

Access to Condoms and HIV/AIDS Information: A Global Health and Human Rights Concern

I. Summary	1
II. The United States’ “War on Condoms”	3
III. Condoms and the Vatican	9
IV. Examples of Country Restrictions on Condoms and HIV/AIDS Information	12
India	12
Nigeria	16
Peru	18
United States Domestic Policy.....	20
Brazil	25
V. Recommendations to Governments and International Donors.....	26
Lift restrictions on access to condoms and complete HIV/AIDS information.....	27
Publicly counter misinformation about condom safety and efficacy.....	27
Take steps to expand HIV prevention services that include condoms	27
Take steps to enable and empower vulnerable populations to use condoms against HIV	27

I. Summary

HIV/AIDS is a preventable disease, yet approximately 5 million people were newly infected with HIV in 2003, the majority of them through sex.¹ Many of these cases could have been avoided, but for state-imposed restrictions on proven and effective HIV prevention strategies, such as latex condoms. Condoms provide an essentially impermeable barrier to HIV pathogens. According to the Joint United Nations Programme on HIV/AIDS (UNAIDS), scientific data “overwhelmingly confirm that male latex condoms are highly effective in preventing sexual HIV transmission.”² However, many governments around the world either fail to guarantee access to condoms or impose needless restrictions on access to condoms and related HIV/AIDS information. Such restrictions interfere with public health as well as set back internationally recognized human rights—the right to the highest attainable standard of health, the right to information, and the right to life.

In the midst of this crisis, the world’s leading donor to HIV/AIDS programs, the United States, has ramped up its support for HIV prevention programs that promote sexual abstinence and marital fidelity. The United States Leadership against AIDS, Tuberculosis and Malaria Act of 2003 (commonly known as the President’s Emergency Plan for AIDS Relief or PEPFAR) devotes 33 percent of prevention spending to “abstinence until marriage” programs, concentrating these programs on fifteen heavily AIDS-affected countries in sub-Saharan Africa, the Caribbean and Asia.³ As implemented domestically in the United States, government-funded “abstinence only” programs censor science-based information about condoms and suggest that heterosexual marriage is the only reliable strategy for prevention of sexually transmitted HIV.⁴ Abstinence-only programs do not provide a proven effective alternative to programs that include accurate information about condom use, and may cause harm.⁵

¹ Joint United Nations Programme on HIV/AIDS (UNAIDS), *2004 Report on the Global AIDS Epidemic: 4th Global Report* (2004) p. 10; World Health Organization (WHO), *The World Health Report 2004: Changing History* (2004), p. 1.

² UNAIDS, *2004 Report*, p. 75.

³ United States Leadership against HIV/AIDS, Tuberculosis and Malaria Act of 2003, P.L. 108-25, 22 U.S.C. sections 7601 et seq. (2003), ss. 402(b)(3), 403(a); see also Office of the United States Global AIDS Coordinator, “The President’s Emergency Plan for AIDS Relief. U.S. Five Year Global HIV/AIDS Strategy,” February 2004. The fifteen countries are Botswana, Cote D’Ivoire, Ethiopia, Guyana, Haiti, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Vietnam, and Zambia.

⁴ See, e.g., Human Rights Watch, *Ignorance Only: HIV/AIDS, Human Rights and Federally-Funded Abstinence-Only Programs in the United States*, vol. 14, no. 5(G) (September 2002).

⁵ There is mounting evidence that abstinence-only programs show no long-term success in delaying sexual initiation or reducing sexual risk-taking behaviors among youth and that participants in abstinence-only programs are less likely to use contraceptives once they become sexually active. See, e.g., Edward Smith, et

Not only do these programs deprive people at risk of HIV of lifesaving information, but by teaching that heterosexual marriage is the only legitimate context for sex, they discriminate against lesbians and gay men, who cannot legally marry in most countries.

It is not only the United States that restricts access to condoms and lifesaving information about HIV/AIDS. In many countries, political and/or religious leaders have made public statements associating condoms with sin or sexual promiscuity, implying that people who use condoms lack the moral fortitude to abstain from sex until marriage. In countries with significant Roman Catholic populations, governments frequently bow to pressure from religious leaders to censor information about condoms in school-based HIV/AIDS curricula or other HIV-prevention programs. The Holy See, which represents the Vatican diplomatically and exerts considerable influence over HIV/AIDS policy in many Roman Catholic countries, explicitly objects to condom use and at times has publicly distorted scientific information about the effectiveness of condoms against HIV. Since the announcement of PEPFAR in 2003, pressure by the U.S. to make abstinence a more central part of HIV prevention strategies in donor

al., *Evaluation of the Pennsylvania Abstinence Education and Related Services Initiative: 1998-2002*, Pennsylvania Department of Health, January 2003, pp. 1 and 21 (noting concern that 2/3 of ninth graders in abstinence-only program were sexually active, and only about 1/2 of them used contraceptives, and that most programs had no effect on reducing sexual debut); Minnesota Department of Health, *Minnesota Education Now and Babies Later Evaluation Report 1998-2002*, 2003 (finding that abstinence-only programs had little long-term impact on sexual intention and behavior, and percentage of sexually active youths was higher in several counties with abstinence-only programs than state average); see also Peter Bearman and Hannah Brückner, "Promising the Future: Virginity Pledges as they Affect Transition to First Intercourse," *American Journal of Sociology*, vol. 106, no. 4 (2001), pp. 859-912 and Bearman and Brückner, "After the Promise: the STD Consequences of Adolescent Virginity Pledges," 2004, <http://www.yale.edu/socdept/CIQLE/cira.ppt> (retrieved November 10, 2004) (finding that pledging abstinence until marriage ineffective in stemming acquisition of sexually transmitted diseases and that teens who break promise to remain sexually abstinent until marriage much less likely to use contraceptives once they become sexually active).

The Institute of Medicine, a body of experts that acts under a Congressional charter as an advisor to the U.S. federal government, noted in 2001 that scientific studies have shown that comprehensive sex and HIV/AIDS education programs and condom availability programs can be effective in reducing high-risk sexual behaviors. The Institute further noted that there was no such evidence supporting abstinence-only programs, and stated that investing "millions of dollars of federal...funds...in abstinence-only programs with no evidence of effectiveness constitutes poor fiscal and health policy." Committee on HIV Prevention Strategies in the United States, Institute of Medicine, *No Time to Lose: Getting More from HIV Prevention* (Washington, D.C.: National Academy Press, 2001), pp. xi-xii and pp. 118-20. A 2001 report analyzing studies of HIV prevention programs found that programs that include information about both abstinence and condoms can delay the onset of sex and increase condom use among sexually active teens. The same study found no evidence existed that abstinence-only programs had an effect on sexual behavior or contraceptive use among sexually active teens. Douglas Kirby, *Emerging Answers: Research Findings on Programs to Reduce Teen Pregnancy* (Washington, D.C.: National Campaign to Prevent Teen Pregnancy, 2001), pp. 5, 88-91. A 1998 study comparing a program that educated students about safer sex (including condom use) with an abstinence-only program found that both programs affected sexual behavior in the short term, but that the safer sex program was more effective at reducing unprotected sexual intercourse and frequency of intercourse in the long term. John B. Jemmott et al., "Abstinence and Safer Sex HIV Risk Reduction Interventions for African American Adolescents," *Journal of the American Medical Association*, vol. 279, no. 19, May 20, 1998, pp. 1529-1536.

countries appears to have reduced condom availability and access to accurate HIV/AIDS information in some countries.

Given these restrictions, it should come as no surprise that the vast majority of people at risk of HIV lack the basic tools to protect themselves from this fatal disease. In 2003, fewer than half of all people at risk of sexual transmission of HIV had access to condoms.⁶ Less than one quarter had access to basic HIV/AIDS education.⁷ The United Nations Population Fund (UNFPA) estimated in 2000 that over 7 billion additional condoms were needed in developing countries to achieve a significant reduction in HIV infection.⁸ International funding for procuring condoms declined throughout the 1990s, and U.S. condom donations remain well below levels seen in the early 1990s despite recent reported increases. At the same time, U.S. funding for international “abstinence until marriage” programs increased exponentially in 2003 with the enactment of PEPFAR.

Condoms are not a complete solution to the spread of HIV, but they are a necessary tool to combat that spread. In the absence of equally effective alternatives or of evidence that abstinence-until-marriage programs work, there is no scientific basis for restricting access to and information about the only device available to prevent HIV transmission through sex. While abstinence and fidelity may work for some people in some cases, promoting these behaviors at the expense of condoms deprives people of complete information and services for HIV prevention. To avert this health and human rights crisis, governments and international donors should immediately lift any restrictions on access to condoms and take concrete steps to guarantee comprehensive and science-based HIV-prevention services to all those who need them.

II. The United States’ “War on Condoms”

At the July 2004 International AIDS Conference in Bangkok, U.S. Global AIDS Coordinator Randall Tobias attempted to deflect charges from AIDS activists that the United States had substituted “abstinence until marriage” programs for science-based HIV prevention strategies that included correct and consistent condom use. Tobias

⁶ Global HIV Prevention Working Group, *Access to HIV Prevention: Closing the Gap* (May 2003), p. 2.

