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Health and Human Rights

**A Resource Guide for the
Open Society Institute and
Soros Foundations Network**



Now we have the responsibility to move forward by recognizing that true interdependence and real interconnectedness requires that we—from health and from human rights—advance together: equal partners in the belief that the world can change.

Jonathan Mann (1947-1998)



OPEN SOCIETY INSTITUTE

equitas

Centre international
d'éducation aux droits humains
International Centre for
Human Rights Education

Health and Human Rights

A Resource Guide for the
Open Society Institute and
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June 2007

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Soros Foundations Network

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International Centre for
Human Rights Education



Introduction

Photo courtesy Paul McAdams

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Acknowledgements

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▶ **Appendix: Thirteen Health and Human Rights Documents**

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Preface

One of the most satisfying experiences of my human rights career was participating in litigation in the 1970s that closed the Willowbrook Developmental Center, a notoriously inhumane facility for persons with intellectual disabilities in New York City. Willowbrook was not only a health hazard to its more than 6,000 “mentally retarded” inmates, but a deep affront to the dignity and human rights of people with mental disabilities. The lawsuit was brought by the New York branch of the American Civil Liberties Union, of which I was executive director. It resulted in the resettlement of the inmates in state-supported community residences where they were able to lead near normal lives. It also spurred massive reform of New York State's system of care for the developmentally disabled, assisting many thousands of others to live outside institutions and contributed significantly to such reforms throughout the United States.

Willowbrook is an enduring symbol of the power of the law to improve the health of society's most marginalized persons. Whether people living with HIV or AIDS, drug users, sex workers, Roma, or people needing palliative care, those living on the furthest margins of society have one thing in common: violations of their human rights worsen their health. Extortion and arbitrary arrest of drug users impede access to harm reduction services and are a major cause of prison overcrowding. Violence and discrimination against men and women in prostitution makes it difficult to reach them with life-saving HIV-prevention services. Discrimination on the basis of HIV status, still widespread over 25 years into the epidemic, frustrates efforts to bring the epidemic under control.

This Resource Guide brings together two of the Open Society Institute's largest priorities: our public health portfolio on the one hand, and our numerous law and human rights initiatives on the other. By working together, each of these programs can accomplish their goals more effectively. Health advocates can better serve their clients by harnessing the power of the law to secure protection against human rights violations. Human rights advocates can increase their reach by attending to the negative health repercussions of extensive human rights abuses. At the foundation level, collaboration between legal and health staff can substantially enrich their professional experience.

I recommend this Guide to all staff dedicated to the important pursuit of health and human rights.

Aryeh Neier
June 2007

About this Guide

Purpose and organization

This Resource Guide was prepared by your colleagues as a user-friendly, multi-purpose resource that can be used on a regular basis on the job.

The Guide covers the basic concepts and resources in health and human rights and contains **six chapters**, each on a different health issue of priority concern to the Open Society Institute (OSI) and Soros Foundations Network (SFN), and **one appendix**.

The six chapters are:

- ▶ **Chapter 1:** Human rights in patient care
- ▶ **Chapter 2:** HIV/AIDS and human rights
- ▶ **Chapter 3:** Harm reduction and human rights
- ▶ **Chapter 4:** Palliative care and human rights
- ▶ **Chapter 5:** Sexual health and human rights
- ▶ **Chapter 6:** Health and human rights in minority communities
- ▶ **Appendix:** Thirteen health and human rights documents

Each chapter is organized into six sections that answer the following questions:

- ▶ **How** is this a human rights issue?
- ▶ **What** is OSI's work on this issue?
- ▶ **Which** are the most relevant international and regional human rights standards related to this issue?
- ▶ **What** are some effective human rights programming on this issue?
- ▶ **Where** can I find additional resources on this issue?
- ▶ **What** are key terms related to this issue?

How to use and modify the Guide

The Guide is a practical **reference tool** for you to use in your day-to-day work. You can also **add** new materials as you see fit, **take notes** in the margins, and **print** specific sections for use in training.

Review the following table for examples on how you can use and modify each section of the Guide.

Chapter heading	How to use and modify the Guide
How is this human rights issue?	Use these introductory sections for a quick definition of each health issue, or re-print them in a report or advocacy document.
What is OSI's work on this issue?	Share these descriptions of OSI's work with potential grantees or advocacy partners.
Which are the most relevant international and regional human rights standards related to this issue?	Consult the tables to construct human rights arguments, identify opportunities for using human rights mechanisms, or conduct legal research. If a regional or international human rights body issues a new ruling on one of the issues, add this to the relevant table.
What are some effective human rights programming on this issue?	Review the project examples to develop your annual strategy or encourage local partners to take on health and human rights work. If you encounter a good example of health and human rights programming, you can write it up as a project example and add it to the appropriate chapter.
Where can I find additional resources on this issue?	Refer to the resources lists to deepen your understanding on any of the topics. As you discover additional good readings and trainings for each topic, you can add them to the relevant resource list and share them with colleagues working on these issues.
What are key terms related to this issue?	Check the glossaries to look up a term related to any of the issues. If you discover a new term that is not included in one of the glossaries, you can look up the definition and add it to the appropriate chapter.

Putting the Guide into action

This Guide is a **starting point** for a wide range of health and human rights programming within OSI and the SFN. The Guide will provide you with ideas, information, and resources to develop programs in any of the six subject areas covered in each chapter.

You can use the Guide to:	How
Collaborate with colleagues on strategy development	There are many opportunities for Law Program and Public Health Coordinators to collaborate on health and human rights work. The Guide provides over thirty examples of projects that can be adapted at the country or regional level, as well as extensive information on developing claims before regional and international bodies. The annual strategy process is a good time to consult the Guide for ideas on how law and health staff can collaborate.
Develop regional or thematic courses and trainings	Each chapter of the Guide contains the information and resources needed to develop a course or training seminar on the topic of the chapter. For example, you can use the information in Chapter 2 to develop a course on HIV/AIDS and Human Rights for advocates in a particular region. While the chapters do not contain actual curricula or training materials, an experienced educator can use the information in the Guide to develop a course or seminar.
Identify human rights claims	The Guide contains hundreds of real-life examples of human rights abuses related to each of six health issues, as well as legal standards and precedents that can be used to seek redress for these abuses. The Introduction to the Guide briefly describes the main regional and international human rights mechanisms with which you can lodge complaints. There is great potential for using regional and international mechanisms to advance health-related claims, and this is an excellent area of collaboration for law program and public health staff.
Adapt the project examples in your country	Each chapter of the Guide contains three to five examples of effective health and human rights projects from around the world. Each project example summarizes the work accomplished and includes contact information for the implementing organization. You can adapt these project examples to any country or region. You can also share the project examples with your NGO partners to encourage them to take on more work on health and human rights.
Conduct further research	If you are conducting research on health and human rights—for example, writing an article or news item, preparing a conference presentation, or developing a Request for Proposals (RFP)—you can consult the Guide for a list of articles, books, websites, and other resources on each of the six issues the Guide covers. While not comprehensive, each resource list was prepared by experts in the field and contains their recommendations of the most useful resources.
Educate other funders	While this Guide is primarily directed at OSI and the SFN, it can also be used by other funders who are interested in health and human rights. The Guide (or sections of it) can be translated into local languages and adapted to local contexts. Parts of it can be expanded, abbreviated, or modified depending on the purpose and audience.

Using human rights mechanisms

Treaties and enforcement mechanisms

One of the main ways to advocate for health and human rights is to lodge complaints or file reports with regional or international human rights mechanisms. These mechanisms were established to enforce governments' compliance with the regional and international human rights treaties they have ratified. These treaties make up the so-called "hard law" of international human rights, while the interpretations of the treaty mechanisms make up "soft law" that is not directly binding on governments. There are two main types of enforcement mechanisms:

- ▶ **Courts**, which act in a judicial capacity and issue rulings that are binding on governments in the traditional sense;
- ▶ **Committees**, which examine reports submitted by governments on their compliance with human rights treaties, and in some cases examine individual complaints of human rights violations.

The main treaties and corresponding enforcement mechanisms discussed in this Guide are shown on the following page:

Using the mechanisms

One of the greatest advantages of regional and international human rights mechanisms is that they allow individuals and NGOs to lodge complaints or file reports of human rights abuses.

The best way to learn about how to use a particular mechanism is to visit its website or contact its Secretariat. The contact information for each enforcement mechanism discussed in the Guide, as well as some introductory information about its mandate and procedures is provided on the next pages.

Treaties and corresponding enforcement mechanisms

Treaty	Enforcement Mechanism
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee (HRC)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Committee on Economic, Social and Cultural Rights (CESCR)
International Convention on the Elimination of all forms of Racial Discrimination (ICERD)	Committee on the Elimination of Racial Discrimination (CERD)
Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention)	International Labour Organization (ILO)
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee)
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child (CRC Committee)
African Charter on Human and People's Rights (ACHPR) & Protocols	African Commission on Human and People's Rights (ACHPR Commission)
European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)	European Court of Human Rights (ECtHR) (with Committee of Ministers)
European Social Charter (ESC)	European Committee of Social Rights (ECSR) (with Governmental Committee and Committee of Ministers)
Framework Convention for the Protection of National Minorities (FCNM)	Committee of Ministers of the Council of Europe & Advisory Committee (AC)

Note: The above is only a fraction of the treaties and enforcement mechanisms that can be used to advocate for health and human rights. Some of the resources listed at the end of this Introduction contain more detailed information about the regional and international human rights systems.

Human Rights Committee

▶ Mandate

The Human Rights Committee (HRC) oversees government compliance with the International Covenant on Civil and Political Rights (ICCPR). The HRC has two mandates: to monitor country progress on the ICCPR by examining periodic reports submitted by governments; and to examine individual complaints of human rights violations under the Optional Protocol to the ICCPR.

▶ Civil society participation

NGOs can submit “shadow reports” to the HRC on any aspect of a government’s compliance with the ICCPR. Shadow reports should be submitted through the HRC Secretariat based at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva, which also keeps a calendar of when governments come before the Committee. The HRC meets three times a year. Individuals and NGOs can also submit complaints to the HRC under the Optional Protocol.

Contact

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www.unhchr.ch/html/menu2/6/hrc.htm

Committee on Economic, Social, and Cultural Rights

▶ Mandate

The Committee on Economic, Social, and Cultural Rights (CESCR) oversees government compliance with the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The CESCR monitors country progress on the ICESCR by examining periodic reports submitted by governments.

▶ Civil society participation

NGOs can submit “shadow reports” to the CESCR on any aspect of a government’s compliance with the ICESCR. Shadow reports should be submitted through the CESCR Secretariat based at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva, which also keeps a calendar of when governments come before the Committee. The CESCR meets twice a year.

Contact

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Fax: +41 22 917 9046
wlee@ohchr.org
www.unhchr.ch/html/menu2/6/cescr.htm

Committee on the Elimination of Racial Discrimination

► Mandate

The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the International Convention on the Elimination of all forms of Discrimination (ICERD) by states. It monitors country progress on ICERD by examining periodic reports submitted by governments. The Committee then addresses its concerns and recommendations to the country in the form of “concluding observations.” Besides commenting on country reports, CERD monitors state compliance through an early-warning procedure and the examination of inter-state complaints and individual complaints.

► Civil society participation

NGOs can submit “shadow reports” to the Advisory Committee (AC) on any aspect of a government’s compliance with the Framework Convention for the Protection of National Minorities (FCNM). Shadow reports should be submitted through the CERD Secretariat based at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva, which also keeps a calendar of when governments come before the committee. CERD meets twice a year.

Contact

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 Fax +41.22.917.90.22
nprouvez@ohchr.org
www.ohchr.org/english/bodies/cerd/index.htm

International Labour Organization

► Mandate

The International Labour Organization (ILO), located within the United Nations, is primarily concerned with respect for human rights in the field of labour. In 1989, they adopted the Convention concerning Indigenous and Tribal Peoples in Independent Countries. States must provide periodic reports on their compliance with the Convention to the ILO and to national employers and workers associations. National employers and workers associations may submit comments on these reports to the ILO. The ILO Committee of Experts (CE) evaluates the reports and may send “Direct Requests” to governments for additional information. The CE then publishes its “Observations” in a report, presented at the International Labour Conference. On the basis of this report, the Conference Committee on the Application of Standards may decide to more carefully analyze certain individual cases and publishes its conclusions. Additionally, an association of workers or employers may submit a representation to the ILO alleging that a

member state has failed to comply with the Convention and a member state may file a complaint against another.

▶ **Civil society participation**

The Convention encourages governments to consult indigenous peoples in preparing their reports. Indigenous peoples may also affiliate with a worker association or form their own worker association in order to more directly communicate with ILO. The CE meets in November and December of each year, and the International Labour Conference is in June.

Contact

Office Relations Branch
4, rue des Morillons
CH-1211, Geneva 22, Switzerland
Tel. +41.22.799.7732, Fax +41.22.799.8944
RELOFF@ilo.org
www.ilo.org/public/english/index.htm

Committee on the Elimination of All Forms of Discrimination Against Women

▶ **Mandate**

The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) oversees government compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The CEDAW Committee has three mandates: to monitor country progress on CEDAW by examining periodic reports submitted by governments; to examine individual complaints of violations of women's rights under the Optional Protocol to CEDAW; and to conduct missions to state parties in the context of concerns about systematic or grave violations of treaty rights.

▶ **Civil society participation**

NGOs can submit “shadow reports” to the CEDAW Committee on any aspect of a government's compliance with CEDAW. Shadow reports should be submitted through the Division for the Advancement of Women in New York, which also keeps a calendar of when governments come before the Committee. The CEDAW Committee meets twice a year. Individuals and NGOs can also submit complaints to the Committee under the Optional Protocol, or encourage the Committee to undertake country missions as part of its inquiry procedure.

Contact

Jane Connors, Chief, Women's Rights Unit, Division for the Advancement of Women, Department of Economic and Social Affairs, Two UN Plaza, Room DC2-1226, New York, NY, 10017
Tel: +1 (212) 963-3162, Fax: +1 (212) 963-3463
connorsj@un.org
www.un.org/womenwatch/daw/cedaw/committee.htm

Committee on the Rights of the Child

► Mandate

The Committee on the Rights of the Child (CRC) oversees government compliance with the Convention on the Rights of the Child (CRC). It monitors country progress on the CRC by examining periodic reports submitted by governments.

► Civil society participation

NGOs can submit “shadow reports” to the CRC on any aspect of a government’s compliance with the Convention. Shadow reports should be submitted through the CRC Secretariat based at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva, which also keeps a calendar of when governments come before the Committee. The CRC meets three times a year.

Contact

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mandrijasevic@ohchr.org
www.ohchr.org/english/bodies/crc/index.htm

African Commission on Human and People’s Rights

► Mandate

The African Commission on Human and People’s Rights, a body of the Organization of African Unity (OAU), has a broad mandate to protect and promote human rights in Africa, as well as to interpret the provisions of the African Convention on Human and People’s Rights. The Commission monitors country progress on the Convention by: examining periodic reports submitted by governments; examining complaints of violations of the Conventions provisions brought by individuals, NGOs, and governments; and undertaking a range of promotional activities related to human rights in Africa.

► Civil society participation

Individuals or organizations may submit complaints to the Commission, provided all local remedies have been exhausted and other admissibility criteria have been met. (The requirement of exhausting domestic remedies may be waived if it is obvious to the Commission that this procedure has been unduly prolonged.) Individual or organizational complaints are only considered by the Commission at the request of a majority of its members. Detailed information about the submission procedure can be found on the Commissions website:

www.achpr.org/english/information_sheets/ACHPR%20inf.%20sheet%20no.3.doc .

NGOs with observer status with the Commission may attend the Commission’s public sittings.

Note on the African Human Rights Court: To complement the mandate of the African Commission, the African Charter on Human and People's Rights contains a Protocol calling for the establishment of an African Court on Human and People's Rights. As of April 2007, judges for the African Court had been sworn in, however the Court was not yet operational. Once operational, the Court will have jurisdiction over the African Charter and its Protocols and any other "relevant human rights instrument" ratified by the concerned parties. The Court will accept complaints from the Commission, States Parties, and African Intergovernmental Organizations.

Contact

African Commission on Human and People's Rights,
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Tel: +220 4392 962, 4372 070, 4377 721-23
Fax: +220 4390 764
achpr@achpr.org
www.achpr.org

European Court of Human Rights

▶ Mandate

The European Court of Human Rights (ECtHR), a body of the Council of Europe (COE), enforces the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The ECtHR adjudicates both disputes between states and complaints of individual human rights violations. The Committee of Ministers of the Council of Europe is responsible for monitoring the implementation of judgments made by the ECtHR. (See note on Committee of Ministers below.)

▶ Civil society participation

Any individual or government can lodge a complaint directly with the ECtHR alleging a violation of one of the rights guaranteed under the Convention, provided they have exercised all other options available to them domestically. An application form may be obtained from the ECtHR website (www.echr.coe.int/echr/).

The Council of Europe has established a legal aid scheme for complainants who cannot afford legal representation. NGOs can file briefs on particular cases either at the invitation of the President of the Court, or as "Amici Curia" (Friends of the Court) if they can show that they have an interest in the case or special knowledge of the subject matter, and that their intervention would serve the administration of justice. Hearings of the ECtHR are generally public.

Contact

European Court of Human Rights,
Council of Europe, 67075 Strasbourg-Cedex, France,
Tel: +33 3 88 41 20 18, Fax: + 33 3 88 41 27 30
www.echr.coe.int

European Committee of Social Rights

▶ Mandate

The European Committee of Social Rights, also a body of the Council of Europe (COE), conducts regular legal assessments of government compliance with provisions of the European Social Charter. These assessments are based on reports submitted by governments at regular two-to-four-year intervals known as “supervision cycles.” The Governmental Committee and the Committee of Ministers of the Council of Europe also evaluate government reports under the ECSR. (See note on Committee of Ministers below.)

▶ Civil society participation

Reports submitted by governments under the European Social Charter are public and may be commented upon by individuals or NGOs. International NGOs with consultative status with the COE, as well as national NGOs authorized by their government, may also submit “collective complaints” to the COE alleging violations of the Charter.

Contact

www.humanrights.coe.int/cseweb/GB/index.htm

Advisory Committee

▶ Mandate

The Advisory Committee (AC) assists the Committee of Ministers in monitoring compliance with the Framework Convention for the Protection of National Minorities (FCNM). It monitors country progress on the FCNM by examining periodic reports submitted by governments. Besides examining these reports, the AC may hold meetings with governments and request additional information from other sources. The AC then prepares an opinion, which is submitted to the Committee of Ministers. Based on this opinion, the Committee of Ministers issues conclusions concerning the adequacy of measures taken by each state party. The AC may be involved by the Committee of Ministers in the monitoring of the follow-up to the conclusions and recommendations.

▶ Civil society participation

NGOs can submit “shadow reports” to the AC on any aspect of a government’s compliance with the FCNM. Shadow reports should be submitted through the FCNM Secretariat.

Contact

Directorate General of Human Rights (DGII)
 Secretariat of the Framework Convention for the
 Protection of National Minorities
 F – 67075 STRASBOURG CEDEX
 France
 Tel: +33/(0)3.90.21.44.33, Fax: +33/(0)3.90.21.49.18
minorities.fcnm@coe.int
www.coe.int/minorities

Other committees and groups

▶ Committee of Ministers

The Committee of Ministers (www.coe.int/cm) is the decision-making body of the Council of Europe, and is comprised of the foreign ministers (or their permanent representatives) of all COE member states.

