



HUMAN RIGHTS & HEALTH

PERSONS LIVING WITH HIV/AIDS

THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF HEALTH IS ONE OF THE FUNDAMENTAL RIGHTS OF EVERY HUMAN BEING WITHOUT DISTINCTION OF RACE, RELIGION, POLITICAL BELIEF, ECONOMIC OR SOCIAL CONDITION.

—Preamble to the Constitution of the World Health Organization

JUAN FIGHTS FOR HIS RIGHTS*

Juan is HIV-positive. He is also the head of a nongovernmental organization that works to improve the quality of life and promote the empowerment of others like him living with HIV/AIDS, their family members, and other loved ones. Specifically, his group strives to protect and defend the human rights of all persons whose lives have been touched by HIV/AIDS, and it provides legal expertise and guidance to those who feel their civil, political, economic, social or cultural rights and fundamental freedoms have been denied or violated.

Juan’s group filed a petition with an international human rights body alleging responsibility on the part of his Government for presumed violations of various provisions in binding human rights conventions relating to the right of life; humane treatment; equal protection before the law; juridical protection; and economic, social, and cultural rights. Juan claims that by not providing him and 30 other HIV-positive individuals the triple therapy medication needed to prevent them from dying and to improve their quality of life, the State has violated the right to life, health, and well-being of the alleged victims.

The State reported to the human rights body the decision to authorize the purchase of medication for the provision of triple (i.e., combined) therapy and to adopt measures for strengthening and stepping up activities aimed at preventing the transmission of AIDS through education and the promotion of hygiene and preventive health among sectors most at risk for this disease. Additionally, the Government announced its intention to create a fund aimed at purchasing antiretroviral medications for the provision of triple therapy to HIV-infected persons. The national health authorities began administering antiretroviral treatment, and currently some 1,700 people receive the drug therapy through state hospitals.

*This personal story is based on a real incident that occurred in Latin America. Similar cases dealing with the human rights and fundamental freedoms of persons living with HIV/AIDS have been reviewed by the Inter-American Commission on Human Rights (IACHR; <http://www.iachr.org>), which is one of the human rights bodies of the Organization of American States (OAS).

WHO ARE THEY? WHAT IS THEIR PLIGHT?

It is estimated that around 25 million people have died as a result of Acquired Immunodeficiency Syndrome (AIDS) since it was first recognized in 1981. AIDS is the outcome of an infection by a virus known as Human Immunodeficiency Virus (HIV) which has spread all over the world in epidemic proportions. The large death toll AIDS has taken so far on the global population makes HIV/AIDS one of the most lethal epidemics in recorded history. It has claimed the lives of famous leaders and nameless migrant laborers; noted musicians, artists,

and scientists; poor rural African mothers and wealthy Hollywood socialites; popular movie stars and school-teachers; police officers, prison inmates, fashion models, housewives, and sex workers; orphans, fathers, and grandparents.

According to the Joint United Nations Program on HIV/AIDS (UNAIDS), “HIV/AIDS has already caused unparalleled human suffering—and far worse lies ahead.” By 2010, it says, the cumulative death toll will most likely double. By the end of 2006, there were nearly 40 million people living with HIV, and a significant portion may al-

ready have developed full-blown AIDS. During this same year, there were an estimated 4.3 million new infections and nearly 3 million officially recorded deaths due to AIDS.

Two-thirds of all people living with HIV/AIDS are in sub-Saharan Africa, and nearly three-quarters of all adult and child deaths due to AIDS in 2006 occurred here. In Latin America, Argentina, Brazil, Colombia, and Mexico—perhaps due to their large populations—are home to the biggest epidemics, with Brazil alone accounting for one-third of all the region’s population living with HIV/AIDS. The highest HIV prevalence, however, is found in the smaller countries of Belize, El Salvador, Guatemala, Honduras, and Panama—where between 1% and 2.5% of all adults are infected. In the Caribbean, AIDS is one of the leading causes of death among the population ages 15 to 44. The epidemic in this subregion occurs in the context of harsh gender inequalities and is being fueled by a thriving sex industry, which services both local and foreign clients.

In the wake of the HIV/AIDS tragedy, a deadly second epidemic has emerged—human rights abuses of those who are living with (or who are suspected of living with) the HIV virus. Discrimination and intolerance have caused thousands of people to lose their jobs, homes, and social standing; to be rejected by family and friends; denied vital medical care and support; unjustly imprisoned without due process and judicial guarantees; and even killed.

