



# General Assembly

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## Human Rights Council

### Sixteenth session

Agenda item 3

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

**Argentina, Armenia\*, Bolivia (Plurinational State of)\*, Bosnia and Herzegovina\*,  
Brazil, Chile, Colombia\*, Congo\*, Costa Rica\*, Cuba, Guatemala, Honduras\*, Iceland\*,  
Liechtenstein\*, Mexico, Montenegro\*, Mozambique\*, Nicaragua\*, Peru\*, Serbia\*,  
Switzerland, Thailand, United States of America, Uruguay, Venezuela (Bolivarian  
Republic of)\*: draft resolution**

### **16/... 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 and the Declaration of Commitment on HIV/AIDS,

*Recalling also* the Guidelines on HIV/AIDS and Human Rights (hereinafter referred to as “the Guidelines”), 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,

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\* Non-Member State of the Human Rights Council.

*Noting with concern* that almost ten million 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 World Trade Organization's General Council 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 prevention programmes, 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;

*Concerned also* at the instances of multiple or aggravated forms of discrimination, stigma, violence and abuses, which affect the enjoyment of human rights and can 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, in particular by adopting or improving penal or civil legislation to address these phenomena,

*Reaffirming* the importance of achieving Millennium Development Goal 6 (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 HIV-related 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,

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

*Reaffirming* the vision of zero new infections, zero AIDS-related deaths and zero discrimination, enshrined 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 drug users 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,

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

*Noting with appreciation 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,

*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 essential to the full realization of the right of everyone to the highest attainable standard of physical and mental health;

2. *Welcomes* the report of the Secretary-General on the protection of human rights in the context of HIV/AIDS;<sup>1</sup>

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<sup>1</sup> A/HRC/16/69.

3. *Also welcomes* the adoption of the 2011-2015 Strategy of the Joint United Nations Programme on HIV/AIDS, and its vision of zero new infections, zero AIDS-related deaths and zero discrimination, and the goals set for 2015;

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 necessary steps 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-related prevention, treatment, care and support, from a public health perspective, in an 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 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 take into account local circumstances, ethics and cultural values and include information 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, including abstinence and fidelity;

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

(c) Providing comprehensive and 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 efforts relating to drug use within the HIV context;

(e) Expanding access to voluntary and confidential counselling and testing;

(f) Promoting testing and ensuring early and effective treatment of sexually transmitted 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 regional and national HIV/AIDS strategies, where applicable;

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

11. *Calls upon* States and, where applicable, United Nations funds, programmes and specialized agencies, international and 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;

12. *Requests* States to develop further and, where necessary, to establish coordinated, participatory, gender-sensitive, transparent and accountable national HIV/AIDS policies and programmes, and 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 care, including pediatric services and medicines, and intensifying efforts to develop early diagnosis tools, child-friendly medicine combinations and new treatments for children, particularly infants living in resource-limited settings, and building, where needed, and supporting the social security systems that protect them;

14. *Encourages* all States 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;

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 the decision-making processes and the implementation of policies and programmes on HIV/AIDS;

19. *Calls upon* 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, 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, abuses 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 Council thereon;

26. *Decides* to hold a panel discussion at its nineteenth session, within existing resources, with the support of the Joint United Nations Programme on HIV/AIDS, to give voice to people living with and affected by HIV/AIDS, including young people, with a view to taking into account their recommendations in reinforcing the centrality of human rights in the response to HIV/AIDS.

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