In addition to supervising judgments of the ECtHR and evaluating reports under the ECSR (see above), the Committee of Ministers also makes separate Recommendations to member states on matters for which the Committee has agreed to a “common policy”—including matters related to health and human rights.

Some of these Recommendations are provided by the **Parliamentary Assembly** of the Council of Europe (stars.coe.fr), which is a consultative body composed of representatives of the Parliaments of member states.

▶ European Union

The European Union (www.europa.eu/europa.ed.int/eur-lex/) has twenty-seven member states and is a separate system from the Council of Europe (www.coe.int), which has forty-six member states. Mechanisms for advocating for health and human rights within the European Union (such as EU Directives and the European Court of Justice) are not discussed in this Guide. It should be noted, however, that all member states of the European Union are bound by the institutions and instruments under the Council of Europe.

Essential reading

General resources in health and human rights

Each chapter of this Guide contains topic-specific resources on the health issue covered by that chapter. The following are general resources on health and human rights, divided into the following categories:

- ▶ Conventions: UN *
- ▶ Conventions: Regional*
- ▶ Guidelines and interpretations*
- ▶ Books
- ▶ Key articles, reports, and other documents
- ▶ Periodicals
- ▶ Websites
- ▶ Search engines
- ▶ Training materials

* For additional information on UN and Regional conventions as well as Guidelines and interpretations see [Appendix](#).

Conventions: UN

- ▶ International Covenant on Civil and Political Rights.
Source: www.unhchr.ch/html/menu3/b/a_ccpr.htm
- ▶ International Covenant on Economic, Social and Cultural Rights.
Source: www.unhchr.ch/html/menu3/b/a_cescr.htm
- ▶ International Convention on the Elimination of all forms of Racial Discrimination.
Source: www.ohchr.org/english/law/cerd.htm
- ▶ Convention concerning Indigenous and Tribal Peoples in Independent Countries.
Source: www.unhchr.ch/html/menu3/b/62.htm

- ▶ Convention on the Elimination of all Forms of Discrimination Against Women.
Source: www.ohchr.org/english/law/cedaw.htm
- ▶ Convention on the Rights of the Child.
Source: www.ohchr.org/english/law/crc.htm
- ▶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
Source: www.ohchr.org/english/law/cat.htm

Conventions: Regional

- ▶ African Charter on Human and People's Rights.
Source: www.achpr.org/english/info/charter_en.html
- ▶ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
Source: www.achpr.org/english/info/women_en.html
- ▶ African Charter on the Rights and Welfare of the Child.
Source: www.achpr.org/english/info/child_en.html
- ▶ European Convention on the Protection of Human Rights and Fundamental Freedoms.
Source: conventions.coe.int/Treaty/en/Treaties/Html/005.htm
- ▶ European Social Charter.
Source: conventions.coe.int/Treaty/EN/Treaties/Html/035.htm
- ▶ Framework Convention for the Protection of National Minorities.
Source: conventions.coe.int/treaty/en/Treaties/Html/157.htm

Guidelines and interpretations

- ▶ The Siracusa Principles on the Limitation and Derogation Principles in the ICCPR, especially Article 25.
Source: www1.umn.edu/humanrts/instree/siracusaprinciples.html
- ▶ The Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights.
Source: www1.umn.edu/humanrts/instree/Maastrichtguidelines.html

- ▶ Committee on Economic, Social and Cultural Rights, General Comment 14, The Right to the Highest Attainable Standard of Health.
Source: [www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)
- ▶ Committee on the Elimination of Discrimination against Women, General Recommendation 24, Women and Health.
Source:
www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24

Books

General Human Rights

- ▶ Buergethal, Thomas and Dinah Shelton and David Stewart. *International Human Rights in a Nut Shell*. West Publishing Company, 1995.
- ▶ Cranston M. *What are Human Rights?* New York: Basic Books, 1973.
- ▶ Nussbaum M. Capabilities, Human Rights and the Universal Declaration. In: *Weston and Marks. The Future of International Human Rights*, Transnational Publishers, 1999.
- ▶ Orend B. *Human rights—Concept and Context*. Broadview Press, 2000.
- ▶ Steiner HJ and Alston P. *International Human Rights in Context – Law, Politics, Morals*. 2nd ed. Oxford University Press, 2000. Chapters 1, 4 and 11.
- ▶ Sen, Amartya, *Development as Freedom*. Pp.87-100. New York: Anchor Books, 1998.

Health and Human Rights

- ▶ Alfredsson, G. and K. Tomasevski. *A Thematic Guide to Documents on Health and Human Rights: Global and Regional Standards adopted by Intergovernmental Organizations, International Non-Governmental Organizations and Professional Associations*. Martinus Nijhoff, 1998.
- ▶ Asher, Judith. *Right to Health: A Resource Manual*. Commonwealth Medical Trust, 2004
- ▶ Beyrer, Christopher and Hank Pizer, eds. *Public Health and Human Rights: Evidence-Based Approaches*. (forthcoming).
- ▶ Chapman, Audrey and Sage Russell, eds. *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*. Intersentia, 2002.

- ▶ Cook, Rebecca J, Bernard Dickens, and Mahmoud Fathalla. *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law*. Oxford: Oxford University Press, 2003.
- ▶ Framer, Paul. *Infections and Inequalities: The Modern Plagues*. California: University of California Press, 2001.
- ▶ Framer, Paul. *Pathologies of Power: Health, Human Rights and the New War on the Poor*. California: University of California Press, 2003.
- ▶ Gostin, Lawrence O. *Public Health Law: Power, Duty, Restraint*. California: University of California Press, 2003.
- ▶ Gruskin, Sofia and Michael A. Grodin, George J. Annas, and Stephen P. Marks, eds. *Perspectives on Health and Human Rights*. Routledge, 2005.
- ▶ Mann, Jonathan M. and Sofia Gruskin, Michael A. Grodin, and George J. Annas, eds. *Health and Human Rights: A Reader*. Routledge, 1999.
- ▶ Marks, Stephen. *Health and Human Rights: Basic International Documents*. Boston: Harvard University Press, 2006.

Key articles, reports, and other documents

- ▶ Annas, George J. Human Rights and Health—The Universal Declaration of Human Rights, 339 *New Eng. J. Med.* 1778 (1998).
- ▶ Beyrer, Chris. Public Health, Human Rights, and the Beneficence of States, *Human Rights Review* 2004, 5(1) 28-33.
- ▶ Burris Scott. “Law as a Structural Factor in the Spread of Communicable Disease.” *Houston Law Review* 36 (1999): 1756-1786.
- ▶ Burris, Scott and Zita Lazzarini and Lawrence O Gostin. “Taking Rights Seriously.” *Journal of Law, Medicine & Ethics*, 30(2002):490-491.
- ▶ Farmer P, Gastineau N. Rethinking Health and Human Rights: Time for a Paradigm Shift. *J Law, Med and Ethics* (2002) 30:4:655-666.
- ▶ Framer, Paul. *Never Again? Reflections on Human Values and Human Rights*. Tanner lectures on Human Values. University of Utah: 2005.
- ▶ Goodman T. Is There A Right To Health? *J. of Medicine and Philosophy*, 30:643-662, 2005.

- ▶ Gruskin, Sofia and Trantola, Daniel. “Health and Human Rights, paper, to appear as chapter in *The Oxford Textbook of Public Health*, 4th edition, Detels, McEwan, Beaglehole and Tanaka, eds, (Oxford University Press).
- ▶ Leary, V. “The Right to Health in International Human Rights Law,” *Health and Human Rights: An International Journal*, 1994, 1(1):24-56.
- ▶ London, Leslie. “Human Rights and Public Health: Dichotomies or Synergies in Developing Countries? Examining the Case of HIV in South Africa.” *Journal of Law, Medicine and Ethics* 30 (2002): 677-691
- ▶ London, Leslie. “Issues of equity are also issues of rights: Lessons from Experiences in Southern Africa,” *BMC Public Health* 2007, 7:14.
- ▶ Mann, Jonathan. *Medicine and Public Health, Ethics and Human Rights*, Hastings Center Rep., May-June 1997.
- ▶ Ngwena, Charles. “The Recognition of Access to Health Care as a Human Right in South Africa: Is It Enough?” *Health and Human Rights: An International Journal* 5 (1): 26-44 (2000).
- ▶ Odinkalu, Chidi Anselm. *Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social and Cultural Rights under the African Charter on Human and Peoples’ Rights*. *Human Rights Quarterly* 23.2 (2001) 327-369.
- ▶ Right to Health Unit, Human Rights Centre, University of Essex, UK, *Right to the Highest Attainable Standard of Health*, Inter-Regional Conference on Human Rights and Judiciary Systems.
- ▶ Special Rapporteur to the Commission on Human Rights. “The Right of Everyone to the Highest Attainable Standard of Physical and Mental Health.”
- ▶ World Health Organization. *25 Questions and Answers on Health and Human Rights*, Health and Human Rights Publications Series 1 (2002).
- ▶ Zuckerman, Barry and Ellen Lawton and Samatra Morton. *From Principles to Practice: Moving from Human Rights to Legal Rights to Ensure Child Health*.

Periodicals

- ▶ *Health and Human Rights: An International Journal*.
- ▶ *The Lancet* (contains a regular health and human rights section).

- ▶ BMC International Health and Human Rights.

Websites

- ▶ Amnesty International Health Professional Network
web.amnesty.org/pages/health-index-eng
- ▶ BMC International Health and Human Rights
www.biomedcentral.com/bmcinthealthhumrights/
- ▶ François Xavier Bagnoud Centre for Health and Human Rights, Harvard School of Public Health
www.hsph.harvard.edu/fxbcenter/
- ▶ Global Lawyers and Physicians
www.glphr.org
- ▶ The International Center for the Legal Protection of Human Rights (monthly report of significant human rights decisions from common law jurisdictions)
www.interights.org
- ▶ International Federation of Health and Human Rights Organizations
www.ifhhro.org
- ▶ International Society for Health and Human Rights
www.ishhr.org
- ▶ International Helsinki Federation for Human Rights (IHF)
The IHF is a community of 46 human rights NGOs in the OSCE area that co-operate on promoting implementation of human rights and compliance with international human rights standards.
www.ihf-hr.org/index.php
- ▶ Johns Hopkins School of Public Health Center for Public Health and Human Rights
www.jhsph.edu/humanrights/index.html
- ▶ National Economic and Social Rights Initiative
www.nesri.org
- ▶ Physicians for Human Rights
physiciansforhumanrights.org/
- ▶ Science and Human Rights Program of the American Association for the Advancement of Science
shr.aaas.org

- ▶ Special Rapporteur on the Right to the Highest Attainable Standard of Health www2.essex.ac.uk/human_rights_centre/rth/rapporteur.shtm or www.ohchr.org/english/issues/health/right/
- ▶ University of Minnesota Human Rights Library contains a lengthy list of health and human rights websites, though many of these are out of date www1.umn.edu/humanrts/links/health.html
- ▶ World Health Organization's Health and Human Rights page
WHO's 25 Questions and Answers on Health and Human Rights is a useful introductory document
www.who.int/hhr/en/

Search engines

- ▶ The UN Treaty Body Database includes all general comments, concluding observations, reports, and other documents of the UN human rights system, organized by treaty monitoring body and special procedure
www.unhchr.ch/tbs/doc.nsf
- ▶ The International Human Rights Index also includes the above documents but is searchable by key word, country, and right
www.universalhumanrightsindex.org
- ▶ The University of Minnesota has an excellent database of international human rights documents and information. It is organized simply and clearly and is generally the easiest way to find documents
www1.umn.edu/humanrts/
- ▶ Professor Anne Bayefsky's website (York University, Toronto, Canada) includes international human rights documents and jurisprudence that are searchable by country, category of document, and theme or subject matter
www.bayefsky.com
- ▶ Health and Human Rights Info, a project of the International Society for Health and Human Rights, is a searchable database of organizations, manuals, training materials, projects and reports, and articles related to several areas of health and human rights
www.hhri.org

Training materials

- ▶ The Human Rights Resource Center, part of the University of Minnesota human rights library, contains a range of interactive training packages on human rights
www1.umn.edu/humanrts/edumat/

- ▶ The website of Equitas contains a collection of education manuals and resources as well as extensive information and links to Equitas projects and partners
www.equitas.org

What are key terms related to health and human rights?

Glossary

The following terms relate both to health and human rights and to human rights in general.

D

Dignity

The quality of being worthy, honored, or esteemed. Human rights are based on inherent human dignity and aim to protect and promote it.

H

Human rights

Entitlements, freedoms, and privileges which inhere to all human beings regardless of jurisdiction or other factors such as ethnicity, nationality, religion, or sex.

Human rights indicators

Criteria used to measure compliance with international human rights standards.

I

Interdependent/ indivisible

Term used to describe the relationship between civil and political rights and economic and social rights. Interdependence and indivisibility mean that one set of rights does not take precedence over the other, and that guaranteeing each set of rights is contingent upon guaranteeing the other.

M

Maximum available resources

Key provision of ICESCR, Article 2 obliging governments to devote the maximum of available government resources to realizing economic, social and cultural rights.

Monitoring/ fact finding/ investigation

Terms often used interchangeably, generally intended to mean the tracking and/or gathering of information about government practices and actions related to human rights.

N

Negative rights

State obligations to refrain from interfering with a person's attempt to do something.

P

Positive rights

State obligations to do something for someone.

Progressive realization

Requirement that governments move as expeditiously and effectively as possible toward the goal of realizing economic, social and cultural rights, and to ensure there are no regressive developments.

R

Respect, protect, and fulfill

Governments' obligations with respect to rights. **Respect:** government must not act directly counter to the human rights standard. **Protect:** government must act to stop others from violating the human rights standard. **Fulfill:** government has an affirmative duty to take appropriate measures to ensure that the human rights standard is attained.



Photo courtesy of Physicians for Human Rights

Chapter 1 Human Rights in Patient Care

“There is no difference between men, in intelligence or race, so profound as the difference between the sick and the well.”

F. Scott Fitzgerald

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Introduction

This chapter will introduce you to key issues and resources related to human rights in **patient care**, with a particular focus on issues such as **consent, confidentiality, access to information** and **care**.

While other chapters in this Resource Guide focus on specific populations—such as people living with and affected by HIV and AIDS, people who use drugs, sex workers, LGBT communities, and ethnic minorities—this chapter addresses human rights issues affecting patients as a whole.

The chapter is organized into six sections that answer the following questions:

- ▶ **How** is patient care a human rights issue?
- ▶ **What** is OSI's work in the area of human rights in patient care?
- ▶ **Which** are the most relevant international and regional human rights standards related to patient care?
- ▶ **What** are some examples of effective human rights programming in the area of patient care?
- ▶ **Where** can I find additional resources on human rights in patient care?
- ▶ **What** are key terms related to human rights in patient care?

As you read through this chapter, consult the **glossary of terms** found in the last section, *What are key terms related to patient care and human rights?*

How is patient care a human rights issue?

What is patient care?

Patient care refers to the “prevention, treatment and management of illness and the preservation of physical and mental well-being through services offered by medical and allied health professions”¹ A **Patient** is a person who is waiting for, is receiving, or has received health care services.²

What are human rights in patient care?

Human rights in patient care encompass all rights recognized under international law that are relevant to the provision of health services. This includes basic empowerment rights (such as information, consent, free choice, privacy and confidentiality), rights to a remedy for abuses, and rights of access to services.

Human rights in patient care are a critical part of the provision of quality and appropriate health care, which is recognized as part of the human right to the highest attainable standard of health.

Human rights in patient care refer not just to entitlements for actual patients, but to legal, ethical, and human rights standards in the provision of care that concern health providers and the entire community.

What are patient rights?

“**Patient rights**” refers to a “set of rights, responsibilities and duties under which individuals seek and receive health care services.”³

The call for patients’ rights is a movement that is growing globally to make governments and health care providers more accountable for providing access to quality health services.

The **European Charter of Patients’ Rights**, compiled in 2002 by Active Citizenship Network, a European network of civic, consumer, and patient organizations, provides one clear statement of patient rights. This statement was part of a grassroots movement across Europe for patients to play a more active role in shaping the delivery of health services and an attempt to translate regional documents on the right to health care into specific provisions.⁴ Although this Charter is not legally binding, a strong network of patient rights groups across Europe have successfully lobbied their national government for recognition and

¹ Based on WHO (World Health Organization) definition.

² Based on WHO definition for “user(s) of health care services, whether healthy or sick” (WHO European Consultation on the Rights of Patients, 2004).

³ European Observatory on Health Systems and Policies (citing USAID, 1999).

⁴ It is important to note that the pharmaceutical company Merck & Co. also provided funding for this movement.

adoption of rights in the Charter.⁵ The Charter has also been used as a reference point to monitor and evaluate health care systems across Europe.

European Charter of Patients' Rights

Source: Active Citizenship Network, 2002

The 14 'immutable' rights	Description
1. Right to preventive measures	Every individual has the right to a proper service, in order to prevent illness.
2. Right of access	Every individual has the right of access to the health services that his or her health needs require. The health services must guarantee equal access to everyone, without discriminating on the basis of financial resources, place of residence, kind of illness, or time of access to services.
3. Right to information	Every individual has the right of access to all kinds of information regarding their state of health, the health services (and how to use them), and all that scientific research and technological innovation makes available.
4. Right to consent	Every individual has the right of access to all information that might enable him or her to actively participate in the decisions regarding his or her health. This information is prerequisite for any procedure and treatment, including participation in scientific research.
5. Right to free choice	Each individual has the right to freely choose from among different treatment procedures and providers, on the basis of adequate information.
6. Right to privacy and confidentiality	Every individual has the right to the confidentiality of personal information, including information regarding his or her state of health and potential diagnostic or therapeutic procedures, as well as the protection of his or her privacy during the performance of diagnostic exams, specialist visits, and medical/surgical treatments in general.
7. Right to respect for patients' time	Each individual has the right to receive necessary treatment within a swift and predetermined period of time. This right applies at each phase of the treatment.

Continued

⁵ One of the activities of new EU member-states during process of preparation for accession in the EU was adjustment of health care legislation towards European legislation and standards. Many countries, such as Bulgaria, adopted new health law, whose structure and contents are strictly in line with the European Charter of Patients' Rights.

The 14 'immutable' rights	Description
8. Right to observance of quality standards	Each individual has the right of access to high-quality health services, on the basis of the specification and observance of precise standards.
9. Right to safety	Each individual has the right to be free from harm caused by the poor functioning of health services, medical malpractice and errors, and the right of access to health services and treatments that meet high safety standards.
10. Right to innovation	Each individual has the right of access to innovative procedures (including diagnostic procedures), according to international standards and independently of economic or financial considerations.
11. Right to avoid unnecessary suffering and pain	Each individual has the right to avoid as much suffering and pain as possible, in each phase of his or her illness.
12. Right to personalised treatment	Each individual has the right to diagnostic or therapeutic programmes tailored as much as possible to his or her personal needs.
13. Right to complain	Each individual has the right to complain whenever he or she has suffered harm, and the right to receive a response or other feedback.
14. Right to compensation	Each individual has the right to receive sufficient compensation within a reasonably short time whenever he or she has suffered physical (or moral and psychological) harm caused by a health service treatment

Did you know?

- ▶ Worldwide, information about patient rights is severely lacking.
 - In **Macedonia**, while 82% of respondents stated that there are patient rights, 56% do not know what their rights are.⁶
 - In **Lithuania**,
 - 85% of medical staff (out of 255) and 56% of patients (out of 451) had heard of or read about patients' rights laws;

⁶ Rights of Patients in Macedonia According to European Standards 2005.