⁷ *Ibid.*

⁸ According to UNFPA, only 950 million of the estimated 8 billion condoms needed to achieve a “significant reduction” in HIV infection in developing countries were donated in 2000. United Nations Population Fund (UNFPA), “Global Estimates of Contraceptive Commodities and Condoms for STI/HIV Prevention, 2000-2015,” UNFPA, Technical Report. See also, N. Chaya and K. Amen with M. Fox, *Condoms Count: Meeting the Need in the Era of HIV/AIDS* (Washington, D.C.: Population Action International, 2002), p. 29.

stated that the United States' HIV prevention message had been and continued to be "ABC," which stands for "Abstain, Be faithful, use Condoms," in that order. He went on to say, "Abstinence works, being faithful works, condoms work. Each has its place."⁹ Three months earlier, however, Tobias had stated that "statistics show that condoms really have not been very effective." He added, "It's been the principal prevention device for the last twenty years, and I think one needs only to look at what's happening with the infection rates in the world to recognize that it has not been working."¹⁰

Tobias' contradictory statements exemplified a trend of U.S. officials concealing or distorting scientific evidence about condoms in order to consolidate support for "abstinence until marriage" programs.¹¹ In 2000, the U.S. Congress passed legislation requiring studies and educational materials on the "effectiveness or lack of effectiveness of condoms" in preventing human papillomavirus (HPV), a mandate that was clearly intended to undermine confidence in the use of condoms against HIV.¹² In 2002, a fact sheet on the effectiveness of condoms was removed from the website of the U.S. Centers for Disease Control and Prevention (CDC) and replaced by a new fact sheet which, while factually accurate, eliminated instructions on how to use a condom properly and evidence indicating that condom education does not encourage sex in young people.¹³ Information on condom effectiveness was similarly altered on the website of

⁹ CNN.com, "U.S. fights criticism at AIDS conference," online:

<http://www.cnn.com/2004/HEALTH/conditions/07/14/aids.conference.reut/> (retrieved August 25, 2004).

¹⁰ Kaiser Family Foundation, "U.S. Global AIDS Coordinator Tobias Defends Emphasis on Abstinence," *Daily HIV/AIDS Report*, April 22, 2004.

¹¹ See, e.g., Nicholas D. Kristof, "The Secret War on Condoms," *The New York Times*, January 10, 2003; Marie Cocco, "White House Wages Stealth War on Condoms," *Newsday*, November 14, 2002; Caryl Rivers, "In Age of AIDS, Condom Wars Take Deadly Toll," *Women's eNews*, December 10, 2003, <http://womensenews.org/article.cfm/dyn/aid/1633/context/archive> (retrieved February 16, 2004); Art Buchwald, "The Trojan War," *The Washington Post*, December 11, 2003.

¹² 42 U.S.C. section 247b-17. The legislation creating PEPFAR similarly required the president to report on the "impact that condom usage has upon the spread of HPV in Sub-Saharan Africa." H.R. 1298, s. 101(b)(3)(W); see also, *President's Emergency Plan for AIDS Relief: Five Year Strategy Document*, pp. 79-80. Pro-abstinence advocates have long sought to disparage condoms by speculating about the link between condom usage and HPV, some strains of which cause cervical cancer. Condom use is in fact associated with lower rates of cervical cancer and HPV-associated disease, though the precise effect of condoms in preventing HPV is unknown. CDC, "Male Latex Condoms and Sexually Transmitted Diseases" (2002).

¹³ Compare CDC, "Condoms and Their Use in Preventing HIV Infection and Other STDs" (September 1999), available at http://www.house.gov/reform/min/pdfs/pdf_inves/pdf_admin_hhs_info_condoms_fact_sheet_orig.pdf with CDC, "Male Latex Condoms and Sexually Transmitted Diseases" (2002), available at http://www.house.gov/reform/min/pdfs/pdf_inves/pdf_admin_hhs_info_condoms_fact_sheet_revis.pdf. See also, A. Clymer, "Critics Say Government Deleted Web Site Material to Push Abstinence," *The New York Times*, November 26, 2002; U.S. House of Representatives, Committee on Government Reform—Minority Staff, Special Investigations Division, U.S. Rep. Henry A. Waxman, "Politics and Science in the Bush Administration," August 2003, updated Nov. 13, 2003, p. 12.

USAID.¹⁴ Supporters of “abstinence until marriage” provisions, including Ambassador Tobias and the director of HIV/AIDS programs at USAID, Anne Peterson, relied throughout 2003 on a tendentious reading of successful HIV prevention efforts in Uganda, attributing decreases in HIV prevalence there to increased abstinence and fidelity and downplaying the role of condoms.¹⁵ Since George W. Bush assumed the presidency in early 2001, the United States has sought to restrict references to condoms and comprehensive sex education in United Nations policy documents.¹⁶

While President Bush has at times mentioned condoms in his public speeches, he has demonstrated a clear and consistent commitment to “abstinence only” programs that censor information about condoms. As governor of Texas and during his 2000 presidential campaign, Bush supported federally-funded abstinence-only programs and vowed to expand them if elected president.¹⁷ Soon after taking office in 2001, Bush appointed as high-level HIV/AIDS advisers physicians who denied the effectiveness of condoms, including former U.S. Representative Tom Coburn and Joe S. McIlhany, Jr., president of the Texas-based Medical Institute for Sexual Health (MISH) and a long-time recipient of federal abstinence-only funds.¹⁸ As president, he has continued to

¹⁴ Compare USAID, “The Effectiveness of Condoms in Preventing Sexually Transmitted Diseases,” http://www.usaid.gov/pop_health/aids/TechAreas/condoms/condom_effect.html (retrieved January 28, 2003; no longer available) with USAID, “USAID: HIV/AIDS and Condoms,” http://www.usaid.gov/pop_health/aids/TechAreas/condoms/condomfactsheet.html (retrieved July 10, 2003).

¹⁵ See Tina Rosenberg, “On Capitol Hill, Ideology Is Distorting an African AIDS Success,” *The New York Times*, April 28, 2003; Emily Wax, “Ugandans Say Facts, Not Abstinence, Will Win AIDS War,” *The Washington Post*, July 9, 2003; Tom Carter, “Uganda Leads by Example on AIDS,” *The Washington Times*, March 13, 2003. National-level survey data suggest that delays in sexual debut, a reduction in the number of sexual partners, and increases in condom use all played a part in lowering HIV risk in Uganda. See Susheela Singh, Jacqueline E. Darroch, and Akinrinola Bankole, “A, B and C in Uganda: The Roles of Abstinence, Monogamy and Condom Use in HIV Decline,” Occasional Report No. 9, The Alan Guttmacher Institute, December 2003; Susan Cohen, “Flexible But Comprehensive: Developing Country HIV Prevention Efforts Show Promise,” *The Guttmacher Report on Public Policy*, October 2002.

¹⁶ See discussions in Francoise Girard, “Global Implications of US Domestic Policy and International Policies on Sexuality,” IWGSSP Working Papers, No. 1 (June 2004), p. 8; Esther Kaplan, *With God on their Side: How Christian Fundamentalists Trampled Science, Policy, and Democracy in the Bush White House* (New York: The New Press, 2004), pp. 235-39; Human Rights Watch, *Unprotected: Sex, Condoms and the Human Right to Health in the Philippines* (May 2004), vol. 16, no. 6(C); Human Rights Watch, *Ignorance Only*, p. 12.

¹⁷ In 1999, speaking about his gubernatorial record, President Bush said, “We have an aggressive U.S.\$5 million-a-year abstinence program [in Texas] to teach young people that the rewards of abstinence far outweigh the risks of sex.” Governor George W. Bush, Speech to Right Choices for Youth Conference, Austin, Texas, March 31, 1999. In the presidential debates, before being elected president, Bush said, “I will promote abstinence programs in our school systems.” President George W. Bush, final New Hampshire Republican primary debate, Manchester, New Hampshire, January 26, 2000. President Bush also mentioned abstinence in his speech accepting his party’s nomination at the 2000 Republican National Convention. President George W. Bush, Presidential nomination acceptance speech, Philadelphia, Pennsylvania, August 3, 2000. Text of all three statements mentioned above as well as others are available from Project Vote Smart at http://www.vote-smart.org/speech.php?can_id=CNIP9043 (retrieved August 25, 2004).

¹⁸ As a member of Congress, Coburn was instrumental in the passage of 2000 legislation requiring studies of the impact of condom use on HPV transmission and in pushing the National Institutes of Health to convene a

support funding for abstinence programs in both his domestic and foreign policy agendas.¹⁹

The United States has traditionally been the world's largest donor of condoms to low and middle-income countries. Throughout the 1990s, however, the number of condoms shipped abroad by the U.S. Agency for International Development (USAID) dropped from a high of approximately 800 million condoms in 1991 to just over 200 million in 1999.²⁰ Condom shipments increased to approximately 480 million condoms in 2003, higher than the approximately 233 million condoms shipped in 2002.²¹ Yet this was still a fraction of the amount provided in the early 1990s, despite the fact that the number of people living with HIV/AIDS nearly tripled over that same time period.²² Laws requiring that U.S.-donated condoms be purchased from American manufacturers mean that the U.S. does not obtain the lowest possible price for condoms, despite the fact that many non-U.S. brands of condoms on the international market meet stringent quality control standards.²³

Enacted in June 2003, the United States Leadership against HIV/AIDS, Tuberculosis and Malaria Act of 2003 stipulates that 33 percent of prevention spending go to “abstinence until marriage” programs.²⁴ In the fiscal years (FY) 2004 and 2005, the United States spent more than U.S.\$20 million on “abstinence until marriage” programs under PEPFAR²⁵ and continued to issue requests for proposals and grants for these

series of meetings on condom effectiveness. McIlhane's Medical Institute for Social Health (MISH) uses discredited science to argue that condoms are safe, and receives federal funding to produce written and video materials for adults and youth “explaining why condoms are not a reliable alternative to abstinence.” Medical Institute for Social Health, “Condoms: What's Still At Risk;” “Do Condoms Make Sex Safe Enough?;” *Sex, Condoms and STDs: What We Know Now* (Spring 2003).

¹⁹ See, e.g., The White House, “President Announces Welfare Reform Agenda,” February 26, 2002, <http://www.whitehouse.gov/news/releases/2002/02/20020226-11.html> (retrieved August 2, 2002).

²⁰ USAID Bureau for Global Health, *Overview of Contraceptive and Condom Shipments, FY 2001* (Washington, D.C.: PHNI Project for USAID, September 2002), pp. 17-18.

²¹ Remarks by Andrew S. Natsios, administrator, United States Agency for International Development (USAID), HIV Prevention Symposium, Academy for Educational Development, January 14, 2004.

