



# General Assembly

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## Human Rights Council

### Fifteenth session

Agenda item 3

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

**Austria<sup>\*</sup>, Bolivia (Plurinational State of)<sup>\*</sup>, Bosnia and Herzegovina<sup>\*</sup>, Brazil, Chile, Colombia<sup>\*</sup>, Costa Rica<sup>\*</sup>, Croatia<sup>\*</sup>, Cuba, Germany<sup>\*</sup>, Greece<sup>\*</sup>, Guatemala, Haiti<sup>\*</sup>, Hungary, India<sup>\*</sup>, Kazakhstan<sup>\*</sup>, Kenya<sup>\*</sup>, Luxembourg<sup>\*</sup>, Malta<sup>\*</sup>, Mexico, Norway, Panama<sup>\*</sup>, Paraguay<sup>\*</sup>, Peru<sup>\*</sup>, Portugal<sup>\*</sup>, Senegal, Serbia<sup>\*</sup>, South Africa<sup>\*</sup>, Spain, Sudan<sup>\*</sup>, Switzerland, Thailand, the former Yugoslav Republic of Macedonia<sup>\*</sup>, Tunisia<sup>\*</sup>, Uganda: draft resolution**

### 15/... Right of everyone to the enjoyment of the highest attainable standard of physical and mental health

*The Human Rights Council,*

*Reaffirming* the Universal Declaration of Human Rights, and recalling the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities,

*Reaffirming also* that the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health is a human right as reflected, inter alia, in article 25, paragraph 1, of the Universal Declaration of Human Rights, article 12 of the International Covenant on Economic, Social and Cultural Rights, and article 24 of the Convention on the Rights of the Child, as well as, with respect to non-discrimination, in article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 12, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women and article 25 of the Convention on the Rights of Persons with Disabilities, and that such a right derives from the inherent dignity of the human person,

*Recalling* its resolutions , 6/29 of 14 December 2007, 8/13 of 18 June 2008 10/24 of 27 March 2009, 11/8 of 17 June 2009, 12/7 of 1 October 2009 and 12/24 and 12/27 of 2 October 2009, its decisions 2/107 and 2/108 of 27 November 2006, and all resolutions on

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<sup>\*</sup> Non-Member State of the Human Rights Council.

the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health adopted by the General Assembly and the Commission on Human Rights,

*Recalling also* the declarations and programmes of action adopted by the major United Nations conferences and summits and their follow-up meetings,

*Recalling further* the Declaration on the Right to Development, which, inter alia, establishes that States should take, at the national level, all measures necessary for the realization of the right to development and should ensure, inter alia, equality of opportunity for all in their access to basic resources, such as health services,

*Taking note with interest* of general comment No. 14 of the Committee on Economic, Social and Cultural Rights, general comment No. 3 of the Committee on the Rights of the Child and general recommendation No. 24 of the Committee on the Elimination of Discrimination against Women,

*Concerned* that, for millions of people throughout the world, the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including through access to medicines that are safe, effective, affordable and of good quality, in particular essential medicines, vaccines and other medical products, and to health-care facilities and services, still remains a distant goal and that, in many cases, especially for those living in poverty, this goal remains remote,

*Concerned also* that the increasing incidence of non-communicable diseases constitutes a heavy burden on society, with serious social and economic consequences, and aware that there is a need to respond to cardiovascular diseases, cancers, diabetes and chronic respiratory diseases, which represent a leading threat to human health and development,

*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,

*Recalling also* the creation, under the aegis of International Action against Hunger and Poverty, of the International Drug Purchase Facility, UNITAID, which facilitates access to drugs for the world's poorest people as part of the fight against the major pandemic diseases, such as HIV/AIDS, malaria and tuberculosis,

*Recalling further* Commission on Narcotic Drugs resolution 53/4 of 12 March 2010 entitled "Promoting adequate availability of internationally controlled licit drugs for medical and scientific purposes while preventing their diversion and abuse",

*Recalling* World Health Assembly resolution WHA63.1 of 19 May 2010 entitled "Pandemic influenza preparedness: sharing of influenza viruses and access to vaccines and other benefits", which recognizes the need to implement a fair and transparent, equitable, efficient and effective system for the sharing of the H5N1 and other influenza viruses with human pandemic potential and access to vaccines and other benefits on an equal footing,

