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COMMISSION ON HUMAN RIGHTS  
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**ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Argentina, Brazil, Bulgaria\*, Cuba, Dominican Republic,  
Ecuador\*, El Salvador\*, Honduras, Luxembourg\*, Paraguay,  
Portugal\*,  
South Africa, Venezuela\*: draft resolution**

**2004/... Access to medication in the context of pandemics  
such as HIV/AIDS, tuberculosis and malaria**

*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,

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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.

*Recalling* its resolutions 1999/49 of 27 April 1999, 2001/33 of 23 April 2001, 2001/51 of 24 April 2001, 2002/32 of 22 April 2002 and 2003/29 of 22 April 2003,

*Bearing in mind* World Health Assembly resolutions WHA55.12, entitled “Contribution of WHO to the follow-up of the United Nations General Assembly special session on HIV/AIDS”, and WHA55.14, entitled “Ensuring accessibility of essential medicines”, both adopted on 18 May 2002, and World Health Assembly resolutions WHA56.27, entitled “Intellectual property rights, innovation and public health” and WHA56.30, entitled “Global health-sector strategy for HIV/AIDS”, both adopted on 28 May 2003, as well as the *Code of Practice on HIV/AIDS and the World of Work*, adopted by the Governing Body of the International Labour Organization in May 2001,

*Taking note* of the establishment of the Commission on Intellectual Property Rights, Innovation and Public Health by the World Health Organization,

*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, tuberculosis and malaria are inseparable elements of an effective response and must be integrated into a comprehensive approach to respond to such pandemics,

*Recalling* general comment No. 14 (2000) on the right to the highest attainable standard of health (article 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,

*Taking note* of general comment No. 3 (2003) on HIV/AIDS and the rights of the child, adopted by the Committee on the Rights of the Child at its thirty-second session,

*Noting with great concern* that, according to the Joint United Nations Programme on HIV/AIDS (UNAIDS), the HIV/AIDS pandemic claimed an estimated 3 million lives in 2003,

*Alarmed* that, according to the same source, about 40 million people were living with HIV by the end of 2003 and that an estimated 5 million people were newly infected with HIV in 2003,

*Also alarmed* that, according to information provided jointly by UNAIDS, the United Nations Children's Fund and the United States Agency for International Development in July 2002, 25 million children under the age of 15 are projected to lose one or both parents owing to HIV/AIDS by 2010, 20 million of whom will reside in Africa,

*Taking note* of General Assembly resolution 58/237, entitled "2001-2010: Decade to Roll Back Malaria in Developing Countries, particularly in Africa", adopted on 23 December 2003,

*Alarmed* that, according to the global Roll Back Malaria partnership, malaria annually causes more than 1 million deaths, around 90 per cent of which are in Africa, that malaria is the leading cause of death in young children and that it causes at least 300 million cases of acute illness each year,

*Alarmed also* that, according to the World Health Organization report of 2004 entitled *Global Tuberculosis Control*, tuberculosis kills about 2 million people each year, more than 8 million people around the world become sick with tuberculosis each year and it is projected that between 2002 and 2020, 36 million people will die of tuberculosis if control is not further strengthened,

*Acknowledging* the significance of HIV/AIDS in the increase in tuberculosis and other opportunistic infections,

*Alarmed* that, according to the World Health Organization, one third of the world's population still lacks access to essential medicines and that in the poorest parts of Africa and Asia, over half of the population lacks access to even the most basic essential drugs,

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

*Recalling* the Declaration on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and Public Health adopted at the Fourth World Trade Organization Ministerial Conference in Doha in November 2001,

*Welcoming* the decision on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health, adopted by the General Council of the World Trade Organization on 30 August 2003, to enable countries with insufficient or no manufacturing capacities in the pharmaceutical sector, in particular those afflicted by public health problems resulting especially from HIV/AIDS, tuberculosis, malaria and other epidemics, to make effective use of compulsory licensing under the TRIPS Agreement,

*Recognizing* the existing efforts and the desirability of further promoting the transfer of technology and capacity-building in the pharmaceutical sector to countries with insufficient or no manufacturing capacities in the pharmaceutical sector, in accordance with applicable international law, including international agreements acceded to,

*Stressing* the importance of fully implementing the Declaration of Commitment on HIV/AIDS, "Global Crisis - Global Action", adopted by the General Assembly in its resolution S-26/2 of 27 June 2001 at its special session on HIV/AIDS, and taking note of the report of the Secretary-General on progress towards implementation of the Declaration of Commitment on HIV/AIDS (A/58/184),

