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

## **The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS)**

### **Report of the United Nations High Commissioner for Human Rights**

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 16/28, in which the Council requested the Office of the United Nations High Commissioner for Human Rights to engage actively with the 2011 High-Level Meeting on AIDS of the General Assembly, by providing a human rights-based perspective, and to inform the Human Rights Council thereon. This report provides (a) an overview of the context and objectives of the Political Declaration on HIV and AIDS adopted at the High-Level Meeting on AIDS, including information on the role that the Office of the United Nations High Commissioner played in advocating for a human rights-based perspective; and (b) an analysis of the 2011 Political Declaration on HIV and AIDS from a human rights perspective.

The report highlights that the 2011 Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV/AIDS, represents an important opportunity to chart a new course for the global AIDS response and advance human rights by addressing discrimination associated with HIV-related stigma, vulnerability and risk behaviours.

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## **I. Introduction**

1. The Human Rights Council, in its resolution 16/28 on the protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS), emphasized the significance of the 2011 comprehensive review of progress achieved in realizing the 2001 Declaration of Commitment on HIV/AIDS and the 2006 Political Declaration on HIV/AIDS. The 2011 comprehensive review was requested by the General Assembly in its resolution 65/180 of 20 December 2010. In the fourth preambular paragraph of the resolution, the General Assembly noted that a comprehensive review was apposite to mark three decades of the HIV/AIDS pandemic, 10 years since the adoption of the 2001 Declaration of Commitment on HIV/AIDS and its time-bound measurable goals and targets, and five years since the adoption of the 2006 Political Declaration on HIV/AIDS with the goal of achieving universal access to comprehensive HIV prevention, treatment, care and support by 2010. In its resolution 16/28, the Human Rights Council requested 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 Human Rights Council thereon. The present report is submitted pursuant to that request.

2. The present report includes background information on the context and objectives of the 2011 Political Declaration on HIV and AIDS adopted at the General Assembly High-Level Meeting on AIDS in its resolution 65/277; a summary of the human rights challenges prior to the adoption of the Political Declaration; information on the role that the Office of the United Nations High Commissioner for Human Rights played in advocating for a human rights-based perspective; and an analysis of the 2011 Political Declaration from a human rights perspective.

## **II. Thirty years of AIDS: context and objectives of the 2011 Political Declaration on HIV and AIDS**

### **A. Rationale for a new declaration on HIV and AIDS**

3. The Declaration of Commitment on HIV/AIDS, adopted unanimously by the General Assembly at its twenty-sixth special session in its resolution S-26/2, emphasized that the realization of human rights and fundamental freedoms for all is essential to reduce vulnerability to HIV/AIDS. The Declaration highlighted the central importance of addressing stigma and related discrimination against people living with and at risk of HIV. Noting the disproportionate risk of HIV faced by women, the Declaration committed Member States to developing and implementing national strategies that promote the advancement of women and women's full enjoyment of human rights. The 2006 Political Declaration on HIV/AIDS, adopted by the General Assembly in its resolution 60/262, committed States to intensify efforts to enact, strengthen or enforce legislation, regulations and other measures to eliminate all forms of discrimination against and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV and members of vulnerable groups. It also included a commitment to the full and active participation of people living with HIV and vulnerable groups in HIV responses, as well as to achieving the goal of universal access to HIV prevention programmes, treatment, care and support by 2010.

4. Together these landmark declarations have galvanized global support for reversing the spread of the epidemic and accelerating momentum in providing universal access to