*Concerned* about the lack of health workers and their imbalanced distribution within countries and throughout the world, in particular the shortage in sub-Saharan Africa, which undermines the health systems of developing countries,

*Recalling* World Health Assembly resolution WHA58.33 of 25 May 2005 entitled "Sustainable health financing, universal coverage and social health insurance", which, inter alia, urges States to ensure that individuals do not face catastrophic health-care expenditure and impoverishment as a result of seeking care,

*Reaffirming* that access to safe and clean water for personal and domestic use, as well as sanitation and nutrition, have a fundamental impact on the realization of the right of everyone to the enjoyment of the highest attainable standard of health,

*Recognizing* the need for States, in cooperation with international organizations and civil society, including non-governmental organizations and the private sector, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of the right of everyone to the highest attainable standard of physical and mental health,

*Concerned* about the interrelation between poverty and the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in particular the fact that ill-health can be both a cause and a consequence of poverty,

*Recalling* the commitments made by the international community to implement fully the health-related Millennium Development Goals,

*Stressing* that gender equality and the empowerment of women and girls are fundamental elements for their health, including sexual and reproductive health, and in the reduction of their vulnerability to HIV/AIDS and that the advancement of women and girls is a key factor in attaining the health-related Millennium Development Goals, in particular the improvement of maternal health and the reversal of the HIV/AIDS pandemic, and noting the importance of increasing investments in and accelerating research on the development of effective HIV-prevention methods, including female-controlled methods and microbicides,

*Recalling* that health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity,

*Recalling also* its resolutions 5/1 on institution-building of the United Nations Council and 5/2 on the - code of conduct for special procedures mandate holders of the Council, of 18 June 2007, and stressing that the mandate holder shall discharge his or her duties in accordance with those resolutions and the annexes thereto,

1. *Decides* to extend the mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as established in paragraph 1 of resolution 6/29, for a further period of three years;

2. *Encourages* the Special Rapporteur, in fulfilling his mandate:

(a) To continue to explore how efforts to realize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health can reinforce poverty reduction strategies;

(b) To continue the analysis of the human rights dimensions of the issues of neglected diseases and diseases particularly affecting developing countries, and also the national and international dimensions of those issues;

(c) To continue to pay particular attention to the identification of good practices for the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, without discrimination;

(d) To continue to apply a gender perspective in his work and to pay special attention to the issue of maternal mortality and morbidity and to the needs of children and vulnerable and marginalized groups in the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

(e) To continue to pay due attention to the rights of persons with disabilities in the context of the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

(f) To continue to pay attention to sexual and reproductive health as an integral element of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

(g) To continue to avoid in his work any duplication or overlapping with the work, competence and mandate of other international bodies active in health issues;

(h) To continue to submit proposals which could contribute to the realization of the health-related Millennium Development Goals;

(i) To take into account the relevant provisions of the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference in the context of the enjoyment of the highest attainable standard of physical and mental health;

(j) To continue to explore the issue of strengthening health systems as a contribution to the realization of the right of everyone to the highest attainable standard of physical and mental health;

(k) To pay special attention to equitable and universal access to health services, including the principle of solidarity between the sick and the healthy;

(l) To continue to address the issue of access to medicines that are safe, effective, affordable and of good quality, taking note of the Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines;

(m) To continue to contribute, within the existing mandate, to the analysis of the human rights dimensions of the HIV/AIDS epidemic, which particularly affects developing countries, including the enjoyment of the right to the highest attainable standard of health by members of all populations vulnerable to and affected by the epidemic;

(n) To conduct country visits and to respond promptly to invitations from States.

