

HIV/AIDS and Human Rights

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In North America, many people infected with HIV do not face imminent death, but instead have access to treatments that can prolong their life expectancy for more than 20 years. Nevertheless, these people are often obliged to exist rather than live.

People infected with HIV are discriminated against, especially with respect to employment, and must face the ignorance of others. HIV/AIDS is still seen as an illness of shame, whereby people who are infected with HIV are assumed to have engaged in reproachful behaviours. In reality, however a person becomes infected with HIV, no one becomes infected voluntarily or deliberately. HIV/AIDS is an illness like any other.

The stigma and discrimination that surrounds HIV exists in Montreal as much as anywhere else in the world. In Montreal, a real witch hunt occurred this past winter after the death of a female paediatrician who was HIV positive and continued to practice her profession. Despite the fact that she took very careful precautions, fear and ignorance contributed to her condemnation.

Discrimination against people with HIV in the workplace is a big issue in Canada. According to a survey carried out by a Quebec organization, almost 100% of 100 large companies said that they would not hire or recruit a candidate who indicated that he or she was HIV positive. If it was discovered that an employee was HIV positive, companies said that work conditions would probably become restrictive and exclusionary to the point that the employee would be forced to quit. With the evolution of the health care system towards privatization and private management, there are fewer and fewer employers who are willing to assume the costs of an employee who requires \$3,000 a month in medical treatment. This is one of the reasons why in Quebec 63% of the HIV positive population want to work, but remain unemployed.

Another aspect of discrimination is related to access to treatment. Who has access to what kind of treatment? For example, a debate has recently arisen with respect to organ transplantation. Some people argue that since they are going to die anyway, HIV positive people should not receive organ transplants.

The 'problem' is that today people who are sick do not die immediately. Instead, they have a future, and it is therefore becoming increasingly difficult to exclude them from society. One of the big questions facing Western society today is how to permit HIV positive people to be active members of society. Talking about returning to work is one thing, but allowing this to happen in an effective way is another.

David Patterson

Application of the International Human Rights Framework to HIV/AIDS

Rights Applicable to HIV: International Guidelines on HIV/AIDS and Human Rights

All the rights in the 6 human rights treaties apply to HIV/AIDS.

The following framework helps to situate the human rights that are applicable to HIV/AIDS. States are obliged to respect, protect and fulfill human rights progressively (top row). The groups who are implicated in the response to HIV/AIDS are listed in the left-hand column. This includes people living with HIV/AIDS (PLWA); groups who are vulnerable to HIV and at risk of infection, including children, prisoners, handicapped people, women, and sex trade workers; and civil society, including human rights and human service organizations.

Applicable Rights	Respect	Protect	Fulfill
PLWA	1	2	3
Vulnerable Groups	4	5	6
Civil Society	7	8	9

Using this diagram it is possible to schematize and approach the issue of HIV/AIDS systematically. For example, a person living with HIV who is refused treatment in a public hospital would fall into box 1. A law prohibiting discrimination against women would fall into box 5.

A similar approach has been put forth in a publication entitled International Guidelines on HIV/AIDS and Human Rights which is published by UNAIDS and the UN Office of the High Commissioner for Human Rights. These guidelines consider the international human rights framework and apply it to the AIDS epidemic. Another publication I can recommend is the Handbook for Legislators on HIV/AIDS, Law and Human Rights. Both of these publications are powerful advocacy tools.

Limitations on International Guidelines

- ◆ The Guidelines have not been adopted into treaties, and therefore are not legally binding on governments.
- ◆ The Guidelines have not been adopted by any political bodies.
- ◆ The Guidelines were created in 1996, and were reviewed in 2002. They can quickly become out-of-date because the epidemic is changing so rapidly.

Rights-based Approaches

Rights-based approaches imply:

- ◆ Participation and inclusion
- ◆ Non-discrimination and equality

- ◆ Accountability and transparency
- ◆ Indivisibility and interdependence
- ◆ Gender-awareness as a cross-cutting theme

We can apply these principles in all our work on HIV and human rights. For example, in practice we must involve people living with HIV and vulnerable groups in policy development and program implementation. This principle has been accepted since 1992, and has been coined the GIPA principle – the Greater Involvement of People living with HIV/AIDS.

International Policy on HIV/AIDS

The UN Commission on Human Rights considers the issue of HIV/AIDS and human rights every 2 years. Several resolutions on HIV/AIDS came out of the 59th Session in 2003. These resolutions dealt mainly with freedom of opinion and expression, and access to medications for HIV/AIDS, tuberculosis and malaria. In the 60th Session in 2004 there was a resolution on access to medications for HIV/AIDS, tuberculosis and malaria, and in the 61st Session in 2005 we expect a further resolution on HIV/AIDS and human rights.