²² USAID Bureau for Global Health, *Overview of Contraceptive and Condom Shipments, FY 2001; UNAIDS, 2004 Report*, p. 25, figure 1.

²³ In 2002, USAID contract negotiations reduced the average procurement price of condoms from U.S.\$0.06 to U.S.\$0.04. This new price is still higher than the lowest international price, thus limiting the number of condoms procured per U.S. dollar spent. See *Consolidated Appropriations Act, 2004*, 118 Stat. 3, 147 (2004), Donald McNeil, “Global War Against AIDS Runs Short of Vital Weapon: Donated Condoms,” *The New York Times*, October 9, 2002.

²⁴ United States Leadership against HIV/AIDS, Tuberculosis and Malaria Act of 2003, P.L. 108-25, 22 U.S.C. sections 7601 et seq. (2003), ss. 402(b)(3), 403(a).

²⁵ Jennifer Kates, “U.S. Government Funding for Global HIV/AIDS Through FY 2004,” HIV/AIDS Policy Brief, Kaiser Family Foundation (June 2004), p. 10.

programs.²⁶ While government-issued program guidelines do not forbid recipients from promoting condoms, they make no mention of condom availability as an indication of program outcome or performance and, as required by PEPFAR, state that “applicants will not be required . . . to endorse, utilize or participate in a prevention method to which the organization has a religious or moral objection.”²⁷ The five-year strategy document released in February 2004 by the U.S. Office of the Global AIDS Coordinator, which administers PEPFAR, states that correct and consistent condom use will be promoted only for “those who practice high-risk behaviors,” advising only abstinence and fidelity for all others.²⁸ The fact that domestically funded abstinence-only programs in the U.S. censor information about condoms outright, combined with the widespread official anti-condom sentiment that accompanied PEPFAR’s enactment, suggests that condoms are intended to play at best a minor role in PEPFAR-funded “abstinence until marriage” programs.

Following the ramping up of U.S.-funded “abstinence until marriage” programs, leaders of African countries standing to receive PEPFAR funding made numerous public statements in favor of sexual abstinence as a primary HIV prevention strategy. In May 2004, for instance, Ugandan president Yoweri Museveni deviated from his historical support of condoms by stating that condoms should be provided only for sex workers.²⁹ This change in position occurred at approximately the same time that the U.S. announced that Uganda would receive \$90 million of PEPFAR funds.³⁰ President Museveni continued to make similar statements in his public speeches, including at the International AIDS Conference in July 2004.³¹

There are signs of attitudes towards condoms changing elsewhere as well. In Zambia, President Mwanawasa gave a speech in 2004 suggesting that traditional methods to fight HIV/AIDS, including promoting condoms and public awareness campaigns, were not

²⁶ In April 2004, USAID announced first round grant awards for abstinence and behavior change programs with youth to two organizations serving six countries, representing \$16.7 million. “USAID Announces First Round of Grants for President Bush’s Emergency Plan for AIDS Relief,” USAID press release, April 13, 2004.

²⁷ USAID, “Annual Program Statement: HIV/AIDS Prevention Through Abstinence and Behavior Change for Youth,” November 26, 2003, pp. 7, 13-15. Appropriations legislation for FY2004 requires that information about condoms be medically accurate if it is provided, including “public health benefits” and “failure rates.” Consolidated Appropriations Act, 2004, 118 Stat. 3, 147 (2004).

²⁸ *PEPFAR: Five Year Strategy Document*, p. 9.

²⁹ Health and Development Networks, “Condom U-Turn puts many young Ugandans at Risk,” May 26, 2004, online: <http://archives.hst.org.za/af-aids/msg01372.html> (retrieved August 25, 2004).

³⁰ Racheal Rinaldo, “Condoms Take a Back Seat to Abstinence with U.S. AIDS Money,” *Inter Press Service*, May 24, 2004, online: <http://www.ipsnews.net/interna.asp?idnews=23879> (retrieved August 25, 2004). The article quotes an unnamed U.S. official as saying that prevention funds could be used to purchase condoms, but that condoms would ideally be used only with “high risk” populations.

³¹ Kaisernetwork.org, “Daily Update from the XV International AIDS Conference,” July 12, 2004.

working and that the country needed instead to promote sexual abstinence.³² In March 2004, the Zambian government reportedly banned the distribution of condoms in schools on the grounds that condoms promoted promiscuity among youth.³³

In Swaziland, which has one of the highest HIV prevalence rates in the world (between 37 and 40 percent of adults as of 2004), leading government officials and important public figures, including the founder of Swaziland's AIDS Support Organization, took public anti-condom stands in 2003. A top traditional leader reportedly ridiculed condoms as ineffective and inconsistent with "Swazi manhood."³⁴ In 2001, the Kenyan government discontinued the supply of free condoms to the general population, although it continued to supply highly subsidized condoms. When asked about this change, a health ministry official stated that if the poor cannot afford condoms, they should be faithful.³⁵

Such anti-condom sentiment appears to be affecting programs funded by the U.S. Agency for International Development (USAID), in addition to those funded by PEPFAR. A Peru-based staff member of the Center for Health and Gender Equity (CHANGE), a nongovernmental organization, observed that pressure for abstinence programs in Peru was arising from the fact that USAID had requested funding proposals on abstinence-based HIV prevention, as well as a broader perception that the U.S. prefers abstinence programs.³⁶ A reproductive health expert in Nigeria told Human Rights Watch, "I think that USAID is not promoting condoms any longer, but abstinence only."³⁷ This perception may discourage programs from including condom provision and condom information as programmatic elements in their applications for funds from USAID.

³² Human Rights Watch internal e-mail communication with Tony Tate, June 19, 2004.

³³ Z. Geloo, "Anger at Move to Declare Schools Condom-Free Zones," *Inter Press Service*, March 16, 2004.

³⁴ U.N. Office for the Coordination of Humanitarian Affairs, "Swaziland: Resisting Condom Use as AIDS Deaths Soar," *Integrated Regional Information Network (IRIN) News*, December 1, 2003.

³⁵ "No More Free Condoms in Kenya," *The East African Standard*, November 10, 2001.

³⁶ Human Rights Watch telephone interview with Anna-Britt Coe, Center for Health and Gender Equity, Lima, Peru, June 25, 2004.

³⁷ Human Rights Watch telephone interview with Dr. Friday Okonofua, editor, *African Journal of Reproductive Health* and dean, School of Medicine, College of Medical Sciences, University of Benin, Benin City, Nigeria, July 13, 2004.

III. Condoms and the Vatican

Official Roman Catholic teaching, as expressed in the *Catechism of the Catholic Church*, is silent on the use of condoms against HIV/AIDS. However, Roman Catholic teaching opposes the use of condoms for artificial birth control, and many bishops' conferences, Vatican officials, and theologians have interpreted this as an all-out ban on condom use for any purpose. Catholic leaders have repeatedly made public statements discouraging condom promotion. On World AIDS day in 2003, Cardinal Javier Lozano Barragan, president of the Pontifical Council for Health and Pastoral Care, stressed the importance of programs that focus on abstinence and fidelity.³⁸ In addition, the Holy See has taken advantage of the unique level of access afforded by its non-member permanent observer status at the United Nations to lobby for the exclusion of references to condoms in U.N. policy documents.³⁹

Statements by senior Vatican officials suggest that the Roman Catholic church's principal objection to condoms is that they promote sexual promiscuity. In December 2003, Cardinal Alfonso L6pez Trujillo, the president of the Vatican's Pontifical Council for the Family, wrote that "condoms may even be one of the main reasons for the spread of HIV/AIDS." In the same statement, Trujillo praised members of the Spanish Episcopal Council for taking a stand against condom promotion programs on the grounds that they "tend to be deceitful, . . . hide information, and because they do not contribute towards prevention, but rather to a greater spread of risky behaviour."⁴⁰ This statement built upon comments Trujillo had made in 1995 that teaching children sex education was an "abuse" and that the promotion of "safer sex" was "a dangerous and immoral policy based on the deluded theory that the condom can provide adequate protection against AIDS."⁴¹

³⁸ P. Pulella, "Vatican defends anti-condom stand on AIDS Day," *Reuters*, December 1, 2003. Cardinal Barragan has condoned the use of condoms in the limited situation where a woman cannot refuse her HIV-positive husband's sexual advances. Other cardinals, including Cardinal Godfried Daneels of Belgium, have voiced a more expansive version of this "lesser-evils" approach; in May 2004, Daneels told a Catholic television program that if an HIV-positive person insists on having sex, "He has to use a condom. Otherwise he will commit a sin" by risking transmission of a potentially fatal virus. Associated Press, "Clergymen suggest exceptions to Vatican condom ban to halt HIV," *Taipei Times*, March 24, 2004, p. 9.

³⁹ See footnote 16, above. The Holy See has joined the United States in supporting many of these resolutions, along with countries such as Sudan, Libya, Egypt, Syria, and Iran (at the 2001 U.N. Special Session on Children) and Iran, Libya, Pakistan, and Sudan (at the 2002 U.N. Special Session on HIV/AIDS).

⁴⁰ Cardinal Alfonso Lopez Trujillo, "Family Values versus Safe Sex: A Reflection by His Eminence, Alfonso Cardinal Lopez Trujillo, President, Pontifical Council for the Family," December 1, 2003, online: http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20031201_family-values-safe-sex-trujillo_en.html#ChurchCriticism (retrieved August 26, 2004).

