Confronting Discrimination and Inequality in China

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The purpose of this study is to examine selected international and regional instruments endorsed by China and ASEAN member countries relevant to HIV-related discrimination. Recommendations are then made as to how to strengthen the role of international and regional instruments in national responses to HIV-related discrimination.

HIV-related discrimination is defined broadly as any discrimination which contributes to the spread of HIV and the impact of AIDS. HIV-related discrimination, including gender-based discrimination, has long been recognized as a co-factor in HIV vulnerability. In 1989 the (then) UN Centre for Human Rights and the World Health Organization (WHO) convened an international consultation on AIDS and human rights which identified this link. In 2007, Piot and colleagues described the interaction of gender, discrimination and HIV thus:

Gender inequality is one of many injustices fuelling the epidemic. The spread of HIV is disproportionately high among many groups that experience discrimination and suffer from a lack of human rights protection. This includes groups that have been marginalized socially, culturally, and often economically, such as injection drug users, sex workers, migrants, and men who have sex with men. Women's susceptibility to HIV is further enhanced in members of marginalized or migrant populations: research in Viet Nam, for example, revealed that women migrant workers were twice as likely as other women to become HIV positive.

More than other infectious diseases, discrimination determines who gets infected with HIV, who is diagnosed as HIV-positive, and what care, treatment and support people receive after diagnosis. HIV-related discrimination also leads to, and is itself a consequence of, socio-economic vulnerability. For example, in sub-Saharan Africa,
countries with greater income inequality have higher HIV prevalence. This observation should be of particular concern to countries with significant or increasing levels of inequality.9

HIV-related discrimination is a central obstacle to the augmentation of prevention, treatment, care and support programs. It is therefore an entirely appropriate subject for international scrutiny and for the exchange of experience and best practices. By encouraging countries to address HIV-related discrimination, international and regional instruments contribute to the national and global response to HIV.

This study addresses the following questions:

1. What has been the contribution of international and regional instruments to national responses to HIV-related discrimination, as evidenced by law and policy reform?
2. How can the role of international and regional instruments be strengthened in support of national responses to HIV-related discrimination?

Millions of dollars have been spent on international and regional intergovernmental meetings on HIV, where the resulting declarations and resolutions are regarded as key outputs.6 Yet some governments pay little attention to the commitments they make at these events. To ensure the maximum return on this investment, we need to examine how national compliance with international commitments can be improved. It is also possible that, rather than creating more instruments, human and financial resources could be more usefully directed to national-level activities to address HIV-related discrimination, and to the implementation and monitoring of existing commitments.

I. INTERNATIONAL INSTRUMENTS

In this article, the term “international instruments” refers to both binding instruments (e.g. treaties) and non-binding instruments (such as declarations of the UN General Assembly and regional intergovernmental bodies).

1. Paris AIDS Summit 1 December 1994

In December 1994, at a meeting convened jointly by France and the WHO, heads of government met for the first time to discuss AIDS. Representatives from the countries in this study came from China, Indonesia, Philippines, Thailand and Viet Nam. In the statement of the meeting (the “Paris Declaration”) representatives declared their “determination to fight against poverty, stigmatization and discrimination” and “to provide leadership, advocacy and guidance in order to ensure that non-discrimination, human rights and ethical principles form an integral part of the response to the pandemic.”7 They also undertook to “fully involve non-governmental and community-
based organizations as well as people living with HIV/AIDS in the formulation and implementation of public policies..."

One outcome of the Paris AIDS Summit was the GIPA Principle – the "greater involvement of people living with HIV/AIDS." This principle is expressed at the national level by the inclusion of people living with HIV in national strategy development bodies and the country coordinating mechanism (CCM) established to develop proposals for, and monitor the implementation of, grants from the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund). At the international level this principle is expressed through the designation of seats for representatives of people living with HIV (PLHIV) on the governing bodies of the Joint United Nations Program on HIV/AIDS (UNAIDS) and the Global Fund, and a special accreditation process to allow for the participation of PLHIV representatives in UN meetings on HIV, such as the General Assembly sessions noted below.

