

HEALTH & HUMAN RIGHTS: HIV/AIDS as an Example

Georgina N. Bukenya

MPHP 439

Introduction:

Acquired Immune Deficiency Syndrome or acquired immunodeficiency syndrome (AIDS) is a collection of symptoms and infections resulting from the specific damage to the immune system caused by the human immunodeficiency virus (HIV).¹ In its late stage, the condition causes patients to be prone to opportunistic infections. Even though treatments for AIDS and HIV exist to slow down the virus's progression, there is no known cure. HIV is transmitted via direct contact of a mucous membrane or the bloodstream with a bodily fluid containing HIV, such as blood, semen, vaginal fluid, preseminal fluid, and breast milk.² Transmission can be in the form of anal, vaginal or oral sex, blood transfusion, contaminated hypodermic needles, exchange between mother and baby during pregnancy, childbirth, or breastfeeding, or other exposure to one of the above bodily fluids. In the absence of antiretroviral therapy, the average time of progression from HIV infection to AIDS is about nine to ten years, and the mean survival time after developing AIDS is about 9.2 months.³ Nevertheless, the rate of clinical disease progression varies widely between individuals, from as short as two weeks up to 20 years. There are several factors that affect the rate of progression. These include issues that have an effect on the body's ability to defend against HIV such as the infected person's general immune function.⁴ Older people tend to have weaker immune systems, and therefore are at greater risk of rapid disease progression than younger people. Limited access to health care and the existence of simultaneous infections such as tuberculosis may also predispose people to faster disease progression.⁵

A. The Concept of Human Rights:

Human rights are those rights that are inherent and universally applicable to all human beings irrespective of factors such as race, sex, nationality or jurisdiction. Human rights have evolved and are deemed to be based on innate human dignity and are non alienable.⁶ Legally, human rights are expressed at the international level by way of international covenants and in the domestic setting, through national laws. Outside the legal realm, human rights are viewed by some as part of a fundamental moral basis for regulating the geo-political order.

The term ‘International Bill of Rights’ refers to three documents that codify the essential human rights that are recognized the world over. The Universal Declaration of Human Rights of 1948 was adopted after World War II, is not a legally binding document but has over time acquired binding effect due to most states through their actions endowing it with legitimate legal force and by regarding it as binding on them. The Declaration was and continues to be effective in urging states to endorse and advance human rights; economic, social and civil rights. The Declaration is fundamental because it was the first international attempt to limit states’ actions and to impose a duty on them towards their citizens. The Declaration states that individuals gave a right to a standard of living that is adequate for them to enjoy their health and well-being and this includes having access to medical and social services.⁷ To strengthen the Declaration and the rights expressed therein, the International Covenant on Civil and Political Rights (ICCPR) of 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1976 were created and came into force as legally binding documents. The

ICCPR creates and guarantees civil and political rights to be enjoyed by all human beings. It obliges member states to respect and ensure all people within their territories and subject jurisdiction the rights set out therein. The rights established include right to life, freedom from torture, cruel and inhuman/degrading treatment, freedom from slavery, the right to liberty, the right to equality before the law of all persons, freedom of thought, religion and conscience and freedom of expression and association to name a few.⁸ The ICESCR sets forth economic, social and cultural rights and freedoms and member states have agreed to take relevant steps to realize these rights and freedoms. The Covenant provides that states recognize and endeavor to ensure the rights of all persons to work, to social security, to adequate standards of living, to the enjoyment of the highest attainable standard of physical and mental health and education.⁹

The fundamental basics created by the International Bill of Rights and which flows through out the human rights movement are; human rights treat all people as equal in rights and dignity, states must not violate human rights, human rights are universal rights of individuals and are founded on principles of humanity. The right to health under the International Bill of Rights is expressed as the right to the highest attainable standard of physical and mental health. As such, it imposes a duty on states to protect and advance the health of individuals and ensure quality health care.

B. Concept of Health:

Health relates to the mental, physical and social well-being of individuals. Health is defined as ‘a state of complete physical, mental and social well-being, not merely the absence of disease or infirmity.’¹⁰ Modern health focuses on the health of individuals and

the health of populations. This is founded on the basis that health is made up of two fields; medicine and public health.¹¹ Hence, the term health is broad and reaches beyond illness, viruses and disease to include social well-being. As such, health is nurturing the sick but also preventing sicknesses and encouraging physical, mental and social welfare. The act of promoting and maintaining health whether at the national or global level is to a greater extent carried out by governments and official agencies. These bodies are mandated with the task of assessing the situation, and designing appropriate policies which they enforce. In so doing, these agencies aim to control societal behavior due in part to empirical studies which have shown that disease outbreaks result from human behavior.¹²

This paper's focus is on the relationship between human rights and health, specifically health policy and will make reference to the HIV/AIDS epidemic to highlight the interdependence between health and human rights.

