 2002

[Adopted without a vote. See chap. X.]
Annex V: Resolution 2002/32: Access to medication in the context of pandemics such as HIV/AIDS

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,


Bearing in mind World Health Assembly resolutions WHA54.10 entitled "Scaling up the response to HIV/AIDS" and WHA54.11 entitled "WHO medicines strategy", both of them adopted on 21 May 2001, as well as resolution concerning HIV/AIDS and the world of work adopted on 13 June 2000, by the International Labour Conference,

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, are inseparable elements of an effective response and must be integrated into a comprehensive approach to combat 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), in particular guideline 6,

Taking note of 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 at its twenty-second session in May 2000,

Noting with great concern that, according to the Joint United Nations Programme on HIV/AIDS, the HIV/AIDS pandemic claimed 3 million lives in 2001,

Alarmed that, according to the same source, about 40 million people were infected with the HIV virus by the end of 2001,

Alarmed also at the high levels of prevalence of other infectious diseases, such as tuberculosis and malaria, and acknowledging the significance of HIV/AIDS in the increase in tuberculosis and other opportunistic infections,
Recognizing the need to promote prevention and comprehensive care and support, including treatment and access to medication, for those affected by tuberculosis and malaria, Welcoming the recent initiatives by the Secretary-General and relevant United Nations agencies to make HIV/AIDS-related drugs more accessible to developing countries and noting that much more can be done in this regard,

Welcoming also 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,

Welcoming further the creation of the Global Fund to Fight AIDS, Tuberculosis and Malaria, the purpose of which is to attract, manage and disburse additional resources through a new public-private partnership that will make a sustainable and significant contribution to the reduction of infections, illness and death, by making grants for the prevention, treatment, care and support of the infected and directly affected,

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, 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 and by preventing related discrimination and stigma,

1. Recognizes that access to medication in the context of pandemics such as HIV/AIDS 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 pursue policies, in accordance with applicable international law, including international agreements acceded to, which would promote:

(a) The availability in sufficient quantities of pharmaceuticals and medical technologies used to treat pandemics such as HIV/AIDS or the most common opportunistic infections that accompany them;

(b) The accessibility to all without discrimination, including the most vulnerable sectors of the population, of such pharmaceuticals or medical technologies and their affordability for all, including socially disadvantaged groups;
(c) The assurance that pharmaceuticals or medical technologies used to treat pandemics such as HIV/AIDS 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;

3. Also calls upon States, at the national level, on a non-discriminatory basis:

(a) To refrain from taking measures which would deny or limit equal access for all persons to preventive, curative or palliative pharmaceuticals or medical technologies used to treat pandemics such as HIV/AIDS or the most common opportunistic infections that accompany them;

(b) To adopt legislation or other measures, in accordance with applicable international law, including international agreements acceded to, to safeguard access to such preventive, curative or palliative pharmaceuticals 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 pharmaceuticals or medical technologies;

4. Further calls upon States, in furtherance of the Declaration of Commitment on HIV/AIDS adopted by the General Assembly at its special session in June 2001, 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 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;

5. Calls upon States to take all appropriate measures, nationally and through cooperation, to promote the development of new and more effective preventive, curative or palliative pharmaceuticals, in accordance with applicable international law, including international agreements acceded to;
6. Also 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 pharmaceuticals or medical technologies used to treat pandemics such as HIV/AIDS 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 pharmaceuticals and medical technologies;

7. Welcomes the Declaration on the TRIPS Agreement and Public Health adopted at the Fourth World Trade Organization Ministerial Conference in November 2001, in which World Trade Organization members:

(a) Recognized the gravity of the public health problems afflicting many developing countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics;

(b) Stressed the need for the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) to be part of the wider national and international action to address these problems;

(c) Recognized that intellectual property protection is important for the development of new medicines and also recognized the concerns about its effects on prices;

(d) Agreed that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health; accordingly, while reiterating their commitment to the TRIPS Agreement, they affirmed that the Agreement can and should be interpreted and implemented in a manner supportive of World Trade Organization members' right to protect public health and, in particular, to promote access to medicines for all; in this connection, they reaffirmed the right of World Trade Organization members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose;
8. Calls upon the international community, the developed countries in particular, to continue to assist the developing countries in their fight against pandemics such as HIV/AIDS through financial and technical support, as well as through the training of personnel;

