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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Resolution adopted by the Human Rights Council*

16/28

The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS)

The Human Rights Council,

Recalling Human Rights Council resolution 12/27 of 2 October 2009 and relevant Commission on Human Rights resolutions, the Political Declaration on HIV/AIDS, adopted by the General Assembly on 2 June 2006 and the Declaration of Commitment on HIV/AIDS, adopted by the Assembly on 27 June 2001,

Recalling also the Guidelines on HIV/AIDS and Human Rights (hereinafter referred to as “the Guidelines”) referred to in the above-mentioned resolutions and annexed to Commission on Human Rights resolution 1997/33, which provide guidance to ensuring the respect, protection and fulfilment of human rights in the context of HIV,

Emphasizing the significance of the comprehensive review in 2011, as requested by the General Assembly in its resolution 65/180 of 20 December 2010, which will mark three decades of the HIV/AIDS pandemic, the ten-year review of the Declaration of Commitment on HIV/AIDS and its time-bound measurable goals and targets, and the five-year review of the Political Declaration on HIV/AIDS with the goal of achieving universal access to comprehensive HIV prevention, treatment, care and support by 2010,

Recalling Human Rights Council resolution 15/22 of 30 September 2010, on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its sixteenth session (A/HRC/16/2), chap. I.

Noting with concern that almost fourteen million six hundred thousand HIV-positive people in low- and middle-income countries lack access to antiretroviral therapy, particularly in sub-Saharan Africa, that an estimated one million end-stage AIDS patients have no access to treatment for moderate to severe pain, and that many people in need fail to receive treatment for tuberculosis and other HIV-related opportunistic infections,

Recalling that access to medicine is one of the fundamental elements in achieving progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and that it is the responsibility of States to ensure access for all, without discrimination, to medicines, in particular essential medicines that are affordable, safe, effective and of good quality,

Reaffirming the right to use, to the fullest extent, the provisions contained in the World Trade Organization Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement), the Doha Declaration on the TRIPS Agreement and Public Health, the decision of the General Council of the World Trade Organization of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration and, when formal acceptance procedures are completed, the amendments to article 31 of the TRIPS Agreement, as proposed by the General Council of the World Trade Organization in its decision of 6 December 2005, which provide flexibilities for the protection of public health, and, in particular, to promote access to medicines for all, encouraging the provision of assistance to developing countries in this regard and calling for a broad and timely acceptance of the amendments to article 31 of the TRIPS Agreement,

Recalling the Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, adopted by the World Health Assembly on 24 May 2008,

Reaffirming the urgent need to scale up efforts significantly towards the goal of universal access to comprehensive HIV prevention, treatment, care and support,

Recalling World Health Assembly resolutions 62.12, on primary health care, including health system strengthening, and 62.14, on reducing health inequities through action on the social determinants of health, of 22 May 2009,

Expressing deep concern that HIV infection significantly increases the risk of maternal mortality and morbidity and that, in countries with high HIV prevalence, AIDS-related complications are one of the leading causes of maternal mortality,

Noting with concern that more than sixteen million children under the age of 18 have been orphaned by AIDS, and that about fourteen million eight hundred thousand of these children live in sub-Saharan Africa,

Concerned at the continuing high prevalence of HIV among key populations at higher risk, as defined in the 2011-2015 Strategy of the Joint United Nations Programme on HIV/AIDS, endnote 41 (hereinafter referred to as “key populations”), and the need to ensure their unimpeded access to HIV-related prevention, treatment, care and support;

Mindful of the importance of ensuring national, regional and international legal environments that ensure universal access to HIV-related prevention, treatment, care and support, including for key populations,

Concerned at the instances of multiple or aggravated forms of discrimination, stigma, violence and abuses that affect the enjoyment of human rights and often lead to particular targeting of people living with, presumed to be living with or affected by HIV/AIDS and members of key populations, as well as to increased vulnerability to HIV, and also recalling the importance that States adopt or strengthen programmes or measures to eradicate multiple or aggravated forms of discrimination, violence and abuse, in particular by adopting or improving penal or civil legislation to address these phenomena,

Reaffirming the importance of achieving Millennium Development Goal 6 (to combat HIV/AIDS, malaria and other diseases), and noting that poverty, inequality and food insecurity increase people's vulnerability to HIV, posing increased risks of infection to populations in every region while at the same time undermining the socio-economic conditions of people living with HIV or those affected by the epidemic,

Recalling that stigma and discrimination are major obstacles to an effective HIV response, that discrimination on the basis of HIV status, actual or presumed, is prohibited by existing international human rights standards, and that the term "or other status" in non-discrimination provisions in international human rights texts should be interpreted as covering health status, including HIV/AIDS,

Reaffirming that the full realization of human rights and fundamental freedoms for all is an essential element in the global response to the HIV/AIDS pandemic, including in the areas of prevention, care, support and treatment, and that such a response reduces people's vulnerability to HIV/AIDS and prevents stigma and related discrimination against people living with or at risk of HIV/AIDS,

