



A Human Rights Approach to HIV/AIDS

“Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.”

– Vienna Declaration and Programme of Action (1993), Part I, article 1

HIV/AIDS, health, and human rights

All people have human rights *because* they are human. Human rights cannot be waived or taken away. Governments are obliged to respect, protect, and fulfill these rights.

Health is a “state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity” (World Health Organization). The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being. It is inseparable from the enjoyment of other human rights, such as the right to food, housing, adequate income, work, education, participation, privacy, enjoyment of the benefits of scientific progress and its applications, access to information, freedom of association and assembly, freedom of movement, freedom from cruel, inhuman, or degrading treatment, and freedom from discrimination.

In the context of the HIV/AIDS epidemic, promotion and protection of human rights and promotion and protection of health are fundamentally linked. When human rights are not promoted and protected, it is harder to prevent HIV transmission. When these rights are not promoted and protected, the impact of the epidemic on individuals and communities is worse.

“Realization of human rights and fundamental freedoms for all is essential to reduce vulnerability to HIV/AIDS.”

– United Nations General Assembly Special Session on HIV/AIDS, Declaration of Commitment, at paragraph 58

- Without *access to information* about how HIV is transmitted and *the means to prevent transmission*, people are more vulnerable to infection.
- Without *adequate medical care and treatment, nutrition, shelter, and income*, people with HIV are more susceptible to anxiety, poor health, and disease.
- Without the *participation of people affected by the epidemic*, prevention programs and support services are less likely to work for the people who need them.

- As a result of the *stigma associated with HIV/AIDS* and with populations affected by the epidemic, people experience discrimination in the community, at work, in housing, in immigration, in accessing health and social services.

Failure to promote and protect human rights has made the HIV/AIDS epidemic worse for many populations:

- The subordination of *women and girls* – compounded by domestic violence, sexual coercion, and inability to negotiate safer sex – has made them vulnerable to HIV infection and prevented them from getting the information, resources, and services that are necessary for their health.
- Hostility toward *gay, lesbian, bisexual, and transgendered people* has created environments that are silent about their existence, fail to support them in their personal and social development, and deny them the information, resources, and services that are necessary for their health.
- The subordination of *Aboriginal peoples* has left a legacy of cultural alienation, political exclusion, dependence, poverty, violence, and substance abuse. These have contributed to high rates of disease, including high rates of HIV infection.
- *Prisoners* depend on the state to give them the resources to prevent infection with HIV and other diseases, to protect their privacy, to protect them from violence, and to provide them with health care. Failure to fulfill these rights has contributed to HIV transmission among prisoners and made the impact of HIV infection worse.
- Responses to drug use and sex work put a disproportionate emphasis on controlling these activities through criminal and public health law. This approach stigmatizes *people who use illegal drugs or provide sexual services*, and neglects or undermines alternative responses to drug use and sex work that prevent disease and promote health.

Human rights – the duty of governments

From a human rights perspective, people are **entitled** to enjoy the conditions that would enable them to realize their health and well-being. This means that under international law governments are **obliged** to respect, protect, and fulfill the rights of people.

After the United Nations Charter and the Universal Declaration of Human Rights were enacted in 1948, countries entered into legally binding treaties to protect human rights. These treaties include the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), the International Convention on the Elimination of All Forms of Racial Discrimination (1963), the Convention on the Elimination of All Forms of Discrimination

“The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.”

– Vienna Declaration and Programme of Action (1993), Part I, article 1

Against Women (1979), the Convention on the Rights of the Child (1989), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

Canada has agreed to be bound by all of these treaties. In addition, human rights in Canada are protected under the *Canadian Charter of Rights and Freedoms* and by federal, provincial, and territorial human rights laws.

As well, Canada, along with all the other member states of the United Nations, adopted the ***Declaration of Commitment on HIV/AIDS*** drafted by the United Nations General Assembly Special Session on HIV/AIDS in June 2001. The Declaration acknowledges that the full realization of human rights is an essential element in all areas of the global response to the epidemic, and sets out specific goals and actions to realize those rights.