9. Invites the Committee on Economic, Social and Cultural Rights, when considering the human rights dimension of combating pandemics such as HIV/AIDS, to give attention to the issue of access to medication and invites States to include appropriate information thereon in the reports they submit to the Committee;

10. 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.4/2002/52 and Add 1);

11. 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 fifty-ninth session;

12. Decides to continue its consideration of this matter at its fifty-ninth session, under the same agenda item.

49th meeting
22 April 2002
[Adopted without a vote. See chap. X.]
Annex VI: Summary of Parallel Event on Realizing the Right to Health: Access to HIV/AIDS-related medication

3 April 2002

Parallel to the 58th session of the Commission on Human Rights, OHCHR, in collaboration with UNAIDS and WHO, organized a meeting to raise awareness of recent developments surrounding the issue of access to medication in the context of HIV/AIDS. Speakers were invited to assess the human rights implications of these developments within the context of the international legal framework for the right to health, through a consideration of national experiences; the role of civil society; and global institutional experiences. The meeting was attended by a large number of representatives from governments, UN agencies, and NGOs, as well as by participants from the private sector.

The meeting was chaired by Stefanie Grant, Chief, Research and Right to Development Branch, OHCHR. Panellists included:

- Mary Robinson, UN High Commissioner for Human Rights
- Marika Fahlen, Director, Social Mobilization and Information, UNAIDS
- Jeffrey Sachs, Chair, WHO Commission on Macroeconomics and Health, and special adviser to the Secretary-General on the Millennium Development Goals (via videoconference)
- Jaqueline Rocha Cortes, Government of Brazil
- Dr Joseph Perriens, WHO
- Zackie Achmat, Treatment Action Campaign (South Africa)
- Richard Elliott, Canadian Legal AIDS Network

Background and Context

In April 2001 the Commission on Human Rights adopted, for the first time, a resolution which recognizes that access to medication in the context of pandemics such as HIV/AIDS is “one fundamental element for achieving progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of health”. It calls on States to pursue policies which would promote:

a) The availability in sufficient quantities of pharmaceuticals and medical technologies used to treat pandemics such as HIV/AIDS, or the most common opportunistic infections that accompany them;

b) The accessibility to all without discrimination, including the most vulnerable sectors of the population, of such pharmaceuticals or medical technologies and their affordability for all, including socially disadvantaged groups; and

c) The assurance that pharmaceuticals or medical technologies used to treat pandemics such as HIV/AIDS 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.
Recent Developments

Significant developments have taken place since the adoption of the resolution:

- In June 2001, the UN General Assembly adopted a Declaration of Commitment which reaffirms that access to medication in the context of pandemics such as HIV/AIDS is fundamental to realizing the right to health. The Declaration recognizes that prevention, care, support and treatment are mutually reinforcing elements of an effective response, and that effective prevention, care and treatment strategies will require increased availability of, and non-discriminatory access to medication.
- In June 2001 a Global Fund was established in order to mobilise additional resources to assist developing countries in addressing the challenges raised by HIV/AIDS, malaria and tuberculosis.
- In September 2001 States agreed, in the Durban Declaration and Programme of Action, on the need to address the impact of racism as a determinant of health status and access to health care.
- At the Fourth Ministerial Conference in Doha last November, governments adopted a Declaration which clarifies, to a certain extent, the flexibilities built into the TRIPS Agreement regarding intellectual property, public health and access to medication. The Doha Declaration stresses the need for TRIPS to be interpreted in a manner supportive of WTO members’ right to protect public health and promote access to medicines, particularly with regard to public health problems affecting developing countries, such as HIV/AIDS.

These developments all encourage respect for the right to the highest attainable standard of health for those infected with and affected by HIV and AIDS. They also are important steps towards the achievement of the Millennium Development Goals including halting and beginning to reverse the spread of HIV/AIDS, and halving extreme poverty by 2015.