2. United Nations human rights treaties
Although no UN human rights treaty refers explicitly to HIV, prohibitions of discrimination include "other status" to indicate that the listed grounds of discrimination are not limited. For example, the International Covenant on Economic, Social and Cultural Rights states:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.\(^{10}\)

The UN Commission on Human Rights repeatedly affirmed that the term "other status" in international human rights treaties should be interpreted to include HIV status.\(^{11}\)

In 1996 UNAIDS and the Office of the High Commissioner for Human Rights (OHCHR) convened an expert consultation to explore states' obligations in responding to the HIV epidemic under the UN human rights treaties. The report of the consultation contains 12 principles, now known as the "International Guidelines on HIV/AIDS and Human Rights." The report was included as an annex to the corresponding report of the Secretary-General to the Commission on Human Rights in 1997 (E/CN.4/1997/37). The Guidelines were subsequently annexed to a Commission resolution on HIV/AIDS (1997/33). At that time members of the Commission included China, Indonesia, Malaysia, and Philippines.

The report of the consultation was then edited and published by UNAIDS and OHCHR in 1998 as *HIV/AIDS and Human Rights: International Guidelines*.\(^{12}\) In 2002 the Guidelines were updated to reflect developments in prevention, treatment, care and
support. A consolidated version of the International Guidelines was published in 2006, as *International Guidelines on HIV/AIDS and Human Rights*.12

The Guidelines note the wide range of rights implicated in the response to HIV, including the right to non-discrimination.14 Most importantly, the Guidelines refer to the circumstances in which international law permits the imposition of restrictions and limitations on certain human rights in the context of HIV and AIDS.13

In 1998, the Inter-Parliamentary Union (IPU) adopted a broad resolution on HIV at the 99th Conference in Windhoek, Namibia. In 1999 the IPU and UNAIDS published the *Handbook for Legislators on HIV/AIDS, Law and Human Rights*. This publication examines national experience in implementing the Guidelines, and includes a chapter on HIV-related discrimination.16 In 2007 the IPU, the United Nations Development Program (UNDP) and UNAIDS published a revised and expanded edition, *Taking Action Against HIV*.17 Of the countries in this study, only Brunei and Myanmar are not IPU members.

All of the countries in this study have ratified at least one human rights treaty relevant to HIV, the Convention on the Rights of the Child, and most countries have ratified several such treaties. Some human rights treaty monitoring bodies have provided specific guidance in the application of the respective treaties to HIV. In 2003, the Committee on the Rights of the Child issued a General Comment on HIV/AIDS and the rights of the child.18 References to HIV in the country periodic reports to the treaty monitoring bodies give further indication of states’ recognition of their binding obligations to take action on HIV under international law. For example, the second periodic report of China under the Convention on the Rights of the Child makes reference to the national response to HIV and AIDS.19

Over the period 1997-2005 the Commission on Human Rights requested that governments report on the steps they had taken to promote and implement, where applicable, programs to address the urgent HIV-related human rights of women, children and vulnerable groups, as described in the International Guidelines.20 In 2005, fifteen governments responded, including Thailand from among the countries in this study.21 The country reports are available on the website of the Office of the High Commissioner for Human Rights.22

Finally, the Convention on the Rights of Persons with Disabilities came into force on 3 May 2008. As of 30 January 2008, all of the countries in this study except Brunei, Malaysia and Myanmar have signed the Convention. Although the Convention does not refer explicitly to HIV, UNAIDS has long urged that the definition of disability include HIV infection,23 reflecting the interpretation of national disability law in Canada and many other countries.24

3. Instruments of the International Labour Organization
All the countries in this study except Brunei Darussalam are members of the International Labour Organization (ILO). In 2001, the ILO published the *Code of*
Practice on HIV/AIDS and the World of Work (the Code of Practice) which includes non-discrimination as a key principle. The Code of Practice was developed through a tripartite process and was issued with the agreement of all ILO members. In 2002 ILO published Implementing the Code of Practice on HIV/AIDS and the World of Work: an Education and Training Manual. This manual gives specific guidance on legislation concerning HIV in the workplace, including the prohibition of discrimination relating to HIV status.