⁴¹ The Pontifical Council for the Family, "the Truth and Meaning of Human Sexuality: Guidelines for Education within the Family," online:

As in the United States, condom opponents within the Roman Catholic church have at times made false scientific claims about condoms in order to buttress their moral arguments. In an October 2003 interview with the BBC, for example, Cardinal Trujillo suggested that HIV can permeate microscopic pores in condoms. Calling the use of condoms “a form of Russian roulette,” Trujillo stated: “The AIDS virus is roughly 450 times smaller than the spermatozoon [spermatozoa]. The spermatozoon can easily pass through the ‘net’ that is formed by the condom.”⁴² Trujillo’s claim was not new. Since 2002, various bishops have claimed that HIV can permeate condoms, called for health warnings on condom packets, and cited anti-condom studies by the pro-“abstinence-only” Medical Institute for Sexual Health.⁴³

The claim that condoms contain microscopic pores that are permeable by HIV pathogens flies in the face of science.⁴⁴ In October 2003, the World Health Organization dismissed claims of condom porosity as “totally wrong.”⁴⁵ Simultaneously, the European Union Commission criticized the Vatican’s campaign against condoms for being unscientific and for contributing to the spread of the epidemic by discouraging condom use.⁴⁶ In 2004, Anglican Archbishop Desmond Tutu of South Africa

http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_08121995_human-sexuality_en.html (retrieved August 26, 2004).

⁴² BBC News, “Vatican in HIV condom row,”

<http://news.bbc.co.uk/1/hi/health/3176982.stm> (retrieved February 13, 2004).

⁴³ AFP, “Catholic Cardinal suggests health warning on condom packets,” October 13, 2003; “Why the fuss about condoms?” *The Tablet*, February 1, 2003; “Zambia: ‘Luo’s Condom Plan is Killing Our People,’” *Africa News*, May 8, 2002 (quoting the pastoral coordinator of the Catholic Archdiocese of Zambia, Fr. Evaristo Chungu, as saying, “Scientists themselves agree that condoms have been failing to prevent pregnancy, and as the head of the spermatozoa is 50 times as large as the less than one micro AIDS virus, no informed person would believe that the condom will be more than occasionally effective”); Pontifical Council for Health Pastoral Care: Pontifical Council for Pastoral Care of Migrants and Itinerant People, Pontifical Council for the Family, “The Reproductive Health of Refugees: A Note for the Bishops’ Conferences,” September 14, 2001 (criticizing a U.N. manual calling for the provision of condoms in refugee situations on the grounds that condoms have “not an insignificant percentage of failure.”)

⁴⁴ See U.S. Centers for Disease Control and Prevention (CDC), “Fact Sheet for Public Health Personnel: Male Latex Condoms and Sexually Transmitted Diseases,” <http://www.cdc.gov/hiv/pubs/facts/condoms.htm> (retrieved April 15, 2004); six studies cited in R. Gardner, R.D. Blackburn, and U.D. Upadhyay, *Closing the Condom Gap: Population Reports*, series H, no. 9 (Baltimore: Johns Hopkins University School of Public Health, Populations Information Program, 1999), p. 13; European Union Commission, “HIV/AIDS: European Research provides clear proof that HIV virus cannot pass through condoms,” Brussels, October 20, 2003; National Institutes of Allergy and Infectious Diseases, National Institutes of Health, Department of Health and Human Services, “Workshop Summary: Scientific Evidence on Condom Effectiveness for Sexually Transmitted Disease (STD) Prevention,” July 20, 2001, p. 7.

⁴⁵ T. Rachman, “Cardinal’s Comments on AIDS and Condoms Draw Criticism from UN Health Agency,” *Associated Press*, October 10, 2003. See also, “Cardinal’s Statement ‘Could Contribute to Spread of HIV/AIDS,’ Warns UNFPA leader,” UNFPA press release, October 13, 2003.

⁴⁶ “HIV/AIDS: EU blasts Vatican over condom claims,” *EUBusiness*, October 21, 2003, available at <http://www.eubusiness.com/afp/031021093239.48w7n104>.

challenged the Roman Catholic claim that promoting condoms leads to promiscuity.⁴⁷ In June 2001, UNAIDS director Peter Piot publicly asked the Roman Catholic Church to stop opposing the use of condoms against AIDS, saying that “when priests preach against contraception, they are committing a serious mistake which is costing human lives.”⁴⁸

Anti-condom messages promoted by senior Vatican officials can exert considerable influence over national and regional Catholic bishops’ conferences. In 2003, for example, the Catholic Bishops Conference of the Philippines (CBCP) successfully blocked legislation that would have authorized the use of national funds for condoms and other contraceptive supplies.⁴⁹ The CBCP issued in 1993 a statement that condemned the promotion of condoms against HIV/AIDS as “tantamount to condoning promiscuity and sexual permissiveness.” In 2004, the Croatian Bishop’s Conference also opposed condom education efforts. In 2001 Catholic bishops from southern Africa condemned the use of condoms to fight AIDS,⁵⁰ a position they reaffirmed in October of 2003.⁵¹ Bishops from southern Africa are not unanimous in the position, however. Kevin Dowling, a bishop from South Africa, has been outspoken in his position that opposition to condoms amounts to a death sentence for women, particularly in Africa, who cannot insist on abstinence or fidelity.⁵²

⁴⁷ “Catholics dismayed over Tutu’s criticism,” *SABC News*, February 25, 2004, available at http://www.sabcnews.com/south_africa/health/0,2172,74707,00.html

⁴⁸ Agence France-Presse (AFP), “Church’s Stand against Contraception Costs Lives,” *AIDS Education Global Information System- News (AEGIS-News)*, June 29, 2001, available at <http://www.aegis.com/news/afp/2001/AF0106L3.html>.

⁴⁹ This and other religiously-motivated restrictions on condoms in the Philippines are documented in Human Rights Watch, *Unprotected*, pp. 13-20, 28-44.

⁵⁰ S. Swindells, “African Bishops Slam Condom Use in Aids Fight,” *Daily Mail and Guardian* (South Africa), July 31, 2001, online: <http://www.globalpolicy.org/socecon/develop/aids/africa/0731bishop.htm> (retrieved August 26, 2004).

⁵¹ C. Sylla, “African Church Rejects Condom Use Despite High HIV Infection Rate,” Agence France-Presse via Clarinet, October 9, 2003, online: http://quickstart.clari.net/qs_se/webnews/wed/ca/Qafrica-religion-health.RRgA_DO9.html (retrieved August 26, 2004).

⁵² See, e.g., G. J. MacDonald, “Bishop Kevin Dowling: South African bishop battles church in battling AIDS,” *National Catholic Reporter*, April 16, 2004, online: http://www.religiousconsultation.org/News_Tracker/South_African_bishop_battles_Church_and_AIDS.htm (retrieved August 26, 2004).

IV. Examples of Country Restrictions on Condoms and HIV/AIDS Information

While international donors play an important role in establishing HIV prevention policy in the developing world, the responsibility to guarantee access to condoms and complete HIV/AIDS information also rests with national governments. Widely ratified human rights treaties, including the *International Covenant on Economic, Social and Cultural Rights*, oblige states parties to respect, protect, and promote the right of all people to the highest attainable standard of health. This in turn requires states to “refrain from limiting access to contraceptives” and “people’s participation in health-related matters,” to refrain from “censoring, withholding or intentionally misrepresenting public health information,” and to prevent third parties from limiting “people’s access to health-related information and services.”⁵³ The following country case examples, based on documentary research and interviews with key informants, provide illustrations of various restrictions on access to condoms and complete HIV/AIDS information.

India

In September 2004, the executive director of the Global Fund to Fight AIDS, Tuberculosis and Malaria, Dr. Richard Feacham, echoed numerous analyses in suggesting that India had surpassed the Republic of South Africa as the nation with the highest number of people living with HIV/AIDS in the world.⁵⁴ Current United Nations estimates place the number of people living with HIV/AIDS in India at approximately 5.1 million; however experts have pointed to widespread underreporting of HIV/AIDS in India and believe the actual figure to be much higher. In most Indian states, sex is the main mode of transmission of HIV.⁵⁵

Despite an increasing need for access to condoms in India, condom sales in the country reportedly dropped by 5 percent in 2002.⁵⁶ Condom shortages have also been reported, including in brothels.⁵⁷ While the Indian government nearly doubled the funding

⁵³ Committee on Economic, Social and Cultural Rights (CESCR), *The Right to the Highest Attainable Standard of Health: CESCR General Comment 14* (22nd Sess., 2000), para. 16.

⁵⁴ “India surpasses South Africa as country with most HIV cases, Global Fund director says,” *UN Wire*, September 16, 2004.

⁵⁵ National Intelligence Council, “The Next Wave of HIV/AIDS: Nigeria, Ethiopia, Russia, India, and China” (September 2002). In 2003, the World Bank reported that sexual transmission was responsible for 84 percent of reported AIDS cases in India. World Bank Group, “Issue Brief: HIV/AIDS, South Asia Region (SAR), India” (October 2003).

⁵⁶ M. Chadha, “India Fights to Promote Condoms,” *BBC News*, July 15, 2003. See also, N. Koshie, “Water, Power and now Condom Shortage,” *Times News Network*, August 7, 2002.

⁵⁷ *Ibid.* See also, “Chronic Condom Shortage Could Trigger AIDS in Indian Brothels,” *Deutsche Presse-Agentur*, August 4, 2002.

available for purchasing condoms in 2003 and private sector and bilateral funding helped to narrow the condom supply gap, a significant unmet need for condoms and information about condoms remained.⁵⁸ As of 2004, India was one of only eight countries whose public health budget represented less than 1 percent of its gross domestic product.⁵⁹

Nongovernmental organizations (NGOs) offer a critical source of condoms and HIV/AIDS information in India. However, NGOs that serve vulnerable populations such as sex workers and men who have sex with men report regular harassment by police.⁶⁰ Some police officers treat the provision of condoms to men who have sex with men as an act abetting sodomy, which is criminalized under section 377 of the Indian penal code.⁶¹ While prostitution is not criminalized in India, police reportedly have used condom possession as justification for harassing sex workers and outreach workers who encourage sex workers to use condoms.⁶²

In addition to sodomy laws, strict obscenity laws limit the types of information that NGOs can provide on condoms.⁶³ A staff member at the Lawyers Collective, a legal assistance group in Mumbai with a specialized AIDS unit, told Human Rights Watch, “It is easy for instructions on correct use of a condom in a pamphlet [designed for men who have sex with men] to violate the law.”⁶⁴ The same staff member observed that, starting in 2002, abstinence education gained a stronger foothold in India due to the combined influence of the United States and the former government led by the Bharatiya Janata Party (BJP). “This is a complicated political thing,” he said. “There are lots of trade-offs with the U.S. . . . The last government was very into the abstinence-only thing. . . . I

⁵⁸ Ibid. In April 2004, Melinda Gates of the Bill and Melinda Gates Foundation wrote, “India urgently needs . . . more condoms.” Melinda French Gates, “AIDS in India,” *The Seattle Times*, April 11, 2004. In October 2003, the World Bank also identified the need for “increase[d] condom promotion activities.” World Bank Group, “Issue Brief: HIV/AIDS, South Asia Region- India” (October 2003), online: <http://lnweb18.worldbank.org/sar/sa.nsf/0/ABD810AE81552B8285256DBB00542F7E?OpenDocument> (retrieved August 26, 2004).