- 50% of professionals and 69% of patients thought information about diagnosis, treatment results, and alternatives necessary for patients.⁷
- ▶ There are widespread misconceptions about the meaning of forms providing for patient consent to invasive surgery.
 - In a recent survey among 732 European surgical patients,
 - 46% believed that the primary function of the written consent form was to protect the hospital,
 - 68% thought that the form allowed doctors to take control, and
 - 41% believed consent forms made their wishes known.⁸
 - ▶ Access to essential medicines is lacking in developing countries.
 - The total number of people without access to essential medicines is estimated at between 1.3 and 2.1 billion people.
 - According to a 1999 study, about 30% of the world population lacked access to essential medicines.
 - Only 10% of R&D spending is directed to health problems that account for 90% of the global disease burden.
 - A small number of companies dominate global production, trade, and sale of medicines. Ten companies account for almost half of all sales.⁹
 - ▶ Worldwide, medicines are often inappropriately taken.
 - Half of all medicines are inappropriately prescribed, dispensed, or sold.
 - Half of all patients fail to take their medicines properly.
 - An estimated 2/3 of global antibiotic sales occur without any prescription.
 - In **Pakistan** and **India**, 70% of patients were prescribed antibiotics, and up to 90% of injections are estimated to be unnecessary.
 - In the **United States**, adverse drug events rank among the top 10 causes of death and cost between \$30-130 billion each year.¹⁰

⁷ BMC International Health and Human Rights 2006, 6:10.

⁸ BMJ September 2006.

⁹ World Health Organization, The World Medicines Situation (2004).

¹⁰ World Health Organization, The World Medicines Situation (2004).

What is OSI's work in the area of human rights in patient care?

1

Although OSI does not have a program on human rights in patient care, patient care issues arise in the work of the International Harm Reduction Development Program, International Palliative Care Initiative, Sexual Health and Rights Project, and Roma Health Project. Moreover, the OSI **Mental Health Initiative (MHI)** focuses on ensuring the human rights of people with mental disabilities to participate in society and live as equal citizens, working to end their unjustified and inappropriate institutionalization (www.soros.org/initiatives/mhi).

The **Human Rights and Governance Grants Program (HRGGP)** supports the leading mental disability rights NGOs working in Central and Eastern Europe and the former Soviet Union as well as other projects on patients' rights through human rights monitoring, documentation, and litigation.

The **Law and Health Initiative (LAHI)** has a specific objective to promote human rights in patient care (www.soros.org/initiatives/health/focus/law). It supports the establishment of human rights guidelines for the delivery of medical services and the training of health workers, as well as legal action to remedy abuses in the health care system. In February 2007, LAHI sponsored a one-week seminar, which brought together experts from legal, public health, and medical perspectives and patient advocates to think creatively about human rights in patient care and how to structure a course dealing with this concern. Topics explored included:

- ▶ International Framework for Health and Human Rights
- ▶ Regional and Constitutional Protection of Health
- ▶ Institutionalization and the Health Care System
- ▶ Criminalized Populations and Disease Vulnerability
- ▶ Patient Privacy, Consent, and Confidentiality
- ▶ Providers' Rights and Their Relationship to Patients' Rights
- ▶ Legal Remedies for Health Care Abuses
- ▶ Human Rights in Health Care Reform

Delegations came from six former Soviet Union countries: Armenia, Georgia, Kazakhstan, Kyrgyzstan, Russia, and Ukraine.

Which are the most relevant international and regional human rights standards related to patient care?

Overview

A wide variety of human rights standards at the international, regional, and national levels applies to patient care. These standards can be used for many purposes:

- ▶ **To document** violations of patient rights
- ▶ **To advocate** for the cessation of these violations
- ▶ **To sue** governments for violations of national human rights laws
- ▶ **To complain** to regional and international human rights bodies about breaches of human rights agreements.

In the tables on the following pages, **examples** of human rights violations related to patient care are provided. Relevant human rights **standards** are then cited, along with examples of legal **precedents** and **provisions** from patient right charters and declarations, **interpreting** each standard.

How to read the tables

As you read through each table, ask yourself the following questions about the **violations**, **standards**, and **precedents and interpretations** that are cited:

EXAMPLES OF HUMAN RIGHTS VIOLATIONS

Do any of these violations occur in your country? Are there other violations of this human right that exist in your country?

HUMAN RIGHTS STANDARDS

Are these violations prohibited by the “human rights standards”? Can the standards be interpreted to apply to this violation?

PRECEDENTS AND INTERPRETATIONS

Do any of the “examples of precedents and interpretations” apply to this issue? Can they be interpreted to apply to this issue?

Remember that human rights law is an evolving field, and that many human rights violations are not directly addressed by existing legal standards and precedents. Through ongoing documentation and advocacy, advocates can build a stronger body of jurisprudence on patient care and human rights.

Abbreviations

In the tables, the seven treaties and their corresponding enforcement mechanisms are referred to with the following abbreviations:

Treaty	Enforcement Mechanism
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee (HRC)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Committee on Economic, Social and Cultural Rights (CESCR)
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee)
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child (CRC Committee)
African Charter on Human and People's Rights (ACHPR) & Protocols	African Commission on Human and People's Rights (ACHPR Commission)
[European] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)	European Court of Human Rights (ECtHR) (with Committee of Ministers)
European Social Charter (ESC)	European Committee of Social Rights (ECSR)

Table 1: Patient care and the right to liberty and security of the person

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A hospital employs excessive restraints on patients, such as tying them to a bed or wheelchair for hours each day. • Mentally ill patients are confined without a set procedure or standard. • There are unjustified delays in reviewing whether mentally ill patients must continue to be institutionalized. • Patients are detained in hospitals for their inability to pay bills. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 9(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.</p> <p>ACHPR 6 Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.</p> <p>ECHR 5(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:</p>	<p>HRC: considering a period of 14 days of detention for mental health reasons without review by a court in Estonia incompatible with ICCPR 9. [CCPR/CO/77/EST (HRC, 2003), para. 10].</p> <p>ECtHR: establishing that civil commitment must follow a procedure prescribed by law and cannot be arbitrary; the person must have a recognized mental illness and require confinement for the purposes of treatment. [Winterwerp v. The Netherlands, 33 Eur. Ct. H.R. (ser. A) (1979)].</p> <p>ECtHR: mandating speedy periodic legal review of civil commitment with the essential elements of due process. [X v. United Kingdom, 46 Eur. Ct. H.R. (ser. A) (1981)].</p> <p>ECtHR: awarding damages for violation of liberty interests to a patient detained in a Hungarian psychiatric hospital for 3 years where the commitment procedure was superficial and insufficient to show dangerous conduct. [Oct. 3, 2006].</p>

Table 2: Patient care and the right to privacy

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Patient medical information is open to all hospital staff, including those not involved in patient care. • Patients are forced to disclose their medical diagnosis to their employer in order to obtain sick leave from work. • Medical examinations take place under public conditions. • Terminally-ill patients are forced to remain in public wards. • Staff of medical/ psychiatric institutions routinely open patient mail and review their correspondence. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 17(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.</p> <p>ECHR 8(1) Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>CRC 16(1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • European Convention on Human Rights and Biomedicine, art 10(1): “Everyone has the right to respect for private life in relation to information about his or her health.” 	<p>The European Charter of Patients’ Rights sets out: “Every individual has the right to the confidentiality of personal information, including information regarding his or her state of health and potential diagnostic or therapeutic procedures, as well as the protection of his or her privacy during the performance of diagnostic exams, specialist visits, and medical/surgical treatments in general.” [art. 6].</p> <p>Under the Declaration on the Promotion of Patients’ Rights in Europe, “All information about a patient’s health status . . . must be kept confidential, even after death.” “Patients admitted to health care establishments have the right to expect physical facilities which ensure privacy.” [art. 4.1, 4.8].</p> <p>CESCR: referring to “the right to have personal health data treated with confidentiality.” [CESCR GC 14, para 12].</p> <p>ECtHR: holding that “the protection of personal data, not least medical data, is of fundamental importance to a person’s enjoyment of his or her right to respect for private and family life. Respecting the confidentiality of health data is a vital principle It is crucial not only to respect the sense of privacy of the patient but also to preserve his or her confidence in the medical profession and in the health services in general.” [M.S. v. Sweden (27/08/1997)].</p> <p>ECtHR: noting that disclosure of health data “may dramatically affect a person’s private and family life, as well as social and employment situation, by exposing him or her to opprobrium and the risk of ostracism.” [Z. v. Finland, 25/02/1997].</p>

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Table 3: Patient care and the right to information

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A state fails to provide information on various health care services. For instance, rape victims are entitled to obtain post-exposure prophylaxis to prevent HIV infection, but very few are aware of this option. • Hospitals fail to provide information on patient satisfaction, clinical performance, and waiting lists. • Physicians fail to comprehensibly explain to patients the facts related to their condition. • Physicians fail to provide patients with information about treatment options and the potential risks and benefits of each procedure. • Patients are denied access to their medical files. • Information services are unavailable for people who speak certain languages or who are deaf or blind. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 19(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p> <p>ACHPR 9 (1) Every individual shall have the right to receive information.</p> <p>ECHR 10 (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.</p> <p>(2) Every individual shall have the right to express and disseminate his opinions within the law.</p> <p>See also:</p> <ul style="list-style-type: none"> • European Convention on Human Rights and Biomedicine, art 10(2): “Everyone has the right to know any information collected about his or her health.” 	<p>Under the European Charter of Patients’ Rights, “Every individual has the right of access to all kinds of information regarding their state of health and health services and how to use them, and all that scientific research and technological innovation makes available.” [art. 3].</p> <p>The Declaration on the Promotion of Patients’ Rights in Europe emphasizes, “Patients have the right to be fully informed about their health status, including the medical facts about their conditions; about the proposed medical procedures, together with potential risks and benefits of each procedure; about alternatives to the proposed procedures, including the effect of non-treatment; and about the diagnosis, prognosis, and progress of treatment.” Moreover, “[p]atients have the right to choose who, if any one, should be informed on their behalf.” [art. 2.2, 2.6].</p> <p>CESCR: health care accessibility “includes the right to seek, receive and impart information and ideas concerning health issues.” [CESCR GC 14, para 12].</p>

Table 4: Patient care and the right to bodily integrity

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Physicians either fail to obtain consent from patients before performing medical procedures, or do not provide patients with adequate information so that they can make an informed decision. • In the case of a very young patient or a patient lacking capacity, the hospital does not allow for a substitute decision-maker. • A hospital lacks standardized procedures for obtaining patients' consent to participate in scientific research. • Physicians ignore patient wishes regarding treatment. • Patients are not allowed to switch physicians or healthcare providers. 	
Human Rights Standards	Precedents and Interpretations
<p>ACHPR 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.</p> <p>African Women's Protocol 4(1) Every woman shall be entitled to respect for her life and the integrity and security of her person.</p> <p><i>Note:</i> The right to bodily integrity is not specifically recognized under the ICCPR, ICESCR, or European conventions, but has been interpreted to be part of the right to security of the person (ICCPR 9, ECHR 5), the right to freedom from torture and cruel, inhuman, and degrading treatment (ICCPR 7, ECHR 3), the right to privacy (ICCPR 17, ECHR 8), and the right to the highest attainable standard of health (ICESCR 12, ESC 11).</p> <p>See also:</p> <ul style="list-style-type: none"> • CRC 19(1) (protecting the child from all forms of physical or mental violence) • European Convention on Human Rights and Biomedicine, art 5: "An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it." 	<p>The European Charter of Patients' Rights sets out the right to "informed consent." "A patient has the right to refuse a treatment or a medical intervention and to change his or her mind during the treatment, refusing its continuation." [art. 4]. Moreover, a patient has "the right to freely choose from different treatment procedures and providers on the basis of adequate information." [art. 5].</p> <p>Under the Declaration on the Promotion of Patients' Rights in Europe, "[t]he informed consent of the patient is a prerequisite for any medical intervention," and "[a] patient has the right to refuse or halt a medical intervention." [art. 3.1, 3.2].</p> <p>CESCR: explaining that the right to health includes "the right to be free from non-consensual medical treatment and experimentation." [CESCR GC 14, para. 4].</p> <p>ECtHR: finding a breach of physical and moral integrity when dimorphine was administered to a son against his mother's wishes and a DNR (Do Not Resuscitate) order was placed in his records without his mother's knowledge [Glass v. United Kingdom (Application no. 61827/00, 2004)].</p>

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Table 5: Patient care and the right to life

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Due to inadequate reproductive health and prenatal care, complications from pregnancy and childbirth are a leading cause of death for young women. • Ambulances fail to arrive at certain communities in a timely manner. • Patients are unable to obtain low cost medications due to bureaucratic hurdles and an overly restrictive patent regime. As a result, their life is in danger. • Health services do not include preventive screening for many types of cancer. As a result, patients learn they have cancer when it is already too late for effective treatment. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 6(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p> <p>ACHPR 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.</p> <p>ECHR 2(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.</p>	<p>HRC: explaining that the right to life “should not be interpreted narrowly” or “in a restrictive manner,” and its protection “requires that States adopt positive measures . . . to increase life expectancy.” [ICCPR GC 6, paras 1, 5].</p>

Table 6: Patient care and the right to the highest attainable standard of health

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Hospitals do not take adequate measures to prevent hospital-borne infections, oversee health risks following transfusions, and ensure their tests and treatment remain of high quality. • Hospitals fail to meet the needs of patients who require religious or psychological support or provide treatment appropriate for the terminally ill. • Hospitals fail to provide care suited to the needs of small children. • Long, unjustified delays in the provision of health services regularly lead to a worsening in patients' health. • The state fails to provide certain communities sanitation services and safe drinking water. • A state lacks adequate compensation procedures for patients harmed by health care providers. 	
Human Rights Standards	Precedents and Interpretations
<p>ICESCR 12(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>12(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: . . . (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.</p> <p>ACHPR 16(1) Every individual shall have the right to enjoy the best attainable state of physical and mental health. 16(2) States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.</p> <p>ESC 11 – The right to protection of health</p> <p>With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed . . . (2) to provide advisory and educational facilities for the promotion of health . . .</p> <p>See also:</p> <ul style="list-style-type: none"> • CRC 24, African Charter on the Rights and Welfare of the Child 14 (child's right to the highest attainable standard of health) 	<p>The European Charter of Patients' Rights refers to the right to "the observance of quality standards," "safety," "innovation." [arts 8-10].</p> <p>The Declaration on the Promotion of Patients' Rights in Europe, promulgated by a WHO European Consultation, "Patients have the right to a quality of care which is marked both by high technical standards and by a humane relationship between the patient and health care provider." [art. 5.3].</p> <p>CESCR: "As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality." They must also be "sensitive to gender and life-cycle requirements." [CESCR GC 14, para 12].</p> <p>CESCR: explaining that "the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment." [CESCR GC 14, paras 4, 11, 12].</p> <p>CESCR: pointing to a need for federal legislation on the patient rights in Russia, including redress for medical errors. [E/C.12/1/ADD.94 (CESCR, 2003), para. 32].</p>

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Table 7: Patient care and freedom from torture and cruel, inhuman, and degrading treatment

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Victims of state torture are denied needed medical care. • Prisoners lack basic health services and are forced to subsist on very little food and with inadequate clothes and no heat during the winter. • Mentally ill prisoners are punished for symptoms of their illness, including self-mutilation and attempted suicide. • National laws restricting opioid availability and access cause cancer and AIDS patients to suffer unnecessary pain. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.</p> <p>ACHPR 5 Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.</p> <p>African Women’s Protocol 4(1) All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.</p> <p>ECHR 3 No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment • European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment • Code of Conduct for Law Enforcement Officials 	<p>The European Charter of Patients’ Rights sets out: “Each individual has the right to avoid as much suffering and pain as possible, in each phase of his or her illness. The health services must commit themselves to taking all measures useful to this end, like providing palliative care treatment and simplifying patients’ access to them.” [art. 11].</p> <p>Under the Declaration on the Promotion of Patients’ Rights in Europe, “Patients have the right to relief of their suffering according to the current state of knowledge. . . . Patients have the right to humane terminal care and to die in dignity.” [art. 5.10, 5.11].</p> <p>HRC: calling for the improvement of hygienic conditions, regular exercise, and adequate treatment of the mentally ill in detention facilities in Bosnia and Herzegovina (both in prisons and mental health institutions). [CCPR/C/BIH/CO/1 (HRC, 2006), para. 19].</p> <p>ECtHR: upholding prisoners’ right to confinement under conditions compatible with human dignity. Prisoners’ health and wellbeing must be adequately secured by the provision of requisite medical assistance. [Kudla v. Pologna, Oct. 26, 2000].</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • Committee Against Torture: pointing to overcrowding, inadequate living conditions, and lengthy confinement in Russian psychiatric hospitals as “tantamount to inhuman or degrading treatment.” [CAT/C/RUS/CO/4 (CAT, 2007), para. 18].

Table 8: Patient care and the right to participate in public policy

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A country fails to adopt a national health plan or to make it publicly available to its citizens. • Citizens lack an opportunity to comment on and participate in the setting of public health priorities. • The government will not accept or respond to information and proposals on health care delivery submitted by citizens. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 25 Every citizen shall have the right and the opportunity, without . . . distinctions . . . (a) To take part in the conduct of public affairs, directly or through freely chosen representatives.</p> <p>CEDAW 7 State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: . . . (b) [t]o participate in the formulation of government policy and the implementation thereof.</p> <p>African Women’s Protocol 9(1) States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • CEDAW 14(2)(a) (right of rural women to participate in development planning) • The Ljubljana Charter on Reforming Health Care 	<p>The European Charter of Patients’ Rights has a whole section on the “Rights of Active Citizenship”--- citizens’ “right to participate in the definition, implementation and evaluation of public policies relating to the protection of health care rights.” [Part III].</p> <p>CESCR: calling for countries to adopt “a national public health strategy and plan of action” to be “periodically reviewed, on the basis of a participatory and transparent process.” [CESCR GC 14, para. 43].</p> <p>CESCR: “Promoting health must involve effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health. Effective provision of health services can only be assured if people’s participation is secured by States.” [CESCR GC 14, para. 54].</p>

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Table 9: Patient care and the right to non-discrimination and equality

Examples of Human Rights Violations	
<ul style="list-style-type: none"> Members of certain communities are treated in separate wards with a lower standard of care. Health workers refuse to treat sex workers, drug workers, or LGBT's. Maternal and reproductive health services for women are lacking. A country fails to provide health services to the poor or non-citizens. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 26 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>ICESCR 2(2) The States Parties to the present Covenant undertake to guarantee the rights enunciated in the present Covenant shall be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status.</p> <p>ACHPR 2 Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.</p> <p>See also:</p> <ul style="list-style-type: none"> European Convention on Human Rights and Biomedicine, art 3 (equitable access to health care) International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e)(iv) Convention relating to the Status of Refugees European Convention on Citizenship and the Convention Relating to the Status of Stateless Persons 	<p>CESCR: explaining that health facilities, goods, and services have to be accessible to everyone without discrimination “and especially to the most vulnerable and marginalized sections of the population.” The Committee further urged particular attention to the needs of “ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS.” [CESCR GC 14, para 12].</p> <p>CESCR: explaining that health facilities, goods, and services “must be affordable for all,” and “poorer households should not be disproportionately burdened with health expenses as compared to richer households.” [CESCR GC 14, para 12].</p> <p>CESCR: criticizing China for inadequate medical care provided to low-income patients. Many expensive drugs required by chronically ill and mentally ill patients are not subsidized and thus in practice denied them. [E/C.12/1/ADD.107 (CESCR, 2005), para. 87].</p> <p>CESCR: admonishing Russia where hospitals and clinics in poor regions often do not stock all essential drugs. [E/C.12/1/ADD.94 (CESCR, 2003), para. 31].</p>

What are some examples of effective human rights programming in the area of patient care?