In 2005 the ILO published a report on the implementation of the Code of Practice in ASEAN countries. In 2008, the ILO published a further study on the implementation of the Code, including a review of national HIV/AIDS laws and policies. In 2009, the International Labour Conference will consider adopting a "Recommendation" on HIV/AIDS. Although the Recommendation will not be binding, the Governing Body can request that ILO member governments report on the implementation of the Recommendation, thus imposing further obligations to address HIV-related discrimination.

4. Resolutions of the World Health Assembly
All of the countries in this study are WHO members. In 1988 the WHO governing body, the World Health Assembly (WHA), called on members to avoid discrimination on the grounds of HIV status in the provision of services, employment and travel. As of January 2008, China, Malaysia, and Singapore all exclude foreign visitors with HIV, contrary to the WHA resolution and other international guidance.

5. Resolutions of the General Assembly
Under the UN Charter, the General Assembly may meet in special session to consider a wide range of issues of international importance. Resolutions of the UN General Assembly at such special sessions have the status of non-binding recommendations for member states. In November 2000 the UN General Assembly decided to convene a UN General Assembly special session (UNGASS) on HIV/AIDS in New York in June 2001. In addition to the over 1,000 ECOSOC-accredited non-governmental organizations (NGOs) which can participate in such UN meetings, the General Assembly approved arrangements for the accreditation and participation of hundreds of non-ECOSOC accredited NGOs working on HIV-related issues. Preparations for the UNGASS on HIV/AIDS thus occupied the attention of many staff working on HIV in government departments, international agencies, and civil society organization for the following seven months.

In June 2001 the UN General Assembly adopted by acclamation the "Declaration of Commitment on HIV/AIDS," which includes time-bound targets for national action in key areas, including HIV-related discrimination. Countries are requested to report on progress made at subsequent General Assembly sessions, using a standard monitoring framework. Country reports are posted on the UNAIDS website.
In the Declaration of Commitment, all UN members recognized the links between human rights and HIV (para. 16). They also pledged to "ensure the development and implementation of multi-sectoral national strategies and financing plans for combating HIV/AIDS that "eliminate discrimination and marginalization" by 2003 (para. 37). The member states also pledged to address discrimination against women and children, and (para. 58):

By 2003, enact, strengthen or enforce as appropriate 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.

In 2006 the General Assembly held a major review of progress in implementing the Declaration of Commitment, and adopted a further resolution, the "Political Declaration on HIV/AIDS." In this instrument the General Assembly committed (para. 29):

...to intensifying efforts to enact, strengthen or enforce, as appropriate, 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 and members of vulnerable groups, in particular to ensure their access to, inter alia, education, inheritance, employment, health care, social and health services, prevention, support and treatment, information and legal protection, while respecting their privacy and confidentiality; and developing strategies to combat stigma and social exclusion connected with the epidemic.

Members also pledged to address gender inequalities, and to adopt measures to address all forms of discrimination against women. Further comprehensive reviews will take place in General Assembly special sessions during 2008 and 2011.

In 2006 the International Council of AIDS Service Organizations (ICASO) undertook a study which considered the implementation of the Declaration of Commitment in 14 countries, including Indonesia. The ICASO study found that there was "a huge gap between what exists on paper in terms of anti-discrimination policies and what happens in reality. Stigma and discrimination are commonplace, and they constitute the major obstacle to the successful implementation of prevention, care, treatment and support services." The study found that

- Governments have not done enough to create a culture based on rights.
- Governments fail to educate the population concerning the laws and policies.
The fight against discrimination is not part of the government's agenda.

There is no formal system for monitoring the implementation of the laws and policies, especially among vulnerable groups.

Most people do not understand that they have rights and do not know about the legal mechanisms available to protect those rights.

Most people do not have the skills to fight for their rights.

Where governments do take action, it tends to be reactive rather than prevention.

The reporting framework developed to monitor states' compliance with the Declaration of Commitment contains a "National Composite Policy Index," which proposes that data on stigma and discrimination be collected every two years through a desk review and key informant interviews. The Policy Index for the 2008 country reports has been updated and now requires information on many of the issues addressed in the ICASO study. The 2008 Policy Index contains two parts: one to be completed by governments (Part A) and another to be "administered to representatives from non-governmental organizations, bilateral agencies, and UN organizations" (Part B).