Because of its association with behaviors that may be considered socially unacceptable and in some cases even illegal, HIV infection is widely stigmatized. This stigma stems from generalized fear and associations of AIDS with sex, disease, and death, and with behaviors deemed illegal, forbidden, or taboo, such as pre- and extramarital sex, sex work, sex between men, and injecting drug use. Therefore, the social groups most vulnerable to human rights abuses are commercial sex workers, men who have sex with other men, injecting drug users, undocumented migrant workers and refugees, and internally displaced persons.

In addition, the life-long disadvantages faced by girls and women due to gender-based discrimination—

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including inadequate education, poor pay, and employment prospects, and violence, abuse, and exploitation by men—make them particularly vulnerable to unwanted, unsafe sex, both within and outside of marriage, thereby increasing their risk of contracting HIV, and then, if later infected, to being denied access to the appropriate and critically needed social, medical, and legal support systems.

Yet the most vulnerable group of all is society’s youngest. By 2010 the number of children orphaned by AIDS is expected to reach 25 million. With the massive rise in the number of orphans, traditional systems for caring for them are becoming overwhelmed and unable to cope. The resulting lack of protection increases the likelihood that these children will become stigmatized, isolated, discriminated against, and deprived of their basic human rights to a decent education and good health, thereby compromising opportunities for socioeconomic well-being as these orphans grow into adulthood.



PROTECTION THROUGH INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS

Both the United Nations and the Inter-American systems have a significant body of legal instruments for the protection of human rights that can be used to protect the rights and liberties of persons living with HIV/AIDS. Because human rights instruments established by international law protect all persons without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, they are considered to also protect the rights and freedoms of all persons living with HIV/AIDS.

Some of these tools have emerged from **conventions or treaties**, and they are legally binding for States that have ratified them. Others—international human rights **declarations** or “**standards**”—although not legally binding, are considered to be authoritative interpretations of international convention requirements. It is important to note that these standards are enshrined in international

law and represent a consensus of international opinion. In most cases, they are issued by the U.N. General Assembly, Human Rights Council, or High Commissioner's Office, and by the OAS Inter-American Commission on Human Rights, or they may originate through the work of other specialized U.N. and inter-American system agencies. They may be used to guide the formulation or review of policies, plans, or programs; the enactment of pertinent legislation; and/or the restructuring of health services in order to provide a more effective response to those living with HIV/AIDS.

PREVENTION,
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The United Nations System

Binding Instruments

International Covenant on Civil and Political Rights (1966). **Article 2** requires States to protect the rights and freedoms of all persons regardless of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. Other **articles** relevant to those living with HIV/AIDS are: **6** (the right to life); **7** (the right to humane treatment); **9** (the right to liberty and personal security); **12** (the right to liberty of movement and freedom to choose residence); **14** (equality before the courts and tribunals); **16** (the right to recognition everywhere as a person before the law); **17** (the right to privacy and protection of the law against arbitrary or unlawful attacks on personal honor and reputation); **18 and 19** (the right to freedom of thought and expression, including the freedom to seek, receive, and impart information); **23** (the right to form a family); **24** (the rights of children to protective measures by the State based on his/her status as a minor); **26** (equality before the law and the right to equal protection); and **27** (the rights of ethnic, religious, or linguistic minorities).

International Covenant on Economic, Social, and Cultural Rights (1966). **Article 12** recognizes the universal right to the "enjoyment of the highest attainable standard of physical and mental health" and requires State parties to take steps for the prevention, treatment, and control of disease and to create the necessary conditions "which would assure to all medical service and medical attention in the event of sickness." **Article 6** recognizes the universal right to work, and **ar-**

ticle 13 states that education should be equally available and accessible to all. (See "General Comment No. 14" in the following section for more specific references to the Covenant within the HIV/AIDS context.)

These two Covenants, along with the **Universal Declaration on Human Rights**, constitute what is known as the **International Bill of Rights**. All three provide protection against discrimination of persons living with HIV/AIDS and their families.