⁵⁹ “Could AIDS Explode in India?” *The Economist*, April 15, 2004.

⁶⁰ See, e.g., Human Rights Watch, *Epidemic of Abuse: Police Harassment of HIV/AIDS Outreach Workers in India* (July 2002), vol. 14, no. 5 (C).

⁶¹ Human Rights Watch telephone interview with Vivek Divan, Lawyers Collective, Delhi, India, July 30, 2004.

⁶² Human Rights Watch, *Epidemic of Abuse*. Significant work has been done in India through sex worker collectives to resist police harassment and provide HIV prevention resources to sex workers through peer networks. See, e.g., M. Menon, “An NGO Gets Sex Workers to Enforce Condom Use,” *InterPress News Service*, August 20, 1997; N. Rajani, “Fighting for Their Health, India’s Sex Workers Mobilize,” *American Foundation for AIDS Research* (July 2003), online: <http://www.aegis.com/pubs/amfar/2003/AM030703.html> (retrieved August 26, 2004).

⁶³ Indian Penal Code, sections 292, 293, and 294. See also, Lawyers Collective, *Legislating an Epidemic: HIV/AIDS in India* (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2003), p. 59.

⁶⁴ Human Rights Watch telephone interview with Vivek Divan, Delhi, India, July 30, 2004.

had never heard of abstinence in the five years that I was working here, until the last year and a half—it seems to be the U.S.”⁶⁵

People at risk of HIV in India lack adequate access not only to condoms, but also to basic information about HIV transmission. A 2001 survey cited by the World Bank found that 70 percent of women and 82.5 percent of men had “basic awareness” of HIV/AIDS; however, the World Bank also reported that “more than 75 percent of Indians mistakenly believe that they could contract HIV from sharing a meal with a person with HIV.”⁶⁶ Moreover, awareness of HIV/AIDS is significantly lower for rural women, who are less likely to have access to information and demonstrate rates of HIV/AIDS awareness of as low as 30 percent. Until 2004, advertisements providing information about condoms were banned from Indian television.⁶⁷ According to testimony gathered by Human Rights Watch in 2002, government officials and medical staff sometimes provided misinformation about HIV transmission and disease progression.⁶⁸

Children and young people may be severely affected by the deficit of comprehensive information about HIV/AIDS in India. As of 2003, far less than half of government secondary schools offered HIV/AIDS education.⁶⁹ HIV/AIDS education was available only in grades eight and above, by which time most children, particularly girls, stop attending school.⁷⁰ Even where school-based HIV/AIDS education was provided, information about HIV transmission and condoms was often omitted and “HIV education tend[ed] to address not gender roles and sexuality, but parenting, disease, and abstinence.”⁷¹ The secretary of education in the state of Kerala told Human Rights

⁶⁵ Ibid.

⁶⁶ World Bank Group, “Issue Brief,” (October 2003). <http://lnweb18.worldbank.org/sar/sa.nsf/0/ABD810AE81552B8285256DBB00542F7E?OpenDocument>. The issue brief does not define what is meant by “basic awareness.”

⁶⁷ “Sushma Gone, Condom Ads Back on Screen,” *The India Express*, July 27, 2004; Human Rights Watch telephone interview with Vivek Divan, Delhi, India, July 30, 2004.

⁶⁸ Human Rights Watch, *Epidemic of Abuse*; Human Rights Watch, *Future Forsaken: Discrimination Against Children Affected by HIV/AIDS* (New York: Human Rights Watch, 2004), pp. 118-122.

⁶⁹ National AIDS Control Organization (NACO) and United Nations Children’s Fund (UNICEF), *Reaching Out to Young People: A Report of the National Workshop on School AIDS Education* (Mumbai, India: February 9-11, 2003).

⁷⁰ If offered at all, it is most likely offered in grade nine or above. According to Kumud Nansal, Additional Secretary, Ministry of Education, Government of India, only 23 percent of fifteen- to nineteen-year-olds in India are in school. NACO and UNICEF, *Reaching Out to Young People*, p. 37. See also UNESCO Institute for Statistics, “South and East Asia,” *Regional Report* (Montreal: UNESCO, 2003), pp. 74-75 (listing the gross enrollment ratio for secondary education at 49 percent).

⁷¹ M. E. Green, Z. Rasekh, K.-A. Amen, *In This Generation: Sexual and Reproductive Health Policies for a Youthful World* (Washington, DC: Population Action International, 2002), pp. 21-23; T. Boler, *The Sound of*

Watch in 2003, “In schools we don’t say that you can get HIV by sex. We say, ‘Protect yourselves,’ but we don’t say how to protect.”⁷² HIV/AIDS education programs are also virtually nonexistent for children who are out of school, on the streets, or in institutions.⁷³

Given these restrictions on HIV/AIDS information, it is no surprise that misinformation about HIV/AIDS pervades Indian society, fueling stigma against people living with the disease. The staff member at the Lawyer’s Collective told Human Rights Watch, “In some areas of the country there is also a culture that sex with a virgin will cure STDs [sexually transmitted diseases],” and that some men who have sex with men “don’t consider it sex,” and thus don’t perceive themselves as at risk for HIV.⁷⁴

The appointment of a new health minister in India, Anbumani Ramdoss, provided an opportunity for improvement in both access to information and access to condoms. In July 2004, the Indian press reported that the ministry of health had lifted the prior administration’s ban on condom advertisements on television, paving the way for the National AIDS Control Organization to develop several condom promotion advertisements.⁷⁵ However, further steps must be taken to ensure that condom promotion strategies work, especially for women. For example, violence or the threat of violence significantly impedes women’s ability to negotiate condom use with their sex partners; however, the Indian government has failed to take the most basic steps to protect Indian women from violence. Rape within marriage is not recognized under Indian law, and there is currently no domestic violence law, although one has been drafted.⁷⁶

Silence: Difficulties in Communicating on HIV/AIDS in School, Experiences from India and Kenya (London: ActionAid, 2003), pp. 31-33.

⁷² Human Rights Watch interview with P. Mara Pandiyan, Secretary, General Education Department, Government of Kerala, Thiruvananthapuram, Kerala, November 26, 2003.

⁷³ Human Rights Watch interview with school AIDS education resource person, New Delhi, December 4, 2003; Human Rights Watch interview with Jayatri Chandra, joint secretary, Ministry of Social Justice and Empowerment, Government of India, New Delhi, December 4, 2003; Human Rights Watch interview with M.D. Nasimuddin, director, Department of Social Defense, government of Tamil Nadu, Chennai, Tamil Nadu, November 17, 2003. More detailed information from all interviews mentioned in this footnote can be found in Human Rights Watch, *Future Forsaken*, p. 116.

⁷⁴ Human Rights Watch telephone interview with Vivek Divan, Delhi, India, July 30, 2004.

⁷⁵ “Sushma Gone, Condom Ads Back on Screen,” *The India Express*, July 27, 2004.

⁷⁶ Human Rights Watch telephone interview with Vivek Divan, Delhi, India, July 30, 2004.

Nigeria

An estimated 5.4 percent of adults aged fifteen to forty-nine are HIV-positive in Nigeria,⁷⁷ the majority of them having been infected through sex.⁷⁸ Condoms remain inaccessible or unaffordable for many Nigerians.⁷⁹ In a 2002 survey, 75 percent of health service facilities visited by Deliver, a program run in Nigeria by the U.S.-based John Snow International, were missing condoms or contraceptive supplies.⁸⁰ One health advocate reported that there had been an absence of condoms in rural communities.⁸¹ Another reported a lack of information about HIV and HIV transmission in rural communities.⁸²

Efforts to improve condom access in Nigeria have sometimes been hindered by restrictions on condom promotion. For example, Population Services International (PSI), a social marketing group that sells condoms in the private sector at subsidized prices, sold a record number of condoms in the first quarter of 2001.⁸³ However, PSI's radio advertisements promoting condoms were suspended for four months in 2001 by the Advertising Practitioners Council of Nigeria, a Nigerian government organization, on the unsubstantiated grounds that the messages were "seductive" because they encouraged condom use in premarital sexual relationships.⁸⁴ Nigerian states that operate under Islamic law (Shari'a) have seen similar restrictions. In October 2004, the Nigerian press reported that the Shari'a Consultative Council in Bauchi State had banned condom advertisements in the state-owned electronic media, claiming that such advertisements

⁷⁷ UNAIDS, *2004 Report*, p. 191.

⁷⁸ National Intelligence Council, "The Next Wave of HIV/AIDS."

