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**ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Afghanistan\*, Algeria, Argentina, Australia\*, Austria, Bangladesh\*, Belgium, Brazil, Burundi, Cameroon, Canada, China, Colombia\*, Croatia, Cuba, Dominican Republic, Egypt\*, El Salvador\*, Finland, Georgia\*, Germany, Greece\*, Guatemala, Iraq\*, Ireland, Luxembourg\*, Mauritius\*, Mexico, Monaco\*, Mozambique\*, Netherlands\*, Norway\*, Paraguay\*, Peru, Poland, Portugal, Sierra Leone, Slovenia\*, South Africa, Swaziland, Thailand, Turkey\*, Uganda, Uruguay, Viet Nam: draft resolution**

**2002/... Access to medication in the context of pandemics such as HIV/AIDS**

*The Commission on Human Rights,*

*Reaffirming* the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights,

*Reaffirming also* that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health is a human right,

*Recalling further* its resolutions 1999/49 of 27 April 1999, 2001/33 of 23 April 2001 and 2001/51 of 24 April 2001,

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\* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

*Bearing in mind* World Health Assembly resolutions WHA54.10 entitled “Scaling up the response to HIV/AIDS” and WHA54.11 entitled “WHO medicines strategy”, both of them adopted on 21 May 2001, as well as resolution concerning HIV/AIDS and the world of work adopted on 13 June 2000, by the International Labour Conference,

*Acknowledging* that prevention and comprehensive care and support, including treatment and access to medication for those infected and affected by pandemics such as HIV/AIDS, are inseparable elements of an effective response and must be integrated into a comprehensive approach to combat such pandemics,

*Recalling* the guidelines elaborated at the Second International Consultation on HIV/AIDS and Human Rights held in Geneva from 23 to 25 September 1996 (E/CN.4/1997/37, annex I), in particular guideline 6,

*Taking note of* General Comment No. 14 (2000) on the right to the highest attainable standard of health (art. 12 of the International Covenant on Economic, Social and Cultural Rights), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-second session in May 2000,

*Noting with great concern* that, according to the Joint United Nations Programme on HIV/AIDS, the HIV/AIDS pandemic claimed 3 million lives in 2001,

*Alarmed* that, according to the same source, about 40 million people were infected with the HIV virus by the end of 2001,

*Alarmed also* at the high levels of prevalence of other infectious diseases, such as tuberculosis and malaria, and acknowledging the significance of HIV/AIDS in the increase in tuberculosis and other opportunistic infections,

*Recognizing* the need to promote prevention and comprehensive care and support, including treatment and access to medication, for those affected by tuberculosis and malaria,

*Welcoming* the recent initiatives by the Secretary-General and relevant United Nations agencies to make HIV/AIDS-related drugs more accessible to developing countries and noting that much more can be done in this regard,

*Welcoming also* the Declaration of Commitment on HIV/AIDS “Global Crisis - Global Action” adopted by the General Assembly at its special session on HIV/AIDS held in June 2001,

*Welcoming further* the creation of the Global Fund to Fight AIDS, Tuberculosis and Malaria, the purpose of which is to attract, manage and disburse additional resources through a new public-private partnership that will make a sustainable and significant contribution to the reduction of infections, illness and death, by making grants for the prevention, treatment, care and support of the infected and directly affected,

*Recognizing* that the spread of HIV/AIDS can have a uniquely devastating impact on all sectors and levels of society and stressing that the HIV/AIDS pandemic, if unchecked, may pose a risk to stability and security, as stated in Security Council resolution 1308 (2000) of 17 July 2000,

*Emphasizing*, in view of the increasing challenges presented by pandemics such as HIV/AIDS, the need for intensified efforts to ensure universal respect for and observance of human rights and fundamental freedoms for all, including by reducing vulnerability to pandemics such as HIV/AIDS and by preventing related discrimination and stigma,

1. *Recognizes* that access to medication in the context of pandemics such as HIV/AIDS is one fundamental element for achieving progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

2. *Calls upon* States to pursue policies, in accordance with applicable international law, including international agreements acceded to, which would promote:

(a) The availability in sufficient quantities of pharmaceuticals and medical technologies used to treat pandemics such as HIV/AIDS or the most common opportunistic infections that accompany them;

(b) The accessibility to all without discrimination, including the most vulnerable sectors of the population, of such pharmaceuticals or medical technologies and their affordability for all, including socially disadvantaged groups;

(c) The assurance that pharmaceuticals or medical technologies used to treat pandemics such as HIV/AIDS or the most common opportunistic infections that accompany them, irrespective of their sources and countries of origin, are scientifically and medically appropriate and of good quality;

3. *Also calls upon* States, at the national level, on a non-discriminatory basis:

(a) To refrain from taking measures which would deny or limit equal access for all persons to preventive, curative or palliative pharmaceuticals or medical technologies used to treat pandemics such as HIV/AIDS or the most common opportunistic infections that accompany them;

(b) To adopt legislation or other measures, in accordance with applicable international law, including international agreements acceded to, to safeguard access to such preventive, curative or palliative pharmaceuticals or medical technologies from any limitations by third parties;

(c) To adopt all appropriate positive measures to the maximum of the resources allocated for this purpose, to promote effective access to such preventive, curative or palliative pharmaceuticals or medical technologies;

4. *Further calls upon* States, in furtherance of the Declaration of Commitment on HIV/AIDS adopted by the General Assembly at its special session in June 2001, to address factors affecting the provision of drugs related to the treatment of pandemics such as HIV/AIDS and the most common opportunistic infections that accompany them, as well as to develop integrated strategies to strengthen health care systems, including laboratory capacities and the training of health-care providers and technicians, in order to provide treatment and monitor the use of medications, diagnostics and related technologies;

5. *Calls upon* States to take all appropriate measures, nationally and through cooperation, to promote the development of new and more effective preventive, curative or palliative pharmaceuticals, in accordance with applicable international law, including international agreements acceded to;

6. *Also calls upon* States, at the international level, to take steps, individually and/or through international cooperation, in accordance with applicable international law, including international agreements acceded to, such as:

(a) To facilitate, wherever possible, access in other countries to essential preventive, curative or palliative pharmaceuticals or medical technologies used to treat pandemics such as HIV/AIDS or the most common opportunistic infections that accompany them, as well as to extend the necessary cooperation, wherever possible, especially in times of emergency;

(b) To ensure that their actions as members of international organizations take due account of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and that the application of international agreements is supportive of public health policies which promote broad access to safe, effective and affordable preventive, curative or palliative pharmaceuticals and medical technologies;

7. *Welcomes* the Declaration on the TRIPS Agreement and Public Health adopted at the Fourth World Trade Organization Ministerial Conference in November 2001, in which World Trade Organization members:

(a) Recognized the gravity of the public health problems afflicting many developing countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics;

(b) Stressed the need for the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) to be part of the wider national and international action to address these problems;

(c) Recognized that intellectual property protection is important for the development of new medicines and also recognized the concerns about its effects on prices;

(d) Agreed that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health; accordingly, while reiterating their commitment to the TRIPS Agreement, they affirmed that the Agreement can and should be interpreted and implemented in a manner supportive of World Trade Organization members' right to protect public health and, in particular, to promote access to medicines for all; in this connection, they reaffirmed the right of World Trade Organization members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose;

8. *Calls upon* the international community, the developed countries in particular, to continue to assist the developing countries in their fight against pandemics such as HIV/AIDS through financial and technical support, as well as through the training of personnel;

9. *Invites* the Committee on Economic, Social and Cultural Rights, when considering the human rights dimension of combating pandemics such as HIV/AIDS, to give attention to the issue of access to medication and invites States to include appropriate information thereon in the reports they submit to the Committee;

10. *Takes note with interest* of the report of the Secretary General on access to medication in the context of pandemics such as HIV/AIDS (E/CN.4/2002/52 and Add 1);

11. *Requests* the Secretary-General to solicit comments from Governments, United Nations organs, programmes and specialized agencies and international and non-governmental organizations on the steps they have taken to promote and implement, where applicable, the present resolution, as well as to report thereon to the Commission at its fifty-ninth session;

12. *Decides* to continue its consideration of this matter at its fifty-ninth session, under the same agenda item.

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