

HIV/AIDS and Human Rights

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Applicable rights

The following framework helps to situate the human rights that are applicable to HIV/AIDS. States are obligated to respect, protect and fulfill human rights (top row). The groups “more particularly concerned” by HIV/AIDS are listed in the left-hand column (people living with HIV/AIDS; vulnerable groups such as sexually active people, street kids, drug users; and civil society, that is people working on HIV/AIDS issues).

Applicable Rights	Respect / <i>respecter</i>	Protect / <i>promouvoir</i>	Fulfill / <i>remplir les obligations</i>
PLWA / VIH+	1	2	3
Vulnerable groups / <i>groupes vulnérables</i>	4	5	6
Civil society / <i>société civile</i>	7	8	9

The international human rights system obliges states to act in three areas: to respect, protect, and fulfill human rights. As related to HIV/AIDS, this obligation has three areas of application, which are often not met:

1. States have an obligation to protect the rights of people living with HIV from discrimination. People living with HIV have the right to adequate health care; however, they are often refused treatment at state hospitals. In addition, the state is responsible for the accommodation of special needs in the work place, particularly in the private sector, through the creation of protective laws. The state also has

legal obligations to take all steps possible toward the progressive realization of the right to health, through the provision of treatment such as anti-retroviral drugs.

2. The state is legally obliged to protect the rights of groups that are “vulnerable” to HIV/AIDS, such as children, women, health workers, elderly people and sex workers. These groups are often more at risk of contracting HIV/AIDS because their other basic rights are not protected.
3. The rights of civil society must be respected, particularly the right to freedom of speech and assembly. If these rights are not assured, it becomes impossible to promote human rights in the context of HIV/AIDS. For example, a health education group was not allowed to lease a space for its center in a private building, because the group discussed issues related to gay sex. While this was a private sector issue, the state has obligations to protect their rights to assembly.

International guidelines

In 1996, the Commission for Human Rights, together with UNAIDS, NGOs and associations of people living with HIV/AIDS, developed the *International Guidelines on HIV/AIDS and Human Rights*. The Guidelines had five goals:

1. to transform international norms for easy and effective use on a national level;
2. to structure the issues raised by HIV/AIDS and guidelines for addressing them in one document for easy access;
3. to explain the connection – and to find the balance – between public health and the protection of rights of people living with HIV/AIDS;
4. to define the terms of practical application of human rights norms, and encourage all actors to contribute to them; and
5. to indicate specific and concrete measures for the development of national policy and legislation.

In September and October of 1996, the CHR, with UNAIDS and NGOs, produced a final draft of the twelve guidelines, which can be divided into six themes:

1. The document requests that countries develop a national framework to fight HIV/AIDS.
2. It requests that countries develop a financial and political support structure enabling collective consultation with sufferers and with NGOs.
3. It asks states to reform public health legislation that criminalizes the transmission of HIV/AIDS, intravenous drug use, etc. This criminalization of HIV/AIDS negatively affects vulnerable groups, those believed to be HIV-positive, and family members of people living with HIV/AIDS.
4. It offers guidelines for the development of free legal aid for the protection of human rights related to HIV/AIDS.

5. It lays out the bases for the development of public education programs that focus on human rights and HIV/AIDS.
6. Finally, it mandates that states should participate in all international programs on HIV/AIDS, in order to take advantage of experiences and knowledge from all over the world.

The content of these Guidelines was made more accessible in a second UN document, the *Handbook for Legislators on HIV/AIDS, Law and Human Rights*. A powerful advocacy tool that has a checklist for governments, it also gives concrete examples of various national campaigns, mainly in the developing world.

Since 1996, there has been a revolution in access to treatment of HIV/AIDS. As a result, in 2002, Guideline #6 (access to treatment) of the *International Guidelines on HIV/AIDS and Human Rights* was revised.

These international guidelines apply international human rights law to HIV/AIDS, discuss the role and responsibility of governments, the role of the private sector, and community involvement. However, these guidelines are not legally binding on governments. No political body has adopted them. The Commission on Human Rights took note of them, but did not endorse them, as many of the guidelines are very controversial. Another difficulty is that the guidelines can become outdated, as was the case with access to treatment.

UNGASS Declaration of Commitment

On June 27, 2001, the UN General Assembly had a Special Session (UNGASS) on HIV/AIDS, where it prepared a Declaration of Commitment. The creation of the Declaration was a difficult process because of two controversial subjects: (1) the concept of a human rights-based approach to HIV/AIDS, and (2) the naming of vulnerable groups to be protected.

1. The United States and other members rejected the human rights approach to HIV/AIDS, because they were concerned about states being subjected to international human rights norms, particularly in the area of economic, social and cultural rights.
2. Governments argued about the naming of vulnerable groups, because they felt it was improper to list specific groups, such as gays, intravenous drug users and prostitutes, as vulnerable groups in a UN declaration. Consequently, there is no mention of specific groups, just a reference to “vulnerable groups.”

International responses

What have the political bodies done in the context of HIV/AIDS? Every two years, the Commission on Human Rights has a debate and resolution on HIV/AIDS. There is also an annual discussion and debate on treatment access and governments are invited to submit

reports on their progress in this area. Activists could ask their governments for these reports as a means of monitoring if and how their governments are responding to their obligations.

