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HUMAN RIGHTS COUNCIL
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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Argentina, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Chile,
Colombia*, Guatemala*, Italy, Mexico, Mozambique*, Nicaragua, Norway, Panama*,
Paraguay*, Peru*, South Africa, Spain*, Uruguay, Venezuela (Bolivarian Republic of)*:
draft resolution**

**12/... Protection of human rights in the context of human immunodeficiency virus
(HIV) and acquired immunodeficiency syndrome (AIDS)**

The Human Rights Council,

Recalling Commission on Human Rights resolutions 2005/84, 2003/47, 2001/51 and 1999/49, 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 at its twenty-sixth special session on HIV/AIDS in 2001, which all affirm that the realization of human rights and fundamental freedoms for all is essential to reduce vulnerability to HIV and the impact of AIDS, as is the involvement of people living with HIV,

* Non-Member State of the Human Rights Council.

Recalling also Commission on Human Rights resolutions 2005/23, 2004/26 and 2003/29, and Council decision 2/107, and their acknowledgement that prevention and comprehensive care and support, including treatment and access to medication without discrimination, for those infected and affected by pandemics such as HIV/AIDS, tuberculosis and malaria are inseparable elements of an effective response and must be integrated into a comprehensive approach to respond to such pandemics,

Recalling further Commission on Human Rights resolutions 2005/24, 2004/27, 2003/28 and 2002/31, in which the Commission reaffirms the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and also recalling Council resolution 6/29 of 14 December 2007, in which the Council extended the mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

Taking note with interest of the reports by the United Nations special procedures that have devoted specific attention, in the context of their mandates, to the critical intersection between the protection of human rights and an effective response to the HIV/AIDS epidemic,

Noting with grave concern that, according to estimates by the Joint United Nations Programme on HIV/AIDS and the World Health Organization, at the end of 2007 the number of people living with HIV was 33 million, including 2.7 million people newly infected with HIV in 2007, and that a disproportionate number of them are presently in sub-Saharan Africa, and also deploring the 25 million lives lost to HIV/AIDS since the epidemic was identified,

Recalling the urgent need to scale up significantly towards the goal of universal access to comprehensive prevention programmes, treatment, care and support by 2010, affirmed by Governments in the Political Declaration on HIV/AIDS, and emphasizing the concern with the increasing instances of multiple or aggravated forms of discrimination, and reiterating that such discrimination affects the enjoyment of human rights and can lead to particular targeting of people living with HIV/AIDS and members of key populations affected by the epidemic, as well as 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, in particular by adopting or improving penal or civil legislation to address these phenomena,

Expressing appreciation for the important role played by the engagement of civil society in the response to the HIV/AIDS pandemic,

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

Welcoming also progress in expanding access to HIV treatment, particularly the 35 per cent increase in the number of people receiving antiretroviral therapy from 2007 to 2008, noting, however, that while nearly 3 million people in low- and middle-income countries were estimated to be receiving antiretroviral medicines as of the end of 2007, an estimated 9.7 million in need lacked access to such life-saving medicines, an estimated 1 million end-stage HIV/AIDS patients had no access to treatment for moderate to severe pain, and many people in need failed to receive treatment for tuberculosis and other HIV-related opportunistic infections,

Noting with particular concern that, also according to the Joint United Nations Programme on HIV/AIDS and the World Health Organization, women and girls are disproportionately affected by the epidemic in that they comprise an increasing proportion of the people infected, particularly in sub-Saharan Africa, where women account for 57 per cent of those infected, and young women aged from 15 to 24 years are three times more likely to be infected than young men of the same age,

Welcoming resolution 53/2 of 13 March 2009 of the Commission on the Status of Women and the recognition of the disproportionate impact of HIV and AIDS on women and girls and the need to increase significantly and coordinate political and financial commitment to address gender equality and equity in national HIV and AIDS responses, and recognizing the need to link the AIDS response more closely with the overall response to achieving the Millennium Development Goals, particularly those related to health, and underlining in this regard the interrelated nature of health- and gender-related Millennium Development Goals,

Emphasizing, in view of the increasing challenges presented by HIV, including apparent trends to criminalize beyond the crime of intentional HIV transmission, and the ongoing application of HIV-specific restrictions on the entry, stay 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,