Summary of discussions

Several panellists underscored the increased appreciation of the role of human rights - and the realisation of the right to health specifically - in the fight against HIV/AIDS. They highlighted the interdependent and indivisible nature of the right to health and other human rights, most notably equality and non-discrimination, and drew attention to the negative impact that stigma and discrimination often has on access to treatment and care for people living with HIV/AIDS.

The High Commissioner recalled the unprecedented challenges raised by HIV/AIDS to human rights, development and human security. She noted that the stigma and discrimination associated with HIV and AIDS continue to fuel its spread and exacerbate its impact, and gave concrete examples of how access to treatment and care, including access to HIV/AIDS related medicines, may be impeded as a result. She stressed the importance of learning from best practice examples that demonstrate how the epidemic can be brought under control by addressing the root causes of vulnerability to HIV infection, and by integrating prevention with comprehensive care, treatment and support. She stressed the need to build on recent commitments and to ensure that human rights are central to the decision-making of governments, international organisations, companies and civil society in the response to HIV/AIDS at all levels.
Marika Fahlen recalled the toll taken by HIV/AIDS on human development around the world, and stressed that HIV/AIDS-related human rights are global public goods which go beyond the dignity of the individual person. She noted that the weakening of human capital due to HIV infection and AIDS-related deaths takes a heavy toll on the public institutional capacity to maintain the rule of law and ensure respect for human rights. She stressed that in order to be meaningful, therefore, a rights-based approach to HIV/AIDS must be supported by a nurturing society, political commitment at the highest level and a vibrant civil society. She drew attention to the next World AIDS Campaign which, by focusing on stigma and discrimination, will address the full range of human rights issues relevant to an effective response, from prevention through care, treatment and support.

Participants highlighted the particular importance of access to education and information concerning HIV/AIDS, including the right to seek, receive and impart HIV-related prevention and care information. Zackie Achmat noted the significance of ‘scientific and treatment literacy’ for people living with HIV and AIDS, including access to counselling, testing and information for pregnant women. He pointed to the importance of partnerships between people living with HIV/AIDS, civil society, government and the private sector towards improving access to treatment and care. He drew attention to the need for political will at all levels to deal with barriers to HIV treatment, including health care infrastructure.

Concrete examples were given of how safeguarding human rights may contribute to reducing vulnerability to HIV infection and alleviating the negative impact of the epidemic on those most affected. Jaqueline Rocha Cortes described Brazil’s experience in combating HIV/AIDS. Following the introduction of free universal access to HIV-related medicines in 1996, the number of patients using anti-retrovirals has grown four-fold, and the number of AIDS related deaths has fallen by over 50 percent. She explained that the Government’s key policies and strategies for fighting HIV/AIDS include a comprehensive approach to prevention, treatment and care, based on respect for human rights; strong civil society participation; universal public health system; and a commitment to combating HIV/AIDS-related stigma and discrimination. While a great deal of progress has been made in the fight against HIV/AIDS in Brazil, she noted that several challenges still remain, including: improving early diagnosis and combating mother to child transmission; monitoring the quality of care and treatment; improving the quality of health services generally; and fighting poverty and violence.

Dr Perriens underscored the leading role played by the United Nations in increasing accessibility to treatment in developing countries. He noted the progressive decrease in the price of anti-retroviral drugs in developing countries, citing Brazil and Thailand as examples, and the mainstreaming of differential pricing into corporate thinking. He drew attention to the additional annual resources required to fight HIV/AIDS, including an estimated US$3.6 billion for HIV prevention and US$2.6 billion for care and treatment. He cited several ongoing initiatives such as the Accelerating Access programme, which partners relevant UN agencies with several pharmaceutical companies in a joint effort to improve access to essential medicines.
Several panellists addressed the issue of the impact that international trade agreements may have on access to essential drugs, and noted the Doha Declaration on the TRIPS agreement and public health as a positive development in this regard. The Declaration stresses the need for the TRIPS agreement to be part of the wider national and international response to HIV/AIDS, TB, malaria and other epidemics, and affirms that TRIPS should be interpreted and implemented in a manner supportive of member states’ right to protect public health and, in particular, to promote access to medicines for all. Richard Elliott underlined the legal significance of the Declaration and recalled that States obligations under the TRIPS agreement must be interpreted in the light of their obligations to respect, protect and fulfil human rights – including their obligation to take measures to progressively realize the right to health.