The Relationship between Health and Human Rights:

Health and human rights are interdependent in that to solve health problems, there is a need to improve and respect human rights. Likewise improving health generates conditions that allow for the enjoyment of human rights. This section of this paper will venture to draw attention to public health methods that infringe on human rights and how abuse of human rights can adversely affect health.

A. Public Health Mechanisms that Violate Human Rights:

In preserving the health of society, public health professionals, advocates and agencies may have taken actions that have violated the rights of individuals and groups. It is sometimes believed that human rights will obstruct public health work and this is probably the reason why human rights are not always taken into account when public health policies are being formulated.¹³ Although the human rights movement acknowledges that for purposes of public health protection, rights may be limited for the greater good under certain circumstances. However, governments cannot wantonly extinguish the rights of individuals for an unlimited period of time or go beyond the permitted limitations.¹⁴

The conflict between public health and human rights is not a recent phenomenon. In the United States (US), it dates back to the 19th century at the time when there was a wave of immigration to the US. Human rights violations during this period were blatant. In California, the presence of diseases was blamed on the Chinese immigrants and this culminated into public health policies directed at the Chinese especially with the onset of the bubonic plague. Neighborhoods inhabited by the Chinese were quarantined without notice being given to the inhabitants. Their homes were forcefully disinfected with sulfur and they were subjected to involuntary inoculations with a prophylactic vaccine still in its experimental stages. The public health policy was driven by prejudices and racism particularly since it had not been confirmed that the plague existed among the Chinese.¹⁵ The situation gave rise to a law suit¹⁶ and the presiding judge established a monumental precedent limiting the ability of government agencies to violate the rights of individuals in the name of public health. The public health policies formulated at this time in history

were easily driven by suspicion based on cultural, racial and ethnic differences and violated the right to equal protection before and by the law.¹⁷

Public health is practiced by society and not just by health professionals. Laws and regulations are enacted with the intention of protecting and promoting health. Public health law is defined as ‘the legal powers and duties of the state to constrain the autonomy, privacy, liberty, proprietary, or other legally protected interests in individuals for the protection or promotion of community health’.¹⁸ Laws and regulations requiring reporting or surveillance of disease, mandatory treatment and vaccination, involuntary testing, and those that impose personal restrictions are examples of legislation that transcends individuals’ rights to privacy. The question of government agencies enforcing legislation that is deemed to defy individuals’ rights and believed to be unconstitutional has been addressed by courts of law. Courts have viewed government’s authority to legislate on health issues as part of its police power and have pointed out that the liberties secured by the constitution are not absolute or free from restraint. Courts have acknowledged that an individual’s liberty may be subjected to limitation as a general public safety measure. Only when a regulation or statute fails to carry out its initial purpose or is held to be a plain invasion of rights, or when the police power of the state is considered to have been exercised arbitrarily, will courts intervene and review the legislation. Courts have agreed that the welfare and safety of the public is not subordinate to the notion of a single individual.¹⁹

Quarantine, isolation and forced treatment are techniques utilized by public health agencies that have also been seen to infringe individual rights. These techniques entail separating persons who are contagious from those who need protection. Quarantine is

isolating those who have been exposed to a disease, but not yet ill. This method offers the patients subject to a quarantine order minimum process and the only judicial relief available is a petition for a writ of habeas corpus.²⁰ Nevertheless, the Supreme Court has held that being ill is not justification for confinement if the patient is not dangerous to anyone or can live safely in freedom.²¹ In addition, the court has decided that public intolerance is not sufficient to justify depriving an individual of their liberty and before a state can commit an individual to confinement, they must provide evidence of that individual's dangerousness and the evidence must meet the clear and convincing evidence standard.²²

B. How Violating Human Rights Affects Health:

The definition of health adopted by the World Health Organization (WHO) encompasses mental, physical and social well-being, and as such, implies that any human rights violation is likely to negatively impact health. The conflicts in the former Yugoslavia and in Rwanda which were marred with ethnic cleansing and genocide presented examples of the possible effects on health that human rights violations cause. The mass raping and maiming of targeted ethnic groups adversely affected the health of the survivors.²³

The humanitarian situation in Haiti especially during 1991 and 1994 was stained with human rights violations in the form of rape and sexual assault, arbitrary arrests, inhumane and cruel treatment causing thousands of internally displaced people and refugees. Public health resources were damaged and the consequences of human rights

abuses included victims suffering from post traumatic stress disorders, psychological and psychiatric conditions in addition to physical harm.²⁴