Regarding HIV-related discrimination, Part A of the reporting framework requests governments to report:

- Whether the multisectoral strategy / action framework addresses stigma and discrimination.
- Whether the country has integrated HIV and AIDS into its general development plans (such as National Development Plans, Common Country Assessments/ United Nations Development Assistance Framework, Poverty Reduction Strategy Papers, Sector Wide Approach) and if so, whether the reduction of stigma and discrimination is one of the policy areas addressed in these plans.
- Whether the country has a policy or strategy to promote information, education and communication (IEC) and other preventive health interventions for vulnerable sub-populations and, if so, whether reduction of stigma and discrimination is included for injecting drug users (IDU), men who have sex with men (MSM), sex workers, clients of sex workers, prison inmates, and other sub-populations.
- Whether the country has identified geographical areas in need of HIV prevention programs and, if so, whether IEC on stigma and discrimination reduction is available.

Similarly, Part B of the reporting framework asks:

- Whether the country has laws and regulations that protect people living with HIV from discrimination.
• Whether the country has laws or regulations which specify protections for vulnerable sub-populations (women, young people, IDU, MSM, sex workers, prison inmates, migrants/mobile populations) and others.
• If such laws and regulations exist, what mechanisms are in place to ensure that these laws are implemented, and what systems of redress are in place to ensure these laws are having their desired effect.
• Whether there is a mechanism to record, document and address cases of discrimination experienced by people living with HIV and/or most at risk populations.
• Whether the country has human rights monitoring and enforcement mechanisms, including "focal points within governmental health and other departments to monitor HIV-related human rights abuses and HIV-related discrimination in areas such as housing and employment," and performance indicators or benchmarks for the reduction of HIV-related stigma and discrimination.

Part B also asks about geographic distribution of HIV prevention programs, including IEC on stigma and discrimination reduction, allowing a comparison with the government response to the same question in Part A.

The completion of the monitoring framework may be beyond the human resources and financial capacity of smaller or poorer countries without external help. Technical assistance is available from UNAIDS.

II. REGIONAL INSTRUMENTS

In the region covered by the countries in this study, at least three intergovernmental bodies – Asia-Pacific Economic Cooperation (APEC), ASEAN, and the UN Regional Task Force on Mobility and HIV Vulnerability Reduction (UNRTF) – have considered HIV and issued or endorsed instruments describing international best practices in responding to HIV. In addition, six countries of the Greater Mekong Sub-region (GMS) have signed a Memorandum of Understanding to reduce HIV vulnerability related to population movement.

1. Asia-Pacific Economic Cooperation (APEC)

Of the eleven countries in this study, all except Cambodia, Lao PDR and Myanmar are members of APEC. In 2000 APEC Economic Leaders committed to "fighting HIV/AIDS and other infectious diseases" and called for a report on a "strategy which can be used in APEC to more effectively meet these disease challenges." In 2001 APEC leaders endorsed the strategy, entitled "Infectious Diseases in the Asia Pacific Region: A Reason to Act and Acting with Reason," and called for its implementation.
At the 2004 summit APEC Economic Leaders endorsed an initiative, proposed by China, Philippines and Thailand, titled “Fighting against AIDS in APEC.” Although this statement made no direct reference to stigma and discrimination, it acknowledged that gender inequalities drive the epidemic and that “high risk populations and vulnerable groups need protection from HIV infection.”

In 2005, the (then) APEC Health Task Force hosted meetings on “Best Practices on HIV/AIDS Management in the Workplace” and on “HIV/AIDS and Migrant-Mobile Workers.” The reports of both meetings noted the importance of addressing HIV-related discrimination. The former meeting also suggested that “member economies should consider developing an Agreement on ‘No Compulsory HIV Testing for Sending and Receiving Economies’ in relation to overseas labour employment contracts.” The latter meeting carried this theme forward: recommendations included, “Ensure a rights-based testing and treatment policy for migrant workers that includes the principles of: equal access without discrimination; no mandatory testing; access to care; and, no deportation on the basis of HIV positive status.”