Respecting, protecting, and fulfilling human rights

What does it mean to respect, protect, or fulfill human rights?

- ***Respecting*** a human right means that governments cannot violate the right directly. For example, governments cannot deny prisoners with HIV/AIDS the same quality of medical care that is available in the community.

- ***Protecting*** a human right means that governments have to prevent others from violating the right, and to provide some form of redress when the right is violated. For example, governments should protect people with HIV/AIDS from discrimination in their jobs or when they rent an apartment, and should provide ways to challenge discrimination through the courts or human rights commissions.

A restriction on a human right is legitimate only when all of the following criteria (the Siracusa Principles) are met :

- the restriction is provided for and carried out in accordance with the law;
- it is in the interest of a legitimate objective;
- it strictly necessary to achieve this objective;
- it is the least intrusive and least restrictive means available;
- it is not drafted or imposed in an unreasonable or discriminatory way (United Nations Economic and Social Council. *The Siracusa Principles on the Limitations and Derogation Provisions in the International Covenant on Civil and Political Rights*. 1985).

These principles are reflected in Section 1 of the *Canadian Charter of Rights and Freedoms*.

- ***Fulfilling*** a human right means that governments have to take steps – pass laws, make regulations, set up programs, provide funding – to realize the right. For example, governments must enact or strengthen laws and fund programs that promote the equality of women, enact or strengthen laws that prohibit discrimination against gay men, repeal laws and regulations that harm people who inject drugs, or takes steps to eradicate poverty and dependence among Aboriginal people. Where progressive realization of the right is permitted (this is not the case with political and civil rights), governments are obliged to demonstrate that they are making steady progress. In addition, the obligation of wealthier countries in fulfilling rights extends beyond their borders. It includes providing technical and financial support to poorer countries.

The International Guidelines on HIV/AIDS and Human Rights

The International Guidelines on HIV/AIDS and Human Rights were developed at the Second International Consultation on HIV/AIDS and Human Rights, convened in 1996 by the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS.

The Guidelines provide *comprehensive, detailed, and specific guidance* on how human rights should be promoted and protected in the context of the HIV/AIDS epidemic. Although they are not a treaty that binds governments, they set an internationally recognized standard for governments to live up to.

The Guidelines state that governments should:

- set up a national framework that is coordinated, participatory, transparent, and accountable across all branches of government;
- support consultation with communities and enable community organizations to carry out their activities;
- review and reform public health laws so that they address HIV/AIDS adequately, in a non-discriminatory way, and in accordance with international law;
- review and reform criminal laws and correctional systems so that they are not misused, are not targeted against vulnerable groups, and conform to international law;
- enact or strengthen anti-discrimination laws or other laws dealing with discrimination, privacy, confidentiality, and ethics in research;
- ensure that quality goods, services, and information are available and accessible for HIV/AIDS prevention, care, treatment, and support;
- provide legal support and services to educate people affected by HIV/AIDS about their rights, enforce those rights, and develop expertise in HIV-related legal issues;
- promote a supportive and enabling environment for women, children, and other vulnerable groups;
- change discriminatory and stigmatizing attitudes through education, training, and the media;
- develop, implement, and enforce professional and ethical codes of conduct in accordance with human rights principles;
- set up monitoring and enforcement mechanisms to guarantee that HIV-related human rights are protected;

- cooperate through the United Nations system to share knowledge and experience about HIV-related human rights issues; and
- cooperate through the United Nations system to create effective mechanisms to protect human rights in the context of the HIV/AIDS epidemic.

Guideline 6 was revised at the Third International Consultation on HIV/AIDS and Human Rights in 2002. The revised guideline states what governments should do, both nationally and internationally, to ensure access to prevention, treatment, care, and support. This includes universal access to HIV antiretroviral and other medicines, diagnostic and other medical technologies, and technologies for HIV prevention.