Discrimination against disabled people denies them from have the benefit of and applying their rights. Disabled people are in most cases dependent on wither individual car providers or health institutions and this dependence ironically causes them to be isolated from society. Persons with disabilities regrettably are not always afforded the same or equal opportunities to improve their state of affairs by society and this results in poor health outcomes for the disabled.²⁵

The manipulation of and propoganda about family planning has negatively affected women's health. Having control over one's reproduction and sexuality forms an integral part of human dignity.²⁶ In order for women to exercise and enjoy their rights, having control over their sexuality is vital. So when states censor and influence information on sexuality and reproduction, they are in effect violating women's rights to personal dignity and this in turn imposes far reaching health implications such as impaired physical, mental and emotional well-being, and death.²⁷

The Right to Health: Does It Exist?

As mentioned earlier, international human rights conventions establish health as a human right. The right to health imposes a duty upon states to safeguard and advance the health of individuals and the community as a whole and to ensure quality health car. Nonetheless, there has been debate as to whether the right to health really exists. This is in part due to the reluctance of society to regard socioeconomic rights as legal and enforceable. In spite of this, arguments have evolved in support of the existence of health

as a human right based on the incorporation of health in international human rights instruments with the intention of them being recognized as legal and enforceable.²⁸ However, lack of an enforcement mechanism for socioeconomic rights especially in the ICESCR, contributes to the perception that the right to health is not acknowledged as appropriately legal.²⁹ Consequently, there is limited health rights jurisprudence which makes enforcement of the right difficult. In addition, the fact that human rights scholars have failed to reach a united and clear stand on whether the right to health exists, weakens the campaign for health as a human right.³⁰ The debate as to whether the right to health exists persists with proponents asserting that the exercise and enjoyment of human rights and health are interdependent. They acknowledge that for the purpose of protecting public health, human rights may be restricted provided the restrictions are created by law and are enforced in a non-discriminatory manner.

Human Rights & the HIV/AIDS Epidemic:

As history has shown us, any life threatening disease or epidemic outbreak inevitably instigates human rights abuses targeting the carriers or believed carriers of the disease. HIV/AIDS has been no exception and its devastating capacity has been made worse by wide spread human rights violations.

People living with HIV are subjected to discrimination and stigmatization in all areas of their lives including at the workplace and within their communities. Policies and programs that promote HIV testing especially without the consent of the person or without a search warrant have been held to amount to a violation of a person's autonomy and to violate the constitutional right to freedom from unreasonable searches.³¹ Such

testing methods lead to discrimination because in most cases, the health care providers conducting the tests are relying on their own perceptions and biases in deciding who should be tested. Although mandatory testing of properly defined 'high risk groups' is permitted for purposes of maintaining public health, the human rights movement does not sanction outright discrimination or the establishment of policies that allow discriminatory practices that are uncalled for.

Most states in the US and countries in Western Europe have mandatory reporting requirements of patients with positive HIV tests.³² The purpose of these reporting requirements is to make efforts to track the disease easier, to allow for the collection of data on prevalence and incidence of the disease. In Europe and the US there is controversy as to whether the reporting of positive test results should include the names of the person involved and tracing the person's contact with other people thereafter. Even though some advocates for revealing the names argue that it can be done without breaching patient confidentiality, the obligation borders on violating a person's right to privacy and privacy protections and is likely to discourage people from obtaining voluntary testing.³³

Discrimination is also apparent in relation to the workplace, where some employers have tried while others have succeeded in implementing job related testing. Results of this have included people being denied work due to their test results. The debate surrounding job related testing hinges on the friction between the employers' right to know the employees' status and the employees' right to privacy. In the absence of laws that prohibit testing of this nature where the status of the employee does not impact on their ability to perform, employees' rights will be oppressed.

The US Federal Rehabilitation Act of 1973 safeguards HIV positive employees from discrimination in hiring and firing. Though the Act applies only to organizations that receive funds from the Federal government, it provides some protection to people with HIV. It bars employers from not hiring a person solely on the basis of a disability especially if the disability does not affect their ability to work, and prevents employers from using tests to de-select handicapped applicants.³⁴ Additionally, the Americans with Disabilities Act proscribes discrimination against qualified employees with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. An employer cannot ask about an applicant's HIV status nor can they refuse to employ an applicant on the basis of health insurance reasons. The provisions of the Act state that an employer should take reasonable measures to accommodate the employee, including flexible work schedules and rest periods.³⁵