Introduction

In this section, you are presented with four **examples** of effective activities in the area of patient care and human rights. These are:

1. Litigation to protect the confidentiality of medical information in the Ukraine
2. Litigation to ensure patient treatment with dignity in the United Kingdom
3. Monitoring of patient rights in Europe
4. Engaging health workers in health rights education and action in Uganda

Rights-based programming

As you review each activity, ask yourself whether it incorporates the **five elements** of “rights-based” programming:

- ▶ **Participation**
Does the activity include participation by affected communities, civil society, marginalized groups, and others? Is it situated in close proximity to its intended beneficiaries?
- ▶ **Accountability**
Does the activity identify both the *entitlements of claim-holders* and the *obligations of duty-holders*? Does it create mechanisms of accountability for violations of rights?
- ▶ **Non-discrimination**
Does the activity identify who is most vulnerable, and how? Does it pay particular attention to the needs of vulnerable groups such as women, minorities, indigenous peoples, and prisoners?
- ▶ **Empowerment**
Does the activity give its beneficiaries the power, capability, capacity, and access to bring about a change in their own lives? Does it place them at the center of the process rather than treating them as objects of charity?
- ▶ **Linkage to rights**
Does the activity define its objectives in terms of legally enforceable rights, with links to international, regional, and national laws? Does it address the full range of civil, political, economic, social, and cultural rights?

Finally, ask yourself whether the activity might be replicated in your country:

- ▶ Does such a project **already exist** in your country?
- ▶ If not, should it be **created**? If so, does it need to be **expanded**?
- ▶ What **steps** need to be taken to replicate this project?
- ▶ What **barriers** need to be overcome to ensure its successful replication?

Example 1: **Litigation to protect the confidentiality of medical information in the Ukraine**

In 2006, on a patient's behalf, Vinnystya Human Rights Group challenged a Ukrainian regulation requiring the inclusion of a person's medical diagnosis in forms submitted to employers to permit absence from work due to sickness and the collection of benefits.

Project type

Litigation

Health and human rights issue

A government decree in the Ukraine stipulated that a medical certificate, which included a person's diagnosis and ICD (International Classification of Diseases and Causes of Death) disease code, had to be submitted to employers to excuse absence from work due to sickness and allow for the collection of benefits.

Actions taken

- ▶ Vinnystya Human Rights Group filed a challenge to this regulation on behalf of Svitlana Yuriyivna Poberezhets at the Pecherskyi District Court in Kyiv.
- ▶ Ms. Poberezhets claimed that this regulation violated her rights to privacy and confidentiality under the Ukrainian Constitution and Basic Law on Health Care. She was forced to submit a medical certificate with information about her acute respiratory infection to her place of work, which was then disclosed to her co-workers.
- ▶ Vinnystya Human Rights Group and Ms. Poberezhets were opposed by the Ministry of Health, Ministry of Labour and Social Policy, the Social Insurance Fund for Temporary Disability, the Social Insurance Fund for Industrial Accidents and Occupational Diseases, and the Ministry of Justice.

Results

- ▶ On July 2006, the court agreed with Vinnystya Human Rights Group and Ms. Poberezhets that requiring the submission of diagnosis information to a person's place of work infringed on basic constitutional rights. The court specifically held that it violated (1) privacy protections under the Ukrainian Constitution and [European] Convention for the Protection of Human Rights and Fundamental Freedoms and (2) confidentiality protections under the Ukraine Basic Law on Health Care, Civil Code, and "On Information" Law.
- ▶ The court pointed out that regulatory bodies must act within the scope of their authority under the Constitution and legislation.
- ▶ It thus ordered the regulation's registration as unlawful and contradictory and its cancellation.
- ▶ The government later amended the decree, excluding confidential information from medical certificates.

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Example 2: *Litigation to ensure patient treatment with dignity in the United Kingdom*

A psychiatric patient in the UK sued a hospital which overmedicated her and treated her lice infection by shaving off her hair.

Project type

Litigation

Health and human rights issue

A psychiatric patient based at an NHS (National Health Service) hospital was making good progress. She was moved without notice to a private hospital with an NHS contract. She developed an infection of head lice. Initially, she was treated with anti-lice shampoo, but this was quickly discontinued. After a 20-minute talk with a doctor and nurse, she was persuaded to sign a consent form to have her hair completely shaved off. The patient was a woman in her 20's who was very careful about her appearance and had sported shoulder length blond hair for many years. At this time, she was receiving 7000 mg of anti-psychotics daily, compared with a maximum dose of 1000 mg recommended by the Royal College of Psychiatrists.

Actions taken

- ▶ The patient sued the hospital for assault and breach of human rights and lodged a claim against the doctor for overmedication.

Results

- ▶ The hospital made various offers for compensation and issued an apology. The patient and her family accepted an offer of just over £10,000. The court approved the compensation award.
- ▶ The doctor denied wrongdoing, but the court awarded £1000 in damages for the period of overmedication.
- ▶ Positive media coverage during this case drew public attention to the importance of patient rights protection and ensuring the humane treatment of psychiatric patients.

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Example 3: **Monitoring of patient rights in Europe**

In 2003, the Active Citizenship Network partnered with local NGOs to monitor the compliance of 13 European Union countries with the European Charter of Patients' Rights.

Project type

Human rights monitoring and documentation

Health and human rights issue

Governments across Europe have been slow to establish health care systems in line with WHO standards. With growing medical expenses, governments have been rationing health services. Patients, in turn, are pressing for greater access to medical information in order to play a more active role in managing their treatment and shaping the delivery of health services. With increasing freedom of movement across European Union states, there is also a need for greater harmonization of health systems and the assurance of basic standards.

Actions taken

- ▶ In 2003, the Active Citizens Network (ACN), a European network of civic, consumer, and patient organizations, undertook a two-year study of 13 European Union countries to see how they measure up to the European Charter of Patients' Rights.
- ▶ Working with public health experts, ACN translated the Charter into 160 measurable indicators that could be assessed across various countries.
- ▶ ACN partnered with local NGOs to carry out the monitoring project. Partner organizations interviewed 70 key stakeholders—including medical professionals, journalists, insurance carriers, and government ministry representatives—and visited 39 main hospitals in each of the European capital cities. NGOs further answered a questionnaire on their country's patient rights legislation. This methodology was piloted in Italy and then rolled out to the rest of the countries.

Results

- ▶ The results of the study were available in 2005 and publicly disseminated.
- ▶ The study concluded that Europeans do not have sufficient access to high-quality health care, medical innovation, or information about health care choices and documented the degree to which access to care is lacking.
- ▶ The monitoring project helped initiate a dialogue between civil society and governments on health care delivery. The hope is that this will lead to greater governmental accountability.
- ▶ Citizens can also use the results of the study as a basis for advocacy for better care and for health policy changes.

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Example 4: **Engaging health workers in health rights education and action in Uganda**

In 2003, Ugandan health workers united to urge their colleagues and government to recognize and protect the right to health through anti stigma, health rights leadership, and health budget campaigns.

Project Type

Movement-building and advocacy

Health and Human Rights Issue

Uganda faces major health and human rights challenges including AIDS-related stigma and discrimination, a lack of human rights awareness amongst health workers, and severe under-funding of the health sector.

Action taken

To address these and other health rights, seven health worker leaders founded the Action Group for Health, Human Rights and HIV/AIDS (AGHA) in 2003. AGHA brings together over 600 Ugandan doctors, nurses, other health professionals, NGOs and other institutions interested in promoting the right to health. AGHA spearheads three major campaigns to improve Uganda's AIDS and health response:

- ▶ **Anti-Stigma Campaign:** a Stigma Task Force of over 50 health workers to combat stigma in health settings through education of health workers and community members.
- ▶ **The Health Rights Leadership Campaign:** outreach and training to health workers, the general public, and the media on health and human rights in order to integrate human rights into the medical paradigm.
- ▶ **AGHA's Health Funding Campaign:** a Health Economics Task Force, which lobbies key members of Parliament and raises awareness of budget gaps for health services through the media and petitions to policy makers.

Results

- ▶ The medical paradigm is changing to embrace human rights:
 - The AGHA Stigma Task Force has trained over 150 health workers in four districts on preventing stigma and discrimination and promoting patient rights.
 - The Uganda Medical Association has started a human rights committee, which AGHA will chair.
 - AGHA's health student leadership program has over 300 members and chapters at all public medical schools in Uganda.
- ▶ Health rights are becoming entrenched in key Ugandan institutions:
 - The Ministry of Health and the Uganda Human Rights Commission have both created right to health desks.
 - AGHA has helped WHO train Parliamentarians in health, human rights, and policy.
- ▶ The health budget in Uganda is increasing: In April 2007, the parliament announced an 8 billion Uganda shilling increase in the health budget.

Contact

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617 301 4235

Where can I find additional resources on human rights in patient care?

Resources

To further your understanding on the topic of human rights in patient care, a list of commonly used resources has been compiled and organized into the following categories:

- ▶ Declarations and resolutions UN
- ▶ Declarations and resolutions: non-UN
- ▶ Books
- ▶ Reports, key articles, and other documents
- ▶ Periodicals
- ▶ Websites
- ▶ Blogs

Declarations and resolutions: UN

- ▶ Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982).
Source: www.unhchr.ch/html/menu3/b/h_comp40.htm

Declarations and resolutions: non-UN

- ▶ A Declaration on the Promotion of Patients' Rights in Europe: European Consultation on the Rights of Patients, Amsterdam (WHO, Regional Office for Europe 1994).
Source: www.who.int/genomics/public/eu_declaration1994.pdf
- ▶ Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (Council of Europe 1997).
Source: conventions.coe.int/Treaty/EN/Treaties/Html/164.htm
- ▶ Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data.
Source: conventions.coe.int/Treaty/en/Treaties/Html/108.htm

- ▶ Declaration on Medical Care for Refugees (World Medical Association)
Source: www.wma.net/e/policy/m10.htm
- ▶ Declaration on the Rights of the Patients (World Medical Association).
Source: www.wma.net/e/policy/l4.htm
- ▶ European Charter of Patients Rights (Active Citizens Network, 2002).
Source: www.activecitizenship.net/health/european_charter.pdf
- ▶ International Alliance of Patients' Organizations: Declaration on Patient-Centered Health Care (March 30, 2007).
Source: www.patientsorganizations.org/
- ▶ Jakarta Declaration on Leading Health Promotion into the 21st Century (1997).
Source: www.who.int/hpr/NPH/docs/jakarta_declaration_en.pdf
- ▶ Ljubljana Charter on Reforming Health Care (WHO, Regional Office for Europe 1996).
Source: www.euro.who.int/AboutWHO/Policy/20010927_5
- ▶ Position Statement: Nurses and Human Rights (International Council of Nurses).
Source: www.icn.ch/abouticn.htm
- ▶ Principles on the Effective Documentation of Torture. Istanbul Protocol
Source: physiciansforhumanrights.org/library/istanbul-protocol.html
- ▶ Recommendation Rec (2000)5 and Explanatory Memorandum of Committee of Ministers to Member States on the Development of Structures for Citizen and Patient Participation in the Decision-Making Process Affecting Health Care (Council of Europe).
Source:
wcd.coe.int/ViewDoc.jsp?id=1062769&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

Books

- ▶ Angell, Marcia. *The Truth about Drug Companies: How They Deceive Us and What to Do about It*. New York: Random House, 2005.
- ▶ British Medical Association. *The Medical Profession and Human Rights*. Zed Books, 2001.
- ▶ Den Exeter, Andre. *Health Care Law-Making in Central and Eastern Europe: Review of a Legal-Theoretical Model*, Intersentia, 2002.

- ▶ Gevers, J.K.M., Hondius, E.H., and Hubben, J.H, eds. *Health Law, Human Rights and the Biomedical Convention: Essays in Honour of Henriette Roscam Abbing*, 2005.
- ▶ Lavik, J.L. *Pain and Survival: Human Rights Violations and Mental Health*. Scandinavian University Press, 1994.
- ▶ Rosenmoller, McKee and Baeten, eds. *Patient Mobility in the European Union: Learning from Experience*. European Observatory on Health Systems and Policies, 2006.
- ▶ World Health Organization. *Enforcement of Public Health Legislation*. WHO Western Pacific Region, 2006.

Reports, key articles, and other documents

- ▶ Amnesty International Ethical Code and Declarations Relevant to Health Professionals.
Source: web.amnesty.org/pages/health-ethicsindex-eng
- ▶ Aydin, E., *Rights of Patients in Developing Countries: the Case of Turkey*, Journal of Medical Ethics 2004; 30:555-557.
- ▶ Crofts, N., Louie, R., Loff, B. *The next plague: stigmatization and discrimination related to hepatitis C virus infection in Australia*. Health and Human Rights, 2(2), 86-97 (1997).
- ▶ “Cross-border Health Care in Europe”, Policy Brief, European Observatory on Health Systems and Policies (2005).
- ▶ Council of the European Union, General Secretariat: Conclusions of the Council on patient mobility and health care developments in the European Union, Brussels, 19 April 2004.
- ▶ EPHA Briefing on Human Rights, European Health Alliance (2005).
- ▶ Fallberg, Lars, “Patients’ Rights in Europe: Where do we stand and where do we go,” European Journal of Health Law 7: 1-3 (2000).
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- ▶ Gilson, Lucy. “Trust and the Development of Health Care as a Social Institution,” Social Science & Medicine 56 1453-1468 (2003).

- ▶ Glinos, Irene A. and Baeten, *A Literature Review of Cross-Border Patient Mobility in the European Union*, Europe for Patients Project (September 2006).
- ▶ *Human Rights in Action--A Framework for Local Action* (designed by Department of Health, British Institute of Human Rights, and 5 NHS Trusts), Equality and Human Rights Group (2007).
- ▶ *Human Rights and Health in Prisons: a review of strategy and practice*, Penal Reform International and Royal Netherlands Tuberculosis Foundation (2006).
- ▶ *Human Right to Health Information Sheet 1: Human Right to Health*, National Economic and Social Rights Initiative.
- ▶ *Human Right to Health Information Sheet 2: Human Right to Health Care*, National Economic and Social Rights Initiative.
- ▶ Hungarian Civil Liberties Union, Policy Paper on the Rights of Patients.
- ▶ Leary, V. *The Right to Health in International Human Rights Law*, Health and Human Rights: an International Journal 1 (1): 1-18 (1994).
- ▶ Leenen, Henk, Givers, Sjeff and Pinet, Genevieve (eds), *“Promotion of the Rights of Patients in Europe, a Comparative Study,”* Amsterdam: Academic Publishers (1993).
- ▶ Mackintosh, Maureen. *“Do Health Care Systems Contribute to Inequalities?”* Poverty, Inequality and Health 175-193.
- ▶ Milevska-Kosova, Neda, *“Patients Rights as a Policy Issue in South Eastern Europe,* Policy Paper, International Policy Fellowship Program, Open Society Institute, Budapest (2006)
- ▶ Munro, *“Judicial Psychiatry in China and Its Political Abuses,”* Columbia Journal of Asian Law 13 (2): 72-81.
- ▶ *National Activities on Patients’ Rights and Quality of Health Care (Asia and Pacific, Africa, Latin America, Countries in Transition, Developed Economies)*, Consumers International (2005).
- ▶ *Patients’ Rights in Europe: A Citizens’ Report*, Summary of Meeting Organized by Active Citizenship Network at the European Parliament, Brussels, February 28 to March 1, 2005, Health and Social Campaigners’ Network, Wales, Commissioned by Oxford Vision 2020 (March 2005).
- ▶ *“Patients’ Rights in Europe Today,”* Speech, European Ombudsman (2005).

- ▶ PHR and University of Cape Town. Dual Loyalty And Human Rights in Health professional Practice: Proposed Guidelines and Institutional Mechanisms. Online at physiciansforhumanrights.org/library/report-dualloyalty-2006.html Policy Paper on the Rights of Patients, Hungarian Civil Liberties Union.
- ▶ Rich, Robert F. and Merrick, Kelly R., *Cross Border Health Care in the European Union: Challenges and Opportunities*, University of Illinois Working Paper, October 2006.
- ▶ Scott, Penelope, *Undocumented Migrants in Germany and Britain: the Human “Rights” and “Wrongs” Regarding Access to Health Care*, Electronic Journal of Sociology (2004).
- ▶ *Social Challenge to Health: Equity and Patients’ Rights in the Context of Health Reforms*, Council of Europe 5th Conference of European Health Ministers (1996).
- ▶ Stefanoska, Cavdar, Isajlovska, and Stefanovska, “*Rights of the Patients in Macedonia According to the European Standards*,” Report, Skopje: MIA--- Association of Health Education and Promotion of Health (2005).
- ▶ *Survey of the UK Public: Patients’ Rights* (Backgrounder to Main Report: Patients’ Rights in Europe and the UK), The Patients’ Association (2005).
- ▶ United States Department of Health and Human Services, Centers for Medicare and Medicaid Services: 42 CFR Part 482, Medicare and Medicaid Programs; Hospital Conditions of Participation; *Patients Rights; Final Rule*, Federal Register, Friday, December 8, 2006
- ▶ Written Contribution to Communication from the Commission-Consultation Regarding Community Action on Health Services, ILGA Europe (2007).
- ▶ Xenos, Dimitris, Asserting the Right to Life (Article 2 ECHR) in the Context of Industry, German Law Journal Vol.8 No.3 (2007).

Periodicals

- ▶ British Medical Journal
- ▶ Conflict and Health
- ▶ European Journal of Health Law
- ▶ Journal of Law, Medicine and Ethics

- ▶ Journal of Medical Ethics
- ▶ The Lancet

Websites

- ▶ British Medical association Human Rights Publications.
www.bma.org.uk/ap.nsf/Content/HRpublications
- ▶ Europe for Patients Project
www.europe4patients.org
- ▶ European Court of Human Rights- Mental Disability Cases
www.mdac.info/resources/echr_cases.htm
- ▶ European Public Health Alliance
www.epha.org
- ▶ Health and Social Campaigners' Network International
www.patient-view.com/hscnetwork.htm
- ▶ Oxford Vision 2020
www.oxfordvision2020.org
- ▶ The Patients Association
www.patients-association.org.uk
- ▶ Penal Reform International
www.penalreform.org/health-in-prisons.html
- ▶ Physicians for Human Rights
physiciansforhumanrights.org/
- ▶ Sharing for Action, Patients Rights
www.sharingforaction.med.bg.ac.yu

Blogs

- ▶ The Health Consumer Blog @ Health Consumer Powerhouse
- ▶ Global Directory of Patients' Organizations @ International Alliance of Patients' Organizations
www.patientsorganizations.org

What are key terms related to human rights in patient care?

Glossary

A variety of terms is used in human rights and patient care work. Where noted, these definitions come from the World Health organization (WHO).

A

Ambulatory care

Medical care including diagnosis, observation, treatment, and rehabilitation provided on an outpatient basis.