HIV prevention, treatment, care and support. In line with this growing momentum, in March 2011, the General Assembly decided to convene a high-level meeting from 8 to 10 June 2011 to undertake a comprehensive review of progress achieved in previous declarations, including successes, best practices, lessons learned, obstacles and gaps, challenges and opportunities, and to make recommendations to guide and monitor the HIV/AIDS response beyond 2010. The General Assembly decided in its resolution 65/180 that this review should also include concrete strategies for action, as well as promote the continued commitment and engagement of leaders in a comprehensive global response to HIV/AIDS. During its sixty-fifth session in its resolution 65/277, the General Assembly adopted a new declaration entitled Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV/AIDS. This 2011 Political Declaration was adopted when important progress had been achieved at national, regional and international levels – namely, more than 25 per cent reduction in the rate of new infections in over 30 countries, significant reduction in vertical transmission, and expansion of access to treatment to over 6 million people resulting in the reduction of AIDS-related deaths by more than 20 per cent over a five year period. However, in recognition of the fact that the goals and targets in previous declarations adopted in 2001 and 2006 would expire at the end of 2010, and in the light of the urgent need to renew commitments to the fight against AIDS, an intensified response was considered necessary (see General Assembly resolution 65/180). It was also recognized that HIV continues to constitute a global emergency that poses formidable challenges to development, progress and stability and requires an exceptional and comprehensive global response. The meeting was held at a time when HIV was entering into its fourth decade, AIDS had claimed more than 30 million lives, 33 million people were living with HIV, almost 17 million children were orphaned due to AIDS, 7,000 new infections were occurring daily, and AIDS was the sixth leading cause of death globally.<sup>1</sup>

5. The new 2011 Political Declaration reaffirms the 2001 Declaration of Commitment and the 2006 Political Declaration and the urgent need to scale up the goal of universal access to comprehensive prevention programmes, treatment, care and support. It also commits to new targets and goals, some of which are time-bound, in order to end the epidemic with renewed political will. Like previous declarations, the 2011 Political Declaration reaffirms that the full realization of all human rights and fundamental freedoms for all is an essential element in the global response to HIV. It recognizes that addressing stigma and discrimination is a critical element in the global response to HIV and also recognizes the need to strengthen national policies and legislation in that regard. It also contains a chapter on human rights that seeks to address important human rights-related concerns pertinent to the HIV response. That chapter, together with other references to human rights in the declaration, calls on Member States to tackle stigma and discrimination in its multiple forms and address the drivers of vulnerability and risk behaviours associated with HIV, as well as the human rights violations against people living with, presumed to be living with, and/or affected by HIV.

## **B. Human rights challenges**

6. Prior to the 2011 High-Level Meeting on HIV/AIDS, the Secretary-General was requested to submit an analytical report on progress achieved and challenges remaining in realizing the commitments set out in the Declaration of Commitment and the 2006 Political Declaration, which was entitled “Uniting for universal access: towards zero new HIV

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<sup>1</sup> See Joint United Nations Programme on HIV/AIDS (UNAIDS), *UNAIDS Report on the Global AIDS Epidemic* (2010) and World Health Organization (WHO) “The top 10 causes of death”, fact sheet No. 310 (2011).

infections, zero discrimination and zero AIDS-related deaths” (A/65/797). In its resolution 12/27, the Human Rights Council also requested the Secretary-General to prepare an analytical study on steps taken to promote and implement programmes to address HIV/AIDS-related human rights in the context of efforts towards the goal of universal access to HIV prevention, treatment, care and support, which was entitled “The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS)” (A/HRC/16/69). Both reports point to successes in strengthening human rights in the context of national HIV responses, but also highlight a number of ongoing challenges and contain a number of recommendations and observations including the following:

(a) **Inadequate protection against discrimination:** Although the number of countries reporting anti-discrimination laws in place has increased, nearly 3 in 10 countries still lack such laws or regulations. When anti-discrimination provisions are in place, they are often not effectively enforced. Fewer than 60 per cent of countries report having a mechanism to record, document and address cases of HIV-related discrimination. In 2010, the vast majority of countries reported that they addressed stigma and discrimination in their national HIV strategies; however, most countries did not have a budget for activities aimed at responding to HIV-related stigma and discrimination;<sup>2</sup>