In June 2001, the UN General Assembly Special Session on HIV/AIDS adopted a resolution that requires annual reports and review from all of its members on their actions to combat the epidemic. In 2002, more than 70 countries responded to this resolution and submitted reports. The Declaration of Commitment is particularly useful, as it discusses law reform; governments committed to amend their laws by 2003.

Government responses and community-based initiatives

The following are some examples of what has actually been achieved.

In the Caribbean, a regional approach has been adopted to address the HIV/AIDS epidemic. In the Caribbean Regional Strategic Framework for Action on HIV/AIDS, the first priority area looks at advocacy, policy development and legislation, with a focus on human rights.

In Guyana, the Guyana Human Rights Association is using the Declaration and the International Guidelines as advocacy tools at the national level.

In Costa Rica and Venezuela, activists have used constitutional law to force governments to provide treatment access.

In South Africa, activists have used legal arguments to force the government to provide Nevirapene (blocks mother-child transmission).

Greater Involvement of People Living with HIV/AIDS

A rights-based approach to HIV/AIDS should take into consideration a right to a process, in other words the right of participation of people living with HIV/AIDS (PLWHA) in the response to the epidemic.

At the national level, PLWHA should be sitting on national committees where policy and programs are being developed.

Many countries have made applications to the Global Fund for AIDS, Tuberculosis and Malaria (GFATM). There is a requirement that PLWHA sit on the Country Coordinating Mechanisms of the Global Fund. Similarly, PLWHA and representatives from NGOs are members of UNAIDS and GFATM.

Limitations to a Rights Based Approach

However, the rights-based approach also has several significant limitations. The international human rights framework does not automatically translate into a national legal

framework, particularly in common-law countries. In addition, it can be difficult to take cases to court, particularly in rural areas.

Typically, the worst governments are the least interested in abiding by international law or heeding public opinion. Local community mobilization is always extremely important and should not be neglected.

There is also a problem of conflict between international human rights law, trade law, and intellectual property law. This debate is ongoing and it is not clear that human rights law will win. Furthermore, human rights law is based on the idea of a strong nation state that can enforce its legal obligations. However, there is a weakening of state governments such that they cannot meet their human rights obligations. Likewise, there are increasingly powerful multinational corporations, to which international laws do not apply.

Directions for the future

As human rights activists, we must assert and affirm the central role of governments in assuring the right to health. We must also continue to assert the rights of PLWHA to be included in the process. Finally, we must promote the importance of human rights law as the basis for national and international responses to HIV/AIDS.

Françoise Grothé

Françoise Grothé has been living with HIV for 18 years. Although she has been an activist all of her life, being HIV-positive has compelled her to work with others suffering from the same disease, both here in Canada and in the Dominican Republic.

While living in the Dominican Republic, Françoise Grothé was unable to talk about her disease. The taboos surrounding HIV/AIDS are so strong that it was unthinkable that a blond, foreign woman could have caught it. She worked with many HIV-positive people, who suffered great discrimination. In the later stages of their illness, they were often forced to live quarantined and isolated from the rest of their families and treated inhumanely, as the other family members believed they would catch the disease through any contact.

Françoise Grothé attempted to give these people back their dignity; although she could not save their lives, she could care for them and educated their families so the sick could die in the arms of their loved ones. She also participated in public education campaigns, informing the local population about how HIV is actually transmitted and encouraging better hygiene practices (such as not sharing razors).

In 1998, Françoise Grothé returned to Canada, gaining access to better treatments available here. The type of discrimination suffered by HIV-positive people is very different in Canada. A social stigma surrounds the disease; it is associated with drug users, prostitutes, and gay men. People often think that a person with HIV has caught it because of their lifestyle, and are somehow responsible for having the disease. Françoise insists that no one

should be held responsible for having caught a disease; it is not a person's fault that they have HIV.

Françoise Grothé also discussed the particularly difficult position of women, who must fight for the right to express themselves and insist on the usage of condoms by their partners. However, women are often reluctant to do this, because of loneliness, shyness or poverty. Social attitudes must change, and education, particularly of youth, plays a key role.

Question and Answer Session

The following themes were raised during the discussion period:

Peer education

Peer education campaigns are an excellent approach in the fight against AIDS. It is a very powerful and effective technique to have youth speaking to youth about their personal experiences and how they were infected. However, it can be difficult for people living with HIV/AIDS to speak out, as there is a climate of taboo and stigma that surrounds the disease.

Access to treatments

The combination therapy drugs developed by pharmaceutical companies are very expensive (\$10,000 - \$20,000/year). Generic versions of the same drugs are produced in countries like India and Brazil for a much lower cost (about \$300/year). However, intellectual property law protects the drugs, making it difficult to import and export them. In particular, the rules of the World Trade Organisation (WTO) make it illegal for any member country to produce generic drugs for export. For the moment, India produces the generic drugs for export, but when India joins the WTO in 2006, this will change.

Why are HIV infection rates so much higher in developing countries?

It is true that developed countries have much lower rates of infection of HIV/AIDS. We can compare Canada (0.1% or less of the population infected) with East African countries, such as Kenya (10 – 18% of the population infected). There are many reasons that can explain this difference. In general, human rights overall are more respected in Canada; for example, there is access to free health care and women's rights are protected, which results in lower infection rates of HIV/AIDS.

How is it possible to put pressure on repressive governments to improve their HIV/AIDS policies?

It is extremely difficult to fight an epidemic in countries where there are no civil or political rights and no freedom of speech. Without a means to challenge the government, activists can try to exert international pressure in order to improve governments' respect for human rights.