Acceptability

One of four criteria set out by Committee on Economic, Social, and Cultural Rights by which to evaluate the right to the highest attainable standard of health. Acceptability: means that all health facilities, goods and services must be respectful of medical ethics, culturally appropriate, sensitive to gender and life-cycle requirements, as well as designed to respect confidentiality and improve the health status of those concerned (General Comment 14). *See also* “Adequacy,” “Availability,” and “Quality.”

Accessibility

One of four criteria set out by Committee on Economic, Social, and Cultural Rights by which to evaluate the right to the highest attainable standard of health. Accessibility: means that health facilities, goods and services have to be accessible to everyone without discrimination. Accessibility has four overlapping dimensions: non-discrimination, physical accessibility, economic accessibility (affordability), and information accessibility (General Comment 14). *See also* “Acceptability,” “Adequacy,” and “Quality.”

Availability

One of four criteria set out by Committee on Economic, Social, and Cultural Rights by which to evaluate the right to the highest attainable standard of health. Availability: means that functioning public health and health care facilities, goods, and services, as well as programmes, have to be available in sufficient quantity. This should include the underlying determinants of health, such as safe drinking water, adequate sanitation facilities, clinics and health-related buildings, trained medical personnel, and essential drugs (General Comment 14). *See also* “Acceptability,” “Accessibility,” and “Quality.”

B

Basic needs

Used largely in the development community to refer to basic health services, education, housing, and other goods necessary for a person to live.

D

Dual loyalty

Role conflict between professional duties to a patient and obligations—express or implied, real or perceived—to the interests of a third party such as an employer, insurer, or the state.

E

Essential medicines

Medicines that satisfy the priority health-care needs of the population. Essential medicines are intended to be available at all times in adequate amounts, in the appropriate dosage forms, with assured quality, and at a price the individual and the community can afford.

H

Health

A state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity (WHO).

Health care or patient care

The prevention, treatment, and management of illness and the preservation of mental and physical well-being through the services offered by the medical, nursing, and allied health professions. This embraces all the goods and services designed to promote health, including preventive, curative, and palliative interventions, whether directed to individuals or populations (WHO).

Health care establishment

Any health care facility such as a hospital, nursing home, or establishment for disabled persons (WHO).

Health care providers

Physicians, nurses, dentists, or other health professionals (WHO).

Health care system

The organized provision of health care services.

I

Informed consent

A legal condition in which a person can be said to agree to a course of action based upon an appreciation and understanding of the facts and implications. The individual needs to be in possession of relevant facts and the ability to reason.

Informed consent in the health care context

A process by which a patient participates in health care choices. A patient must be provided with adequate and understandable information on matters such as the treatment's purpose, alternative treatments, risks, and side-effects.

In-patient

A patient whose care requires a stay in hospital or hospice facility for at least one night.

M

Medical intervention

Any examination, treatment, or other act having preventive, diagnostic therapeutic or rehabilitative aims and which is carried out by a physician or other health care provider (WHO).

O

Out-patient

Patient receiving treatment without spending any nights at a health care institution.

P

Patient

A person who is waiting for, is receiving, or has received health care service.

Patient autonomy

The right of patients to make decisions about their medical care. Providers can educate and inform patients, but cannot make decisions for them.

Patient-centered care

Doctrine recognizing the provision of health services as a partnership among health care providers and patients and their families. Decisions about medical treatments must respect patients' wants, needs, preferences, and values.

Patient confidentiality

Doctrine that holds that the physician has the duty to maintain patient confidences. This is to allow patients to make full and frank disclosure to their physician, enabling appropriate treatment and diagnosis.

Patient mobility

Concept describing patient movement beyond their catchment area or area of residence to access health care; mobility can take place within the same country or between countries.

Patient responsibility

A doctrine recognizing the doctor/patient relationship as a partnership with each side assuming certain obligations. Patient responsibilities include communicating openly with the physician or provider, participating in decisions about diagnostic and treatment recommendations, and complying with the agreed-upon treatment program.

Patient safety

Freedom from accidental injury due to medical care or medical errors (Institute of Medicine).

Q

Quality

One of four criteria set out by Committee on Economic, Social, and Cultural Rights by which to evaluate the right to the highest attainable standard of health. Quality: means that health facilities, goods, and services must be scientifically and medically appropriate and of good quality. This requires skilled medical personnel, scientifically approved and unexpired drugs, and hospital equipment (General Comment 14). *See also* “Acceptability,” “Accessibility,” and “Availability.”



Photo: International AIDS Conference Toronto, 2006,
courtesy of Ellen Liu

Chapter 2 HIV/AIDS and Human Rights

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

*United Nations General Assembly, Declaration of
Commitment on HIV/AIDS, para. 58*

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Introduction

This chapter will introduce you to key issues and resources in **HIV/AIDS** and **human rights** and help you understand why, now more than ever, HIV and AIDS must be understood and approached as a human rights issue.

The chapter is organized into six sections that answer the following questions:¹

- ▶ **How** is HIV/AIDS a human rights issue?
- ▶ **What** is OSI's work in the area of HIV/AIDS and human rights?
- ▶ **Which** are the most relevant international and regional human rights standards related to HIV/AIDS?
- ▶ **What** are some examples of effective human rights programming in the area of HIV/AIDS?
- ▶ **Where** can I find additional resources on HIV/AIDS and human rights?
- ▶ **What** are key terms related to HIV/AIDS and human rights?

In addition, this chapter will also address how a human rights approach can be used to address the link between **HIV/AIDS** and **tuberculosis**.

As you read through this chapter, consult the **glossary of terms** found in the last section, *What are key terms related to HIV/AIDS and human rights?*

¹ Some of these questions are also addressed in Chapter 3 (Harm Reduction and Human Rights), Chapter 4 (Palliative Care and Human Rights) and Chapter 5 (Sexual Health and Human Rights).

How is HIV/AIDS a human rights issue?

What is unique about HIV/AIDS?

Since the first cases of AIDS were identified in 1981, it has been recognized that:

- ▶ Stigma and discrimination against people living with, affected by, and vulnerable to HIV infection are major obstacles to delivering HIV prevention, care and treatment services
- ▶ HIV stigma and discrimination are often entangled with the discrimination attached to being a woman, being poor, having a different sexual orientation, engaging in sex work or drug use, or being in prison
- ▶ Protection of human rights, both of those vulnerable to infection and those already infected, is not only important for individuals, but also produces positive public health results
- ▶ Supportive frameworks of policy and law are essential to effective HIV responses.

As the epidemic has progressed, it has also become increasingly clear that:

- ▶ National and local responses to HIV will not work without the full engagement and participation of those affected by HIV, particularly people living with HIV.
- ▶ The human rights of women, young people and children must be protected if they are to avoid infection and withstand the impact of HIV.
- ▶ The human rights of marginalized groups, including people who use drugs, sex workers, prisoners, and gay and bisexual men, must also be respected for the response to HIV to be effective.

By and large, human rights abuses related to HIV have not been significantly addressed in many countries. As a result, stigma and discrimination remain pervasive, and vulnerability to infection continues to be rooted in social, economic and gender inequalities. These realities contribute to the rising number of infections each year, with women, young people and marginalized groups getting infected at the fastest rates and bearing the worst impact of AIDS.

What is the link between HIV/AIDS and tuberculosis?

Tuberculosis (TB), a disease caused by the *Mycobacterium tuberculosis* bacterium that attacks the lungs, is a major cause of death among people living with HIV and AIDS. HIV compromises the immune system and thus increases the likelihood of TB infection, progression, and relapse. It is estimated that one-third of the 40 million people living with HIV worldwide are co-infected with TB. TB kills up to half of all people with HIV worldwide.

Unlike HIV, however, TB can be cured. Treatment with anti-TB drugs has been shown to prolong the lives of people living with HIV by at least two years. Offering TB tests and treatment to people with HIV—and vice versa—greatly increases the chances that both diseases can be controlled.

Inadequate and inconsistent treatment practices, on the other hand, can cause drug-resistant strains of TB. Multi-drug resistant tuberculosis (MDR-TB) is difficult to treat and can be fatal. The emergence of MDR-TB thus poses a grave threat not only to people with TB, but to overall progress in the global fight against HIV and AIDS.

Why a human rights response to HIV?

- ▶ When human rights inform the content of national responses to HIV, vulnerability to HIV infection is reduced and people living with HIV can live with dignity.
- ▶ When human rights principles guide the process by which local and national responses are implemented, the results are responses tailored to the needs and realities of those affected. Such principles include non-discrimination, participation, inclusion, transparency and accountability.
- ▶ Where States are providing comprehensive HIV prevention, care and impact mitigation programmes to all those in need, supporting vulnerable people to be able to act on the information and services they receive, and allowing the full participation of all those affected in the design and implementation of HIV programmes, they are fulfilling their HIV-related human rights obligations and mounting an effective response to HIV.
- ▶ In contrast, where human rights are not respected, protected, and promoted, the risk of HIV infection is increased, people living with and affected by HIV and AIDS suffer from discrimination, and an effective response to the epidemic is often impeded.

What are AIDS-related human rights?

In order to ensure an effective response to HIV and AIDS, all people living with, affected by, and vulnerable to HIV and AIDS must have a full range of internationally-recognized human rights respected, protected, and fulfilled:

These include the **right to**:

- ▶ Non-discrimination and equal protection on the basis of actual or perceived HIV status
- ▶ Access to effective and evidence-based HIV-prevention services
- ▶ Access to anti-retroviral treatment, including treatment to prevent mother-to-child transmission of HIV
- ▶ Due process in the criminal justice system, particularly for groups at risk of HIV such as sex workers, people who use drugs, and men who have sex with men
- ▶ Choice of one's place of residence and migration
- ▶ Seek and enjoy asylum
- ▶ Medical treatment without coercion and with guarantees of privacy
- ▶ Freedom of opinion and expression and the right to freely receive and impart HIV-related information
- ▶ Freedom to form and participate in HIV and AIDS organizations and associations
- ▶ A work environment that is respectful of HIV status
- ▶ Marry and to found a family
- ▶ Equal access to education, including for children affected by HIV
- ▶ A standard of living adequate to maintain good health, including social security, assistance and welfare
- ▶ Freedom from torture and cruel, inhuman or degrading treatment or punishment.

Human Rights and HIV/AIDS: Now More Than Ever

Ten Reasons why human rights should occupy the center of the global response to HIV/AIDS:

1. Universal access will never be achieved without human rights.
2. Gender inequality makes women more vulnerable to HIV, with women and girls now having the highest rates of infection in heavily affected countries.
3. The rights and needs of children and young people are largely ignored in the response to HIV, even though they are the hardest hit in many places.
4. The worst affected receive the least attention in national responses to HIV.
5. Effective HIV-prevention, treatment, and care programs are under attack.
6. AIDS activists risk their safety by demanding that governments provide greater access to HIV and AIDS services.
7. The protection of human rights is the way to protect the public's health.
8. AIDS poses unique challenges and requires an exceptional response.
9. "Rights-based" responses to HIV are practical, and they work.
10. Despite much rhetoric, real action on HIV/AIDS and human rights remains lacking.

Source: Open Society Institute Law and Health Initiative, 2007. Endorsed by 23 HIV/AIDS and human rights organizations worldwide.

Did you know?

- ▶ Around the world, people living with HIV and AIDS have been segregated in schools, hospitals, and prisons; refused employment; denied the right to marry; required to submit to HIV tests as a condition of entry into other countries; banished by their communities; and killed because of their HIV-positive status.
- ▶ As of 2003, almost half of governments in sub-Saharan Africa had yet to adopt legislation or court rulings specifically outlawing discrimination against people living with HIV and AIDS.
- ▶ As of 2003, only one-third of countries worldwide had adopted legal measures specifically outlawing discrimination against populations especially vulnerable to HIV and AIDS.
- ▶ Surveys conducted in Southern Africa between 2000-2001 found that:²
 - Fewer than half of respondents in **Botswana** would buy fresh vegetables from a shopkeeper living with HIV or AIDS
 - One-third of respondents from **Lesotho** felt that a female teacher who is HIV-positive but not sick should not be allowed to continue teaching in school

² Measure DHS, HIV and AIDS Survey Indicators Database. Online: www.measuredhs.com/hivdata/.

- Approximately one-third of respondents from **Namibia** were secretive about a family member's HIV status.
- ▶ Surveys conducted in Central Asia between 2000-2002 found that:³
 - Only 8% of respondents in **Tajikistan** would buy fresh vegetables from a shopkeeper living with HIV or AIDS
 - 15% of respondents from Tajikistan felt that a female teacher who is HIV-positive but not sick should not be allowed to continue teaching
 - In **Uzbekistan**, 30% of male respondents and 46% of female respondents were secretive about their family members' HIV status.
- ▶ In a study conducted in an eastern Chinese coastal city, half of participants believed that punishment was an appropriate response towards those living with HIV, over half (56%) were unwilling to be friends with HIV-positive people, and 73% thought that those living with HIV should be isolated.⁴
- ▶ An evaluation of the implementation of the Declaration of Commitment on HIV and AIDS undertaken in 2006 in 14 countries concluded that human rights abuses of vulnerable populations continue unabated, denying them access to services and effective tools for preventing HIV infection and to life-saving AIDS drugs that will keep them alive.⁵
- ▶ In its most recent report on the global AIDS epidemic (2006), the Joint United Nations Programme on HIV/AIDS (UNAIDS) noted that “half of countries submitting reports to UNAIDS noted the existence of policies that interfere with the accessibility and effectiveness of HIV-related measures for prevention and care.”⁶

The good news

- ▶ Litigation on behalf of people living with and affected by HIV has resulted in tangible court victories in numerous countries:
 - In South Africa, the Constitutional Court held the government in violation of the constitution for failing to provide nevirapine to pregnant women to prevent mother-to-child transmission of HIV
 - In Serbia in 2007, a woman with HIV was awarded damages from the European Court of Human Rights after she was banned from seeing her child
 - In 2007, the Mexican Supreme Court ruled it was unconstitutional to ban members from the military on the grounds of their HIV status.

³ Measure DHS, HIV and AIDS Survey Indicators Database. Online: www.measuredhs.com/hivdata/.

⁴ UNAIDS, Report on the Global AIDS Epidemic: A UNAIDS 10th anniversary special edition (2006), pp. 86-87.

⁵ ICASO, Community Monitoring and Evaluation. Implementation of the UNGASS Declaration of Commitment on HIV and AIDS, 2006.

⁶ UNAIDS, Report on the Global AIDS Epidemic: A UNAIDS 10th anniversary special edition (2006), p. 57.

- ▶ Legislative reform to address the human rights aspects of HIV is underway in many countries: In 2006, the Canadian HIV/AIDS Legal Network released a multi-volume model law resource on HIV and AIDS and the rights of people who use drugs, which is being used for advocacy in countries as diverse as Georgia, Indonesia, Thailand, and Ukraine.
- ▶ A growing number of NGO coalitions are uniting to address the human rights aspects of HIV. These include the Observatoire de la réponse au VIH/sida au Sénégal (Watchdog of the response to HIV and AIDS in Senegal) and the AIDS and Rights Alliance of Southern Africa (ARASA). These coalitions have shown that human rights are an effective organizing principle for mobilizing civil society against AIDS.

What is OSI's work in the area of HIV/AIDS and human rights?

OSI's work on HIV/AIDS and human rights cuts across several network programs. Programs include:

- ▶ **The HIV/AIDS and Civil Society Project**
Supports the development of independent civil society movements to respond to HIV and AIDS epidemics worldwide.
- ▶ **The International Harm Reduction Development Program**
Supports access to HIV prevention, treatment, and care programs for people who use drugs (see Chapter 3).
- ▶ **The International Palliative Care Initiative**
Supports access to comprehensive HIV care, including access to opioid pain medication, for people living with HIV and AIDS (see Chapter 4).
- ▶ **The Sexual Health and Rights Project**
Supports access to HIV prevention, treatment, and care programs for sex workers and LGBT communities (see Chapter 5).
- ▶ **Public Health Watch**
Supports civil society-led monitoring and advocacy on government responses to HIV and AIDS and tuberculosis worldwide.
- ▶ **The Law and Health Initiative**
Works with each of the above programs to support responses to HIV and AIDS that focus on law and human rights.

OSI engages with the **Global Fund to Fight AIDS, Tuberculosis and Malaria** to ensure that the Fund is adequately supported, and that it meaningfully includes civil society in the projects it supports.

Some examples of projects include:

- ▶ In Southern Africa, the region of the world most affected by AIDS, provision of unrestricted institutional support and technical assistance to six organizations working to advance human rights responses to HIV.
- ▶ “Ensuring Justice for Vulnerable Communities in Kenya: A Review of HIV/AIDS-related Legal Services,” a report on access to legal services for people living with, affected by, and at risk of HIV in Kenya. Produced by the Law and Health Initiative.
- ▶ “HIV/AIDS and Human Rights: Now More Than Ever,” a ten-point declaration endorsed by twenty-two NGOs that outlines why, now more than

ever, human rights should occupy the center of the global response to HIV and AIDS. Produced by the Law and Health Initiative.

- ▶ Networking, a satellite session, and venues for human rights activists at the 2006 International AIDS Conference (IAC), including support for clinical legal educators from Mozambique, Thailand, and Ukraine to attend the conference.

For detailed information, see www.soros.org/initiatives/health/focus/law

Which are the most relevant international and regional human rights standards related to HIV/AIDS?

Overview

A variety of human rights standards at the international and regional levels applies to HIV and AIDS. These standards can be used for many purposes:

- ▶ **To document** violations related to HIV and AIDS
- ▶ **To advocate** for the cessation of these violations
- ▶ **To sue** governments for violations of national human rights laws
- ▶ **To complain** to regional and international human rights bodies.

In the tables on the following pages, **examples** of human rights violations related to HIV and AIDS are provided. Relevant human rights **standards** are then cited, along with examples of legal **precedents** interpreting each standard.

How to read the tables

As you read through each table, ask yourself the following questions about the **violations, standards, and precedents and interpretations** that are cited:

EXAMPLES OF HUMAN RIGHTS VIOLATIONS

Do any of these violations occur in your country? Are there other violations of this human right that exist in your country?

HUMAN RIGHTS STANDARDS

Are these violations prohibited by the “human rights standards”? Can the standards be interpreted to apply to this violation?

PRECEDENTS AND INTERPRETATIONS

Do any of the “examples of precedents and interpretations” apply to this issue? Can they be interpreted to apply to this issue?

Remember that human rights law is an evolving field, and that many human rights violations are not directly addressed by existing legal standards and precedents. Through ongoing documentation and advocacy, advocates can build a stronger body of jurisprudence on HIV/AIDS and human rights.

Abbreviations

In the tables, the seven treaties and their corresponding enforcement mechanisms are referred to with the following abbreviations:

Treaty	Enforcement Mechanism
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee (HRC)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Committee on Economic, Social and Cultural Rights (CESCR)
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee)
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child (CRC Committee)
African Charter on Human and People's Rights (ACHPR) & Protocols	African Commission on Human and People's Rights (ACHPR Commission)
[European] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)	European Court of Human Rights (ECtHR)
European Social Charter (ESC)	European Committee of Social Rights (ECSR)

Also cited are the former Commission on Human Rights (**CHR**) and various UN Special Rapporteurs (**SR**) and Working Groups (**WG**).

