Remarks by ASG Brands Kehris

PRESENTATION OF REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS TO ECOSOC (E/2023/74)

25 JULY 2023

Excellencies,

Dear colleagues,

This year's report of the United Nations High Commissioner for Human Rights to ECOSOC addresses an increasingly urgent human rights issue: The patent and other pricing-related aspects of access to medicines, a fundamental element of the right to health and critical for the realization of all human rights.

Today, some 2 billion persons are without access to essential medicines and, as a result, do not benefit from scientific progress that could improve health and save lives.

Governments have the primary duty to respect, protect and fulfil the right to health. But the ability to uphold this right depends on *equitable* access to essential medicines and, to a great extent, on private actors that produce them.

~~Enormous power is conferred on these entities who wield a very direct influence on the supply of medicines essential for health and life.~~

~~These power dynamics – "pathologies of power" – are systemic issues that we need to address in order to fight poverty and inequality and give practical recognition to the fact that all lives have equal value.~~

~~This is a timely discussion, given that the General Assembly will soon hold the SDG Summit and High Level Meetings on Tuberculosis, Universal Health Coverage and Pandemic Prevention, Preparedness and Response. These global health crises and challenges call for bold commitments, systems thinking and joined-up action.~~

Excellencies,

When access to innovations essential for life and health depend on the private sector producers, inevitable tensions arise between the imperative of the realization of human rights by all and the profit-seeking nature of those entities.

~~The High Commissioner's report urges a form of accountability founded on proactive State action to respect, protect and fulfil human rights and new business models which reconcile the fiduciary responsibilities of pharmaceutical companies with their human rights responsibilities.~~

~~While there are many factors which contribute to problems of access, the most important is pricing.~~ The trend toward the high pricing of patented new medicines undermines access in both rich and poor countries.

Patent protections for the new COVID-19 vaccines, in conjunction with Advance Purchase Agreements, facilitated a windfall for vaccine manufacturers, allowing them to prioritize sales to wealthy countries who could offer the most profitable terms even before vaccines had been approved by regulatory authorities.

As a result ~~of this approach~~, ~~the vast majority of doses were sold to wealthy countries, with~~ low- and middle-income countries ~~being~~ were left largely behind, giving rise to what has been termed "vaccine nationalism" or "vaccine apartheid".

Pharmaceutical innovation is rooted in the patent system which ~~is flawed in significant ways. Allowing producers to set the price as high as the market will bear, rather than ensuring a reasonable correlation between the price and the costs of bringing medicines to market, the system~~ often facilitates the creation of effective monopolies on essential medicines.

Daraprim, the only drug available to treat toxoplasmosis, an infection that can cause birth defects, is an example of the impact that the unfettered exercise of the power to name one's price can have. In August 2015, the price of Daraprim rose 5000 percent from $13.50 per tablet to $750 per tablet.

The steep and almost certainly unjustified escalations in the prices for hepatitis, diabetes and other drugs in recent years have demonstrated that these monopolies price out those who cannot afford to pay.

In addition, because of the market-driven research and development (R&D) incentives which characterise the patent system, investment in health products that do not offer substantial returns, or which are deemed to be too costly, has been neglected. The result is a shortage or lack of drugs and therapies needed specifically by women, by people living with rare diseases, by those with diseases mainly affecting the poor, and by children.

The public sector in many countries plays a vital role in funding, with much of the R&D conducted through partnerships with academic institutions and research bodies, ~~. According to one estimate, two-thirds of the global upfront R&D costs are borne by the public, and approximately one third of new medicines begin their development in research institutions. Many medicines developed by the pharmaceutical industry are the result of a large body of scientific work~~ undertaken and funded by the taxpayer.

Without a guarantee that the drugs developed using public funding will be available and affordable and that the data, knowledge and technologies generated will be shared, rights-holders lose out on both their investment and their rights.

In light of all these challenges, the report puts forward a number of recommendations ~~to Member States, including the following~~:

(a) Proactively ringfence the public interest and human rights using competition law, price control policies, procurement law and other law and policy tools;

(b) Strengthen cooperation among States, particularly in relation to the exchange of technical know-how and data, R&D into new drugs, vaccines and diagnostic tools and effective regulation of business entities involved in producing medicines; and

(c) Establish a collaborative, inclusive network of stakeholders with expertise in areas relative to access to medicine, to come up with practical solutions to correctly incentivise innovation while avoiding the current inequalities of access.

Excellencies,

Where public goods or innovations essential for life, health or dignity are concerned, there should be no profiteering and speculation. A balance is possible that allows a fair return on investment while ensuring broad and equal access to medicines. A dialogue is needed between all stakeholders, including Governments, the private sector and rights-holders. New "rules of engagement" are overdue.

The commemoration of the Universal Declaration of Human Rights this year gives us an opportunity to return to core values – values that embrace the equal right of everyone to life, health and dignity. And with it, the protection and fulfilment of the right to access to medicines.

Thank you.

[Statement is for 7 min. Word count 952 – 6,8 min]