The Human rights violation in Haiti during the military coup of 1991 led to several refugees coming to the US. Many of them were taken to Guantanamo Bay and screened to determine those entitled to legal and human rights status. Refugees were tested for HIV and those found to be positive were required to meet higher standards to prove they had rational fears of persecution. In addition, they were accommodated in a different facility at the Bay and were inadequately furnished to provide sufficient care for HIV patients. This state of affairs culminated in a court case where the presiding judge found that the detainees were being held based on their nationality and HIV status and that medical status cannot be used as criteria for continued detention.³⁶

In developing countries in Africa women whose husbands have died of AIDS are rejected by their own families and their husband's family and their property is taken away from them.³⁷ In Russia, the government is doing little about the disease which has resulted in social stigma and discrimination against HIV positive people, with many of them going to great lengths to hide their status and HIV positive mothers deserting their children. Many of these children are then quarantined; heightening what has become an accepted social stigma policy in Russia.³⁸ In Kenya, the United Kingdom High Commission requires applicants for visas to be screened for tuberculosis and AIDS activists have contended that this amounts to discrimination against people living with HIV because tuberculosis is one of the diseases that most common among HIV positive persons.³⁹

In addition to discrimination and stigmatization, the HIV/AIDS epidemic has brought about the violation of people's right to information. In select countries, policy makers have embarked on formulating policies that encouraging the censoring of information on HIV/AIDS prevention, transmission and treatment. This is particularly evident in regard to information provided to the youth. Providing misleading information about HIV/AIDS and other health related information is counter productive to efforts to prevent diseases and violates the right to information and a government's obligation to take necessary steps for the prevention, control and treatment of epidemic diseases.⁴⁰ In Uganda for example, the President launched the President's Initiative on HIV/AIDS Strategy on Communication to Youth (PIASCY); Uganda's first nationwide school based HIV prevention program in 2001. The program led to the creation of draft teachers' manuals that contained information of how HIV is transmitted, how to protect oneself

from infection and the importance of safer sex, condom use and being faithful. However, the final draft of the manuals released in 2003 excluded information about safe sex and the use of condom, and had a new chapter entitled ‘Ethics, Morals and Cultural’, advocating for abstinence, discouraging sex before marriage and even going as far as intimating that sex outside marriage is a sin.⁴¹

The ICCPR provides that people have a right to seek, receive and impart all kinds of information.⁴² This includes information about health and for the right to be valid it necessitates that the information received be accurate and useful. In regard to youth, the Convention on the Rights of a Child obliges member states to ensure that children and parents have access to information about education and basic knowledge about child health.⁴³ Also, the United Nations working group responsible for monitoring the implementation of the Convention on the Rights of the Child, the Committee on the Rights of the Child, has announced in its general comment on HIV/AIDS that children have the right to access adequate information related to HIV/AIDS prevention.⁴⁴

Access to accurate information about health is vital for the realization of the right to attain the highest standard of health. As such, states that implement policies that censor or distort information about HIV/AIDS are in fact violating the right to information and their obligation to ensure that their citizens attain the highest standard of health possible.

The right to health has been violated by health and social welfare policies adopted by some countries. Failure by governments to provide accessible and affordable health care, prevention and treatment services for their people has led to premature deaths from the epidemic. In Zimbabwe, the government has done nothing to offer HIV positive individuals affordable antiretroviral treatment and has continually failed to provide

people living with HIV information about the criteria adopted by the Ministry of Health in determining who can obtain life-saving treatment.⁴⁵ The deteriorating economic and social conditions in Zimbabwe only intensify vulnerability to HIV infection as people are forced to engage in high risk behavior to survive and support their families.

Additional human rights violations include abuse and violence targeting injection drug users. In Ukraine, injection drug users are consistently subjected to abuse by the police even when they are at the needle exchange locations. Drug users are detained and physically and psychologically abused by the police and are made to endure dehumanizing treatment from health care workers.⁴⁶ This state of affairs has worsened the HIV/AIDS status in Ukraine because drug users are then forced to go into hiding, which prevents them from partaking in the needle exchange programs and are further at risk of HIV transmission and limited treatment options.

In other countries, sex workers and men who have sex with men have been victims of human rights abuses at the hands of the organs mandated to protect the citizens. In Bangladesh, HIV/AIDS prevalence is among groups that have been labeled to engage in 'high risk behaviors'. These include sex workers, men who have sex with men and injection drug users. These groups already face isolation from society due to their behavior but the policies adopted by the government add to their vulnerability. They are systematically mistreated by the police who abduct, extort money from them and rape them.⁴⁷ This inevitably restricts their ability to access preventive services and renders them unable to protect their health.