Recognizing the need for the Joint United Nations Programme on HIV/AIDS to significantly expand and strengthen its work with national Governments and to work with all groups of civil society to address the gap in access to services for injecting drug users in all settings, including prisons, to develop comprehensive models of appropriate service delivery for injecting drug users, to tackle the issues of stigmatization and discrimination, and to support increased capacity and resources for the provision of a comprehensive package of services for injecting drug users, including harm-reduction programmes in relation to HIV, as elaborated by the World Health Organization, the United Nations Office on Drugs and Crime and the Joint United Nations Programme on HIV/AIDS in the Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users, in accordance with relevant national circumstances,

Recalling the International Guidelines on HIV/AIDS and human rights as referred to by the Secretary-General in his report on the Second International Consultation on HIV/AIDS and human rights (E/CN.4/1997/37, para. 12), including the summary of the revised Guideline 6: Access to prevention, treatment, care and support (2002), which provide guidance to ensuring the respect, protection and fulfilment of human rights in the context of HIV,

Welcoming the attention given to HIV-related human rights by all the human rights treaty bodies and taking note of general comment No. 3 on HIV/AIDS and the rights of the child, adopted by the Committee on the Rights of the Child at its thirty-second session,

Welcoming also the positive steps taken to implement previous resolutions, including the enactment of legislation in some countries to promote human rights in the context of HIV/AIDS and to prohibit discrimination against all persons infected or presumed to be infected, living with and affected by HIV/AIDS, and members of all populations vulnerable to and affected by the epidemic, but noting with concern that one third of countries still do not have laws protecting people living with HIV/AIDS from discrimination,

Welcoming further the significant role played by the Joint United Nations Programme on HIV/AIDS and its co-sponsor agencies in cooperation with relevant bodies of the United Nations system, including the Office of the United Nations High Commissioner for Human Rights, national and international non-governmental organizations, in particular organizations of people living with HIV/AIDS, in promoting and protecting human rights in the context of HIV/AIDS, including fighting discrimination against people living with HIV/AIDS and in the full range of prevention, treatment, care and support activities,

Recalling that HIV-related stigma and discrimination are major obstacles to an effective HIV response and that discrimination on the basis of HIV or AIDS 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,

Welcoming the report of the Secretary-General on the protection of human rights in the context of HIV and AIDS (A/HRC/10/47), in which the Secretary-General provides an overview of action taken by a number of Governments, specialized agencies and international and non-governmental organizations on the implementation of the International Guidelines on HIV/AIDS and Human Rights, as referred to by the Secretary-General in his report on the Second International Consultation on HIV/AIDS and human rights (E/CN.4/1997/37, para. 12), and which addresses issues of technical cooperation for the promotion and protection of human rights in the context of HIV,

1. *Calls upon* all States, United Nations programmes and specialized agencies, and international and non-governmental organizations to continue to take all necessary steps to ensure the respect, protection and fulfilment of human rights in the context of HIV/AIDS, as referred to in the International Guidelines on HIV/AIDS and Human Rights, as referred to in paragraph 12 of document E/CN.4/1997/37, as an essential part of efforts to achieve the goal of universal access to HIV prevention, treatment, care and support;

2. *Also calls* upon all States to implement in full the Declaration of Commitment on HIV/AIDS adopted by the General Assembly at its twenty-sixth special session on HIV/AIDS, in 2001, and the Political Declaration on HIV/AIDS, adopted by the Assembly 2006 High-level Meeting on AIDS;

3. *Invites* States, United Nations organs, programmes and specialized agencies and international and non-governmental organizations to assist developing countries, in particular least developed countries and those in Africa, 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 populations;

4. *Encourages* all countries to eliminate 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;

5. *Recalls* the commitment, as expressed by the General Assembly in its Political Declaration on HIV/AIDS on 2 June 2006, to intensifying efforts to ensure that a wide range of prevention programmes that take into account local circumstances, ethics and cultural values is available in all countries, particularly the most affected countries, including information, education and communication, in languages most understood by communities and respectful of cultures, aimed at reducing risk-taking behaviours and encouraging responsible sexual behaviour, including abstinence and fidelity, expanded access to essential commodities, including male and female condoms and sterile injecting equipment, harm-reduction efforts related to drug use, expanded access to voluntary and confidential counselling and testing, safe blood supplies, and early and effective treatment of sexually transmitted infections;