*Expressing its support* for the work of the Global Fund to Fight AIDS, Tuberculosis and Malaria and of other international bodies combating such pandemics, and encouraging the Global Fund to further develop effective and appropriate processes for the disbursement of funds,

*Welcoming* the goal by the World Health Organization and the Joint United Nations Programme on HIV/AIDS which aims to support developing countries in securing access to antiretroviral treatment for 3 million people living with HIV/AIDS by 2005, and noting the importance of mobilizing financial contributions from States and other donors,

*Taking note* of the World Health Organization's initiatives to make safe, effective and affordable medicines and diagnostics of good quality more easily accessible to developing countries and countries with economies in transition,

*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, tuberculosis and malaria, 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, tuberculosis and malaria and by preventing related discrimination and stigma,

1. *Recognizes* that access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria 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 consider taking into account 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), as well as the revision of guideline 6 at the Third International Consultation, held on 25 and 26 July 2002;

3. *Also calls upon* States to develop and implement national strategies, in accordance with applicable international law, including international agreements acceded to, in order progressively to realize access for all to prevention-related goods, services and information as well as access to comprehensive treatment, care and support for all individuals infected and affected by pandemics such as HIV/AIDS, tuberculosis and malaria;

4. *Further calls upon* States to establish or strengthen national health and social infrastructures and health-care systems, with the assistance of the international community as necessary, for the effective delivery of prevention, treatment, care and support to respond to pandemics such as HIV/AIDS, tuberculosis and malaria;

5. *Affirms* the importance of public health interests in both pharmaceutical and health policies;

6. *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 pharmaceutical products and medical technologies used to treat pandemics such as HIV/AIDS, tuberculosis and malaria or the most common opportunistic infections that accompany them;

(b) The accessibility and affordability for all without discrimination, including the most vulnerable or socially disadvantaged groups of the population, of pharmaceutical products or medical technologies used to treat pandemics such as HIV/AIDS, tuberculosis, malaria or the most common opportunistic infections that accompany them;

(c) The assurance that pharmaceutical products or medical technologies used to treat pandemics such as HIV/AIDS, tuberculosis, malaria 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;

7. *Calls upon* States, at the national level, on a non-discriminatory basis, in accordance with applicable international law, including international agreements acceded to:

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

(b) To adopt and implement legislation or other measures, in accordance with applicable international law, including international agreements acceded to, to safeguard access to such preventive, curative or palliative pharmaceutical products 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 pharmaceutical products or medical technologies;

8. *Also calls upon* States, in furtherance of the Declaration of Commitment on HIV/AIDS, 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 voluntary counselling and testing, 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;

9. *Further calls upon* States to take all appropriate measures, nationally and through cooperation, to promote research and development of new and more effective preventive, curative or palliative pharmaceutical products and diagnostic tools, in accordance with applicable international law, including international agreements acceded to;

10. *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 pharmaceutical products or medical technologies used to treat pandemics such as HIV/AIDS, tuberculosis and malaria 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 pharmaceutical products and medical technologies;

11. *Urges* States to consider, whenever necessary, adapting national legislation in order to use to the full the flexibilities contained in the TRIPS Agreement;

12. *Welcomes* the financial contributions made to date to the Global Fund to Fight AIDS, Tuberculosis and Malaria, urges that further contributions be made by States and other donors, and also calls upon all States to encourage the private sector to contribute to the Fund as a matter of urgency;

13. *Calls upon* all States and other donors to cooperate in supporting the “3 by 5” Initiative launched jointly by the World Health Organization and UNAIDS with the aim of providing antiretroviral therapy to 3 million people in the developing world by 2005;

14. *Calls upon* UNAIDS to mobilize further resources to combat the HIV/AIDS pandemic and upon all Governments to take measures to ensure that the necessary resources are made available to UNAIDS, in line with the Declaration of Commitment on HIV/AIDS;



15. *Calls upon* States to ensure that those at risk of contracting malaria, in particular pregnant women and children under 5 years of age, benefit from the most suitable combination of personal and community protective measures, such as insecticide-treated bed nets and other interventions that are accessible and affordable, to prevent infection and suffering;

16. *Also calls upon* States to provide the necessary support for the World Health Organization “Roll Back Malaria” and “Stop TB” partnerships in ongoing measures to combat malaria and tuberculosis;

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

18. *Invites* the Committee on Economic, Social and Cultural Rights also to give attention to the issue of access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria and invites States to include appropriate information thereon in the reports they submit to the Committee;

19. *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.4/2004/39);

20. *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 sixty-first session;

21. *Decides* to continue its consideration of this matter at its sixty-first session, under the same agenda item.

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