A. Organizations that support Human Rights in a Health Context:

There are several organizations that support human rights advocacy efforts and the role of human rights in health maintenance. Human Rights Watch (HRW) is notable as it advocates for overall human rights adherence but also criticizes policies and actions that discriminate against certain groups including HIV positive people. HRW advocates for the adoption of policies and legislation that offers protection to people affected by HIV and those at high risk of HIV/AIDS. The organization also carries out research into human rights abuses generally and those related to HIV/AIDS so as to raise awareness of how such abuses curtail the fight against the epidemic.⁴⁸

The World Health Organization's (WHO) mandate is to work with member states, national and international bodies to ensure the attainment by all peoples of the highest possible level of health. WHO has numerous projects, activities, initiatives and contacts that are organized based on health and development topics. In 2000, WHO launched the Health for All strategy which was intended to ensure that all people in the member countries had access to health care and were able to attain equal health outcomes. The concept has influenced many European countries' efforts to establish national health services and to ascertain the factors that affect people's health as part of the quest to address health inequalities.⁴⁹ The strategy has also been vital in providing a source of ideas for human rights and ethics in health. WHO also has a Human Rights and Health Team whose objective is to assist WHO and member states to adopt human rights approaches to health, boost the right to health in international law, and promote health related human rights.⁵⁰ WHO acknowledges that promoting and protecting health and

protecting and respecting human rights are closely linked and that violating one adversely affects the other.⁵¹

The United Nations as an organization has a human rights component that includes the High Commissioner for Human Rights (OHCHR), and the Human Rights Council. These bodies oversee the human rights state of affairs within member states, promote and protect the enjoyment and realization of all rights by all people as established in the Charter of the United Nations and international human rights laws and treaties.⁵²

Amnesty International is an internationally renowned organization that campaigns for the respect internationally recognized human rights. Amnesty International believes that every human being should enjoy the rights protected by the UDHR and other international human rights instruments. Amnesty International fulfills its mandate by conducting research and taking action to prevent and end human rights abuses. The organization focuses on different human rights aspects including poverty and human rights where it advocates for the right to live with dignity which entails the right to adequate housing, food, education and healthcare.⁵³ Amnesty International is carrying out research into how violating the right to live with dignity intensifies poverty and its adverse effects. Amnesty International has been very instrumental and vocal in holding governments and businesses accountable for violations that worsen poverty.

In addition to human rights organizations that advocate for human rights including health as a human right, there are also courts of law both national and regional in nature. Given the scope of this paper, the focus shall be on human rights courts that are regional in nature.

The European Court of Human Rights (ECHR) was established by the European Convention on Human Rights. The Convention sets out the functions of the Court and the rights and guarantees that member states have undertaken to uphold.⁵⁴ The Court's task is to ensure that member states respect and uphold the rights guaranteed in the Convention. The Court receives complaints from individuals, states and organizations and on reviewing the complaints, if it finds that a state has violated the rights within the Convention, it delivers judgment against the state. These judgments are binding and member states are obliged to comply.⁵⁵ The Court has been instrumental in ensuring that states respect human rights and in 2006 received over 80,000 applications or complaints and passed 1,560 judgments that year.⁵⁶ Based on this, it is correct to assume that the Court can be utilized to ensure that the right to attain the highest standard of health is adhered to by member states.

The African Court of Human and Peoples' Rights was established in 1998 under the auspices of the Organization of African Unity (OAU), now referred to as the African Union (AU). The protocol that created the Court came into effect in 2004, however, the statute of the Court has not been circulated as yet and at this point there is not much information about the operations of the Court.⁵⁷ It worth noting that the Court was established 12 years after the OAU was founded and this has led to some scholars branding it as an afterthought.⁵⁸ The Court's mandate is to ensure that member states respect and promote the rights and duties created by the African Charter on Human and Peoples' Rights and other international human rights treaties that ratified by member states.

Individuals and NGOs recognized by the OAU/AU can bring cases before the Court, only if the state in question has made a declaration accepting the jurisdiction of the Court. The African Charter on Human and Peoples' Rights provides that every individual shall have the right to enjoy the best attainable state of physical and mental health and member states are required to protect the health of their citizens.⁵⁹ Though the workings of the Court are yet to be determined, its existence and mandate to ensure respect of the rights of individuals demonstrates that the Court can be influential in protecting the right to health.

The Inter-American human rights system is made up of a Commission on Human Rights and a Court of human rights. The Commission is an organ of the Organization of American States and as early as 1961 it carried out on-site visits within member states to investigate the human rights situation. The Commission examines complaints regarding particular human rights violations. The Commission ensures that member states respect human rights by publishing reports on the human rights situation in the different states. It also recommends measures that states may adopt to protect human rights and submits cases to the Court of human rights for litigation.⁶⁰

The Court of human rights was created by the Inter-American Convention on Human Rights and it adjudicates cases of human rights violation brought against member states. In order for a case to be brought before the Court, the state in question has to have made a declaration accepting the Court's competence. Under the Inter-American system, only a state party to the Convention can bring a case or petition before the Court or the Commission.