6. *Urges* all States to eliminate gender inequalities, gender-based abuse and violence, increase the capacity of women and girls, including those in prison or detention, to protect themselves from the risk of HIV transmission, principally through the provision of health care, and services, including sexual and reproductive health, and the provision of full access to comprehensive information and education, ensure that women can exercise their right to have control over and decide freely and responsibly on matters related to their sexuality in order to increase their ability to protect themselves from HIV transmission, including their sexual and

reproductive health, free of coercion, discrimination and violence, integrate the promotion and protection of reproductive rights, as understood in previous international commitments, such as the Programme of Action adopted by the International Conference on Population and Development in September 1994 and the Beijing Declaration and Programme of Action, adopted by the Fourth World Conference for Women in September 1995, as strong and robust components of their national strategies on HIV/AIDS; and take all necessary measures to improve legal access and protection for women and girls, and to create an enabling environment for the empowerment of women and strengthen their economic independence, and in this context, reiterate the importance of the role of men and boys in achieving gender equality;

7. *Requests* States to further develop and, where necessary, establish coordinated, participatory, gender-sensitive, transparent and accountable national policies and programmes for the HIV response, and to translate those national policies on the district level, in local action, in prisons or detentions, involving, in close cooperation with civil society and in all phases of development and implementation, non-governmental, faith- and community-based organizations, women's organizations, advocacy groups and representatives of people living with HIV and other key populations affected by the epidemic;

8. *Calls upon* States to address as a priority the vulnerabilities faced by children affected by and living with HIV, including those who find themselves trapped in armed conflicts; providing support and rehabilitation to these children and their families, women and older persons, particularly in their role as caregivers, promoting child-oriented HIV/AIDS policies and programmes, including the issue of pediatric HIV services and drugs, and increased protection for children orphaned and affected by HIV/AIDS, and intensifying efforts to develop new treatments for children, and building, where needed, and supporting the social security systems that protect them;

9. *Recalls* the obligations of the Convention on the Rights of Persons with Disabilities of 2006 to provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other people;

10. *Reaffirms* that the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization does not and should not prevent members from taking measures now and in the future to protect public health and, while reiterating its commitment to that Agreement, reaffirms that the Agreement can and should be interpreted and implemented in a manner supportive of the right to protect public health and, in particular, to promote access to medicines for all including the production of generic antiretroviral drugs and other essential drugs for AIDS-related infections;

11. *Recalls* the Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property of the World Health Assembly, and urges States, relevant international organizations and other relevant stakeholders to support actively its wide implementation, in particular in the context of HIV/AIDS and opportunistic infections;

12. *Encourages* all States to apply measures and procedures to enforce intellectual property rights in a manner that avoids the creation of barriers to legitimate trade of medicines, and to provide for safeguards against the abuse of such measures and procedures;

13. *Urges* all States to consider taking the steps necessary 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 affected by the epidemic, and also urges States to consider the enactment of laws protecting these persons from discrimination in HIV prevention, treatment, care and support efforts;

14. *Invites* the human rights treaty bodies, when considering reports submitted by States parties, to give particular attention to the protection of human rights in the context of HIV/AIDS, and invites States to include appropriate relevant information in the reports they submit to the relevant treaty bodies;

15. *Invites* all special procedures, in particular the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, within their existing mandates, to contribute to the analysis of the human rights dimensions of the HIV/AIDS epidemic, which particularly affects developing countries;

16. *Encourages* all States to include appropriate information on human rights in the context of HIV/AIDS in the national report to be submitted to the Council in the framework of the universal periodic review mechanism;

17. *Requests* the Secretary-General to prepare an analytical study based on comments from Governments, United Nations organs, programmes and specialized agencies, particularly the Joint United Nations Programme on HIV/AIDS and its co-sponsor agencies; in cooperation with relevant bodies of the United Nations system, including the Office of the High Commissioner, and international and non-governmental organizations, on the steps taken to promote and implement programmes to address HIV/AIDS-related human rights, as referred to in the International Guidelines on HIV/AIDS and Human Rights, as referred to by the Secretary-General in his report on the Second International Consultation on HIV/AIDS and human rights (E/CN.4/1997/37, para. 12), the Declaration of Commitment on HIV/AIDS of 2001, the Political Declaration on HIV/AIDS of 2006, and the present resolution, in the context of efforts towards the goal of universal access to HIV prevention, treatment, care and support, and to submit, in consultation with interested parties, a progress report to the Council for consideration at its sixteenth session.
