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UNAIDS Secretariat submission on zero draft of CMW-CRC Joint General Comment on the Human Rights of Children in the Context of International Migration

1. UNAIDS welcomes the opportunity to submit written input to the Joint General Comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 21 of the Committee on the Rights of the Child on the human rights of children in the context of international migration.

2. UNAIDS calls the attention of the Committee to the fact that in 2015, there were approximately 36.7 million people living with HIV. Since the start of the epidemic some 35 million people have died of AIDS-related illnesses. As part of the 10 Fast-Track commitments to end AIDS by 2020, UNAIDS has called for the elimination of new HIV infections among children by 2020 while ensuring that 1.6 million children have access to HIV treatment by 2018.

3. Migration involves important health and HIV issues including for children. This submission focuses on two key issues and their impact on children:

A) HIV-related restrictions on entry, stay and residence of people living with HIV based on their HIV status; and

B) Barriers to accessing HIV services for migrant and refugee children.

A) HIV-related restrictions on entry, stay and residence of people living with HIV based on their HIV status

4. HIV-specific travel restrictions on entry, stay and residence, based on positive HIV status, include those restrictions that completely ban entry of HIV-positive people for any reason or length of stay. These restrictions are applied to visa applications for very short stays (e.g. tourist visas) and/or to visa applications for longer stays (visas for residency, immigration, labour migration, asylum or resettlement, study, international employment, and consular service).

5. Governments have typically cited two reasons for such HIV-related travel restrictions: one is to protect the public health by preventing the spread of HIV into a country, and the other is to avoid potential costs of care, treatment and support that might be associated with the stay of a person living with HIV. Early on, however, experts and advocates have stated that HIV-specific restrictions based on HIV status are discriminatory, do not protect the public health, and as blanket restrictions, are overly broad in terms of avoiding potential costs.[1] Furthermore, since the introduction of such restrictions, the impact of HIV has dramatically changed with access to antiretroviral treatment, making these restrictions even more anachronistic, ineffective and unnecessary.

[1] Report of the International Task Team on HIV-related Travel Restrictions – Findings and Recommendations, p.4. Available at http://data.unaids.org/pub/report/2009/jc1715_report_inter_task_team_hiv_en.pdf.

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6. The implementation of HIV-related restrictions on entry, stay and residence has direct implications for families and for children. Families seeking to migrate or seeking asylum and/or resettlement may be denied family unity if one member of the family is HIV-positive and therefore blocked from entry and residence. Experiences of families seeking to adopt HIV-positive children illustrate how HIV-related restrictions against the entry, stay and residence of children living with HIV are discriminatory, increase emotional and financial costs, and in some cases cause delays that result in the child not having timely access to treatment. Such restrictions are contrary to international human rights law which recognizes that respect for family life should be considered as a basis for allowing a non-national to enter or reside in a country.[2]

B) Barriers to accessing HIV services for migrant and refugee children

7. Social, economic and political factors in both the country of origin and destination countries influence migrants' risk of HIV infection. Migrants often cannot access HIV services – either for prevention if they are HIV-negative or for treatment, care and support if they are living with HIV. Migrants, including migrant children, rarely have the same entitlements as citizens to insurance schemes that make health care affordable, particularly if they are undocumented. Transportation costs to reach health-care facilities and the fear of the loss of income further hamper their access to services. Other barriers include the fear of being arrested or harassed by the police when travelling. Knowledge of antiretroviral therapy and how one can benefit from treatment tends to be low among migrant populations, further highlighting the need to increase outreach activities.

8. Women and children separated for long periods of time from their husbands/fathers for economic and social reasons can find themselves in situations of increased vulnerability. For women and children who stay behind when their husbands/fathers migrate, the economic challenges and food insecurity that precipitated the migration may continue. Thus, they may be forced to exchange sex for food or money.

9. Stigma and discrimination are among the foremost barriers to HIV prevention, treatment, care and support. Research has shown that stigma and discrimination undermine HIV prevention efforts by making people afraid to seek HIV information, services and modalities to reduce their risk of infection and to adopt safer behaviours lest these actions raise suspicion about their HIV status.

10. Stigma and discrimination in health care settings is widespread across the world and takes many forms. It violates the most fundamental human rights protected in international treaties and in national laws and constitutions. Stigma and discrimination in health care settings is directed towards some of the most marginalized and stigmatized populations, which include migrants, especially refugees, mounting to intersecting or compounding forms of discrimination.

11. This intersectional aspect of discrimination makes migrant children living with HIV particularly vulnerable to violations of their human rights, including the right to the highest attainable standard

[2] For example, see United Nations Human Rights Committee (1986), "International Covenant on Civil and Political Rights: General Comment No. 15 on the position of aliens under the Covenant." Available on-line at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument. See also UNAIDS and International Organization for Migration (2004), UNAIDS/IOM Statement on HIV/AIDS-related Travel Restrictions.

of health protected by Article 24 of the CRC. Thus requiring national policies and international strategies - like the Agenda for Zero Discrimination in Health Care - to address this and to promote action taking into account the specific needs of migrant children is crucial.

12. Providing treatment to people living with HIV – including migrants and their children - brings economic gains to a society through a person's improved health and productivity. It also has a preventive effect by reducing an individual's viral load, thereby reducing the likelihood of transmitting the virus. Coupled with the falling costs for treatment, it is increasingly difficult to argue that people living with HIV incur greater costs to the destination country compared to the benefits they could contribute over a long-term stay while they are healthy.[3]

13. States shall, in particular where government capacity is limited, accept and facilitate assistance offered by UNICEF, WHO, UNAIDS, UNHCR and other agencies within their respective mandates, as well as, where appropriate, other competent inter-governmental organizations or non-governmental organizations in order to meet the health and health care needs of unaccompanied and separated children.[4]

14. Anonymous and free-of-charge HIV testing and counselling has helped many migrants and other key populations to know their HIV status and, if HIV-negative, reduce their risk of exposure to the virus. Antenatal testing for all pregnant women is often seen as an effective strategy for achieving good coverage of HIV testing in migrant populations and ethnic minorities. HIV testing uptake in antenatal settings among migrants has been shown to be high and similar to that for non-migrant women.

15. Non-discrimination in access to health is a standard to be considered when evaluating the best interest of the child, and therefore of the migrant child, as it is stated in Article 3 of the CRC requiring States Parties to ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

References

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- UNAIDS, Global AIDS Monitoring 2017, Indicators for monitoring the 2016 United Nations Political Declaration on HIV and AIDS, 2016.

[3] Perhaps recognizing these factors, the United Kingdom makes antiretroviral therapy available to all people living with HIV in the country at no cost regardless of their immigration status.

[4] Committee on the Rights of the Child, General Comment No. 6, Art. 22(2).

- UNAIDS, The Gap Report, September 2014.
- WHO-UNAIDS, Joint United Nations Statement on Ending Discrimination in health care settings, 27 June 2017.

7 July 2017 – UNAIDS Secretariat, Geneva