Participants underscored the responsibility of the international community to ensure equitable access to medication for people living with HIV/AIDS in developing countries, and cited the need for a massive increase in financial assistance to countries most affected. In this regard, Jeffrey Sachs stressed the powerful links between health, poverty reduction and long-term economic growth. He recalled the conclusions of the WHO Commission on Macroeconomics and Health, which analysed the global impact of HIV/AIDS, malaria and TB and the other conditions impacting on the health goals of the Millennium Declaration. The Commission found that the resources and knowledge exist to save millions of lives; that better health can be a major catalyst for economic development; and that a new ‘health pact’ between donors and recipients, along with major new investment in health, are needed to achieve this. He drew attention to the Commission’s call for a major increase in domestic spending on health in developing countries and a massive increase in development assistance for health.

The establishment of the Global Fund was noted as a vital turning point in the international fight against HIV/AIDS. It was recalled that the Fund was established to mobilize additional resources to finance prevention, care and treatment plans developed through country partnerships in severely affected countries, as well as in areas with growing epidemics. Several participants pointed to the relatively low levels of contributions received by the fund to date, compared with the estimated US$7-10 billion per year required to fund an effective response. They stressed the need for all partners to support the Global Fund processes at the country level, as well as to ensure that resources from the Fund are allocated based on need and are used to purchase safe, effective quality medicines and diagnostics. The Board of the fund will award its first round of grants this month, with a second round of proposals to be considered at the end of July.

11 April 2002

Panellists:
Paulo David, Secretary, UN Committee on the Rights of the Child, Office of the High Commissioner for Human Rights
Marta Santos Pais, Director, UNICEF Innocenti Research Center
Dr Andrés Villaveces, Department of Injuries and Violence Prevention, WHO
Peter Newell, Joint Coordinator, Global Initiative to End All Corporal Punishment
Jo Becker, Policy Director, Children’s Rights Division, Human Rights Watch

Summary of Discussion: The panellists addressed the scope and process of the study on violence against children. There was consensus that the appointment of an internationally respected special rapporteur on children’s rights and an independent secretariat, is essential. The partnership and cooperation of inter-governmental and non-governmental organizations, professional groups and children can contribute to further needed research.

Paulo David underlined that violence against children occurs daily, in a wide range of situations, within the family, at school and work, in the streets and in prisons, and that violence includes physical and mental violence, as well as neglect. In addressing all cases of violence, discrimination regarding gender and ethnicity must be prevented.

Marta Santos Pais considered the multiple forms violence against children, and emphasized the importance of looking at the conclusions and recommendations of the Committee on the Rights of the Child in carrying out the study. The General Assembly Resolution on the Rights of the Child is not lengthy, and thus leaves room for the vision of the independent expert. She underlined the importance of promoting behaviour change in the ways children are treated; of involving the state in national programs to deal with such issues as neglect and physical and sexual abuse; and of the participation of children themselves in dialogue, stressing their human dignity. Hidden cases of violence, as well as the emotional development of children, are areas requiring further research.

Dr Andrés Villaveces stressed the importance of fostering primary prevention activities and orienting them with research aimed at decreasing the burden of injuries in health. He also stressed the importance of evaluating child abuse and neglect costs to individuals and to society, of having standardized systems of data collection for assessing child abuse and neglect events, and of rendering data more policy-oriented. He said that enhancing public awareness is essential in the prevention of violence. The first World Report on Violence and Health, in which over one hundred researchers from around the world address the issue of violence and with some specific chapters on violence against children, will be published in October 2002. Dr Villaveces further stressed that violence against children has harmful health consequences, and that a violation in one stage of a child’s life, in which the child is the victim, can cause a violation in another stage, in which the child can become a perpetrator of violence. He therefore stressed the importance of looking at violent events from early in life unto later stages so as to include...
the study of youth violence, sexual violence, and school violence, all of which affect children in different manners.