Convention on the Elimination of All Forms of Discrimination against Women (1979). Better known for its acronym, CEDAW is often described as an international bill of rights for women. State parties commit to incorporate the principle of equality of men and women in their legal systems, abolish all discriminatory laws and adopt appropriate ones prohibiting gender discrimination, establish tribunals and other public institutions to ensure the effective protection of women against discrimination, and ensure elimination of discriminatory acts against women by persons, organizations, and enterprises. **Article 12** urges governments to eliminate discrimination against women in the area of health care and to ensure equal access to health care services, including those related to family planning. Other **articles** of particular thematic interest within the HIV/AIDS context are: **1** (discrimination); **2** (policy measures); **3** (guarantee of basic human rights and fundamental freedoms); **5** (sex role stereotyping and prejudice); **6** (abolition of all forms of prostitution); **10** (education); **11** (employment); **13** (economic and social benefits); **15** (equality before the law); and **16** (marriage and family life).

Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984). This instrument may be applied in cases where individuals have been subjected specially to cruel, inhuman, or degrading treatment or punishment based on their HIV/AIDS status, whether in a health care facility, prison, or other public institution. **Article 10** specifies that the training of law enforcement, medical, civil, and military personnel and other public officials must include the prohibition of torture during the custody, interrogation, or treatment of any individual subjected to

arrest, detention, or imprisonment. **Article 13** ensures that any person alleging that he/she has been subjected to torture has the right to complain to, and have his/her case promptly and impartially reviewed by the competent authorities. **Article 14** calls on legal systems of State parties to provide redress to victims, who have an “enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”

Convention on the Rights of the Child (1989). Noting in its Preamble that “childhood is entitled to special care and assistance,” **Article 24** recognizes the right of all children to “the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” See “General Comment No. 3” in the following section for subsequent reflections on HIV/AIDS and children’s rights by the Committee on the Rights of the Child (created in the Convention’s **Article 43** to monitor implementation progress by State parties).

Declarations, Principles, Standards, and Technical Guidelines

Universal Declaration of Human Rights (1948). **Article 1** of this landmark post-World War II instrument states that all people are free and equal in rights and dignity. This all-encompassing provision, which predates the emergence of HIV/AIDS by some three decades, nonetheless implies that persons living with HIV/AIDS are equally entitled to respect of their basic human rights. **Article 25** asserts the right to an adequate standard of living for all individuals and their families, “including food, clothing, housing and medical care, and necessary social services,” and the right to security in the event of sickness and disability.

International Guidelines on HIV/AIDS and Human Rights (1997; revised 2003). Provide policy guidance to governments, international organizations, NGOs, civil society groups, and others on the development and implementation of national strategies that adequately address issues raised by HIV/AIDS. Of the 12 Guidelines, # 6 has garnered the most attention: “States should enact legislation to provide for the regulation of HIV-

THE HIGHEST HIV PREVALENCE, HOWEVER, IS FOUND IN THE SMALLER COUNTRIES OF BELIZE, EL SALVADOR, GUATEMALA, HONDURAS, AND PANAMA—WHERE BETWEEN 1% AND 2.5% OF ALL ADULTS ARE INFECTED.

related goods, services, and information...”. Prevention, treatment, care, and support are mutually reinforcing elements and a continuum of an effective response to HIV/AIDS. Based on human rights principles, universal access requires that these goods, services, and information not only be available, acceptable, and of good quality, but also within physical reach and affordable for all. States are urged to incorporate community participation in all phases of policy design, and to ensure that criminal laws and correctional systems are consistent with inter-

national human rights obligations and are not misused to target those living with HIV/AIDS; that legal support systems are implemented to educate people living with HIV/AIDS about their rights and provide free legal services to enforce these rights; and that both the public and private sectors develop codes of conduct regarding HIV/AIDS issues that translate human rights principles into codes of professional responsibility and practice.

General Comment No. 14, International Covenant on Economic, Social, and Cultural Rights (2000). The Commission on Human Rights’ Committee on Economic, Social, and Cultural Rights, which monitors the Covenant, in its Twenty-second Session, made clear that the right to the highest attainable standard of physical and mental health (known as the “right to health”) included *inter alia* access to treatment and HIV-related education. Paragraph 10 notes that “formerly unknown diseases, such as . . . HIV/AIDS . . . have created new obstacles for the realization of the right to health” Paragraph 12 specifies that health facilities, goods, and services must be within safe physical reach for all persons living with HIV/AIDS; paragraph 18 calls for nondiscrimination and equal treatment in access to health care regardless of health status “including HIV/AIDS;” and paragraph 28 prohibits State parties from restricting the movement of, and incarceration of, those living with HIV/AIDS based solely on their condition. Paragraph 36 establishes that States provide “information campaigns . . . with respect to HIV/AIDS.” Paragraph 33 states that “the right to health, like all human rights, imposes three types or levels of obligations on State parties: the obligations to *respect, protect, and fulfill.*”