⁷⁹ Human Rights Watch telephone interview with Dr. Friday Okonofua, editor, *African Journal of Reproductive Health* and dean, School of Medicine, College of Medical Sciences, University of Benin, Benin City, Nigeria, July 13, 2004. Some government leaders and donors have taken steps to narrow this gap. For example, the British government sponsored 1 billion condoms to be distributed over five years. U.N. Office for the Coordination of Humanitarian Affairs, "Nigerian Government to distribute 1 billion condoms to fight HIV/AIDS," *IRIN PlusNews Weekly*, Issue 60, January 7, 2001. In 2001, to address the high HIV prevalence rate in the military, the president urged the free distribution of condoms to military personnel. Associated Press, "Nigerian President Urges Condom Use," August 5, 2001.

⁸⁰ John Snow International/Deliver, "Assessments lay the groundwork for improved logistics systems in Nigeria," (May 2003), online: http://www.deliver.jsi.com/2002/archives/general/nigeria_assess/index.cfm (retrieved August 26, 2004).

⁸¹ Human Rights Watch telephone interview with Stella Iwuagwu, Center for Right to Health, Lagos, Nigeria, June 24, 2004.

⁸² Human Rights Watch telephone interview with Yinka Jegede-Ekpe, Nigerian Community of Women Living with HIV/AIDS, Lagos, Nigeria, August 11, 2004.

⁸³ "Condom sales soar in Nigeria," *Panafrican News Agency*, April 1, 2001. Condom social marketing is an approach that uses private sector advertising and commercial distribution to make condoms more accessible.

⁸⁴ PSI, "Nigerian Radio Campaign Generates Safer Behavior," *PSI Profile*, March 2003.

promoted immorality. The press quotes the statement as saying, “[T]he continued advisement of condoms indirectly legalizes fornication and adultery.”⁸⁵

In the meantime, groups supporting abstinence-only messages have increased their reach in Nigeria and the government has not responded by taking a clear and discernible position on condoms’ effectiveness. The Nigeria Abstinence Coalition, an umbrella body of individuals, organizations, and agencies promoting abstinence-until-marriage education in Nigeria, was launched in 2004 and includes representatives of over twenty-five non-governmental and faith-based organizations.⁸⁶ In 2004, international NGOs collaborated with local faith-based organizations to launch an abstinence campaign for youth in Nigeria.⁸⁷ One Nigerian reproductive health expert told Human Rights Watch that mixed messages on condoms were confusing to the public, a problem exacerbated by the government’s failure to take a clear position in the issue. “The government doesn’t come out clearly to promote condoms. NACA [the National Action Committee on AIDS] may be afraid of a backlash. This failure to take a stand is really where the problem is.”⁸⁸

Condom promotion in Nigerian schools is similarly limited. While the national approved curriculum for HIV prevention education includes comprehensive education and condom promotion messages, at this writing only three of Nigeria’s fifty state governments have adopted and implemented it in their schools.⁸⁹ The reproductive health expert quoted above told Human Rights Watch that this delay results, in part, from state governments bending to religious pressure.⁹⁰

Nigeria has long experienced problems with condom quality. A condom quality study in 1999 found that USAID-donated condoms “did not compare well with the requirements in the current international standards for condoms.”⁹¹ Similar results had been reported in a 1991 study.⁹² The connection between low condom quality and distrust of condoms

⁸⁵ S. Awofadeji, “Condom Advert Banned,” *This Day* (Lagos), October 1, 2004. The Bauchi State consultative council is the advisory body to the state government on shari’a.

⁸⁶ Dr. E.I.B. Okechukwu, Coordinator, Nigeria Abstinence Coalition, “Nigeria Abstinence Coalition Formed,” Core Initiative list-serve (see http://www.coreinitiative.org/core.php?sp=email_archive), March 15, 2004.

⁸⁷ Ifeoma Charles Monwuba, “Nigeria: New Campaign Based on Abstinence Attitudes” (Population Services International, May 24, 2004), online: <http://www.psi.org/news/0504d.html> (retrieved August 26, 2004).

⁸⁸ Human Rights Watch telephone interview with Dr. Friday Okonofua, Benin City, Nigeria, July 13, 2004.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ Susan Beckerleg and John Gerofi, “Investigation of Condom Quality: Contraceptive Social Marketing Programme, Nigeria” (John Snow International, October 1999), p. 4.

⁹² *Ibid.*

was made as early as 1989 in Nigeria.⁹³ One NGO staff person told Human Rights Watch that distrust continues in the general population.⁹⁴ The Nigerian government has taken some steps to address these concerns, and in 2002, the National Condom Quality Assurance and Testing Laboratory announced that one brand of condoms had been tested and approved for use in the country.⁹⁵ However, continuing mistrust of condoms suggests a need for additional action both to ensure quality itself and to ensure that the public is aware of the improved quality controls.

Peru

Peru had a low estimated adult HIV prevalence of under 1 percent as of the end of 2003, according to UNAIDS.⁹⁶ HIV/AIDS in Peru had begun to spread into the general population, with women and heterosexual men representing increasing percentages of new HIV infections.⁹⁷ Prior to 2001, Peru's National AIDS Program provided condoms free of charge and promoted condom use for HIV prevention, particularly among men who have sex with men and sex workers.⁹⁸ However, this focus reportedly led to condom use being stigmatized in the rest of the population and thus rarely practiced.⁹⁹

A women's rights advocate for the Peru office of an international NGO told Human Rights Watch that under a reasonable policy approach, "the next step in 2001-2004 would have been to integrate family planning and STI and HIV prevention."¹⁰⁰ Instead, between July 2001 and July 2003, access to condoms, especially for poor women, and

⁹³ See, e.g., Dr. Eka Esu-Williams, "Clients and Commercial Sex Work," in Elizabeth Reid, ed., *HIV and AIDS: The Global Inter-Connection* (Bloomfield, CT: Kumarian Press, 1995) (noting that as a result of a condom shortage in 1989, a program serving sex workers in Calabar, Nigeria distributed "poor quality condoms . . . for a three-month period. . . . The frequent breakages severely discouraged condom users)."

⁹⁴ Human Rights Watch telephone interview with Stella Iwuagwu, Center for Right to Health, Lagos, Nigeria, June 24, 2004.

⁹⁵ Oyeyemi Oyedeji, "Gold Circle Condoms get Quality Control Stamp," *The Comet*, April 2, 2002.

⁹⁶ UNAIDS, *2004 Report*, p. 203.

⁹⁷ Andean Comprehensive International Program of Research on AIDS, "Epidemiology of HIV/AIDS in Peru," online: available at http://www.impactaperu.org/cipra/paginas/epidemiology_P.htm; see also, Susana Chavez, "Remarks," Center for Health and Gender Equity, February 27-28, 2002.

⁹⁸ King Holmes et al., "Evaluation of the USAID Help Project: Project Number 527-0378," (The Synergy Project, TVT Associates, Inc. and University of Washington, June 2000), p. ii; Human Rights Watch telephone interview with Anna-Britt Coe, Center for Health and Gender Equity, June 25, 2004.

⁹⁹ Susana Chavez, "Remarks," Center for Health and Gender Equity, February 27-28, 2002. At that time, rates of condom use during "high risk" sex were 19 percent for young women in Peru, compared to a reported 79 percent in Paraguay. United Nations Development Programme (UNDP), "Condom Use at Last High Risk Sex (% ages 15-24), Women, 1996-2002," *Human Development Reports (2004)*, online: http://hdr.undp.org/statistics/data/indic/indic_70_2_1.html (retrieved August 26, 2004).

¹⁰⁰ Human Rights Watch telephone interview with Anna-Britt Coe, Center for Health and Gender Equity, Lima, Peru, June 25, 2004.

government funding levels for HIV/AIDS prevention and treatment, decreased.¹⁰¹ Peru's national STD/AIDS program was eliminated, and HIV/AIDS was placed within a "Risk Reduction Program" that addresses diseases such as malaria, dengue and tuberculosis.¹⁰² "Essentially nothing has been done regarding prevention of HIV and sexually transmitted infections (STIs). There have been restrictions in the distribution of condoms, and increased barriers to accessing them. The sensitive outreach efforts for high risk groups were abandoned," the women's rights advocate told Human Rights Watch.¹⁰³

In October 2002, in response to studies showing that the spermicidal lubricant nonoxynol-9 could damage the wall of the vagina and expose women to HIV, government health officials in Peru released a misleading public alert warning people not to use condoms lubricated with nonoxynol-9.¹⁰⁴ The alert neither explained the precise risk presented by nonoxynol-9 nor recognized that any risk of HIV transmission presented by nonoxynol-9 condoms was still much smaller than the risk of transmission presented by using no condoms at all.¹⁰⁵ The alert also failed to inform the public that condoms not containing nonoxynol-9 remained available and were safe to use.¹⁰⁶ "Although health officials later retracted the alert, many health care providers and the general public interpreted the alert as the government's position on condoms," according to the women's rights advocate interviewed above.¹⁰⁷

Youth aged fifteen to twenty-four years are particularly vulnerable to HIV infection, representing half of new HIV infections worldwide in 2003.¹⁰⁸ However, in Peru children cannot attend a public health clinic for reproductive health services without their parent or guardian. As a result, children are discouraged from seeking the services

¹⁰¹ Rebecca Howard, "Peru Moves Away from Birth Control," *Associated Press*, June 30, 2003; UNAIDS, "National Response Brief: Peru," online: <http://www.unaids.org/nationalresponse/result.asp> (retrieved August 26, 2004).

¹⁰² Email communication from Anna-Britt Coe, Center for Health and Gender Equality, to Human Rights Watch, August 11, 2004.

¹⁰³ Human Rights Watch telephone interview with Anna-Britt Coe, Lima, Peru, June 25, 2004.

¹⁰⁴ Ministry of Health (Peru), "Información Sobre la Seguridad del Nonoxinol-9 Presente en Condones, Lubricantes y Tabletas Vaginales," October 23, 2002, online: <http://www.minsa.gob.pe/infodigemid/alertas/> (retrieved November 19, 2004); see also R. Howard, "Peru Moves Away from Birth Control," *Associated Press*, June 30, 2003.