(b) **Strategic reorientation of global and national HIV responses:** Human rights-related programmes often do not exist in national HIV responses. Where such programmes exist, they are generally not brought to scale or are scattered and fragmented. A strategic shift is required to: (i) invest in better assessments of those most vulnerable to HIV and ensure adequate coverage of their needs; (ii) ensure meaningful engagement of ministries dealing with justice, law enforcement, prisons, human rights, gender, migration and labour, among others; and (iii) focus on the legal and social environments that are necessary for universal access to prevention, treatment, care and support;

(c) **Decriminalization and legal protections:** The reform of punitive laws that impede HIV responses and the strengthening of human rights protections for people living with and vulnerable populations are essential to sustaining the AIDS response. Political leaders should be supported in confronting issues involving decriminalization. Greater efforts must be made by States to reconsider the application of criminal law against HIV transmission and exposure, sex work, drug use and homosexuality and their impact on access to HIV services. They should also reform laws that restrict sexuality education, impose travel restrictions on people living with HIV or require mandatory HIV testing. Specific attention must be paid in law reform efforts to address gender-based violence, the HIV-related rights of women, children and other key populations;

(d) **Increasing participation of those vulnerable to and living with HIV:** The Greater Involvement of People Living with HIV is a long-standing principle of the HIV response and one of its human rights successes. However, as evidence shows heightened vulnerability to HIV among members of key populations it appears critical to renew, expand and improve the participation of all those vulnerable to and living with HIV in all aspects of the response.

(e) **Eliminating gender-based discrimination and violence:** Many gender analyses show how subordination of women and girls and violence against them drive HIV transmission and raise gender-based barriers to care, treatment and support. The

<sup>2</sup> UNAIDS/UNDP/Global Fund to Fight AIDS, Tuberculosis and Malaria, *Analysis of Key Human Rights Programmes in Global Fund-supported HIV Programmes* (New York, 2011)

mobilization of Government, civil society and donors is needed to scale up programmes that address this issue and violence is a priority;

(f) **Financing national programmes:** The mobilization of both Governments and donors to invest financial and technical resources in human rights-centred programmes is urgently needed, as are resources for transparent and independent evaluation of measures taken. More resources are needed for appropriate and comprehensive HIV education for children. Health-service professionals should be equipped to protect confidentiality, ensure informed consent and have functioning mechanisms for redress when people face abuse and discrimination;

(g) **Universal access to prevention, treatment, care and support:** With nearly two in three people eligible for antiretroviral therapy still lacking access,<sup>3</sup> Member States will have to adopt reinvigorated approaches to the treatment, care and support needs of people living with HIV. This includes a recommitment to overcoming legal and regulatory, trade and other barriers that block access to prevention, treatment, care and support.

### C. **Role of the Office of the United Nations High Commissioner for Human Rights**

7. The High-Level Meeting comprised General Assembly plenary meetings and five thematic panel discussions. In addition, numerous side events took place and the President of the General Assembly presided over an informal civil society hearing held to bring civil society perspectives to the attention of the High-Level Meeting and to include civil society contribution in the negotiation of the new declaration. In accordance with Human Rights Council resolution 16/28 and General Assembly resolution 65/180, the Office of the United Nations High Commissioner for Human Rights participated in the High-Level Meeting on AIDS and supported the preparatory processes leading to the meeting, in collaboration with United Nations programmes, funds and specialized agencies. Activities included the issuance of an information note and communication materials to draw attention to the importance of maintaining human rights goals and targets in the new declaration and an assessment of the key human rights priority areas based on the Secretary-General's report to the Human Rights Council (A/HRC/16/69). The Office also followed the negotiations of the 2011 Political Declaration and, upon request, provided advice on technical issues.