Declaration of Commitment on HIV/AIDS (2001). All UN member countries pledged to scale up response to HIV/AIDS within a human rights framework. The Declaration sets concrete targets with dates for the introduction of national legislation and related measures to ensure the respect of human rights in the areas of education, inheritance, employment, health care and other social services, prevention, support, treatment, information, and legal protection. Even though the Declaration is not legally binding, an annual review by the U.N. General Assembly of governments' progress in meeting commitments and the monitoring instruments developed to measure compliance provide powerful incentives to encourage sustainable actions.

Declaration on the TRIPS Agreement and Public Health (2001). Following the global outcry against the high cost of antiretroviral drugs, the 2001 Ministerial Conference of the World Trade Organization (WTO) agreed that the TRIPS (Trade-related Aspects of Intellectual Property Rights) Agreement should be interpreted to support public health and to promote universal access to life-sustaining medicines, thus allowing for patents to be overridden if required to respond to public health emergencies such as the AIDS epidemic. This international statement followed the decision of the Brazilian Government to permit the local generic manufacture of foreign patented medicines for AIDS treatment unless prices for imported drugs were drastically reduced or the international companies began producing them in Brazil. In 2003, the TRIPS Council granted a waiver providing flexibility to countries unable to produce pharmaceuticals domestically to import patented drugs under compulsory licensing. The Declaration extends exemptions on pharmaceutical patent protection for least-developed countries until 2016.

General Comment No. 3, Convention on the Rights of the Child, "HIV/AIDS and the Rights of the Child" (2003). The first-ever general comment on HIV/AIDS to be adopted by a treaty-monitoring mechanism. After noting that the global HIV/AIDS epidemic has "drastically changed the world in which children live," the Comment's Introduction adds that in most parts of the world

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the majority of new infections are in young people ages 15–24 or even younger. While the issue of children and HIV/AIDS is perceived mainly as a medical or health problem, the disease's impact actually "affects all their rights—civil, political, economic, social, and cultural." Therefore, while the right to health (the Convention's **Article 24**) is central, the Comment cites other pertinent articles which it says should serve as the "guiding themes in the consideration of HIV/

AIDS at all levels of prevention, treatment, care, and support." These are: **Article 2** (the right to nondiscrimination); **3** (the rights of the child to have his/her best interests taken as a primary consideration); **6** (the right to life, survival, and development); and **12** (the rights to have his/her views respected). Furthermore, adequate measures can be provided to children and adolescents only if their rights are fully respected. The most relevant of the rights in this regard, in addition to the four just listed, include the right of children to access information and material aimed at their social, spiritual, and moral well-being and physical and mental health (**Article 17**); their right to an appropriate standard of living (**Article 27**); their rights to privacy (**Article 16**); the right not to be separated from parents (**Article 9**); their rights to special protection and assistance by the State (**Article 20**); their right to social security, including social insurance (**Article 26**); the right to education and leisure (**Articles 28 and 31**); the right to be protected from economic and sexual exploitation and abuse, and from illicit use of narcotic drugs (**Articles 32, 33, 34, and 36**); the right to be protected from abduction, sale, and trafficking, as well as from torture or other cruel, inhuman, or degrading treatment or punishment (**Articles 35 and 37**); and the right to physical and psychological recovery and social reintegration (**Article 39**).