¹⁰⁵ *Ibid.*; see also Helene D. Gayle, Letter re: effectiveness of Nonoxynol-9 as means of HIV Prevention, August 4, 2000, online: <http://www.cdc.gov/HIV/pubs/mmwr/mmwr11aug00.htm> (retrieved August 26, 2004) (stating, "A condom lubricated with N-9 is clearly better than using no condom at all.")

¹⁰⁶ Rebecca Howard, "Peru Moves Away from Birth Control."

¹⁰⁷ Email communication from Anna-Britt Coe to Human Rights Watch, August 11, 2004.

¹⁰⁸ UNAIDS, *2004 Report*, p. 14.

they need, including counseling on HIV prevention. UNAIDS describes sex education in Peru as “insufficient and hindered by conservative attitudes.”¹⁰⁹

In February 2004, Pilar Mazzetti took office as health minister in Peru. A staff member at an international NGO based in Peru told Human Rights Watch that under Mazzetti’s administration, the Ministry of Health has been working closely with women’s health organizations to take steps to retake the ground lost over the past few years.¹¹⁰ At this crucial turning point in the country’s epidemic, it is important that Peru take steps to restore full condom access, especially for youth and low-income Peruvians, and to increase the use of comprehensive public education strategies in the general population.

United States Domestic Policy

Condoms are generally available in the United States through a variety of sources including pharmacies, family planning clinics, and HIV prevention organizations, and condom promotion messages are visible in some public places. However, complete and accurate information about condoms is becoming increasingly difficult to find, especially for youth.

In 2002, the Centers for Disease Control and Prevention (CDC) and USAID removed information on condom use and effectiveness from their web-based fact sheets on male condoms.¹¹¹ References to studies concluding that providing information about condoms to adolescents did not affect the timing of sexual debut were also deleted from the fact sheet. The CDC also discontinued its “Programs that Work” initiative, which identified sex education programs that were found to be effective through scientific studies. All five previously identified programs provided comprehensive HIV prevention information, including information about condoms.¹¹² Guidelines proposed by the CDC in 2004 require that AIDS organizations receiving federal funds include information about the “*lack of effectiveness* of condoms” in any HIV prevention educational materials that mention condoms (emphasis added).¹¹³ The proposal also requires recipients of CDC funds to “include a certification that accountable state, territorial or local health officials have independently reviewed educational materials” for

¹⁰⁹ UNAIDS, “National Response Brief: Peru.”

¹¹⁰ Human Rights Watch telephone interview with Anna-Britt Coe, Lima, Peru, June 25, 2004. For example, in an act of apparent good will to women’s rights groups, Mazzetti recently implemented a ministerial decree that made emergency contraception available in government health centers.

¹¹¹ See above, “The United States’ ‘War on Condoms.’”

¹¹² Rep. Henry A. Waxman, “Politics and Science,” p. 6.

¹¹³ CDC, “Proposed Revision of Interim HIV Content Guidelines for AIDS,” 69 Fed. Reg. 115, 33824, June 16, 2004.

compliance with federal legislation. This raises the concern that materials already approved on scientific grounds by relevant review panels will face a costly, time-consuming, and potentially politicized second review process by health officials, who are often political appointees.

The CDC further requires that programs receiving CDC funding not “provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity” and not violate obscenity standards established by the U.S. Supreme Court.¹¹⁴ Consistent with these principles, a review panel must determine that the material would not be construed as obscene by the “average person applying contemporary community standards.” This means that what might be considered appropriate in one community may be obscene in another.¹¹⁵ Since 2001, these guidelines have been used as grounds for politically-motivated audits of federally funded HIV prevention programs. A 2001 audit of San Francisco’s STOP AIDS Project Inc. conducted by the Department of Health and Human Services (DHHS) concluded that two of STOP AIDS’ HIV prevention workshops could be construed as obscene and encouraging sexual activity. In February 2003, CDC officials deemed the controversial materials appropriate. Four months later the CDC reversed its position, finding that the materials violated the ban on encouraging sexual activity and asking STOP AIDS to discontinue their use.

The STOP AIDS audit prompted further investigation of federally-funded HIV/AIDS programs.¹¹⁶ Audits also have apparently been targeted at federal grantees critical of Bush administration positions on sex education and HIV/AIDS. Audits of Advocates for Youth (AFY) and the Sexuality Information and Education Council of the United States (SIECUS), non-profit organizations which provide information on comprehensive

¹¹⁴ CDC, “Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control (CDC) Assistance Programs (Interim Revisions June 1992),” online: http://www.cdc.gov/nchstp/od/content_guidelines/1992guidelines.htm (retrieved August 26, 2004). This language in both versions of the guidelines is from § 2500 (c) of the Public Health Services Act, 42 U.S.C. § 300ee (c).

¹¹⁵ Under the U.S. Supreme Court test, materials are considered obscene if “the average person, applying the contemporary community standards” would find that the work, taken as a whole, appeals to the prurient interest; if the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and if the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. *Miller v. California*, 413 U.S. 15, 24-25 (1973).

¹¹⁶ DHHS’ audit of STOP AIDS prompted Secretary of Health and Human Services Tommy Thompson to order a review of DHHS-funded HIV/AIDS activities “to assess the need for enhanced accountability and performance measures in these activities” and to have DHHS’ Office of the Inspector General “conduct a more comprehensive review of CDC’s HIV/AIDS program activities focusing specifically on appropriate use of federal funds, effectiveness of the programs, and whether program review panels are carrying out their duties as prescribed.” Letter from Secretary Thompson to Congressman Mark Souder, November 14, 2001; see also, Memorandum from Janet Rehnquist to Secretary Thompson, October 12, 2001.

sex education, were requested soon after these organizations started a website opposing federal funding of abstinence education.¹¹⁷ Both organizations have been audited at least three times since late 2002, with no findings of misconduct.¹¹⁸ In 2002, members of the U.S. Congress requested that federal health agencies review the funding of government-funded organizations that had protested a speech by Tommy Thompson, secretary of the U.S. Department of Health and Human Services (HHS), at the 2002 International AIDS Conference in Barcelona.¹¹⁹

The associate director for prevention policy at New York-based Gay Men's Health Crisis (GMHC) said that the pursuit of audits by conservative members of Congress of organizations deemed offensive to them has "created a chilling effect" on HIV prevention activities.¹²⁰ GMHC and other organizations that work with high-risk populations like men who have sex with men are concerned that they will be subject to invasive and time-consuming audits by the federal agencies that fund them. While this effect is impossible to quantify, the audits have discouraged organizations from creating explicit materials considered effective at reaching people most at risk and most affected by HIV/AIDS, including men who have sex with men.

While limiting available information on comprehensive sex education, the U.S. government has steadily increased its spending on abstinence-until-marriage programs for youth. In FY 2004, the federal government appropriated U.S.\$138.25 million for abstinence-only programs.¹²¹ President Bush requested an increase to U.S.\$268 million dollars for abstinence-until-marriage programs for FY 2005.¹²²

¹¹⁷ J. Kelly, "GOP Investigates Sex Ed., Steer Money to Abstinence," *Youth Today*, December/January 2004.

¹¹⁸ C. Healy, "No sex, please -- or we'll audit you," *Salon.com*, October 28, 2003.

¹¹⁹ A letter to the U.S. department of Health and Human Services (HHS) from twelve members of Congress mentioned the protests against Thompson and asked for a complete list of individuals "who attended the conference with some form of federal assistance" and their affiliation, whether governmental or nongovernmental. An e-mail to HHS's legislative affairs office from a staff member at the House Government Reform subcommittee asked, "Can you determine the current fed funding levels if any received by the following organizations that led the demonstration that shut down Thompson during his address last week?" D. Brown, "HHS Studies Funding of AIDS Groups," *Washington Post*, August 19, 2002, p. A01.

¹²⁰ Human Rights Watch telephone interview with Mark McLaurin, associate director for prevention policy, Gay Men's Health Crisis, New York, New York, August 10, 2004. See also, F. Girard, "Global Implications of US Domestic Policy," p. 15.

¹²¹ Sexuality Information and Education Council of the United States (SIECUS), "Overall Federal Spending for Abstinence-Only-Until-Marriage Programs," *State Profiles: A Portrait of Sexuality Education and Abstinence-Only-Until Marriage Programs in the States* (FY 2003 edition).

¹²² *Ibid.* At this writing, the Appropriations Committees of both the U.S. Senate and House of Representatives have both voted for substantial increases for domestic abstinence-only funding, although the final amount has not been determined.

The bulk of federal funding for abstinence-only programs is provided directly to public and private entities through annual U.S. federal legislative appropriations for the Adolescent Family Life Act (AFLA) and the Special Projects of Regional and National Significance-Community Based Abstinence Education Program (SPRANS-CBAE). In addition, U.S.\$50 million is provided to states through the Personal Responsibility and Work Opportunity Reconciliation Act (commonly known as the Welfare Reform Act), which requires states to contribute U.S.\$3 for every U.S.\$4 received in federal funds.¹²³ This further increases the total support for abstinence-only programs. All federally funded abstinence-only programs must provide abstinence education as defined by Section 510(b) of the Welfare Reform Act as follows:

“Abstinence education” means an educational or motivational program which:

- (A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;
- (B) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;
- (C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;
- (D) teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;
- (E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;
- (F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child’s parents, and society;
- (G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and
- (H) teaches the importance of attaining self-sufficiency before engaging in sexual activity.¹²⁴

Section 510(b) funds also can be used for “mentoring, counseling and adult supervision” activities that promote abstinence.¹²⁵ Section 510(b) and AFLA programs are not required to emphasize all eight elements of the above definition equally, but cannot

¹²³ State matching funds may take the form of in-kind services rather than increased program funding.

¹²⁴ 42 U.S.C. § 710(b)(2).