Emphasizing, in view of the increasing challenges presented by HIV/AIDS, including apparent trends to enact criminal and other laws that are counterproductive to HIV prevention, treatment, care and support efforts and the ongoing application of HIV-specific restrictions on the entry, stay and residence of HIV-positive people, the need for intensified efforts to ensure universal respect for and observance of human rights and fundamental freedoms for all in order to reduce vulnerability to HIV, prevent HIV/AIDS-related discrimination and stigma and reduce the impact of AIDS,

Recalling Commission on the Status of Women resolutions 53/2 of 13 March 2009 and 54/2 of 12 March 2010,

Bearing in mind the vision of zero new infections, zero AIDS-related deaths and zero discrimination in the global HIV/AIDS response, referred to in the 2011-2015 Strategy of the Joint United Nations Programme on HIV/AIDS,

Recalling Commission on Narcotic Drugs resolutions 53/9, on achieving universal access to prevention, treatment, care and support for people who use drugs and people living with or affected by HIV, and 53/4, on promoting adequate availability of internationally controlled licit drugs for medical and scientific purposes while preventing their diversion and abuse, of 12 March 2010, and encouraging their implementation within the framework of national legislation,

Noting International Labour Organization Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200), adopted at the ninety-ninth International Labour Conference,

Noting also resolution 63.19 of 21 May 2010, entitled "WHO HIV/AIDS strategy for 2011-2015", of the World Health Assembly,

Reaffirming the outcome document of the High-level Plenary Meeting of the General Assembly, entitled "Keeping the promise: united to achieve the Millennium Development Goals", contained in General Assembly resolution 65/1 of 22 September 2010,

Recalling General Assembly resolutions 63/33 of 26 November 2008, 64/108 of 10 December and 65/95 of 9 December 2010, on global health and foreign policy,

Noting the establishment, in June 2010, of the Global Commission on HIV and the Law,

1. *Affirms* that the protection of human rights in the context of HIV/AIDS, including universal access to HIV-related prevention, treatment, care and support, is an essential element to achieve progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

2. *Takes note* of the report of the Secretary-General on the protection of human rights in the context of HIV/AIDS;¹

3. *Recalls* the 2011-2015 Strategy of the Joint United Nations Programme on HIV/AIDS, and encourages States to ensure its implementation, in accordance with their national contexts and priorities, in cooperation with relevant United Nations funds, programmes and specialized agencies and international and non-governmental organizations;

4. *Calls upon* all States and relevant United Nations funds, programmes and specialized agencies and international and non-governmental organizations to continue to take all steps necessary to ensure the respect, protection and fulfilment of human rights in the context of HIV/AIDS, as referred to in the Guidelines, as an essential part of efforts to achieve the goal of universal access to HIV prevention, treatment, care and support;

5. *Urges* States to ensure full and unimpeded access for all, particularly key populations, to HIV prevention, treatment, care and support, in a public health environment free from discrimination, harassment or persecution against those seeking HIV-related services;

6. *Calls upon* States, United Nations funds, programmes and specialized agencies and international and non-governmental organizations to assist developing countries, upon their request, in their efforts to prevent the spread of the epidemic and alleviate and control the detrimental impact of HIV/AIDS on the human rights of their people;

7. *Reiterates* the commitment to significantly intensify prevention efforts and increase access to treatment, in accordance with relevant national circumstances, by, inter alia, strengthening health systems, scaling up strategically aligned programmes aimed at reducing the risks and vulnerability of persons more likely to be infected with HIV, and combining biomedical, behavioural, social and structural interventions, and through the empowerment of women and adolescents so as to increase their capacity to protect themselves from the risk of HIV infection, and through the promotion and protection of all human rights;

8. *Also reiterates* that prevention programmes should be at the core of national, regional and international responses to the pandemic, and recalls the commitment to intensify efforts to ensure that a wide range of prevention programmes that are evidence-informed and take into account local circumstances, ethics and cultural values is available in all countries, especially most affected countries, and include information and education based on scientific evidence, and communication in languages most understood by local communities and in accessible formats for persons with disabilities, with the aim of:

(a) Reducing risk-taking behaviours and encouraging responsible sexual behaviour;

(b) Expanding access to essential commodities, including male and female condoms and sterile injecting equipment;

¹ A/HRC/16/69.