The Protection of Human Rights in the Context of HIV and AIDS (2005). Resolution 84 of the U.N. Commission on Human Rights' 61st meeting. National governments are asked to ensure that laws, policies, and practices, including those related to the workplace, respect human rights within the HIV/AIDS context and prohibit HIV/AIDS-related discrimination, including through voluntary testing and counseling, education, and media and awareness-raising campaigns; improved and equi-

INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF BASIC HUMAN RIGHTS AND FREEDOMS OF PERSONS LIVING WITH HIV/AIDS

UNITED NATIONS HUMAN RIGHTS SYSTEM						
Protected Rights & Fundamental Freedoms	Universal Declaration of Human Rights	International Covenant on Civil and Political Rights	International Covenant on Economic, Social and Cultural Rights	Convention on the Rights of the Child	Convention on the Elimination of All Forms of Discrimination against Women	Convention against Torture and Other Inhuman or Degrading Treatment or Punishment
Life	Art. 3	Art. 6.1		Art. 6.1		
Humane Treatment	Art. 5	Art. 7		Art. 37.a		Arts. 1 & 16
Personal Liberty	Art. 3	Art. 9		Art. 37.b		
Fair Trial	Art. 8	Art. 14		Art. 40.2		Art.13
Privacy	Art. 12	Art. 17		Art. 16		
Freedom of Expression	Art. 19	Art. 19.2		Art. 13		
Name		Art. 24.2		Art. 7.1		
Movement	Art. 13	Art. 12		Art. 10.2	Art. 15.4	
Equal Protection	Art. 7	Art. 26		Art. 2	Arts. 3 & 15.1	
Judicial Protection	Art. 10	Art. 14		Art. 40.2	Art. 15.2	Art. 13
Work	Art. 23		Arts. 6 & 7	Art. 32	Art. 11	
Enjoyment of the Highest Attainable Standard of Physical and Mental Health	Art. 25.1		Art. 12	Arts. 17, 19.1 & 24	Art. 12	
Education	Art. 26		Art. 13	Art. 28	Art. 10	
Benefits of Culture and Scientific Progress	Art. 27		Art. 15	Art. 31.2	Art. 13.c	
Protection of Persons with Disabilities	Art. 25.1			Art. 23		
Protection of Children	Art. 25.2	Art. 24	Art. 10	All		
Protection of Women	Art. 25.2		Art. 12.2.a		All	
Protection of Older Persons	Art. 25.1					

COUNTRIES OF THE AMERICAS THAT ARE PARTY TO UNITED NATIONS HUMAN RIGHTS TREATIES:

Universal Declaration of Human Rights: Not subject to ratification.

International Covenant on Civil and Political Rights: Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, Venezuela.

Convention on the Elimination of All Forms of Discrimination against Women: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

Convention on the Rights of the Child: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Antigua and Barbuda, Argentina, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, United States of America, Uruguay, Venezuela.

International Covenant on Economic, Social and Cultural Rights: Argentina, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF BASIC HUMAN RIGHTS AND FREEDOMS OF PERSONS LIVING WITH HIV/AIDS

INTER-AMERICAN HUMAN RIGHTS SYSTEM						
Protected Rights & Fundamental Freedoms	American Declaration of the Rights and Duties of Man	American Convention on Human Rights	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women	Inter-American Convention to Prevent and Punish Torture
Life	Art. I	Art. 4			Art. 4.a	
Humane Treatment	Art. XXV	Art 5			Art. 4	Art. 6
Personal Liberty	Art. I	Art. 7			Art. 4.c	
Fair Trial	Art. XVIII	Art. 8			Art. 7.f	Art. 8
Privacy	Art. V	Art. 11				
Freedom of Expression	Art. IV	Art. 13				
Name		Art. 18				
Movement	Art. VIII	Art. 22				
Equal Protection	Art. II	Art. 24		Arts. II & III	Art. 4.f	Art. 8
Judicial Protection	Art. XXVI	Art. 25			Arts. 4.g & 7	
Work	Art. XIV		Arts. 6 & 7	Art. III.1.a		
Enjoyment of the Highest Attainable Standard of Physical and Mental Health	Art. XI		Art. 10	Arts. III.2.a & III.2.b	Art. 4.b	
Education	Art. XII		Art. 13	Arts. III.1.a & 2.b		
Benefits of Culture and Scientific Progress	Art. XIII		Art. 14	Arts. III.2 & IV.2		
Protection of Persons with Disabilities	Art. XVI		Art. 18	All	Art. 9	
Protection of Children	Art. VII	Art. 19	Art. 16			
Protection of Women	Art. VII				All	
Protection of Older Persons	Art. XVI		Art. 17		Art. 9	

PARTIES TO INTER-AMERICAN HUMAN RIGHTS TREATIES:

American Declaration of the Rights and Duties of Man: Not subject to ratification.