¹²⁵ 42 U.S.C. § 710(b)(1).

provide information that is inconsistent with any of them.¹²⁶ Since these programs must have as their “exclusive purpose” promoting abstinence outside of marriage and must teach that abstinence outside of marriage and a mutually faithful monogamous relationship in the context of marriage is the expected standard of sexual activity, they cannot also “promote or endorse” condoms or otherwise discuss them, except to provide “factual information, such as failure rates.”¹²⁷ SPRANS-CBAE programs are more restrictive, requiring that funding recipients must emphasize each of the eight points of the Section 510(b) definition and must target “adolescents” twelve to eighteen years old.¹²⁸ In addition, except in limited circumstances, SPRANS-CBAE grantees cannot use their own funds to provide any other education regarding sexual conduct (such as information about condoms that they cannot provide in the abstinence-only program) to any children to whom they provide abstinence-only education.¹²⁹

In addition to federally-funded programs, state governments in the United States also implement policies that, misleadingly, give primary emphasis to abstinence-based strategies without providing accompanying information about condoms. Thirty-four states require that abstinence be mentioned or stressed in STD/HIV prevention classes in schools, while only seventeen states require that information about contraception be covered.¹³⁰ In Michigan, school districts that refuse to stress abstinence-until-marriage as 100 percent effective can be penalized 1 percent of their state education funding.¹³¹ In Indiana, sex education is state-mandated and must “include that abstinence from sexual activity is the only certain way to avoid...sexually transmitted diseases...and...that the best way to avoid sexually transmitted diseases is to establish a

¹²⁶ Maternal and Child Health Bureau, Health Resources and Services Administration, U.S. Department of Health and Human Services, *Application Guidance for the Abstinence Education Provision of the 1996 Welfare Reform Law, P.L. 104-93*, p. 9. Since 1997, Congress has required that AFLA-funded prevention programs adhere to the Section 510(b) definition.

¹²⁷ Human Rights Watch telephone interview with Michele Lawler, director, Abstinence Education Program, Maternal and Child Health Bureau, Health Resources and Services Administration, U.S. Department of Health and Human Services, June 3, 2002. Program participants who want more information about contraception are to be advised to contact a third party (such as a health department) for more information. Ibid.

¹²⁸ Maternal and Child Health Bureau, Health Resources and Services Administration, U.S. Department of Health and Human Services, *Application Guidance for Special Projects of Regional and National Significance Community-Based Abstinence Education under Title V of the Social Security Act*, pp. 1, 2, 7.

¹²⁹ Conference Report on H.R. 4818, Consolidated Appropriations Act, 2005, Division F—Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2005 (November 19, 2004); Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004, P. L. 108-199 (2004).

¹³⁰ SIECUS, “State Policies in Brief,” *State Profiles: A Portrait of Sexuality Education and Abstinence-Only-Until Marriage Programs in the States* (FY 2003 edition).

¹³¹ J. Brown, “Michigan Puts Teeth in New Abstinence Education Requirements,” *Agape Press*, July 28, 2004.

mutually faithful monogamous relationship in the context of marriage.”¹³² Texas has a similar provision.¹³³

In 2002, Human Rights Watch profiled federally-funded abstinence programs in Texas.¹³⁴ Texas requires that the state board of education approve textbooks before they can be purchased by school districts. In 2004, three of the four health textbooks submitted for approval did not mention contraception, an unsurprising consequence of the state’s strong support for abstinence-only education.¹³⁵

Brazil

Brazil is frequently cited as a success story for effectively controlling its HIV/AIDS epidemic.¹³⁶ The elements of this success include bold policy and programming to ensure local production of generic ARVs for all people living with AIDS in the country, widespread availability of prevention information and voluntary HIV testing, and government-supported programs for sex workers and drug users. At the end of 2003, UNAIDS estimated that 660,000 people were living with HIV/AIDS in Brazil, significantly fewer than what some had projected years earlier.¹³⁷

With respect to access to condoms, the government of Brazil distributed 400 million condoms in 2003 and reported that it wanted to triple that number in 2004-2006.¹³⁸ Government-supplied condoms are in addition to condoms provided to low-income and high-risk groups by NGOs.¹³⁹ The Brazilian government also supports the construction of a domestic condom factory to help the country further meet its need for condoms.¹⁴⁰

¹³² SIECUS, “State Profile: Indiana,” *State Profiles: A Portrait of Sexuality Education and Abstinence-Only-Until Marriage Programs in the States* (FY 2003 edition).

¹³³ Tex. Educ. Code section 28.004(e).

¹³⁴ Human Rights Watch, *Ignorance Only: HIV/AIDS, Human Rights and Federally-Funded Abstinence-Only Programs in the United States*, vol. 14, no. 5(G) (September 2002).

¹³⁵ Reuters, “Battle over Texas sex-ed textbooks: Second-largest buyer could influence rest of U.S.,” August 5, 2004.

¹³⁶ See, e.g., Tina Rosenberg, “Look at Brazil,” *New York Times Magazine*, January 28, 2001; AP, “Brazil Sets Example for Taming AIDS,” July 6, 2004; S. Buckley, “Brazil Becomes Model in Fight Against AIDS,” *The Washington Post*, September 17, 2000, p. A22.

¹³⁷ UNAIDS, 2004 Report, p. 202; AP, “Brazilian President Calls for No Let Up in Fight Against AIDS,” November 27, 2002.

¹³⁸ “Brazil: A Model Response to AIDS? Prevention efforts,” *Online Newshour*, online: http://www.pbs.org/newshour/health/aids/brazil/prevention_efforts.html (retrieved August 26, 2004).

¹³⁹ *Ibid.*

¹⁴⁰ “Supply Worries Stir Condom Factory Plan,” *Boston Globe*, February 26, 2000, p. A4.

Brazil has conducted mass media campaigns educating the public about HIV transmission and safe sex, including advertisements to encourage the use of condoms by gay men.¹⁴¹

Brazil's aggressive efforts to provide condoms and complete HIV/AIDS information have not been free of controversy. In December 2003, the director of Brazil's AIDS program wrote an open letter to the Roman Catholic church condemning inaccurate statements made by church leaders about condom effectiveness and criticizing the church's attempt to stop the distribution of a government produced condom promotion video.¹⁴² In 2004, the government ran a public service message entitled "nothing gets through a condom" soon after the Brazilian Catholic Bishop's Conference issued a statement saying that condoms were not 100 percent safe.¹⁴³

In 2003, USAID canceled a U.S.\$8 million grant to Brazil for condom promotion and marketing and HIV prevention materials.¹⁴⁴ USAID provided no explanation for this unusual cancellation, leading to speculation that the cancellation had reflected a change in USAID priorities away from condom promotion to high-risk groups.¹⁴⁵ A working paper from the International Working Group on Sexuality and Social Policy further reported that the U.S. "insisted on an abstinence-only" standard in a joint venture by the U.S. and Brazil for HIV/AIDS treatment, care, and prevention in lusophone Africa. As a result, Brazil chose to omit any mention of sex education from the agreement.¹⁴⁶

V. Recommendations to Governments and International Donors

Human Rights Watch calls on all governments, donors to HIV/AIDS programs, and relevant United Nations bodies to take the following broad steps to guarantee access to condoms and HIV/AIDS information. Human Rights Watch recommends that the Holy See consider retracting scientifically unfounded information it has disseminated about condoms and further consider ceasing its opposition to references to condoms and to comprehensive HIV prevention in U.N. documents and declarations.

¹⁴¹ M. Milliken, "Brazil Launches First Anti-AIDS Campaign for Gays," *Reuters*, June 5, 2002.

¹⁴² The Church had sued to stop the distribution of the video. AP, "Brazil's AIDS Chief Criticizes Church," *The Miami-Herald*, December 10, 2003.

¹⁴³ C. Starmer-Smith, "An Awful Lot of Condoms in Brazil," *Travel.telegraph.co.uk*, February 21, 2004, online: <http://www.telegraph.co.uk/travel/main.jhtml?xml=/travel/2004/02/21/etnewscond21.xml> (retrieved August 26, 2004).

¹⁴⁴ DKT International, "USAID Shuts Down Brazilian Condom & Education Program," press release, September 15, 2003; *The New York Times*, "Misguided Faith on AIDS," editorial, October 15, 2003.

¹⁴⁵ *Ibid.*

¹⁴⁶ F. Girard, "Global Implications of US Domestic Policy," p. 14.

Governments, donors and multilateral organizations should:

Lift restrictions on access to condoms and complete HIV/AIDS information

Repeal any law or policy that restricts the promotion or distribution of condoms in public facilities and all laws and policies that support censorship of complete and accurate information about condoms and HIV prevention. Review the content of government-issued HIV/AIDS education materials, including school curricula, to ensure that they include comprehensive and age-appropriate information about condoms and safer sex. Ensure that accurate information about condoms delivered through mass media is protected from censorship.

Publicly counter misinformation about condom safety and efficacy

Issue clear statements setting out the effectiveness of condoms against HIV/AIDS and clear instructions for their correct and consistent use. Publicly counter false or misleading statements about the effectiveness of condoms against HIV. Withhold public funds from organizations that make false or misleading statements about condoms. Support programs that guarantee comprehensive information about HIV prevention, including information about the effectiveness of condoms.

Take steps to expand HIV prevention services that include condoms

Work with relevant government agencies, nongovernmental organizations, the private sector, and social marketing groups to ensure adequate supply of condoms in health facilities and in commercial outlets. Develop and implement comprehensive HIV/AIDS education programs that explicitly recognize the effectiveness of condoms against HIV. Withhold public funds from programs that give emphasis to abstinence and fidelity at the expense of condom information and services.

Take steps to enable and empower vulnerable populations to use condoms against HIV

Support efforts to distribute condoms and complete HIV/AIDS information to persons traditionally at high risk of HIV, including sex workers, men who have sex with men, and prisoners. Cease police practices that interfere with the use of condoms for HIV prevention in these populations, such as using possession of condoms as evidence to arrest and prosecute sex workers and men who have sex with men. Address factors,

including gender-based violence, that make it difficult for women, sex workers, and other vulnerable groups to insist on condom use with their sex partners.