In 2006 the APEC Health Task Force approved a proposal by Canada, cosponsored by Thailand and New Zealand, to develop guidelines for creating an enabling environment for employers to implement effective workplace practices for people living with HIV. Draft guidelines were developed through a consultative process involving member economies and other stakeholders. In September 2007, APEC Economic Leaders endorsed “Guidelines for Creating an Enabling Environment for Employers to Implement Effective Workplace Practices for People Living with HIV/AIDS.”

The Guidelines reference the ILO Code of Practice on HIV/AIDS and the World of Work. They also address issues not covered in the Code such as gender, children who work, and migrants and mobile populations. The Guidelines are intended for the governments of APEC member economies, public and private employers, business associations, workers, trade unions and other worker organizations, organizations of people living with HIV, and all other groups with responsibilities and activities related to HIV and AIDS in workplace settings. Also in 2007, APEC member economies identified “HIV as an episodic disability” as an area in which exchange of responses and good practices could be of assistance. In February 2008, the APEC Health Working Group agreed to review the experiences of member economies and to make recommendations on addressing HIV as an episodic disability, as well as promoting and implementing the Guidelines.

2. Association of Southeast Asian Nations

ASEAN has addressed HIV and AIDS in numerous ways, including through the creation of the ASEAN Task Force on AIDS (ATFAO); the publication of regional workplans (currently the Third ASEAN Work Program (AWPIII) 2006-2010); and the holding of two special summits on HIV/AIDS, the first held in Brunei in 2001 and the second
held in Cuba in 2007, with accompanying declarations. The Cebu summit Declaration tasked ATFOA with regular reporting on the implementation of the AWPIII. However, unlike the process to monitor the UN Declaration of Commitment, there is no civil society membership of ATFOA, meetings are closed to observers except by invitation, and country progress reports are not routinely posted on the ASEAN website.

3. United Nations Regional Task Force on Mobility and HIV Vulnerability Reduction (UNRTF)

UNRTF membership comprises the countries of Southeast Asia and China (provinces of Guangxi and Yunnan), as well as interested agencies, and national and regional NGOs by invitation. Two regional strategies on mobility and HIV vulnerability reduction have been endorsed by the member countries (2002-2004 and 2006-2008).48

The overarching theme of the 2006-2008 Regional Strategy is “to strengthen stakeholders’ multi-sectoral response to the heightened HIV vulnerability of migrants and mobile populations in the region.” Discrimination is addressed in the Strategy’s fourth guiding principle.48

4. Memorandum of Understanding for Joint Action to Reduce HIV Vulnerability Related to Population Movement

This instrument was an initiative of the UNDP, WHO and ASEAN and opened for signature in 2004. Six countries have signed the Memorandum: Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam. Although the Memorandum does not mention discrimination explicitly, signatories nonetheless agreed to “promote development strategies that reduce HIV vulnerabilities” and implement the accompanying workplan, which includes “the establishment and expansion of migrant friendly health facilities.”50 The Memorandum has a five year term and includes a mid-term review. The Memorandum proposes a program coordination committee, coordinated by Cambodia, which is to report to ATFOA and meet one day before regular ATFOA meetings. Unfortunately, this committee has never been convened.

III. DISCUSSION

1. What has been the contribution of international and regional instruments to national responses to HIV-related discrimination, as evidenced by law and policy reform?

Although compliance with international human rights treaties is binding under international law, the treaties contain only weak enforcement mechanisms. Compliance is encouraged through an open process of examination of periodic country reports. There is a backlog in the review of country reports, which has increased as more treaties are created and ratified. Although the application of the treaties to HIV is now accepted, the periodic country reporting process has only started to address HIV-related
discrimination more comprehensively in recent years. There are very few references to HIV in the treaty reports from the countries in this study. Therefore, it does not appear that the UN human rights treaties have significantly influenced national law and policy on HIV-related discrimination in the countries in this study.