American Convention on Human Rights (Pact of San José): Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador): Argentina, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Suriname, Uruguay.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Para): Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

Inter-American Convention to Prevent and Punish Torture: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, Venezuela.

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela.

table access to high-quality goods, health care, and safe, effective medication; and assistance to educate those living with and affected by HIV/AIDS about their rights and to help them to realize these rights. States also are requested to develop, support, and strengthen national human rights institutions and other professional bodies to monitor and enforce HIV-related human rights, to eliminate HIV-related stigma and discrimination, and to ensure that codes of professional conduct respect human rights and dignity within the HIV/AIDS context, so that persons who reveal their HIV status, those presumed to be living with HIV, and other affected persons are protected from violence, stigmatization, and discrimination. States are furthermore urged to take the appropriate measures to protect the human rights of women and children within the HIV/AIDS context; in particular, to address gender inequality and violence against women and girls, as well as the legal and social needs of children orphaned or made vulnerable by HIV/AIDS and the needs of their caregivers.

BY 2010 THE NUMBER OF CHILDREN ORPHANED BY AIDS IS EXPECTED TO REACH 25 MILLION. WITH THE MASSIVE RISE IN THE NUMBER OF ORPHANS, TRADITIONAL SYSTEMS FOR CARING FOR THEM ARE BECOMING OVERWHELMED AND UNABLE TO COPE.

The Inter-American System

Binding Instruments

American Convention on Human Rights (Pact of San José, Costa Rica) (1969) **and the Rules of Procedure of the Inter-American Commission on Human Rights** (2000). The Convention covers a range of civil, political, economic, social, and cultural rights and sets a binding protection and monitoring by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. **Articles** pertinent to the situation of persons living with HIV/AIDS are: **4** (the right to life); **5** (the right to humane treatment); **7** (the right to personal liberty and security); **11** (the right to privacy); **13** (the right to freedom of thought and expression); **17** (the rights of the family); **19** (the rights of the child); **22** (the right to freedom of movement and residence); **24** (the right to equal protection before the law); **25** (the right to judicial protection); and **26** (economic, social, and cultural rights). **Article 23** of the Rules of Procedure states that any person or group of persons or nongovernmental entity legally recognized in one or more of the

OAS Member States may submit petitions to the Commission. **Article 25** of the Rules of Procedure allows the IACHR, in cases involving “extreme gravity and urgency,” either at the behest of a party or on its own motion, to request that a State party adopt specific provisional or precautionary measures to prevent irreparable damage and otherwise protect the life and integrity of individuals in precarious circumstances. **Article 40** enables the IACHR to carry out an on-site investigation, “if deemed necessary and advisable,” and **Articles**

62 and 64, respectively, establish the requisites for hearings on petitions and cases and for those of a more general nature.

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) (1994). Defines violence against women as “any act or conduct, based on gender, which causes death or physical, sexual, or psychological harm or suffering to women, whether in the public or the private sphere” and grants every woman “the right to simple and prompt recourse to a competent court for protection against acts that violate her rights.” State parties agree to “include in their domestic legislation penal, civil, administrative, and any other type of provisions that may be needed to prevent, punish, and eradicate violence against women and to adopt appropriate administrative measures where necessary” and to “take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women.”

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador) (1988). Promotes, “within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man.” The Protocol accords priority importance to the right to health (**Article 10**) as a “public good” whose key ingredients are the availability of universal primary health care, the extension of health services “to all individuals sub-

ject to the State’s jurisdiction,” and “satisfaction of the health needs of the highest-risk groups and of those whose poverty makes them the most vulnerable.”

Declarations, Principles, Standards, and Technical Guidelines

American Declaration of the Rights and Duties of Man (1948).

Recognizes basic human dignity and reaffirms that “juridical and political institutions...have as their principal aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness.” Highlights the rights to life, liberty, and personal security; equality before law; protection of honor, personal reputation, private and family life, and mothers and children; residence and free movement; preservation of health and well-being; education; work; and property.

Understanding and Responding to HIV/AIDS-related Stigma and Discrimination in the Health Sector (2003).

Produced by the Pan American Health Organization (PAHO), this is a comprehensive study of the origins, manifestations, and impact of HIV-related discrimination in health services, both from a global perspective and, more specifically, based on studies conducted in Latin American and Caribbean settings. The knowledge, attitudes, and practices of health workers are analyzed, as well as how these affect the experiences of those living with HIV/AIDS who seek health care. It offers concrete recommendations for identifying and eliminating discrimination on the basis of HIV status at all levels of the health sector and concludes with a bibliography of literature reviews on the topics discussed in the publication.