Table 1: HIV/AIDS and the right to life

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Police fail to investigate the murder of a person living with HIV. • Government places unjustified legal restrictions on access to life-saving HIV-prevention or treatment measures. • Government imposes a death sentence for intentional transmission of HIV. • Woman is denied access to post-exposure prophylaxis to prevent HIV following rape. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 6(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p> <p>(2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.</p> <p>ACHPR 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.</p> <p>ECHR 2(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.</p>	<p>HRC: states that art. 6 of the ICCPR creates positive obligations on States to protect life, and that “the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics” {General Comment on the Right to Life, paragraph 5, General Comment 6}</p> <p>Interpreting the right to life, the HRC has recommended that Namibia “pursue efforts to protect population from HIV/AIDS” and “adopt comprehensive measures encouraging greater numbers of persons suffering from HIV and AIDS to obtain adequate antiretroviral treatment and facilitate such treatment” (2004). It has also called for “equal access to treatment” in Kenya (2005) and for Uganda to “allow greater number of persons suffering from HIV/AIDS to obtain adequate antiretroviral treatment” (2004).</p>

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Table 2: HIV/AIDS and freedom from torture and cruel, inhuman and degrading treatment, including in prison

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Outreach workers conducting HIV-prevention with MSM are detained and beaten by police. • An activist is detained and tortured for exposing State complicity in a HIV blood scandal. • Prisoners are denied HIV-related information, education, and means of prevention (e.g., condoms, sterile injection equipment, and bleach), or HIV testing and treatment. • Authorities fail to take steps to prosecute or prevent prison rape. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.</p> <p>ICCPR 10(1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.</p> <p>ACHPR 5 Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.</p> <p>ECHR 3 No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (1987) • European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1989) • Code of Conduct for Law Enforcement Officials (1979) • Standard Minimum Rules for the Treatment of Prisoners (1955) 	<p>HRC: In 2006, expressed concern about the “high incidence of HIV/AIDS and tuberculosis among detainees in facilities of State, along with absence of specialized care for pre-trial detainees” in Ukraine. The Committee recommended that Ukraine relieve prison overcrowding, provide hygienic facilities, assure access to health care and adequate food, and reduce the prison population, including by using alternative sanctions.</p>

Table 3: HIV/AIDS and the right to liberty and security of the person

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Government quarantines people living with HIV or detains them in special colonies. • Penal code imposes explicit prison term for intentional transmission of HIV. • Government requires HIV testing either for all individuals or as a condition of employment, immigration, or military service. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 9(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.</p> <p>ACHPR 6 Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.</p> <p>ECHR 5(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • Code of Conduct for Law Enforcement Officials (1979) • Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) • Reports of the UN Commission on Human Rights Working Group on Arbitrary Detention (2003-2005) 	<p>WG Arbitrary Detention: expressed concern at the arbitrary detention of “drug addicts” and “people suffering from AIDS;” recommended that, “with regard to persons deprived of their liberty on health grounds, the Working Group considers that in any event all persons affected by such measures must have judicial means of challenging their detention.” (2003)</p> <p>ECtHR: “Held that the detention of an HIV-positive gay man violated article 5 as it was not necessary to prevent him from spreading HIV to others.. “{Enhorn v. Sweden, 2005}</p>

Table 4: HIV/AIDS and the right to liberty of movement

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A State conducts HIV screening at its borders or requires disclosure of HIV status as a condition of immigration. • A State singles out HIV status as a reason for denying longer-term residency, while not imposing a similar restriction on other diseases. • A State screens all migrant workers for HIV and categorically deports those who test positive. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 12(1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.</p> <p>(2) Everyone shall be free to leave any country, including his own.</p> <p>(3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (<i>ordre public</i>), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant {emphasis added}.</p> <p>ACHPR 12 (1) Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.</p> <p>(2) Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality {emphasis added}.</p>	<p><i>According to research conducted for this Table, no regional or international human rights body has applied the right to liberty of movement explicitly to the context of HIV and AIDS.</i></p>

Table 5: HIV/AIDS and the right to seek and enjoy asylum

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A State returns an asylum-seeker to a country where she or he faces persecution on the basis of HIV status or HIV activism. • A State excludes people living with HIV from being granted asylum, or discriminates on the basis of HIV status in the context of travel regulations, entry requirements, or immigration and asylum procedures. • Refugees and asylum seekers face discrimination in access to HIV prevention and treatment services. 	
Human Rights Standards	Precedents and Interpretations
<p>ACHPR 12 (3) Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.</p> <p><i>See also:</i></p> <p>Convention relating to the Status of Refugees (1951)</p>	<p>HRC: has confirmed that the right to equal protection of the law prohibits discrimination in law or in practice in any fields regulated and protected by public authorities. This would include travel regulations, entry requirements, and immigration and asylum procedures.</p> <p>The United Nations High Commissioner for Refugees, while not a treaty body, issued policy guidelines in 1988 stating that refugees and asylum seekers should not be targeted for special measures regarding HIV infection and that there is no justification for screening being used to exclude HIV-positive individuals from being granted asylum.</p>

2

Table 6: HIV/AIDS and the right to privacy

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A person is tested for HIV without his or her consent. • A hospital or health care worker fails to maintain confidentiality of a patient's HIV status or medical records. • Government requires registration of all people living with HIV by name. • Government requires disclosure of HIV status on certain forms such as sick-leave certificates, job applications, and medical prescriptions. • Penal code criminalizes certain sexual acts between consenting adults, such as fornication, oral sex, sodomy, or adultery. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 17(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.</p> <p>ECHR 8(1) Everyone has the right to respect for his private and family life, his home and his correspondence.</p>	<p>HRC: In finding that the right to privacy is violated by laws that criminalize homosexual acts between consenting adults {see <i>Toonen v. Australia</i>, 1991}), the Human Rights Committee noted that "...the criminalization of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of HIV and AIDS...[B]y driving underground many of the people at risk of infection...[it] would appear to run counter to the implementation of effective education programmes in respect of the HIV and AIDS prevention" see also, Chapter 4, Sexual Health and Human Rights).</p>

Table 7: HIV/AIDS and freedom of expression and information

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Government censors HIV-prevention information directed at LGBT persons, sex workers, or people who use drugs on the grounds it is obscene or promotes criminalized behavior. • Schools deny young people information about HIV and AIDS, safer sex, sexuality, and condoms. • Media reporting on HIV engages in stigma and stereotyping rather than providing factual information. • Government restricts a newspaper, website, or other communication by activists critical of government AIDS policies. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 19(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p> <p>ACHPR 9 (1) Every individual shall have the right to receive information.</p> <p>ECHR 10(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.</p> <p>(2) Every individual shall have the right to express and disseminate his opinions within the law.</p>	<p>CRC: concluded that adolescent’s right to information about HIV and AIDS is part of the right to information {General Comment 3, 2003, Paragraph 4}.</p> <p>SR Education: has noted the need for sexuality education in schools, as well as the need for schools to ensure the safety of gay and lesbian students.</p> <p>SR Freedom of Expression and Information: has commented on the abuse of the rights of sex workers and LGBT persons; noted restrictions on public speech and denial of HIV and AIDS information to these communities; noted the detention of persons in Kuwait because of a letter mentioning a lesbian relationship; and expressed concern in Uganda about the arrests and harassment of two gender-non-conforming women.</p>

2

Table 8: HIV/AIDS and freedom of assembly and association

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • State restricts formation of nongovernmental, community-based, or service organizations working on HIV and AIDS, or imposes prohibitive bureaucratic requirements. • Police disperse a peaceful and authorized demonstration by AIDS activists. • Organizations such as trade unions or professional associations deny membership on the basis of HIV status. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 21 The right of peaceful assembly shall be recognized.</p> <p>22 The right of peaceful assembly shall be recognized.</p> <p>No restrictions may be placed on the exercise of [these rights] other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (<i>ordre public</i>), the protection of public health or morals or the protection of the rights and freedoms of others.</p> <p>ACHPR 10 Every individual shall have the right to free association provided that he abides by the law</p> <p>11 Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.</p> <p>ECHR 11 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.</p>	<p><i>According to research conducted for this Table, no regional or international human rights body has applied the protection of freedom of assembly and association explicitly to the context of HIV and AIDS.</i></p>

Table 9: HIV/AIDS and the right to marry and found a family

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • State requires HIV testing or proof of HIV-negative status as a condition of marriage. • State forces woman living with HIV to undergo abortion or sterilization, rather than providing her with information and services to prevent mother-to-child transmission of HIV. • Women are denied equal rights in marriage, divorce, or within families, thus decreasing their ability to negotiate safer sex or leave relationships that pose a risk of HIV. • State denies migrants the right to be accompanied by family members, thus increases risk of HIV through casual sex. • State denies asylum to HIV-positive claimant while granting asylum to his or her family. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 23(2) The right of men and women of marriageable age to marry and to found a family shall be recognized.</p> <p>ECHR 12 Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.</p>	<p>CEDAW Committee: recommended that Kenya “take appropriate action to eliminate all discriminatory laws, practices and traditions and ensure women’s equality with men particularly in marriage and divorce, burial and devolution of property upon death in accordance with provisions of CEDAW,” including through passage of HIV and AIDS legislation (2003).</p> <p>ECtHR: ruled the rights of a Serbian woman living with HIV were violated when she was banned from seeing her child (2007).</p>

2

Table 10: HIV/AIDS and the right to non-discrimination and equality under law

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A person is denied work, housing, medicine, or education due to actual or presumed HIV status. • A child affected by HIV faces discrimination because of her or her parents' HIV status. • Government-sponsored HIV-prevention materials exclude information targeted at certain minorities such as LGBT persons, persons with disabilities, or people who use drugs. • Discrimination in access to property and divorce render women more vulnerable to HIV. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 2(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>ICCPR 26 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>ACHPR 2 Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. 3 (1) Every individual shall be equal before the law. (2) Every individual shall be entitled to equal protection of the law.</p> <p>ECHR 14 The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p>	<p>CHR: confirmed that the term “other status” in anti-discrimination provisions includes health status, including HIV status (1995 and 1996).</p> <p>CRC: in the context of anti-discrimination, recommended: that Kazakhstan undertake awareness-raising and sensitization of legal and other professionals on the impact of HIV and AIDS on children (2006); and that Ukraine monitor the situation of “economically disadvantaged households, children living in rural areas, children in institutions, children with disabilities, children belonging to national minorities such as Roma children, and children affected with HIV/AIDS” and develop anti-discrimination strategies for these populations (2002).</p> <p>CEDAW Committee: has made several recommendations on the elimination of discrimination against women in the context of HIV and AIDS (see Table 12, below).</p> <p>Committee on the Elimination of Racial Discrimination: expressed concern at the high rate of HIV and AIDS among minorities and ethnic groups and recommended that governments take appropriate action in Estonia (2006) and South Africa (2006 and 2003).</p>

Table 11: HIV/AIDS and the right to the highest attainable standard of health

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • State fails to take progressive steps to ensure access to HIV-prevention information and services (e.g. condoms, sterile syringe programs, VCT), or imposes restrictions on such services. • State fails to take progressive steps to ensure access to anti-retroviral drugs, treatment for opportunistic infections, opioid pain medications for palliative care, or comprehensive TB care. • State fails to ensure that sex workers, MSM, prisoners, people who use drugs, and other vulnerable groups enjoy proportionate access to HIV prevention, treatment, and care services. 	
Human Rights Standards	Precedents and Interpretations
<p>ICESCR 12(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>12(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: . . . (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases.</p> <p>ACHPR 16 (1) Every individual shall have the right to enjoy the best attainable state of physical and mental health.</p> <p>(2) States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • Convention on the Elimination of All Forms of Discrimination Against Women, 12(1) • Convention on the Rights of the Child, 24(1) 	<p>CESCR: Art. 12 includes “the right to prevention, treatment and control of epidemic...diseases,” including HIV. Recommendations include: Georgia to undertake general HIV-prevention measures (2002); Moldova to “intensify efforts” on HIV (2003); Russia to take “urgent measures to stop the spread of HIV” and related discrimination (2003); Ukraine to provide HIV information to adolescents (2001).</p> <p>CRC: has recommended that States improve HIV-prevention services for children, protect children from HIV-based discrimination, and include children’s rights in HIV strategies (see, e.g., comments on Benin (2006), Senegal (2006), Swaziland (2006), Nigeria (2005), Uganda (2005), Armenia (2004), Burkina Faso (2002), Mozambique (2002), Ukraine (2002), Kenya (2001), Georgia (2000), Tajikistan (2000), and South Africa (2000). The Women’s Committee has made similar comments on Mali (2006), Burkina Faso (2005), and Angola (2004).</p> <p>The CRC has also recommended that Russia study its practice of “segregating children of HIV-positive mothers in hospital wards or separate orphanages and of HIV-positive children being refused access to regular orphanages, medical care and educational facilities” (2005).</p>

2

Table 12: HIV/AIDS and the rights of women and children

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Women face discrimination in the family, in education, employment and health care, and in access to property, and are denied an effective remedy for violence, including marital rape. • Women are denied access to a full range of health services, including reproductive health care, to prevent and mitigate the impact of HIV for themselves and their children. • Children are denied access to comprehensive HIV-prevention services and information. • Children orphaned or affected by AIDS are withdrawn from school, denied their inheritance, and forced into hazardous situations such as forced labor, begging, and sexual exploitation. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 3 The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.</p> <p>23 (3) No marriage shall be entered into without the free and full consent of the intending spouses.</p> <p>(4) States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.</p> <p>24 (1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.</p> <p>ACHPR 18 (3) The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • Convention on the Elimination of All Forms of Discrimination against Women • Convention on the Rights of the Child 	<p>CRC: Recommendations include: Kazakhstan to sensitize legal and other professionals on the HIV among children (2006); Moldova to study situation of adolescent sexual and reproductive health, including HIV (2002); Swaziland (2006), Uganda (2005), and Botswana (2004) to prioritize budget allocations to HIV-affected children; Botswana to ensure free trade agreements do not impede access to low-cost HIV medicines for children (2004); Mozambique (2002), Uganda (2005), and Swaziland (2006) to improve alternate care for AIDS orphans; Benin (2006) and Nigeria (2005) to ensure educational opportunities for children affected by HIV {See also, CRC recommendations on children who use drugs, Chapter 3, Table 10}.</p> <p>CEDAW Committee: Recommendations include: Moldova to target “high-risk groups” with HIV strategies (2006); Russia to address gender aspects of HIV (2002); Angola to “widely promote” sex education and study adolescent health (2004); Kenya to address HIV-related sex discrimination (2003); Uganda to “pay full attention to provisions of health services for prostitutes” (2002); Burkina Faso to implement a range of measures on women and HIV and AIDS (2000 and 2005). CEDAW Committee has also requested countries, including Moldova (2000) and Mali (2006), to gather information on measures to reduce HIV among women.</p>

What are some examples of effective human rights programming in the area of HIV/AIDS?

Introduction

In this section, you are presented with **four examples** of effective activities in the area of sexual health and human rights. These are:

1. Litigation to advance access to HIV treatment in South Africa
2. Providing a “toolkit” for a human rights approach to AIDS in Botswana
3. Legislating for health and human rights: developing, and advocating for, better laws on drug use and HIV/AIDS
4. Uniting to demand government (and NGO) action and accountability on HIV/AIDS in Senegal

Rights-based programming

As you review each activity, ask yourself whether it incorporates the **five elements** of “rights-based” programming:

- ▶ **Participation**
Does the activity include participation by affected communities, civil society, marginalized groups, and others? Is it situated in close proximity to its intended beneficiaries?
- ▶ **Accountability**
Does the activity identify both the *entitlements of claim-holders* and the *obligations of duty-holders*? Does it create mechanisms of accountability for violations of rights?
- ▶ **Non-discrimination**
Does the activity identify who is most vulnerable, and how? Does it pay particular attention to the needs of vulnerable groups such as women, minorities, indigenous peoples, and prisoners?
- ▶ **Empowerment**
Does the activity give its beneficiaries the power, capability, capacity, and access to bring about a change in their own lives? Does it place them at the center of the process rather than treating them as objects of charity?
- ▶ **Linkage to rights**
Does the activity define its objectives in terms of legally enforceable rights, with links to international, regional, and national laws? Does it address the full range of civil, political, economic, social, and cultural rights?

Finally, ask yourself whether the activity might be replicated in your country:

- ▶ Does such a project **already exist** in your country?
- ▶ If not, should it be **created**? If so, does it need to be **expanded**?
- ▶ What **steps** need to be taken to replicate this project?
- ▶ What **barriers** need to be overcome to ensure its successful replication?

Example 1: *Litigation to advance access to HIV treatment in South Africa*

In 2001, the Treatment Action Campaign (TAC) and the AIDS Law Project (ALP) took legal action to secure access to medication to prevent mother-to-child transmission of HIV through litigation to have such treatment declared a constitutional right.

Project type

Litigation and community mobilization

Health and human rights issue

Treatment for HIV is unavailable to the vast majority of people who need it in South Africa. In 2001, it was estimated that approximately 70,000 children would be infected with HIV through mother-to-child transmission alone. Although treatment with azidothymidine (AZT) or nevirapine can significantly reduce the risk of HIV transmission from mother to child, as of 2001 the South African government was restricting this treatment to two pilot sites in each province.

Actions taken

Following a number of failed attempts to convince the Minister of Health to broaden the prevention of mother-to-child transmission (PMTCT) program, TAC and two other plaintiffs filed a notice of motion with the Pretoria High Court alleging that the National Minister of Health as well as the Ministers of Health for all the provinces were in breach of s. 27 of the South African Bill of Rights, which protects “the right to have access to health care services.”

Results and lessons learned

- ▶ In December 2001, the High Court ruled in favour of TAC and ordered the Minister of Health to make nevirapine available in all public hospitals and clinics where testing and counselling facilities existed. The court also ordered the Minister of Health to come up with a programme to prevent or reduce MTCT and to submit reports to the court outlining that programme.
- ▶ The Minister of Health appealed the decision to the South African Constitutional Court, which denied the appeal and found that the Minister of Health had a constitutional duty to give pregnant women access to nevirapine. The victory proved that human rights litigation can be an effective tool to advance access to medicines, particularly in democracies whose constitutions recognize access to health care as a human right.
- ▶ However, litigation is only one of many strategies that are needed to make HIV medicines genuinely available to all those who need them. Other factors that contributed to the success of the litigation included: a broad social movement accompanying the litigation; charismatic and committed leadership on the part of people living with HIV; alliances with treatment activists around the world; the existence of a constitutional democracy with independent courts and a constitution protecting health rights; and a legacy of public interest litigation dating back to the apartheid era.

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Case citation

www.constitutionalcourt.org.za/uhtbin/cgisirsi/vqHa0JTfqU/323010030/9.

Example 2: A “toolkit” for a human rights approach to AIDS in Botswana

To demystify the human rights approach to HIV for local activists and government officials, the Botswana Network on Law, Ethics, and HIV/AIDS (BONELA) produced a user-friendly manual for action on HIV/AIDS and human rights.

Project type

Training and advocacy

Health and human rights issue

In its work with communities, health workers, government officials, NGOs, and businesses, BONELA observed a lack of awareness about what human rights are, and how to respect and promote these rights in people’s everyday lives. There was a lack of training materials on human rights that suited a local context, and human rights were often misunderstood as a foreign or “Western” concept that was not applicable to Botswana.

Actions taken

BONELA created a 14-part manual on AIDS and human rights:

- ▶ The Manual acts as both a *resource* and as a *tool for capacity building, training, and awareness raising*. It provides accurate, interesting, clear, and relevant information on key issues related to AIDS and human rights.
- ▶ The Manual uses a building-block approach in which the first 4 modules deal with foundational aspects needed for any discussion around human rights and HIV and AIDS. The user chooses from among other modules (5-14) appropriate to the intended target group. Each module suggests activities—including scenarios, discussion points, debates, and role plays—that can be used in community-led workshops or seminars.
- ▶ The introductory manual provides guidance on planning participatory learning methods and organizing a workshop or seminar.