There are a number of religious organizations whose focus is HIV/AIDS work in the fields of caring ministries, education and training, information and networking and to teach about the ethics of HIV/AIDS. Though their objective may not be to protect human rights, but through their advocacy work for and on behalf of HIV/AIDS patients, they inevitably advance the right of patients and the need to protect the right to health.⁶¹ In addition, some religious organizations do not specifically target HIV/AIDS or any epidemic or disease, but simply choose to work with people who are ill to make a difference in their lives.⁶²

Conclusion

Outbreaks of life threatening infectious diseases have unfortunately had adverse impacts on the protection and respect of human rights. That notwithstanding, human rights advocates and indeed conventions do permit states to place limitations on the human rights protections accorded to individuals only for the purpose of protecting and maintaining public health. Such limitations can only be implemented in a situation that is characterized as a national emergency or when the interests of society outweigh the interests of an individual.

That said, it is important to note that violations of human rights can and do affect the health of individuals. Policy makers have to bear this in mind when formulating public health policies and ensure that their policies do not unduly place high risk individuals at greater risk of infection and to ensure that policies do not lead to unfair distribution of health resources.

Human rights treaties and conventions incorporate health or the attainment of the highest level of mental and physical health as a right of individuals and impose duties on states to respect and enforce measures to uphold this right. Even though there is much debate as to whether the right to health truly exists, there is consensus that health and human rights are interdependent and neither can be realized without due regard to the other.

Endnotes

-
- ¹ Marx, J. L. (1982). "New disease baffles medical community". *Science* 217 (4560): 618–621. Retrieved from PubMed
http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=pubmed&dopt=Abstract&list_uids=7089584&query_hl=14&itool=pubmed_docsum on March 5 2007
- ² **Divisions of HIV/AIDS Prevention** (2003). **HIV and Its Transmission**. **Centers for Disease Control & Prevention**. Retrieved from <http://www.cdc.gov/HIV/resources/factsheets/transmission.htm> on February 20 2007
- ³ Morgan, D., Mahe, C., Mayanja, B., Okongo, J. M., Lubega, R. and Whitworth, J. A. (2002). "HIV-1 infection in rural Africa: is there a difference in median time to AIDS and survival compared with that in industrialized countries?". *AIDS* 16 (4): 597–632 Retrieved from PubMed
http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=pubmed&dopt=Abstract&list_uids=11873003&query_hl=14&itool=pubmed_docsum on February 19 2007
- ⁴ Morgan, D., Mahe, C., Mayanja, B. and Whitworth, J. A. (2002). "Progression to symptomatic disease in people infected with HIV-1 in rural Uganda: prospective cohort study". *BMJ* 324 (7331): 193–196 Retrieved from PubMed
http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=pubmed&dopt=Abstract&list_uids=11809639&query_hl=14&itool=pubmed_docsum on February 25 2007
- ⁵ Bentwich, Z., Kalinkovich, A. and Weisman, Z. (1995). "Immune activation is a dominant factor in the pathogenesis of African AIDS.". *Immunol. Today* 16 (4): 187–191 Retrieved from PubMed
http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=pubmed&dopt=Abstract&list_uids=7734046&query_hl=14&itool=pubmed_docsum on March 1 2007
- ⁶ **Universal Declaration on Human Rights**, Preamble and Articles 1 & 2. The Declaration characterized human rights as part of human dignity and having universal application.
<http://www.un.org/Overview/rights.html>
- ⁷ *Id.* Article 25
- ⁸ **International Covenant on Civil and Political Rights**, Articles 6, 7, 9, 14&3, 18 & 22
<http://www.ohchr.org/english/law/ccpr.htm>
- ⁹ **International Covenant on Economic, Social and Cultural Rights**, Articles 6, 9, 11(1), 12 (1) & (3)
http://www.unhchr.ch/html/menu3/b/a_cescr.htm
- ¹⁰ **World Health Organization Constitution**, The Preamble
http://www.who.int/governance/eb/who_constitution_en.pdf
- ¹¹ Jonathan M. Mann, Lawrence Gostin, Sofia Gruskin, Troyen Brennan, Zita Lazzarini, Harvey Fineberg, *Health and Human Rights in, Health and Human Rights; A Reader*, at 8 (Jonathan M. Mann, Sofia Gruskin, Michael A. Grodin, George J. Annas, Eds. 1999)
- ¹² Allan M. Brandt, "The Cigarette, Risk and American Culture", *Daedalus, Journal of American Academy of Arts & Sciences* 119 (4) 161-164 & 171-173
- ¹³ Mann et.al. *supra* n. 11 at 35
- ¹⁴ International Covenant on Civil and Political Rights *supra* n. 8 Articles 21 & 22. The ICCPR mentions that public health as a justification for restricting rights of freedom of movement, rights of assembly and association.
- ¹⁵ Alan M. Kraut, *Silent Travelers: Germs, Genes, and the "Immigrant Menace"*. Baltimore: Johns Hopkins University Press, 1994. at 82-96
- ¹⁶ *Wong Wai v. Williamson* 103 F.1 (N.D. Cal 1900)
- ¹⁷ Alan M. Kraut, *supra* n. 15 at 107-111. Similar action was taken against Italian immigrants who were blamed for spreading polio.
- ¹⁸ Barry R. Furrow, Thomas L. Greaney, Sandra H. Johnson, Timothy S. Jost, Robert L. Schwartz, *Bioethics: Health Care Law and Ethics*, 5th Edition (2004) p. 475
- ¹⁹ *Jacobson v. Massachusetts* 197 U.S. 11, 25 S. Ct 358. This is a decision of the US Supreme Court in 1905 concerning mandatory vaccinations.
- ²⁰ Furrow et. al. *supra* n. 18 at 483-484
- ²¹ *O'Connor v. Donaldson*, 422 U.S. 563 (1975)
- ²² *Addington v. Texas* 441 U.S. 418 (1979)