Scaling-Up of Treatment within a Comprehensive Response to HIV/AIDS (2004).

Approved at PAHO’s 45th Directing Council, this Resolution urges Member States to “sustain and reinforce prevention activities and the reduction of stigma within the health services,” emphasizing

HIV/AIDS HAS CLAIMED THE LIVES OF FAMOUS LEADERS AND NAMELESS MIGRANT LABORERS; NOTED MUSICIANS, ARTISTS, AND SCIENTISTS; POOR RURAL AFRICAN MOTHERS AND WEALTHY HOLLYWOOD SOCIALITES; POPULAR MOVIE STARS AND SCHOOLTEACHERS; POLICE OFFICERS, PRISON INMATES, FASHION MODELS, HOUSEWIVES, AND SEX WORKERS; ORPHANS, FATHERS, AND GRANDPARENTS.

ing those to prevent mother-to-child transmission, for voluntary counseling and testing, and services for vulnerable groups—women, children, youth, men who have sex with men, migrants, sex workers, injecting drug users, prisoners, and families of persons living with HIV/AIDS. The Resolution also asks the countries of the Americas to collaborate with civil society, other U.N. agencies, and other groups to “sustain and reinforce the reduction of stigma and discrimination in various contexts according to national laws.”



WHAT YOU CAN DO

The protections embodied in the UN and inter-American Human Rights Systems lie at the heart of

any effort designed to increase the promotion and protection of persons living with HIV/AIDS in the Americas. This endeavor must involve all segments of society—the State, the health sector, and civil society. All actors and stakeholders should come to know and understand the protections afforded by these instruments and then should use them to improve and refine national legislation, policies, plans, programs, and practices. They also should be used to design new or reform existing services for persons living with HIV/AIDS.

The Government

Every branch of government can—and should—participate actively in the effort to promote the rights of persons living with HIV/AIDS, and then to safeguard those rights. Some governments have voluntarily signed and ratified international and regional human-rights conventions, and by so doing have accepted a range of obligations to persons with mental disabilities. Among other obligations, human rights law requires protection against infringements on individual freedom, personal integrity, freedom of movement and judicial protection, among others.

Legislators should gather information about the international human rights instruments to which their govern-

ment is party to ensure that their country's legislation conforms with convention obligations and international human rights standards. If the domestic legal framework does not conform, it should be reviewed and revised to bring it in line. If needed, new legislation should be enacted, all of it conforming with international provisions.

Ministers of health, of education, and of labor—as well as civil servants at all levels in those ministries—and policy makers should be trained on the obligations from international human-rights conventions to which their government is party. If national policies, plans, and programs do not align with these obligations, efforts should be undertaken to revise them so as to make them consistent with those conventions and standards.

Judges, ombudspersons, the police, and officers of other relevant agencies in the criminal justice system should be aware about the international-treaty obligations that they may be called upon to enforce. Ombudsperson's offices can follow up citizen complaints regarding persons living with HIV/AIDS and should visit health institutions and community based services to ensure compliance with national laws. They also should embrace the human rights of persons living with HIV/AIDS as part of their agendas.

Directors of health care facilities should ensure that regulations and standards governing the admission, treatment, holding, and handling of persons living with HIV/AIDS conform to human rights protection standards and norms. They also should ensure that all staff in their facilities are aware of and clearly understand those norms. In addition, they can develop awareness-raising training for all health workers based on the provision of accurate, up-to-date, and precise information on human rights norms and standards in the context of HIV/AIDS and that considers the impact of stigma on those liv-

BECAUSE OF ITS ASSOCIATION WITH BEHAVIORS THAT MAY BE CONSIDERED SOCIALLY UNACCEPTABLE AND IN SOME CASES EVEN ILLEGAL, HIV INFECTION IS WIDELY STIGMATIZED. THEREFORE, THE SOCIAL GROUPS MOST VULNERABLE TO HUMAN RIGHTS ABUSES ARE COMMERCIAL SEX WORKERS, MEN WHO HAVE SEX WITH OTHER MEN, INJECTING DRUG USERS, UNDOCUMENTED MIGRANT WORKERS AND REFUGEES, AND INTERNALLY DISPLACED PERSONS.