8. The Office supported preparations in relation to the high-level panel discussion on prevention entitled "What can be done to get to zero new infections?" The objective of the panel was to focus on the priorities for achieving HIV-prevention goals, including eliminating stigma and discrimination, overcoming barriers to prevention for populations with greater vulnerability and populations at higher risk, ensuring a comprehensive approach to prevention and treatment, and educating young people to lead future HIV-prevention efforts. Among the many issues highlighted, the panel emphasized the need for political commitment and leadership at every level to support HIV prevention and confront and end stigmatization, discrimination and marginalization. Discussions also centred on the need to scale up programmes to address gender inequality, violence against women and girls and consider the role of men in the HIV response. Participants highlighted that respect, including mentioning populations by name with dignity and not derision, would bring HIV prevention out of the shadows. The review or adoption of laws, policies and practices was needed to uphold the human rights of vulnerable and key populations, support the

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<sup>3</sup> The latest data from the *UNAIDS World AIDS Day Report 2011* indicates that nearly 50 per cent of people who are eligible for antiretroviral therapy now have access to lifesaving treatment.

implementation of effective interventions such as harm-reduction programmes and stop criminalization of people based on sexual orientation, drug use or HIV transmission.

9. In his address to the high-level panel on prevention, the Assistant Secretary-General for Human Rights highlighted the critical links between human rights and protective versus punitive legal and social environments. He proposed five human rights priority actions that are needed to sustain the global AIDS response: (a) reaching those most vulnerable to discrimination and ensuring that they have access to HIV services; (b) involving people living with HIV in all aspects of the response, no matter what group they belong to; (c) reviewing punitive laws on HIV transmission and exposure, sex work, homosexuality, travel restrictions and mandatory testing and strengthening laws and policies on sexuality education and women's rights; (d) eliminating gender-based discrimination and violence and scaling up programmes to address this issue; and (e) removing regulatory, trade and other barriers that block the human rights imperative of universal access to HIV prevention, treatment, care and support. His remarks echoed those of the Secretary-General, who stated at the opening plenary meeting of the High-Level Meeting that "from its birth, the campaign against AIDS was much more than a battle against disease. It was a cry for human rights. It was a call for greater equality. It was a fight to end discrimination based on sexual orientation. And it was a demand for equal treatment of all people".

### **III. A human rights analysis of the 2011 Political Declaration on HIV and AIDS**

10. The adoption of the 2011 Political Declaration on HIV and AIDS symbolizes a renewed global commitment to stop, reverse and eliminate AIDS. By reaffirming previous declarations and setting new targets, Member States agreed to address the issue of leadership to end the HIV epidemic; expand HIV-prevention coverage, diversify approaches and intensify efforts to end new infections; increase access to treatment, care and support; advance human rights to reduce stigma, discrimination and violence; address resource constraints and the efficient utilization of resources for AIDS; strengthen health systems and integrate HIV into broader health and development; accelerate research and development to prevent, treat and cure HIV; and establish coordination, monitoring and accountability mechanisms to maximize the response. Some of the important highlights of the declaration include a commitment to:

- (a) Reduce sexual transmission of HIV by half by 2015;
- (b) Eliminate transmission of HIV from mother-to-child by 2015;
- (c) Reduce transmission of HIV among people who inject drugs by half by 2015;
- (d) Increase the number of people on lifesaving treatment to 15 million by 2015;
- (e) Reduce tuberculosis-related deaths by half by 2015;
- (f) Eliminate gender inequalities and gender-based abuse and violence, increase the capacity of women and adolescent girls to protect themselves from the risk of HIV infection;
- (g) Engage people living with and affected by HIV in decision-making and planning, implementing and evaluating the response;
- (h) Redouble HIV-prevention efforts by, among other measures, facilitating access to sexual and reproductive healthcare services and expanding risk and harm reduction programmes;

(i) Ensure that national prevention strategies target populations at higher risk – the declaration mentions specifically men who have sex with men, people who inject drugs and sex workers as populations at higher risk;

(j) Remove before 2015 obstacles that limit the capacity of low- and middle-income countries to provide affordable and effective HIV prevention and treatment and optimize the full use of existing flexibilities under the Agreement on Trade-Related Aspects of Intellectual Property Rights;

(k) Review laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes; and

(l) Increase HIV-related spending to reach a significant level of annual global expenditure on HIV and AIDS, while recognizing that the overall target estimated by the Joint United Nations Programme on HIV/AIDS (UNAIDS) is between US\$22 billion and US\$24 billion in low- and middle-income countries by 2015.