Results and lessons learned

- ▶ The manual has catalyzed local and national workshops and seminars on HIV/AIDS and human rights, leading to much greater awareness of human rights issues and, in some cases, legal and policy change. A network of “resource focal persons” committed to rights-based approaches in health care facilities PWA groups has been established.
- ▶ As a small NGO, BONELA has had difficulty supporting its focal persons. To address this, it has allocated staff time, raised funds, and partnered with other NGOs with the mandate and interest to provide support.
- ▶ Raising awareness is important, but there is also a need for advocacy at policy level. There is a need to engage, sensitize, and persuade legislators of the importance of rights-based approaches to HIV. An informed and committed health care worker, for example, will have difficulty integrating human rights principles into her work without a policy mandate to do so.

Contact

Botswana Network on Law, Ethics, and HIV/AIDS
Plot 50662, Medical Mews, Fairgrounds
Gaborone, Botswana
P.O. Box 402958
Email: bonela@botsnet.bw
Manual at: www.bonela.org

Example 3: **Developing and advocating for better laws on drug use and HIV**

The Canadian HIV/AIDS Legal Network has developed a model-law resource for NGOs and governments seeking to adopt human rights-based law and policy related to HIV among people who use drugs. The Legal Network is now actively promoting this resource at the country level.

Project type

Law reform

Health and human rights issue

Many countries with injection-driven HIV epidemics emphasize criminal enforcement of drug laws over public health approaches, thereby hindering effective responses to HIV and AIDS. Despite evidence supporting harm reduction services, millions of people around the world who use drugs lack access to such services because of legal and social barriers.

Actions taken

The Legal Network developed a “model law” resource providing a detailed framework of legal provisions and commentary on public health approaches to injection-driven HIV. The resource is aimed at policy-makers and advocates in developing and transitional countries where legislative drafting resources may be scarce. At the country level, the resource has been used:

- ▶ In collaboration with the State Department in **Ukraine**, to research and draft regulations permitting sterile syringe programs in prisons;
- ▶ In a submission to the sub-committee reviewing anti-drug legislation in the parliament of **Indonesia**, to encourage legal recognition of harm reduction;
- ▶ In the preparation of training modules on harm reduction and human rights for front-line harm reduction service providers in **Russia**;
- ▶ To advocate for the development of a harm reduction policy in **Thailand**.

Results and lessons learned

- ▶ HIV prevention, care and treatment services operate best within a clear legal framework that specifically protects the human rights of people who use drugs and enables harm reduction measures.
- ▶ Law reform is not a complete solution to effectively addressing the HIV epidemic among people who use illegal drugs, but it is a necessary and often neglected step.
- ▶ Reforming law and policy around drug use and HIV and AIDS within a particular jurisdiction can be challenging because of: hostility or inertia on the part of key government stakeholders; stigma and discrimination in the general population against people who use drugs; criminalization and social marginalization of people who use drugs, which often makes it dangerous for them to publicly advocate for their rights; and competing demands on the time and energy of local advocates.

Contact

Richard Pearshouse
Canadian HIV/AIDS Legal Network:
rpearshouse@aidslaw.ca or
1-416 595 1666 ext 230.
Model law resource available at
www.aidslaw.ca/modellaw.

Example 4: Uniting to demand action and accountability on HIV in Senegal

Despite international praise for its response to HIV, Senegal was excluding vulnerable groups and civil society perspectives as it took its HIV response to a national scale. Five groups united to form a “watchdog” on the government’s AIDS response. Through a report, media advocacy, and meetings with government officials, they succeeded in changing key aspects of national AIDS policy.

Project type

Networking, documentation and advocacy

Health and human rights issue

Senegal has been praised as one of the countries in the developing world that has been most successful in fighting AIDS. Yet, as the government attempted to take its HIV strategy to scale, several problems emerged: the scale up proceeded without a clear strategy or vision; vulnerable populations (particularly orphans and vulnerable children) were not being targeted with interventions; respect for the rights and dignity of people living with HIV and AIDS was lacking; and access to HIV testing and treatment remained too limited. In general, civil society felt that it had been “pushed to the side” and had no real impact on government decision-making.

Actions taken

A group of five NGOs came together to denounce the problems that Senegal was facing in its response to HIV, to provide constructive solutions to overcoming these problems, and to participate in making necessary changes. They formed an informal network, the *Observatoire de la réponse au VIH/sida au Sénégal* (Watchdog of the response to HIV and AIDS in Senegal), which:

- ▶ Drafted a position paper highlighting the group’s collective reflections and recommendations on how to improve Senegal’s response to AIDS;
- ▶ Met with national HIV and AIDS authorities, as well as with international organizations, to present their analysis and seek feedback;
- ▶ Held a press conference to release the position paper and demand action;
- ▶ Succeeded in becoming actively involved in the processes and mechanisms established since to deal with the problems identified.

Results and lessons learned

- ▶ Today, civil society is more, and more meaningfully, involved in key aspects of Senegal’s response to AIDS. The project has shown that strong civil society engagement with government can improve the response to AIDS, as many of the problems in Senegal’s response to AIDS noted by the Observatoire are being addressed.
- ▶ Civil society organizations are most effective when they build coalitions and work together, propose concrete solutions based on sound analysis, and remain independent and critical of government while engaging with government officials.

Contact

Alliance Nationale Contre le Sida
Sacré cœur 3, Villa N°9405
Dakar, Sénégal

www.ancs.sn.

Report at:

www.aidsalliance.org/sw44583.asp

Where can I find additional resources on HIV/AIDS and human rights?

Resources

The most comprehensive collection of resources on HIV/AIDS and human rights is contained in a CD-ROM on “HIV/AIDS: Law, Ethics and Human Rights” produced by UNAIDS and the Canadian HIV/AIDS Legal Network in 2006. Copies of this CD-Rom may be obtained by emailing UNAIDS at unaids@unaids.org.

To further your understanding on the topic of HIV/AIDS and human rights, a list of commonly used resources has been compiled and organized into the following categories:

- ▶ Declarations and resolutions: UN
- ▶ Declarations and resolutions: non-UN
- ▶ Guidelines
- ▶ Books
- ▶ Reports, key articles, and other documents
- ▶ Periodicals
- ▶ Websites
- ▶ Blogs and list-serves
- ▶ Training manuals

Declarations and resolutions: UN

- ▶ UN Commission on Human Rights, Access to Medications in the Context of Pandemics such as HIV/AIDS, Tuberculosis and Malaria, Resolutions 2005/23, 2004/26, 2003/29, and 2002/32
- ▶ UN Commission on Human Rights, Protection of Human Rights in the Context of HIV/AIDS, Resolutions 2005/84, 2003/47, 2001/51, 1999/49, and 1996/43
- ▶ UN Commission on the Status of Women, Women, the Girl Child, and HIV/AIDS, Resolution 47/1 (2003)



- ▶ United Nations General Assembly Special Session on HIV/AIDS, Declaration of Commitment on HIV/AIDS, Resolution A/RES/S-26/2, June 27, 2001
- ▶ United Nations General Assembly Special Session on HIV/AIDS, Roundtable 2: HIV/AIDS and Human Rights, A/S-26/RT.2, June 25, 2001

Declarations and resolutions: non-UN

- ▶ Demand for Action on TB and HIV. Glen Cove: Open Society Institute Public Health Watch, 2007
This demand for action, signed by 43 participants in a meeting hosted by Public Health Watch, calls on the international community to take immediate action against TB, including MDR and XDR-TB, and to integrate TB and HIV programs worldwide.
- ▶ Global Treatment Access Group. The Global AIDS Crisis: Four Steps for Canada. A Civil Society Platform for Action. GTAG, 2007.
This call for action highlights what high-income countries like Canada should do to address the global AIDS crisis.
Source: www.aidslaw.ca/gtag
- ▶ Human Rights and HIV/AIDS: Now More Than Ever (2nd edition). New York: Open Society Institute Law and Health Initiative, 2007.
This declaration, adopted by 23 organizations from around the world, provides 10 reasons why human rights should occupy the center of the global AIDS struggle.
Source: www.soros.org/initiatives/health/focus/law
- ▶ The Patients' Charter for Tuberculosis Care: Patients' Rights and Responsibilities. World Care Council, 2006.
Initiated and developed by patients around the world, this charter outlines the rights and responsibilities of people with TB and aims to make TB patients and their providers more accountable to each other. The charter was developed in tandem with the International Standards for Tuberculosis Care.

Guidelines

- ▶ Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, *International Guidelines on HIV/AIDS and Human Rights: 2006 Consolidated Version*, Second International Consultation on HIV/AIDS and Human Rights (Geneva, September 23-25, 1996) and Third International Consultation on HIV/AIDS and Human Rights (Geneva, July 26-26, 2002). Geneva: UNAIDS, 2006.

The Guidelines provide comprehensive, detailed, and specific guidance on how human rights should be promoted and protected in the context of the HIV and AIDS epidemic. The text and commentary of the Guidelines are available via the web.

Source: www.unaids.org or
www.ohchr.org/english/issues/hiv/guidelines.htm

The following documents explain how advocates can best use the Guidelines, and provides concrete examples of how their implementation can be assessed:

- ▶ AIDS & Rights Alliance for Southern Africa. HIV and Human Rights in SADC. Windhoek: ARASA, 2006.
2006 marked the tenth anniversary of the development of the Guidelines. To mark this occasion, ARASA released this report of an evaluation of the steps taken by SADC countries to implement the Guidelines. The report is the first attempt at measuring the successes and failures of SADC countries in responding to HIV within human rights based framework.
Source: www.arasa.info/publications.php
- ▶ International Council of AIDS Service Organizations. Advocates Guide to the International Guidelines on HIV/AIDS and Human Rights. Toronto: ICASO, 1999.
An easy-to-read summary of the Guidelines, explaining to advocates how they can best use the Guidelines in their day-to-day work.
Source: www.icaso.org
- ▶ Watchirs, H. A Rights Analysis Instrument to Measure Compliance With the International Guidelines on HIV/AIDS and Human Rights. Australian National Council on AIDS and Related Diseases, 1999.
This rights analysis instrument was developed to measure states' compliance with the Guidelines. It has been applied in Australia {see: Watchirs H. AIDS Audit - HIV and Human Rights: An Australian Pilot. *Law & Policy* 2003; 25 (3): 245–268} and served as the basis for a legislative audit undertaken in Nepal {see: National Centre for AIDS and STD Control, POLICY Project/Nepal, and Forum for Women, Law and Development. HIV/AIDS and Human Rights: A Legislative Audit. Kathmandu, Nepal: Forum for Women, Law and Development, 2004 (Publication No. 76)}.
Source: www.policyproject.com/pubs/countryreports/NEP_LegAudit.pdf

Books

- ▶ Beyrer C. *War in the Blood: Sex, Politics, and AIDS in Southeast Asia*. Zed Books, 1998.
- ▶ Framer P. *Pathologies of Power. Health, Human Rights, and the War on the Poor*. Berkeley: University of California Press, 2005.

- ▶ Frankowski S. *Legal Responses to AIDS in Comparative Perspective*. Kluwer Law International, 1998. (This book is a collection of ten essays on legal responses to HIV and AIDS, written by scholars from five continents: Africa, Asia, Australia, Europe and America).
- ▶ Gostin L. *The AIDS Pandemic: Complacency, Injustice, and Unfulfilled Expectations*. University of North Carolina Press, 2003.
- ▶ Lewis S. *Race Against Time: Searching for Hope in AIDS-Ravaged Africa*. Toronto: House of Anansi Press Inc., 2005.
- ▶ Siplon P. *AIDS and the Policy Struggle in the United States*. Washington, DC: Georgetown University Press, 2002.
- ▶ Webber DA. *AIDS and the Law*. Aspen Publishers, 1997 (last updated, 2004). (In addition to the most comprehensive analysis available about legal issues related to HIV and AIDS in the United States, this book also contains chapters on the law related to HIV and AIDS in Australia, Canada, Namibia, South Africa, and the United Kingdom.
Source: www.aidsandthelaw.com for more information and ordering information.

Reports, key articles, and other documents

- ▶ AIDS and Rights Alliance for South Africa. *Proposed SADC Code on Gender and HIV/AIDS*. ARASA, 2005.
This code contains “urgent measures needed to promote the equality of women and the reduction of women’s risk of HIV infection”. The Code is available in English and Portuguese. It is similar to the ‘Code on HIV/AIDS and Employment’ that was adopted by SADC 1997, but focuses specifically on the gendered dimensions of the AIDS epidemic.
- ▶ Altman, D., HIV, Homophobia, and Human Rights. *Health and Human Rights*, 2 (4), 15-22 (1998).
- ▶ Amnesty International. *Women, HIV/AIDS and human rights*. London: AI, 2004.
This paper offers a human rights analysis of the gender-specific factors that put women at risk of contracting HIV and of the consequences of contracting HIV that women face. It underlines the need for government action in a rights-based approach to the gender-related aspects of HIV and AIDS prevention, treatment and support.
Source: web.amnesty.org/library/Index/ENGACTION770842004
- ▶ Amon J. Preventing the further spread of HIV/AIDS: The essential role of human rights. New York: Human Rights Watch, 2006.

Argues that, even as treatment options are expanding, responses to HIV and AIDS in many places are getting further from the kind of science-based, human-rights informed response that has been proven to stop the spread of the disease. Left unaddressed, human rights abuses will undermine both HIV and AIDS prevention and treatment.

Source: hrw.org/wr2k6/hivaids/index.htm

- ▶ Canadian HIV/AIDS Legal Network. A human rights approach to HIV/AIDS. Montreal: The Network (no date).
Describes in detail what is meant by a human rights approach to HIV and AIDS. Available in English and French.
Source: www.aidslaw.ca
- ▶ Center for Health and Gender Equity. Policy brief: Implications of U.S. policy restrictions for programs aimed at commercial sex workers and victims of trafficking worldwide. Takoma Park: The Center, 2005.
Explains the implications for effective HIV prevention, and the promotion of both human rights and public health, of US policy restrictions for programs aimed at sex workers.
Source: www.genderhealth.org
- ▶ Csete J. HIV/AIDS and human rights: we've only just begun. *HIV/AIDS Policy & Law Review* 2005; 10(1): 1, 7-13.
Describes the human rights framework that is the foundation for a more effective response to HIV and AIDS and stresses the urgency of paying more than lip service to the need to put human rights at the centre of the fight against HIV and AIDS in Canada and beyond. Available in English and French.
Source: www.aidslaw.ca
- ▶ Csete J, Elliott R. Scaling up HIV testing: human rights and hidden costs. *HIV/AIDS Policy & Law Review* 2006; 11(1): 1, 5-10.
Discusses the human rights and ethical issues raised by provider-initiated routine HIV testing. Available in English and French.
Source: www.aidslaw.ca
- ▶ Criminal Law, Public Health and HIV Transmission, a Policy Options Paper, UNAIDS, Geneva (2002).
- ▶ Gruskin S. Human rights and public health: An overview. *Canadian HIV/AIDS Policy & Law Newsletter* 1999; 4(2/3): 78-81.
Explains how a human rights framework can be applied to dealing with public health issues and, specifically, HIV and AIDS. The example of women's reproductive health is used to highlight governmental responsibility for both health and human rights. Available in English and French.
Source: www.aidslaw.ca

- ▶ Heywood M. Human rights and HIV/AIDS in the context of 3 by 5: time for new directions? *Canadian HIV/AIDS Policy & Law Review* 2004; 9(2): 1, 7-13. Argues that, over the last decade, the success of the human rights-based approach to HIV and AIDS has been spotty, and describes the challenges that remain in implementing a human rights approach. Argues that human rights advocacy needs to continue, but that new directions are required, and outlines new directions in the areas of confidentiality and openness, HIV testing, and health systems. Available in English and French.
Source: www.aidslaw.ca

- ▶ International Council of AIDS Service Organizations. Community Monitoring and Evaluation. Implementation of the UNGASS Declaration of Commitment on HIV/AIDS. Toronto: ICASO, 2006.
This study evaluated the extent to which governments have implemented the UNGASS Declaration of Commitment. It found that “human rights abuses of vulnerable populations continue unabated.”
Source: www.icaso.org

- ▶ Jürgens R. “Routinizing” HIV testing in low- and middle-income countries. Background paper. New York: Public Health Program, OSI, 2006.
Discusses the human rights and public health issues related to scaling up access to HIV testing.
Source:
www.soros.org/initiatives/health/articles_publications/publications/routinizing_20061213

- ▶ Malinowska-Sempruch K, Gallagher S (eds). *War on Drugs, HIV/AIDS and Human Rights*. New York, Amsterdam, Brussels: International Debate Education Association, 2004.
A collection of essays by people working in the area of harm reduction, drug policy and human rights.

- ▶ Mann J. Human rights. In: Smith RA (ed). *Encyclopedia of AIDS: A Social, Political, Cultural, and Scientific Record of the HIV Epidemic*. 1998.
An introduction to HIV/AIDS and human rights by the late Jonathan Mann.
Source: www.thebody.com/encyclo/human_rights.html

- ▶ Patterson D, London L. International law, human rights and HIV/AIDS. *Bulletin of the World Health Organisation* 2002; 80(12): 964-969.
This article explores the relevance of international human rights law in the response to the HIV and AIDS epidemic at national and international levels.
Source: [www.who.int/entity/bulletin/archives/80\(12\)964.pdf](http://www.who.int/entity/bulletin/archives/80(12)964.pdf)

- ▶ Piot P. Why AIDS is exceptional. Geneva: UNAIDS.
In this speech given at the London School of Economics on 8 February 2005, Dr Piot, the Executive Director of UNAIDS, argues that AIDS

continues to be “exceptional in so many ways that only an equally exceptional response will succeed.”

Source: www.unaids.org

- ▶ Roseman MJ, Gruskin S. HIV/AIDS & Human Rights in a Nutshell. Toronto & Boston: ICASO & Program on International Health and Human Rights, 2005.

Intended to provide “a quick and useful guide for action, as well as an inspirational framework to carry HIV/AIDS and human rights actions forward.” Available in English, French, Russian and Spanish.

Source: www.icaso.org

- ▶ UNAIDS. From Principles to Practice: Greater Involvement of People Living with or Affected by HIV/AIDS. Geneva: UNAIDS, 1999.

Contains the text of the Declaration of the Paris AIDS Summit, explains why involving people living with and affected by HIV and AIDS is critical to the response to HIV and AIDS, and suggests how this can best be done in practice

Source: www.unaids.org

- ▶ UNAIDS & Inter-Parliamentary Union. *Handbook for legislators on HIV/AIDS, law and human rights*. Geneva: UNAIDS, 1999.

Based on the International Guidelines on HIV/AIDS and Human Rights, presents concrete measures that legislators can take to protect human rights and promote public health in responding to HIV and AIDS.

Source: www.unaids.org

- ▶ UNAIDS. *HIV-related stigma, discrimination and human rights violations. Case studies of successful programmes*. Geneva: UNAIDS, 2005.

This report provides a number of case studies of efforts to promote the human rights of people living with HIV and providing redress for violations of their human rights, in Venezuela, Namibia, India, and South Africa.

- ▶ UNAIDS. Intensifying HIV Prevention: A UNAIDS Policy Position Paper. Geneva: UNAIDS/05.18E, 2005.