-
- ²³ Alicia Ely Yamin, *Ethnic Cleansing & Other Lies: Combining Health and Human Rights in the Search for Truth & Justice in the former Yugoslavia* in, Health and Human Rights: A Reader, at 85 (Jonathan M. Mann, Lawrence Gostin, Sofia Gruskin, Troyen Brennan, Zita Lazzarini, Harvey Fineberg Eds. 1999) In Rwanda sexual violence led to HIV/AIDS infection, psychological and physical harm. In the former Yugoslavia people were disappeared and their families suffered psychological harm.
- ²⁴ Cecile Marotte & Herve Rakoto Razafimbahiny, *Haiti 1991-1994: The International Civilian Mission's Medical Unit* in Health and Human Rights: A Reader, at 109 & 111 (Jonathan M. Mann, Lawrence Gostin, Sofia Gruskin, Troyen Brennan, Zita Lazzarini, Harvey Fineberg Eds. 1999)
- ²⁵ Aart Hendriks, *Disabled Persons and Their Right to Equal Treatment: Allowing Differentiation While Ending Discrimination* in, Health and Human Rights: A Reader, at 113-123 (Jonathan M. Mann, Lawrence Gostin, Sofia Gruskin, Troyen Brennan, Zita Lazzarini, Harvey Fineberg Eds. 1999)
- ²⁶ Lynn P. Freedman, *Censorship and Manipulation of Family Planning Information: An Issue of Human Rights and Women's Health* in, Health and Human Rights: A Reader, at 149 (Jonathan M. Mann, Lawrence Gostin, Sofia Gruskin, Troyen Brennan, Zita Lazzarini, Harvey Fineberg Eds. 1999)
- ²⁷ *Id.* at 152-153
- ²⁸ Lisa Forman, "Ensuring Reasonable Health: Health Rights, the Judiciary & South African HIV/AIDS Policy", 33 J.L. Med. & Ethics 711 2005
- ²⁹ *Id.* at 2
- ³⁰ Stephen P. Marks, "Jonathan Mann's Legacy to the 21st Century: The Human Rights Imperative for Public Health", 29 J.L. Med. & Ethics 131
- ³¹ Neal Dickerson, *Civil Rights, HIV Testing, Contact Tracing & Quarantine*, 1993 Monument Press, Las Colinas, Texas p. 17
- ³² *Id.* 20-23. Also see Euro Surveillance, *HIV Testing in Western Europe: National Systems and First European Data*, Euro Surveill 2000;5(2):13-17 <http://www.eurosurveillance.org/em/v05n02/0502-221.asp> (accessed on April 1 2007)
- ³³ Neal Dickerson, *supra* at 22 and 26
- ³⁴ U.S. Federal Rehabilitation Act §504
- ³⁵ Americans with Disabilities Act of 1990 <http://www.eeoc.gov/policy/ada.html> (accessed on March 30 2007)
- ³⁶ George J. Annas, *The Impact of Health Policies on Human Rights: AIDS and TB Control*, in Health and Human Rights: A Reader, at 38-39 (Jonathan M. Mann, Lawrence Gostin, Sofia Gruskin, Troyen Brennan, Zita Lazzarini, Harvey Fineberg Eds. 1999)
- ³⁷ Human Rights Watch Report, *A Dose of Reality: Women's Rights in the Fight Against HIV/AIDS* <http://hrw.org/english/docs/2005/03/21/africa10357.htm> (accessed on March 29 2007)
- ³⁷ Human Rights Watch Report, *Positively Abandoned: Stigma and Discrimination Against HIV Positive Mothers and their Children in Russia* June 2005 Vol.17, No. 4 (d) <http://hrw.org/reports/2005/russia0605> (accessed March 29 2007)
- ³⁸ BBC News, *UK Screening 'Unfair on HIV'* <http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/6320015.stm> (accessed February 1 2007)
- ³⁹ International Covenant on Economic, Social and Cultural Rights *supra* n.9 Article 12
- ⁴⁰ Jonathan Cohen, *A Tale of Two Presidential Initiatives: Changes in an HIV Prevention program in Uganda*, Human Rights Watch February 2006. <http://hrw.org/english/docs/2006/02/01/uganda12591.htm> (accessed February 20 2007)
- ⁴¹ International Covenant on Civil and Political Rights *supra* n. 8 Article 19
- ⁴² Convention on the Rights of the Child, Articles 13 & 24 (2)(e) <http://www.unhchr.ch/html/menu3/b/k2crc.htm>
- ⁴³ Committee on the Rights of the Child, *General Comment No. 3 (2003) HIV/AIDS and the rights of the child*, 32nd Sess. (2003), para. 16 <http://www.unhchr.ch/html/menu2/6/crc/doc/comment/hiv.pdf> (accessed March 20 2007)
- ⁴⁴ Human Rights Watch Report, *Rhetoric and Risk: Human Rights Abuses Impeding Ukraine's Fight Against HIV/AIDS* March 2006 Vol. 18 No. 2(d) <http://hrw.org/reports/2006/ukraine0306> (accessed March 5 2007)
- ⁴⁵ Human Rights Watch Report, *Ravaging the Vulnerable: Abuses Against Persons at High Risk of HIV Infection in Bangladesh*, August 2003 Vol. 15, no. 16 (c) <http://www.hrw.org/reports/2003/bangladesh0803> (accessed March 23 2007)