11. The 2011 Political Declaration reaffirms the obligations of States to promote universal respect and the observance and protection of all human rights and fundamental freedoms in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights and other instruments relating to human rights and international law. It also reaffirms that the full realization of human rights is an essential element of the global response to HIV. The Political Declaration takes notes of the strategy of the UNAIDS for 2011–2015, which has included human rights and gender equality within UNAIDS three strategic directions, on a par with prevention and treatment.

12. The inclusion of a specific chapter on human rights in the Political Declaration is particularly noteworthy as it is an affirmation of the recognition by the General Assembly of the centrality of human rights in the AIDS response. While the prevention and treatment targets also reflect human rights imperatives, the human rights chapter focuses on: (a) creating an enabling legal, social and policy framework to eliminate stigma, discrimination and violence and promoting universal access; (b) reviewing laws and policies that adversely affect the HIV response; (c) reviewing with a view to eliminating restrictions on entry, stay and residence; (d) promoting and protecting human rights in national HIV and AIDS strategies; (e) meeting the specific needs of women and girls by promoting and protecting their rights, reducing their vulnerability to HIV, eliminating discrimination and all forms of sexual exploitation and violence; (f) strengthening national social and child protection systems and care in particular for the girl child; (g) promoting laws and policies to ensure the full realization of human rights for young people; (h) addressing the vulnerabilities of migrant and mobile populations; and (i) mitigating the impact of the epidemic on workers, their families, their dependants, workplaces and economies, taking into account the International Labour Organization Recommendation on HIV and AIDS and the World of Work, 2010 (No. 200) (the first international labour standard on HIV and the world of work).

13. For the first time, a specific reference to an international human rights treaty has been included. The adoption of the Convention on the Rights of Persons with Disabilities was welcomed and the need to take into account the rights of persons with disabilities in the context of health, education, accessibility and information recognized. In a similar manner, the Political Declaration recognizes that access to safe, effective, affordable, good-quality medicines and commodities in the context of HIV is fundamental to achieving the full realization of the right of everyone to enjoy the highest attainable standard of physical and mental health.

14. In negotiating the Political Declaration, Member States were challenged to set and agree to a new set of goals and targets. The inclusion of time-bound targets and benchmarks in the human rights chapter of the Political Declaration similar to those in other sections of



the declaration would have strengthened the monitoring of progress in achieving the human rights goals in the Political Declaration and strengthened the human rights accountability framework that States are obligated to fulfil and rights-holders are entitled to claim. The Political Declaration's commitment to prepare evidence-based operational monitoring and evaluation and mutual accountability mechanisms between all stakeholders to support multisectoral national strategic plans for HIV and AIDS provides a unique opportunity to further integrate and assess human rights principles in all the programmatic phases of national responses. The meaningful participation of affected populations and integration of human rights in the revision of the core indicators framework as stipulated in the Political Declaration to include structural, process and outcome indicators on human rights<sup>4</sup> will enable States to better prioritize their actions and recognize when national policy adjustments and programmatic actions are required.

15. The importance of culture, ethical, religious values and local circumstances is also highlighted as an important consideration in responses to HIV. These values are critical to the AIDS response and should be consistent with international human rights norms and standards. As stated in the Vienna Declaration and Programme of Action "while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms". Furthermore, in accordance with the Universal Declaration on Cultural Diversity (art. 4) and Human Rights Council resolution 10/23 (para. 4), no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope. In addition, in its general comment No. 21 (2009) on the right of everyone to take part in cultural life, the Committee on Economic, Social and Cultural Rights has underscored that "the concept of culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity. This concept takes account of the individuality and otherness of culture as the creation and product of society".