(c) Providing age-appropriate education on sexual and reproductive health, as well as human rights education to all persons, including children and young people;

(d) Considering harm-reduction programmes in relation to HIV as enumerated in the technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users, published by the World Health Organization, the United Nations Office on Drugs and Crime and the Joint United Nations Programme on HIV/AIDS, in accordance with relevant national circumstances;

(e) Expanding access to voluntary and confidential counselling and testing, and safe blood supplies;

(f) Promoting testing and ensuring early and effective treatment of sexually transmitted, co- and opportunistic infections;

(g) Promoting policies that ensure effective prevention and accelerate research and development into new tools for prevention, including microbicides and vaccines with proven efficacy, as well as universal access to them;

9. *Calls upon* all States, United Nations funds, programmes and specialized agencies, international and non-governmental organizations and relevant stakeholders to integrate HIV/AIDS services into comprehensive health-care services, and to facilitate the incorporation of migrants, refugees and internally displaced persons into national and regional HIV/AIDS strategies;

10. *Urges* all States to eliminate gender-based discrimination, stigma, violence and abuse to ensure that women can decide freely and responsibly on matters relating to their sexuality through, inter alia, the provision of health-care services, including sexual and reproductive health, information and education based on scientific evidence, and to integrate the promotion and protection of reproductive rights, as understood in previous international commitments, as components of national strategies on HIV/AIDS;

11. *Calls upon* States and United Nations funds, programmes and specialized agencies and international organizations, within their respective mandates, as well as non-governmental organizations, and relevant stakeholders, to ensure the availability, accessibility and affordability of medicines and health-care services for HIV-positive pregnant women, with a view to eliminating vertical transmission and securing the health of these women;

12. *Requests* States to develop further and, where necessary, to establish coordinated, participatory, gender-sensitive, transparent, evidence-informed and accountable national HIV/AIDS policies and programmes, and to implement them at all levels, including in prisons or other detention facilities, in cooperation with civil society, including faith- and community-based organizations, women's organizations, advocacy groups and representatives of people living with HIV and other key populations;

13. *Calls upon* States to address as a priority the vulnerabilities faced by children and adolescents affected by and living with HIV, providing those children and their families with support and rehabilitation, including social and psychological rehabilitation and care, including pediatric services and medicines, and intensifying efforts to develop early diagnosis tools, child-friendly medicine combinations and new treatments for children, particularly for infants living in resource-limited settings, and building, where needed, and supporting social security systems that protect them;

14. *Encourages* all States to consider eliminating HIV-specific restrictions on entry, stay and residence and ensure that people living with HIV are no longer excluded, detained or deported on the basis of their HIV status;

15. *Encourages* States, United Nations programmes and agencies and relevant stakeholders to ensure that HIV/AIDS programmes and services are inclusive of and accessible to persons with disabilities and consistent with their human rights;

16. *Urges* States to ensure confidentiality and informed consent in the provision of health care, in particular with regard to sexual and reproductive health, to persons living with or affected by HIV/AIDS, including children, according to their evolving capacities;

17. *Encourages* States, as appropriate, in the context of HIV prevention, treatment, care and support, to ensure education and training for health workers on non-discrimination, informed consent, confidentiality and the duty to provide treatment, and to ensure education and training for police and other law enforcement officials on non-discrimination and non-harassment, so as to allow outreach and other service activities;

18. *Encourages* States, United Nations funds, programmes and agencies, international and non-governmental organizations and relevant stakeholders to ensure the meaningful participation of people living with or affected by HIV/AIDS and key populations in both decision-making processes related to and implementation of policies and programmes on HIV/AIDS;

19. *Encourages* all States to apply measures and procedures to enforce intellectual property rights in a manner that avoids the creation of barriers to the legitimate trade of medicines, and to provide for safeguards against the abuse of such measures and procedures, taking into account, inter alia, the Doha Declaration on the Agreement on Trade-related Aspects of Intellectual Property Rights and Public Health;

20. *Urges* all States to consider taking steps towards the elimination of criminal and other laws that are counterproductive to HIV prevention, treatment, care and support efforts, including laws directly mandating disclosure of HIV status or that violate the human rights of people living with HIV and members of key populations, and also urges States to consider the enactment of laws protecting these persons from discrimination, abuse and violence in HIV prevention, treatment, care and support efforts;

21. *Invites* the human rights treaty bodies, when considering national reports, to give particular attention to the protection of human rights in the context of HIV/AIDS;

22. *Invites* all special procedures to contribute further to the analysis of the human rights dimensions of the HIV/AIDS epidemic;

23. *Encourages* all States to include information on human rights in the context of HIV/AIDS in their national reports to be submitted to the Council in the framework of the universal periodic review mechanism and in their reports submitted to treaty bodies;

24. *Encourages* the 2011 World Conference on Social Determinants of Health, organized by the World Health Organization, to address the issue of human rights as a central element in the context of HIV/AIDS;

25. *Requests* the Office of the United Nations High Commissioner for Human Rights to engage actively with the 2011 General Assembly High-level Meeting on AIDS, providing a human rights-based perspective, and to inform the Human Rights Council thereon;

26. *Decides* to hold a panel discussion at its nineteenth session, within existing resources, in consultation with all regional groups, to give voice to people living with or affected by HIV/AIDS, in particular young people, women and orphaned children, with a view to taking into account their experiences in reinforcing the centrality of human rights in the response to HIV/AIDS, in the context of the timely achievement of Millennium Development Goal 6 and in compliance with the Political Declaration on HIV/AIDS and the Declaration of Commitment on HIV/AIDS.

48th meeting
25 March 2011
[Adopted without a vote.]