At these sessions, governments are asked to report on their implementation of the Guidelines on HIV/AIDS and Human Rights. This is a powerful advocacy opportunity for us to find out what our governments are reporting with respect to their adherence to their international obligations on HIV/AIDS and human rights.

The UN Declaration of Commitment on HIV/AIDS was adopted on June 27, 2001. This is another powerful advocacy opportunity because since 2001, governments have been required to report on their implementation. In 2003, over 100 countries submitted reports, and all of these are available on the UNAIDS website. This provides an easy way for us to monitor whether governments are in fact changing legislation and implementing programs as they have reported.

Examples of Government Responses and Community-based Initiatives

- ◆ Caribbean – The Caribbean Regional Strategic Framework on HIV/AIDS. This project is a rights-based approach to law reform around HIV/AIDS, with a priority on advocacy, policy development and legislation focused on human rights.
- ◆ Costa Rica and Venezuela – human rights law has been used to gain access to treatment.
- ◆ South Africa – human rights law has been used to gain access to Nevirapene to prevent the spread of HIV infection from mother to child.
- ◆ Zambia – Zambia AIDS-Law Research and Advocacy Network (ZARAN). ZARAN organized a judicial training workshop in Lusaka in 2003 to address the legal and human rights implications of HIV/AIDS.

Limitations of Human Rights Law

- ◆ International remedies are limited. For example there is no optional protocol to enforce economic, social and cultural rights, including the right to health.
- ◆ Incorporation of international law is not automatic in common law countries.

- ◆ The worst governments are also the least interested in international law and public opinion.
- ◆ Weak states have weak rule of law.
- ◆ There is no substitute for local community mobilization and action.

Key Directions

- ◆ We need to affirm the central role of governments in responding to the epidemic. The non-governmental sector alone cannot assure the protection and access to treatments that are required.
- ◆ People living with HIV/AIDS must be included in the response to the epidemic.
- ◆ Human rights law and rights-based approaches must be used as the basis for the national and international response to HIV/AIDS.

Additional information:

UNAIDS- www.unaids.org

Canadian HIV/AIDS Legal Network- www.aidslaw.ca

Questions and Answers Period

The following themes were raised during the question and answer period:

What is the role of UNAIDS in the fight against HIV/AIDS?

UNAIDS is a good resource, but ultimately the response has to come from national governments, not from international organizations. UNAIDS can provide information and support advocacy efforts aimed at convincing national governments to implement human rights laws.

What should be our approach towards the use of traditional medicines to treat HIV/AIDS?

We need to strike a balance between acknowledging the role of traditional medicines and understanding that there is yet no cure for HIV/AIDS. Governments have an important role to play in controlling and regulating the use of traditional medicines.

Does the term ‘vulnerable groups’ stigmatize people, and if so should the term be changed to ‘vulnerable practices’?

This is a difficult question to answer. We have moved from talking about vulnerable groups to talking about vulnerable practices because it is particular behaviours that are risky, not membership in particular group.

It is important to talk about vulnerable groups as well as talking about high-risk behaviours. If we can't talk about vulnerable groups, how are we going to address the fact that groups like women, street youth and prisoners are at a higher risk of becoming infected with HIV/AIDS?

The World Health Organization 3 by 5 Initiative

This was an ambitious UN initiative that aimed to have 3 million people in developing countries receiving anti-retroviral medications by 2005. In many countries treatments are not available, or are available but not accessible to the population because of high costs. Therefore it appears that the 3 by 5 goal will not be fully realized. Nevertheless, it is still important to set targets. Without the 3 by 5 Initiative we would not have been able to obtain the funds that were raised.

HIV/AIDS and Disability

Often people who are disabled are not provided with the information they need to protect themselves against HIV infection. In many parts of the world disabled people are excluded from HIV/AIDS awareness and treatment programs. Very little research, advocacy and policy work has been done on this issue.

Drug Trials and HIV/AIDS Medications

This is a big issue for people in developing countries who often have fewer legal protections and remedies against drug companies who conduct drug trials for HIV/AIDS medications. The WHO has guidelines that specify that there is a very high standard of care expected during drug trials and with respect to side effects of HIV medications. Many companies have a patients' bill of rights, which states what rights people have when agreeing to undergo drug testing.