Greater involvement of people with HIV/AIDS or affected by HIV/AIDS

Participation, transparency, and accountability are key to a rights-based approach to the HIV/AIDS epidemic. This is affirmed by the Guidelines.

At the Paris AIDS Summit in 1994, Canada, along with 41 other national governments, agreed to the principle of greater involvement of people living with or affected by HIV/AIDS (the GIPA principle).

This means that governments should create a climate in which people infected or affected by HIV/AIDS can participate *meaningfully* in all aspects and levels of the response. This includes strengthening the capacity of networks of people with HIV/AIDS and other community-based organizations to participate in the response.

The Canadian HIV/AIDS Legal Network's project

The Canadian HIV/AIDS Legal Network has begun a three-year project to promote a rights-based approach to HIV/AIDS. The project will:

- *raise awareness* in Canada of the link between health and human rights in the context of the HIV/AIDS epidemic;
- *promote* the use of the International Guidelines on HIV/AIDS and Human Rights in Canada; and
- *assess* the status of laws and policies in Canada in light of the Guidelines and Canada's human rights obligations.

The project, which ends in 2005, will lead to the publication and distribution of a report on the results of the assessment of Canada's performance to date, and recommendations about actions to be taken over a period of five years to improve Canada's performance. Funding for the project has been provided by the Canadian Strategy on HIV/AIDS.

For more information, visit the Legal Network's website at http://www.aidslaw.ca/Maincontent/issues/discrimination/rights_approach.htm or contact Thomas Haig at thaig@aidslaw.ca.

For More Information

International Guidelines on HIV/AIDS and Human Rights

- An easy-to-read summary of the 1996 Guidelines, produced by the International Council of AIDS Service Organizations, is available at www.icaso.org.
- The text and commentary of the 1996 Guidelines are available at www.unaids.org/publications/documents/human/law/hright2e.pdf.
- The Revised Guideline 6 is available at www.unaids.org/publications/documents/human/HIVAIDSHumanRights_Guideline6.pdf.
- A *Handbook for Legislators on HIV/AIDS, Law and Human Rights*, which follows the Guidelines, is available from UNAIDS and the Interparliamentary Union at www.unaids.org/publications/documents/human/law/ipue.pdf.

Health, Human Rights, and HIV/AIDS

- For a short overview of public health and human rights, see a speech by S Gruskin, reprinted in *ICASO Update* 1998, no. 15, available at www.icaso.org/icaso/docs/newsletters/october98.html.
- For a comprehensive introduction to health and human rights, see S Gruskin, D Tarantola. Health and human rights. In: R Detels, R Beaglehole (eds). *Oxford Textbook on Public Health*. 4th ed. Oxford: Oxford University Press, 2001, at 311-336, available at www.oup.co.uk/pdf/0-19-263041-5_04-1.pdf.
- For answers to frequently asked questions about health and human rights, see the World Health Organization's *25 Question & Answers on Health & Human Rights*, available at http://www.who.int/hhr/activities/en/25_questions_hhr.pdf.
- For recent thinking on the connections between health, human rights, law, and socioeconomic factors, see S Burris et al. Symposium : Health, Law, and Human rights : Exploring the Connections. *The Journal of Law, Medicine & Ethics*. 2002; 30(4): 492-763.
- For reports on human rights abuses in the context of the global HIV/AIDS epidemic, see Human Rights Watch's website on HIV/AIDS and human rights, at www.hrw.org/campaigns/aids/index.php.

United Nations Documents

- The United Nations Commission on Human Rights' resolutions on HIV/AIDS are available at <http://193.194.138.190/hiv/documents.htm>.
- United Nations General Assembly Special Session on HIV/AIDS. Declaration of Commitment on HIV/AIDS is available at www.unaids.org/whatsnew/others/un_special/ARES26-2_en.pdf.
- Guidelines and core indicators for monitoring the implementation of the Declaration of Commitment are available at www.unaids.org/whatsnew/others/un_special/index.html.