Of the non-binding instruments noted above, the most comprehensive and closely monitored is the Declaration of Commitment. In 2008, all of the countries in this study except Brunei, Myanmar and Singapore submitted country reports on progress in implementing the Declaration up to 2007. Since 2001, several countries in the region have introduced laws or other legal measures to address HIV-related discrimination, including Cambodia (2002), China (2006), Indonesia (2004), and Vietnam (2006). Philippines has comprehensive legislation which pre-dates the Declaration. Only some of these laws provide clear remedies with enforceable penalties, however. In 2005, the China report on the implementation of the Declaration made specific reference to actions taken to strengthen policy measures. In 2007, the China report notes the introduction in 2006 of the Regulation on AIDS Prevention and Treatment (Decree No. 457). This is evidence of China's intention to implement the commitments in the Declaration.

The preface to the Implementing Guidelines for the Cambodian Law on the Prevention and Control of HIV/AIDS notes that "(t)he law follows internationally recognized best practice for responding effectively to HIV/AIDS." This indicates that in drafting the Guidelines the Cambodian authorities took into account international best practices, however there is no specific reference to the sources of such guidance.

In Indonesia, the 2004 Ministerial Decree on HIV/AIDS Prevention and Control in the Workplace addressed discrimination against PLHIV in the workplace, and follows the 2003 Tripartite Declaration to Combat HIV/AIDS in the Workplace. The Tripartite Declaration reflects the principles in the ILO Code of Practice on HIV/AIDS and the World of Work. The ILO and other agencies, including the United States Department of Labor, have provided technical and financial assistance to Indonesia to address HIV in the workplace.

In 2005, the governments of Cambodia and three other GMS countries undertook a national policy audit to assess compliance with selected international instruments in the context of HIV and population mobility, including the UNRTF Regional Strategy, the Declaration of Commitment, and the Memorandum of Understanding. The audit was conducted by government representatives themselves, and in some cases officials became aware of their government's position on issues relating to HIV and mobility for the first time.

In 2006 the Cambodian Minister of Public Works and Transport issued four policies to promote HIV prevention in the public works and transport sector. In his introduction to the policies, the Minister noted that the policies were developed, in part, pursuant to the Memorandum of Understanding (noted above). Policy 4 is titled "Support the
Memorandum of Understanding of the Joint Action to Reduce HIV Vulnerability Related to Mobile Populations (2004-2009) among countries in the Greater Mekong Sub-region (GMS) to obtain a favourable result as requested by the signatories. The policies are published in both Khmer and English, and the Memorandum is attached as an annex. Canada, through the Canada South East Asia Regional HIV/AIDS Program, and other donors have provided intensive technical and financial support to Cambodia to address HIV/AIDS, including in the context of population movements.64

Of the six countries that signed the Memorandum however, only Cambodia refers to the instrument as influential in national policy reform. One challenge is that the Memorandum may have been signed in some countries without any or adequate discussion at Cabinet level. Another challenge is that the annexed workplan was not costed, nor were funds identified to implement the obligations in the Memorandum. Perhaps as a result, the proposed program coordination committee has never been convened. Aside from Cambodia, it appears the Memorandum had no impact in influencing HIV-related law and policy in the signatory countries in the period 2005-2007.

2. How can the role of international and regional instruments be strengthened in support of national responses to HIV-related discrimination?

The binding or non-binding nature of the instrument does not appear to determine the level of government response, at least in reporting compliance. It appears that the following strategies may increase the likelihood that an international instrument will have an impact on national responses to HIV-related discrimination:

1. Involve all stakeholders in the development of the instrument. This includes all government departments which may be affected by the instrument, as well as the private sector and civil society organizations.

2. Ensure the instrument is endorsed by an official with recognized signing authority to represent and bind the whole of government, not just one ministry.

3. Ensure all documentation is accessible and disseminated promptly to all national stakeholders in the national language(s). Documentation should be posted on the internet in the national language(s) and in English with scanned copies of the original signed instruments.

4. Ensure that the endorsement of the instrument is a part of a process leading to implementation, not an isolated event. Costs of implementation should be established, a budget attached and financial support identified.

5. Ensure the human resources to implement the commitments have been identified, and that technical support is available where necessary.
6. Conduct periodic policy audits to remind governments of their commitments and assess compliance. Ensure these audits and periodic country reports are published in national language(s) and in English, and widely disseminated, including on the internet.