16. The Political Declaration also reaffirms the sovereign rights of Member States and the need for all countries to implement the commitments and pledges in the Declaration consistent with national law, national development priorities and international human rights. It is trite to observe that sovereignty entails responsibility. The positive human rights obligations of sovereign States implies the responsibility of States to ensure the realization of human rights in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights and ratified international human rights instruments, human rights norms and standards, and customary international law. These include but are not limited to the immediate obligation of non-discrimination.

17. Member States are also challenged to ensure that their national responses to HIV are inclusive of all people, especially people that are most marginalized and populations most affected by the epidemic, including those unnamed in the Political Declaration such as transgender persons, persons in detention, refugees, internally displaced persons and people living in poverty. This will require developing monitoring mechanisms to assess who has been left out of the response and taking measures to address systemic/structural discrimination and ensuring access to HIV-related health services without prejudice. Member States must also tackle the disproportionate impact of the epidemic on women and

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<sup>4</sup> See interim report of the Special Rapporteur of the Commission on Human Rights on the right of everyone to enjoy the highest attainable standard of physical and mental health (A/58/427).

girls and include comprehensive targets on HIV prevention, treatment, and care that address women's subordination, violence and discrimination.

18. In terms of funding the AIDS response, donors and States have an obligation to ensure that the resources for HIV are commensurate with the realization of the right to the highest attainable standard of physical and mental health to the extent of maximum available resources. At a time of dwindling resources for HIV, the efficient use of resources directed towards most affected populations will be critical. Among other things, the human rights obligations relating to the right health includes ensuring the sustainability of access to affordable and good quality lifesaving antiretroviral treatment for people already on treatment; that those in need of treatment are able to receive it; and the availability of new antiretroviral drugs that are less toxic, contain high barriers to drug resistance and require minimal clinical monitoring while maintaining therapeutic efficacy.<sup>5</sup>

19. The Charter of the United Nations, the Universal Declaration of Human Rights and widely ratified international human rights treaties highlight the duty and importance of international cooperation in realizing the right to the highest attainable standard of physical and mental health. Countries that cannot realize this right within existing resources are obliged to seek international assistance. Depending on the availability of resources, States should facilitate access to essential health facilities, goods and services wherever possible and provide the necessary aid when required.<sup>6</sup> However, States also have a responsibility to ensure that international funding sources for health do not replace domestic investments in health systems and the fundamental need for an effective health infrastructure. In any society, an effective health system is a core institution, no less than a fair justice system of a democratic political system.<sup>7</sup> Initiatives such as the one taken by African countries through the adoption of the Abuja Declaration and Framework for Action for the Fight against HIV/AIDS, Tuberculosis and Other Diseases on the allocation of at least 15 per cent of their annual budget to the improvement of the health sector should be encouraged.

## IV. Conclusions

**20. The 2011 Political Declaration on HIV and AIDS builds on previous momentum in the global AIDS response and provides a catalytic framework to transform the fourth decade of AIDS into an era of zero new infections, zero AIDS-related deaths and zero discrimination. The renewed commitment of Member States as detailed in the 2011 Political Declaration reflects lessons learned, incorporates new challenges and demonstrates global solidarity for people living with and affected by HIV. The following elements will be critical in sustaining the fragile gains that were made during the first 30 years of AIDS: political leadership; revolutionizing HIV prevention; ensuring that treatment is affordable, acceptable, accessible and of good quality; sustainability and shared responsibility for investments in AIDS; and advancing human rights for all including addressing discrimination associated with HIV-related stigma, vulnerability and risk behaviours.**

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<sup>5</sup> See UNAIDS/WHO, "The treatment 2.0 framework for action: catalysing the next phase of treatment, care and support" (Geneva, 2011).

<sup>6</sup> Committee on Economic Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health (para. 39).

<sup>7</sup> See report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/7/11).

21. **The 2011 Political Declaration on HIV and AIDS is not self-implementing. Member States will therefore need to ensure that the goals and aspirations of the Political Declaration are translated into actions and results that respect and protect human rights and fundamental freedoms.**

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