-
- 46 Human Rights Watch Report, *No Bright Future: Government Failures, Human Rights Abuses and Squandered Progress in the Fight Against AIDS in Zimbabwe*, July 2006, Vol. 18 No. 5 (a) <http://hrw.org/reports/2006/zimbabwe0706> (accessed April 2 2007)
- 48 More information can be found at Human Rights Watch, HIV/AIDS & Human Rights http://www.hrw.org/doc/?t=hivaids&document_limit=0,5
- 49 Hilary Graham, *Social Determinants and Their Unequal Distribution: Clarifying Policy Understandings*, *The Milbank Quarterly*, Vol. 82, No. 1, 2004 at 103
- 50 World Health Organization, Health and Human Rights, <http://www.who.int/hhr/en>
- 51 More information about the WHO and its work with human rights and health can be obtained from <http://www.who.int/hhr/onepagerHHRETH.pdf> and <http://www.who.int/hhr/en>
- 52 Office of the United Nations High Commissioner for Human Rights, <http://www.ohchr.org/english/about/index.htm> and <http://www.un.org/rights>
- 53 Amnesty International, Poverty and Human Rights, <http://web.amnesty.org/pages/poverty-index-eng>
- 54 European Court of Human Rights, <http://www.echr.coe.int/ECHR/EN/Header/The+Court/The+Court/History+of+the+Court>
- 55 European Court of Human Rights, <http://www.echr.coe.int/ECHR/EN/Header/Applicants/Information+for+applicants/Frequently+asked+questions>
- 56 European Court of Human Rights, Survey of Activities 2006, Registry of the European Court of Human Rights, Strasbourg, 2007 <http://www.echr.coe.int/NR/rdonlyres/69564084-9825-430B-9150-A9137DD22737/0/SurveyofActivities2006.pdf>
- 57 Project on International Courts and Tribunals, African Court on Human and Peoples' Rights, <http://www.pict-pecti.org/courts/ACHPR.html>
- 58 *Id.*
- 59 African Charter on human and Peoples' Rights, Article 16, <http://www1.umn.edu/humanrts/instree/z1afchar.htm>
- 60 Inter-American Human Rights System, <http://www.ishr.ch/hrm/Infokit/InfoPack/InterAmericanHRSystem.pdf>
- 61 Churches United in the Struggle Against HIV/AIDS, <http://www.cuaha.info/index2.php>
- 62 Healthcare Ministries, <http://www.healthcareministries.org/about.htm>