**Peter Newell** said that the scope of the study must cover children of all age and ethnicity and that the causes of violence must be as broad a category as possible, involving cases of both deliberate acts of violence and neglect. Responding to Marta Santos Pais’s presentation, he claimed that relying on existing documents and research could prove dangerous and would not make what is now invisible, visible. He emphasized that few countries have an enquiry system into the death of children. For such a system, birth registration is necessary and not all children are registered at birth. He said that disabled children, a group that is under-researched, are particularly vulnerable to violence. New research is also required on violence within the family. Very often cases of child suicide remain unreported and unclassified so as to not disturb the family. He commented on the absence of political will and said that violence against children continues to remain a low priority on political agendas at the national level.

**Jo Becker** said that it is tragically the teachers, employees, and guardians of children, that initiate violence. Speaking on the conduct of the study, she reiterated the importance of an independent secretariat, funded by voluntary contributions and directly responsible to the special rapporteur and not to agencies. She said that partnership is necessary in order to generate the political will called for by Peter Newell. The full participation of UNICEF, WHO, OHCHR, and ILO is essential, as well as that of non-governmental organizations, groups of professionals such as psychologists, nutritionists, teachers, and children themselves.
Annex VIII: Summary of Parallel Event on Economic, Social and Cultural Rights in Practice: The right to health in practice

11 April 2002

Parallel to the 58th session of the Commission on Human Rights, the International Commission of Jurists (ICJ), in collaboration with the Federal Republic of Germany and the Republic of Chile, organised a meeting to explore the practical application of the right to health. The meeting was chaired by Louise Doswald-Beck, Secretary General of the ICJ, and moderated by Bertie Ramcharan, Deputy High Commissioner for Human Rights, Office of the High Commissioner for Human Rights (OHCHR).

Summary of discussions

Ambassador Juan Vega, Permanent Mission of the Republic of Chile to the United Nations and other organizations in Geneva underscored the right to health as a fundamental right recognized in the WHO Constitution and the Chilean Constitution. The protection of the right to health is part of all government policy initiatives in Chile.

Ambassador Walter Lewalter, Permanent Mission of the Federal Republic of Germany to the United Nations and other international organizations in Geneva explained that it is now generally accepted that economic, social, and cultural rights and civil and political rights are interdependent and realization of one contributes to the realization of the other. He lamented the fact that in the past, economic and social rights have been neglected. He stressed the responsibility of states to ensure compliance with the obligations created by international law.

Professor Eibe Riedel, Professor, Faculty of Law, University of Mannheim, Germany elaborated upon a four-step strategy set out in General Comment 14 for monitoring progressive realization of the right to health involving (1) human rights indicators, (2) benchmarks nationally set, (3) scoping and (4) assessments, when the Committee discusses periodic reports once every five years with the states parties (countries that have ratified the International Covenant on Economic, Social and Cultural Rights, presently around 145).

The first step involves the acceptance of relevant indicators agreed in close cooperation with the relevant specialized agencies which in that process can contribute to mainstreaming human rights effectively in their respective domain. Next, national benchmarks are then set by states parties themselves, thereby enabling a differentiated approach to the vastly differing situations in which most countries find themselves. As a third step these self-set benchmarks or targets then need to be agreed with the Committee, usually in the period following the submission of the state party's report, for which the Committee has used the term scoping. This will then, fourthly, serve as the basis for an assessment during the dialogue between the state party and the Committee and for the drafting of concluding observations. The advantage of such a four-step procedure lies in the truly cooperative and interactive spirit of states parties, the Committee (treaty bodies), and specialized agencies, in which a more focused and meaningful discussion can take place.
Ms Nelly Alvarado, the Republic of Chile Inter-Ministerial Commission for Health Sector Reform outlined recent development in Chile to promote the right to health, including a bill on health and human rights adopted by Parliament.

Kitty Arambulo, Deputy Secretary of the Committee on Economic Social and Cultural Rights, OHCHR observed that many states are far from the theoretical framework presented at the international level. A first step in creating a system of indicators for economic and social rights would be to forge a link between indicators being developed and international human rights instruments and policies.