7. Disseminate the instrument among affected communities and their representatives, national human rights institutions, lawyers, academics, and students.

8. Improve communications between government representatives at international meetings and relevant ministries regarding international commitments.

9. Encourage governments to make reference to their international commitments when drafting national instruments on HIV-related discrimination. Technical assistance should also emphasize this aspect.

10. Explore new opportunities to secure government action on HIV-related discrimination, including through influencing the policies of major donors, and the interpretation and implementation of the UN Convention on the Rights of Persons with Disabilities.

IV. CONCLUSION

There is more likelihood that international instruments will impact on national responses to HIV-related discrimination if an adequate monitoring and reporting process is included, and financial and technical assistance to undertake both implementation and monitoring is available. Not every intergovernmental meeting on HIV needs a new commitment or declaration. There may be more value in emphasizing the implementation of existing commitments.

Further research is needed to establish how international instruments influence legal and other responses to HIV-related discrimination. This could be done by examining the preparatory documents, interviews with legal drafters who prepared the bills, and a comparative analysis of the relevant texts.

China should now examine its international and regional commitments to address HIV-related discrimination, and take the necessary steps to comply with these commitments. This includes law and policy reform at the national, provincial and local levels. It also includes educating and training legislators and policy makers, judiciary, police, legal service providers and para-legals at all levels in the purpose and application of the law. Mass organizations of women and youth should also be made aware of the importance of non-discrimination in the context of HIV, not only to promote a harmonious society, but because HIV-related discrimination discourages PLHIV and people most vulnerable to HIV from accessing prevention education and care, treatment and support services. China should also use international and regional forums to share its initiatives as best practice examples for other countries to consider, adapt and apply.
**ENDNOTES**

1. Association of Southeast Asian Nations (ASEAN). In 2007 ASEAN member countries were Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam. www.aseansec.org (home page).


5. See Gillespie S. et al. (2007), "Is poverty or wealth driving HIV transmission?" AIDS. 2007 Nov; 21 Suppl 7:S5-S16.


8. See UNAIDS. From Principles to Practice: the Greater Involvement of People Living with HIV/AIDS (GIPA), 1999.

9. "People living with HIV" or "HIV-positive people" (PLHIV) is the preferred terminology to refer to people infected with the human immunodeficiency virus. UNAIDS, (2007), UNAIDS "Terminology Guidelines.


11. See e.g., Commission on Human Rights resolution 2005/84, 21 April 2005.


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


20. See for example, Commission on Human Rights resolution 2005/84.


27 ILO, (2005), HIV/AIDS and the World of Work in ASEAN.


29 ILO, (2007) Strengthening the ILO’s capacity to assist its Members’ efforts to reach its objectives in the context of globalization. ILC. 96th Session, Geneva, para. 163.


32 Immigration Act 1959. First Schedule (Part II).

33 Immigration Act. Section 8(3)(ba) defines as a prohibited immigrant “any person suffering from Acquired Immune Deficiency Syndrome or infected with the Human Immunodeficiency Virus.”


40 UNAIDS (2007), Guidelines on the Construction of Core Indicators.


44 These reports were not available from the APEC web site www.apec.org on 8 February 2008. The reports (obtained previously by the author) do not include a list of meeting participants.
and it is not possible from the reports to determine which APEC member economies were represented at the meetings.


An "episodic disability" is a disability which can result in periods of impairment and time away from the workplace, followed by periods of relative good health and capacity to work.


Regulations on AIDS Prevention and Treatment. Decree of the State Council No. 457, effective 1 March 2006.


Available at www.csearhap.org. Also available at www.hivmobilitysea.org.

In Kunming, Yunnan, in December 2007 the Righteous Law Firm and the Daytop Drug Abuse Treatment and Rehabilitation Center held a workshop for lawyers on HIV in order to improve the provision of legal services to PLHIV and vulnerable groups. The workshop was supported by the Asia Pacific Council of AIDS Service Organizations (APCASO) and the International Development Law Organization (IDLO). After the workshop a network of lawyers was established to address HIV issues and a guide to HIV and the law was written.