3. *Takes note with appreciation* of the work being carried out by the Special Rapporteur in the discharge of his mandate, and in that regard acknowledges the most recent reports of the Special Rapporteur;

4. *Calls upon* all States:

(a) To give due consideration to the recommendations of the Special Rapporteur;

(b) To guarantee that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health will be promoted and protected without discrimination of any kind;

(c) To ensure that relevant legislation, regulations and national and international policies take due account of the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

(d) To take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources, with a view to achieving progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

(e) To consider ratifying the Framework Convention on Tobacco Control adopted at the fifty-sixth World Health Assembly;

(f) To pay special attention to the situation of the poor and other vulnerable and marginalized groups, including by the adoption of positive measures, in order to safeguard the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

- (g) To take it into account World Health Assembly resolution 61.17 on the health of migrants;
- (h) To place a gender perspective at the centre of all provisions affecting the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- (i) To protect and promote sexual and reproductive health as integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- (j) To take into account the rights of the child and to ensure the timely achievement of Millennium Development Goal 4;
- (k) To take into account the fact that access to medicine is a 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;
- (l) To pay due attention to the rights of persons with disabilities in the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including by ensuring equal access for persons with disabilities to the same range, quality and standard of free or affordable health care and programmes as are provided to other persons, and by providing health services specifically needed by persons with disabilities because of their disabilities, including community-based habilitation and rehabilitation services;
- (m) To cooperate fully with the Special Rapporteur in the implementation of his mandate, to provide all information requested and to respond promptly to his communications;
- (n) To give serious consideration to the requests for visits of the Special Rapporteur, so that he may carry out his mandate even more effectively;
- (o) To safeguard informed consent within the health counseling, testing and treatment continuum, including in clinical practice, public health and medical research, as a critical element of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including by training health workers and by ensuring protection against abuse, particularly with regard to individuals belonging to vulnerable groups;
- (p) To apply measures and procedures for enforcing intellectual property rights in such a manner as to avoid creating barriers to the legitimate trade in medicines and to provide for safeguards against the abuse of such measures and procedures;
- (q) To consider taking the steps necessary for 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 to consider the enactment of laws protecting these persons from discrimination in HIV prevention, treatment, care and support efforts;
- (r) To promote human rights education and training for health professionals, as appropriate;

5. *Recognizes* that the Doha Ministerial Declaration on the Agreement on Trade-related Aspects of Intellectual Property Rights and Public Health confirms that the Agreement does not and should not prevent States members of the World Trade Organization from taking measures to protect public health and that the Declaration, while reiterating the commitment to the Agreement, affirms that it can and should be interpreted

and implemented in a manner supportive of the rights of States members of the World Trade Organization to protect public health and, in particular, to promote access to medicines for all; and further recognizes, in this connection, the right of States members of the World Trade Organization to use, to the fullest extent, the provisions of the above-mentioned Agreement, which provide flexibility for this purpose;

6. *Also recognizes* the indispensable role that health professionals play in the promotion and protection of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and welcomes the adoption at the sixty-third World Health Assembly of the Code of Practice for the International Recruitment of Health Workers;

7. *Welcomes* the creation of the Medicines Patent Pool Foundation by UNITAID, with a view to improving access to appropriate, affordable antiretrovirals in developing countries;

8. *Also welcomes* the Recommendation concerning HIV and AIDS and the world of work, 2010 adopted by the International Labour Conference at its ninety-ninth session;

9. *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 actively support its broad implementation;

10. *Calls upon* the international community to continue to assist developing countries in promoting the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including through financial and technical support and training of personnel, while recognizing that the primary responsibility for promoting and protecting all human rights rests with States;

11. *Invites* all international organizations with mandates having a bearing on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to take into account the national and international obligations of their members related to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

12. *Requests* the Special Rapporteur, with the assistance of the Office of the United Nations High Commissioner for Human Rights, in consultation with States, relevant United Nations agencies, national human rights institutions and other relevant stakeholders, to prepare, within existing resources, a thematic study on the realization of the right to health of older persons, including the main existing challenges and best practices;

13. *Decides* to address the thematic study requested in paragraph 12 above, within existing resources, at a panel discussion within the programme of work of its eighteenth session, and to consider taking further possible action on the issue, and invites the Office of the High Commissioner, the World Health Organization, members of the Advisory Committee and other relevant United Nations bodies and agencies, to participate in an interactive dialogue on the study in the Council;

14. *Requests* the United Nations High Commissioner for Human Rights to continue to provide all the necessary resources for the effective fulfilment of the mandate of the Special Rapporteur;

15. *Decides* to continue consideration of this matter under the same agenda item, in accordance with its programme of work.