Helena Nygren-Krug, Health and Human Rights Focal Point, WHO, outlined how human rights was being operationalized in the work of WHO and how human rights was embedded in the WHO Corporate Strategy as a new emphasis of work.

Stephen Marks, Professor of Health and Human Rights, Director François-Xavier Bagnoud Center for Health and Human Rights, Harvard University explained the link between the right to health and the right to development. The right to development was characterized as a process in which key indicators would capture equity, non-discrimination, transparency, and accountability.
Annex IX: Summary of Parallel Event on National Human Rights Institutions and Disability Rights: Protection at the National Level

16 April 2002

Panellists:

Professor Gerard Quinn (Moderator), Professor at Galway University and Member of the National Human Rights Commission of Ireland, author of Office of the High Commissioner for Human Rights Commissioned Study on Disability Rights

Mr Brian Burdekin, Special Advisor on National Institutions to the High Commissioner for Human Rights

Ms Myriam Tebourbi, OHCHR Human Rights Officer responsible for Disability Issues

Mr Richard Light, Research and Publications Director, Disability Awareness in Action

Mr Driss Dahak, President, Conseil consultatif des droits de l’homme, Morocco

Mrs Margaret Sekaggya, Chairperson, Uganda Human Rights Commission

Justice Shri J.S. Verma, Chairperson, Indian National Human Rights Commission

Summary of Discussion:

Mr Brian Burdekin emphasized the need for open-ended, comprehensive discussions among persons with disabilities, national policy-makers, and non-governmental organizations. With increasing complaints of the violation of rights, national institutions are going to be forced to respond.

Ms Myriam Tebourbi, viewed the UN treaty monitoring bodies as an important arena in addressing disability issues and stressed the importance of mainstreaming the rights of persons with disabilities in all human rights mechanisms. She suggested the appointment of a special rapporteur to the Commission on Human Rights on disability or incorporating disability into the mandates of existing special rapporteurs. She stressed that being disabled does not mean being unhealthy.

Mr Richard Light, said a substantial hurdle is acknowledging the very humanity of the disabled. Twenty-eight percent of cases of violations of the rights of persons with disabilities involve abuse but only six percent of these cases result in legal action. He has documented that those who have been forced to take drugs or undergo electronic shock therapy under the mental health system, perceive medical treatment as torture.

Mr Driss Dahak said that Morocco is urgently establishing laws for the protection of the disabled and is prohibiting the incarceration of the disabled in psychiatric institutions. He stated that the disabled constitute a larger percentage of the world’s population than the ten percent statistic of the World Health Organization.

Professor Quinn responded that a more accurate statistic is twenty-five percent, the inflation reflecting armed conflict. In calculating a percentage, consideration needs to be given to the families and caretakers of the disabled, whose lives are also affected.
Mrs Margaret Sekaggya, described the programme of research and education established by the Human Rights Commission in Uganda, using publications and radio broadcasts to promote respect for persons with disabilities. Beginning in October 2002, the Commission spent two months collecting information from the disabled, civil society, and government departments, for public hearings with the aim of sensitising the general public. In a recent report to Parliament, the Commission recommended a law providing assistance in areas of housing, transport, communication, social security, health, and education. The disability of many of those bringing complaints to the Commission was a result of torture or occupational hazards. The Commission provides compensation to such victims.

Justice Shri J.S. Verma stressed that the Human Rights Commission in India addresses individual complaints from non-governmental organizations that assist the disabled. The Commission has taken up the issue of the wide prevalence of iron and iodine deficiency related health problems that result in a large number of children being born with mental disabilities. In 2000, the Commission reviewed the Persons with Disabilities Act (Equal Opportunities, Protection of Rights and Full Participation). Significant amendments have been suggested, such as: including persons afflicted with Hemophilia and Thalassemis in the definition of disability and providing specialized long term medical care for these persons; mentioning Filariasis in the definition of locomotive disability and providing a program of escort service and interpretation for persons with sensory disability; and incorporating non-discrimination clauses for people with mental, physical, and sensory impairments.