ing with HIV/AIDS. **Nurses and other health care workers in public mental health hospitals and clinics** should familiarize themselves with the rights of persons living with HIV/AIDS and ensure that those rights are being upheld in every instance of contact with them. Health care workers must remember that they may be the last line of defense protecting the physical, psychological, and moral integrity of persons with mental disabilities, who may not be able to speak for themselves. If they witness any violation, they must act to stop it and bring it to the attention of responsible officials. **Admissions personnel and other staff** should ensure that in most cases they have the informed consent of persons being admitted

to the facility consistent with international human rights norms and standards; they also should ensure that in most cases they have informed consent for treatment provided consistent with international standards.

Civil Society

NGOs and advocacy groups working on HIV/AIDS and human rights can use the human rights instruments as tools to monitor the performance of governments during policy and program implementation and to take action for redress when HIV-related policies appear to violate human rights. They can use the International Guidelines to interpret human rights norms enshrined in the earlier-referenced U.N. and inter-American human rights treaties and declarations. They can also strive to be included in community consultations during all phases of HIV/AIDS policy design, program implementation, and evaluation. Finally, civic groups can form local and national associations of lawyers, other professionals, and those living with HIV/AIDS united to promote rights-based approaches. With the support of the United Nations Development Program, these groups have formed regional networks in Latin America and the Caribbean, as well as Asia, the Pacific, and Africa.

Organizations of persons living with HIV/AIDS and their families

can completely familiarize themselves with their fundamental human rights and the internal workings of local, regional, and international mechanisms designed to safeguard individual rights and freedoms, and ultimately how these are protected under national and international law such as those provided by the IACHR. For this reason, it is important for these organizations to network and develop close ties with NGOs, other advocacy groups, and local ombudspersons' offices, and likewise ensure that all health care professionals and caregivers working with the family are aware and respectful of HIV/AIDS-related human rights norms and practices. One concrete way to deepen across-the-board commu-

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nity awareness would be to set up and participate in telephone hotlines, drop-in centers, safe houses, and "buddy support" systems.

The mass media can fulfill its social responsibility by developing creative public education campaigns explicitly designed to transform public attitudes of discrimination and stigmatization associated with HIV/AIDS into ones of understanding and acceptance, by proactively highlighting instances of human rights violations, and by increasing the general public's knowledge of the gamut of international, national, and local

laws, policies, and programs that exist to promote, preserve, and protect the human rights of those living with HIV/AIDS.

THE PAN AMERICAN HEALTH ORGANIZATION'S WORK

As a specialized agency for the promotion and protection of public health belonging both to the U.N. and inter-American systems, PAHO can play a unique and central role in promoting and protecting the right to the enjoyment of the highest attainable standard of health and in strengthening the link between health and other human rights. The principal activity areas it should focus on are:

- Dissemination, through training workshops, of international human rights norms and standards that protect persons living with HIV;
- Close collaboration with ombudspersons' offices and other national governmental agencies in charge of protecting human rights;
- Technical collaboration with PAHO Member States on the review and, if necessary, reform of national policies, plans, and programs to ensure their conformity with international human rights norms;
- Collaboration with organizations of persons living with HIV/AIDS, their families, and public health personnel in activities related to the promotion and protection of the basic human rights and fundamental freedoms of all those living with HIV/AIDS;
- Technical collaboration with regional and international human rights bodies charged with promoting and protecting the human rights of those living with HIV/AIDS, such as the IACHR,¹ including participation in hearings and the provision of technical opinions; and
- Publication and dissemination of technical documents outlining the human rights framework applicable to persons living with HIV/AIDS.
- Close work with the Center for Law and the Public's Health (Georgetown University Law Center and Johns Hopkins School of Public Health), which is the PAHO/WHO Collaborating Center on Human Rights Law.

¹ For example, some of the functions of the Inter-American Commission on Human Rights are to review and grant decisions regarding petitions concerning alleged violations of human rights recognized in the American Convention on Human Rights and other Inter-American instruments, visit OAS Member States and review their compliance with Regional human rights treaties, request that States adopt precautionary measures to prevent irreparable harm to persons and conduct general and specific hearings on human rights issues or individual cases. For further information see <http://www.iachr.org>.



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