This paper aims to “energize and mobilize an intensification of HIV prevention with an ultimate aim of universal access to HIV prevention and treatment”. It recognizes that ensuring that “human rights are promoted, protected and respected and that measures are taken to eliminate discrimination and combat stigma” is an “essential policy action” for HIV prevention (at 23).

Source: www.unaids.org

- ▶ UNAIDS & Canadian HIV/AIDS Legal Network. *Courting rights: case studies in litigating the human rights of people living with HIV*. Geneva: UNAIDS, 2006.

Presents examples where a whole range of people – from people living with HIV, to activists, to prisoners – have demanded that human rights related to HIV be recognized and enforced in national courts of law.

Source: www.unaids.org or www.aidslaw.ca

- ▶ UNESCO & UNAIDS. *HIV/AIDS and Human Rights - Young People in Action*. Geneva, 2001.

This kit presents ideas for youth action on human rights and HIV and AIDS.

Source: www.unaids.org/en/Issues/Impact_HIV/hivHRlaw.asp

- ▶ University of Toronto, Case Study: Treatment Action Campaign v. the Minister of Health.

Source: www.law-lib.utoronto.ca/diana/casestudies.html

- ▶ World Health Organization. *25 questions & answers on health & human rights*. Geneva: WHO, 2002.

Part of the WHO Health and Human Rights Publication Series which aims to clarify the relationship between human rights and specific health topics. Suggests answers to key questions which come to mind in exploring the linkages between health and human rights. Available in many languages.

Source: www.who.int/hhr/activities/publications/en

- ▶ World Health Organization, UNAIDS, and Office of the United Nations High Commissioner for Human Rights. *HIV/AIDS – Stand up for human rights*. Geneva, 2003.

This cartoon is designed to empower young people to promote human rights in relation to HIV and AIDS, to raise awareness of the key linkages between HIV/AIDS and human rights, to demystify the disease and to combat the myths and taboos associated with HIV and AIDS. Available in English, French, and Thai.

Source: www.who.int/hhr/activities/publications/en/

Periodicals

- ▶ Health & Human Rights

A journal dedicated to studying the relationship between human rights and health. Three issues of the journal have focused on HIV/AIDS and human rights.

Source: www.hsph.harvard.edu/fixcenter/journal.htm

- ▶ HIV/AIDS Policy & Law Review

Provides analysis and summaries of current developments in HIV/AIDS-related policy, law, and human rights.

Source: www.aidslaw.ca

Websites

The following websites contain useful information on HIV/AIDS and describe projects undertaken on HIV and AIDS and human rights:

- ▶ Accion Ciudadana Contra el SIDA (Venezuela)
In Spanish only. Contains many relevant materials, including a manual on HIV/AIDS and human rights
www.accsi.org.ve
- ▶ AIDS Law Project (South Africa)
Together with the website of the Canadian HIV/AIDS Legal Network, this site is the most comprehensive source for information on legal and human rights issues related to HIV and AIDS.
www.alp.org.za
- ▶ AIDS Law Unit of the Legal Assistance Centre (Namibia)
www.lac.org.na/alu/default.htm
- ▶ AIDS Legal Network (South Africa)
Among other things, contains information on a Training Manual – HIV/AIDS & Human Rights: Towards a supportive and enabling environment for women, children and other vulnerable groups. The manual includes four modules pertaining to defining and understanding core concepts, to the meaning and implication of Guideline 8 of the International Guidelines on HIV/AIDS and Human Rights, to South Africa's response to the principles outlined in Guideline 8 and to practical advocacy steps aimed at enhancing the access to, and implementation of, legislative and policy measures. Also contains an HIV/AIDS and the Law Trainers' Manual.
www.aln.org.za
- ▶ AIDS Rights Alliance for Southern Africa (ARASA)
This website contains a number of useful documents, including an HIV/AIDS and Human Rights Advocacy Resource Manual, a Draft Code on HIV/AIDS and Gender, and a report on HIV and human rights in SADC countries.
www.arasa.info
- ▶ Botswana Network on Ethics, Law, and HIV (BONELA)
www.bonela.org
- ▶ Canadian HIV/AIDS Legal Network:
Together with the website of the AIDS Law Project (South Africa), this site is the most comprehensive source for information on legal and human rights issues related to HIV and AIDS. All materials are in English and French. Some materials are also available in Spanish and Russian and in some other languages.
www.aidslaw.ca

- ▶ Center for Reproductive Rights
www.reproductiverights.org

- ▶ Health Action AIDS (USA): www.phrusa.org/campaigns/aids/index.html
A project of Physicians for Human Rights (www.phrusa.org) in coordination with Partners in Health (www.pih.org). The site contains a section on HIV/AIDS and human rights.

- ▶ Human Rights Watch
Contains a section on HIV/AIDS and human rights with many reports on human rights abuses in the context of the global HIV and AIDS epidemic and other materials.
www.hrw.org

- ▶ Hungarian Civil Liberties Association: www.tasz.hu
Hungarian and English. Among other things, HCLU has produced a book on HIV/AIDS and human rights in Hungary and a policy paper on HIV and AIDS.

- ▶ International Council of AIDS Service Organizations (ICASO):
www.icaso.org
Contains documents on issues related to HIV/AIDS and human rights, including an advocates' guide to the International Guidelines on HIV/AIDS and Human Rights and a paper on "HIV/AIDS and Human Rights in a Nutshell."

- ▶ Lawyers Collective HIV/AIDS Unit (India)
www.lawyerscollective.org

- ▶ Office of the United Nations High Commissioner for Human Rights:
www.ohchr.org
At www.ohchr.org/english/issues/hiv/index.htm, contains a section dedicated to HIV/AIDS and human rights, including an "introduction to HIV/AIDS and human rights" and a list of documents, including resolutions, general comments and reports by various UN bodies on issues related to HIV and AIDS and human rights.

- ▶ Open Society Institute – Public Health Program
Contains, among other things, the NGO declaration "Human Rights and HIV/AIDS: Now More than Ever", and a background paper on scaling up access to HIV testing in resource-poor countries.
www.soros.org/initiatives/health/

- ▶ Program on International Health and Human Rights (United States)
Contains a number of publications and other information about HIV/AIDS and human rights.
www.hsph.harvard.edu/pihhr/index.html

- ▶ The Center for HIV Law and Policy
www.hivlawandpolicy.org
- ▶ Uganda Network on Law, Ethics, and HIV
www.uganet.org
- ▶ UK AIDS and Human Rights Project
Among other things, contains a series of fact sheets on HIV/AIDS and human rights and on HIV and AIDS and prisoners' rights.
www.aidsrightsproject.org.uk
- ▶ UNAIDS
Contains a section on HIV, human rights and law, explaining why protection of human rights is critical to a successful response to HIV and AIDS, with links to many resources on issues related to HIV/AIDS and human rights produced by UNAIDS and to the work of the UNAIDS Global Reference Group on HIV/AIDS and Human Rights.
www.unaids.org
- ▶ United Nations Development Programme (UNDP)
One of the focus areas of the UNDP HIV and AIDS activities is human rights, gender, and HIV and AIDS. At www.undp.org/hiv/focus03.htm, the site contains materials related to human rights and HIV and AIDS, including a discussion paper on human rights, gender and HIV and AIDS prepared for the round table on human rights, gender and HIV and AIDS held during the 2005 UN General Assembly High Level Meeting on HIV and AIDS. The Paper argues that if the dual and synergistic challenges of gender equality and respect for human rights are not addressed, the achievement of the Millennium Development Goals and the targets of the Declaration of Commitment on HIV/AIDS will be jeopardized.
www.undp.org
- ▶ World Health Organization (WHO)
The site contains information about WHO's work on health and human rights and a number of publications on the topic.
www.who.int/en/
- ▶ Zambia AIDS Law Research and Advocacy Network (ZARAN)
www.zaran.org

Blogs and list-serves

- ▶ American Bar Association AIDS Coordinating Committee, HIV-LEGAL Listserv
www.abanet.org/AIDS/listserv.html

- ▶ HealthGAP (Global Access Project)
www.healthgap.org
- ▶ AIDS and Rights: A Collaborative Blog Focused on HIV and AIDS and Human Rights
www.eliminateaids.blogspot.com

Training Manuals

- ▶ AIDS Law Project, Lawyers for Human Rights and Joint Oxfam HIV/AIDS Programme. *HIV/AIDS and the Law. A Trainer's Manual* (second edition), 2005.
A practical manual aiming to assist people who train others on HIV and AIDS and the law.
Source: www.aln.org.za
- ▶ AIDS Legal Network. Training Manual – HIV/AIDS & Human Rights: Towards a supportive and enabling environment for women, children and other vulnerable groups. ALN, 2005.
This training manual focuses on Guideline 8 of the International Guidelines on HIV/AIDS and Human Rights. It is prepared for a facilitation approach based on interaction, participation, information sharing and skills development and targets trainers within civil society.
Source: www.aln.org.za
- ▶ AIDS & Rights Alliance for Southern Africa. *HIV/AIDS and Human Rights Advocacy Resource Manual*. Windhoek: ARASA, 2006.
The purpose of this manual is to set out information on HIV/AIDS and human rights, with a focus on Southern Africa, in an accessible and user-friendly format. The manual provides its readers with a better understanding of the links between HIV/AIDS and human rights; sets out ways in which law and policy can and should promote an effective human rights based response to HIV and AIDS in Southern Africa; gives examples of how Southern African countries have used rights-based law and policy to respond to HIV and AIDS; and provides readers with ideas on how to strengthen a rights-based response to HIV and AIDS in their own countries and in the region.
Source: www.arasa.info/publications.php
- ▶ Asia Pacific Council of AIDS Service Organizations. *HIV/AIDS and Human Rights: A Training Manual for NGOs, Community Groups and People Living with HIV/AIDS*, 2002.
This manual contains a series of training modules designed to introduce a human rights approach to HIV and AIDS.
Source: www.apcaso.org
- ▶ Botswana Network on Law, Ethics, and HIV/AIDS. *Human Rights and HIV: A Manual for Action*. BONELA, 2005.

The manual aims to “provide the right tools for local activists, government officers, health care workers and people living with HIV and AIDS to pursue a human rights approach to the many problems posed by the epidemic”.

Source: www.bonela.botsnet.co.bw

- ▶ HIV & AIDS Legal Clinic (Ontario). *HIV & the Law Advocate's Manual*. Toronto: HALCO, 2004.

A lay advocates manual designed to help people living with HIV or AIDS and front line workers in agencies working with people living with HIV or AIDS understand more about the legal issues affecting them.

Source: www.halco.org

- ▶ University of Toronto. Women, HIV/AIDS and Human Rights-syllabus and annotated bibliography.2006. Prepared for a series of four workshops held at the University of Toronto, August 4-17, 2006. Hard copies of the full text syllabus also available while supplies last.

Contact: reprohealth.law@utoronto.ca

Source: www.law-lib.utoronto.ca/diana/women-hiv-aids/contents.htm

What are key terms related to HIV/AIDS and human rights?

Glossary

A variety of terms is used in HIV and AIDS and human rights work. The following list is not comprehensive, but will introduce you to basic acronyms and other terms often used by AIDS activists.

A

ARV, ART

Acronyms for anti-retroviral and anti-retroviral treatment. Anti-retroviral drugs inhibit various phases of the life-cycle of the human immunodeficiency virus (HIV), thus reducing HIV-related symptoms and prolonging life-expectancy of people living with HIV. Treatment with ARVs is also used to prevent transmission of HIV from mother-to-child and to prevent HIV infection following exposure.

D

DOC

Acronym for the *Declaration of Commitment on HIV/AIDS*, adopted by the United Nations General Assembly in a special session in June 2001. The DOC recognizes that “realization of human rights and fundamental freedoms for all is essential to reduce vulnerability to HIV/AIDS” (paragraph 58).

G

GIPA

Abbreviation for “greater involvement of people living or affected by HIV/AIDS”. The importance and benefits of involving people living with HIV or AIDS in formulating policy and delivering services has been widely recognized, first at the 1994 Paris AIDS Summit and more recently in the *Declaration of Commitment on HIV/AIDS*.

Global fund

Abbreviation for the Global Fund to Fight AIDS, Tuberculosis and Malaria, the central global mechanism for channelling funds between rich and poor countries to finance national responses to HIV and AIDS.

Guidelines

Abbreviation for the *International Guidelines on HIV/AIDS and Human Rights*, an authoritative set of non-binding legal and policy recommendations issued by UNAIDS and the Office of the High Commissioner for Human Rights (OHCHR) in 1998.

P

PEPFAR

Acronym for the President’s Emergency Plan for AIDS Relief, a five-year, US\$15-billion AIDS package authorized by U.S. President George W. Bush and enacted by the U.S. Congress in 2003 under the *U.S. Global Leadership on HIV/AIDS, Tuberculosis and Malaria Act*. PEPFAR is the largest program to combat HIV and AIDS financed by a single donor government.

PMTCT

Acronym for prevention of mother-to-child transmission of HIV, or transmission during pregnancy, labour and delivery, or breastfeeding. Without treatment, approximately 15-30% of babies born to mothers living with HIV will be infected during pregnancy and delivery, and a further 5-20% will become infected through breastfeeding.

PWA, PLWA, PLWHA

Acronyms for person living with HIV or AIDS.

S

Stigma and discrimination

The United Nations has called **stigma** and **discrimination** associated with HIV and AIDS “the greatest barriers to preventing further infections, providing adequate care, support and treatment and alleviating impact.” **Stigmatization** leads to **discrimination**.

- ▶ **Stigma** is “a powerful discrediting and tainting social label that radically changes the way individuals view themselves and are viewed as persons.” People who are stigmatized are usually considered deviant or shameful for some reason or other, and as a result are shunned, avoided, discredited, rejected, restrained or penalized. As such, stigma is an expression of social and cultural norms, shaping relationships among people according to those norms. Stigma marks the boundaries a society creates between “normals” and “outsiders”, between “us” and “them”.
- ▶ **Discrimination** in the context of HIV and AIDS has been defined as “any measure entailing any arbitrary distinction among persons depending on their confirmed or suspected HIV serostatus or state of health.”

Discrimination can be **legitimate** and **illegitimate**.

- **Illegitimate** discrimination is unjustified, disproportionate, and arbitrary.
 - A measure or an action is unjustified if it lacks rational and objective reasons.
 - It is disproportionate if the means employed and their consequences far exceed or do not achieve the aims pursued.
 - It is arbitrary if it seriously infringes the rights of the individual and is not necessary to protect the health of others.

U

UNAIDS

Acronym for the Joint United Nations Programme on HIV/AIDS, a consortium of eight United Nations agencies addressing various aspects of the global AIDS epidemic. UNAIDS has a small program dedicated to address the legal, ethical, and human rights aspects of HIV and AIDS.



Photo: "Why don't you hear us?" Matt Curtis, 2007

Chapter 3 Harm Reduction and Human Rights

"They treat us like dirt. I just
want to be treated like a
normal human being."

Yevgeny, injecting drug user in Saint Petersburg, 2004

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Introduction

This chapter will introduce you to key issues and resources in **harm reduction and human rights**, with a particular focus on the rights of people who inject illicit drugs.

The chapter is organized into six sections that answer the following questions:¹

- ▶ **How** is harm reduction a human rights issue?
- ▶ **What** is OSI's work in the area of harm reduction and human rights?
- ▶ **Which** are the most relevant international and regional human rights standards related to harm reduction?
- ▶ **What** are some examples of effective human rights programming in the area of harm reduction?
- ▶ **How** can I find additional resources about harm reduction and human rights?
- ▶ **What** are key terms related to harm reduction and human rights?

As you read through this chapter, consult the **glossary of terms**, found in the last section, *What are key terms related to harm reduction and human rights?*

¹ Some of these questions are also addressed in Chapter 2, HIV/AIDS and Human Rights.

How is harm reduction a human rights issue?

What is harm reduction?

A common social response to people who use illegal drugs is to treat them like drugs: as something to be controlled and contained. Drug users are often subject to prolonged incarceration or institutionalization, or offered health care only if they demonstrate that they have stopped their drug use altogether. This is true despite evidence that dependence on certain drugs is chronic and relapsing, that active drug users can benefit from many forms of prevention and treatment, and that refusing services makes people who use drugs more vulnerable to a range of health and social problems.

Harm reduction takes a different and more pragmatic approach, recognizing that not everyone is able or willing to stop illicit drug use, and that those who are still using drugs can make choices to protect their health and the health of others. Also known as “harm minimization,” harm reduction focuses on reducing the adverse consequences of drug use, including risk of HIV and other blood-borne infections, rather than on demanding that people stop drug use altogether. Central to much harm reduction is a belief that services should meet people who use drugs “where they are,” rather than requiring people to fulfill many complicated requirements or behavioural changes before they get help.

Some common harm reduction measures include:

▶ Access to HIV prevention

Provision of sterile injection equipment and prescription of orally-administered medications such as methadone or buprenorphine to reduce injection of heroin and other illicit opiates have been shown clearly to reduce HIV risk. Yet these services remain out of reach of people who inject drugs in many countries. Programs are either too small to reach all at risk, opposed by politicians who insist—without evidence—that they encourage drug use, or limited by police actions such as harassment of needle exchange workers and arrest of clients.

▶ Access to HIV and drug treatment

Evidence shows that people who inject drugs can, with proper supports, enjoy the same benefits from antiretroviral treatment (ART) as other people with HIV. However ART remains limited or ineffective for drug users, if it is available at all. While effective treatment for drug addiction can enhance ART adherence, many drug treatment programs offer little more than forced labor and long-term detention, making these programs more like prison than treatment. Even humane and effective drug treatment programs are of limited use if fear of harassment, arrest, or incarceration makes drug users reluctant to use them.

▶ **Access to sexual health services**

Provision of sexual health services enables people who use drugs to protect themselves and their sexual partners from HIV, preventing further sexual transmission of an epidemic initially spread by drug use. UNAIDS urges that sexual health services be made available to all drug users and their partners.

Source: UNAIDS, *Intensifying HIV prevention: UNAIDS policy position paper*. Geneva, 2005.

How is harm reduction related to human rights?

Drug users are vulnerable people. They suffer from inadequate medical assistance. They experience discrimination, invasion of privacy, police harassment, and social marginalization. They have to endure the arbitrary deprivation of rights, such as mandatory medical treatment. Their capacity to defend their interests is impaired by social stigmatization. One would assume that society's majority would oppose such violations. After all, arbitrary searches, disco raids, compulsory urine tests, and wrongful appropriation of confidential medical files are injustices suffered by nonusers as well. But the majority accepts the invasion of privacy in an attempt to have a drug-free environment. Support for the human rights of drug users is virtually nonexistent.

Judit Fridli, "Harm Reduction and Human Rights" *Harm Reduction News*, 2003

Harm reduction goes hand in hand with advocacy to ensure a range of human rights for people who use drugs. Such advocacy includes work to ensure:

- ▶ Access to information and measures to protect against disease and overdose
- ▶ Protection against cruel or inhumane treatment
- ▶ Protection against violations of privacy such as forced testing and registration
- ▶ Freedom of association and political participation.

Some harm reduction and human rights efforts include:

▶ **Protection against abuses by police and health care providers**

Mistreatment of people who use drugs by police and healthcare providers is widespread. Police use the threat of incarceration or painful withdrawal symptoms to coerce testimony and extort money of people who use drugs. In many countries, police or health care providers release confidential information regarding HIV or drug using status, register drug users' names on government lists, and deny them employment or services. It is common for governments to impose lengthy prison sentences for minor drug offences. This not only constitutes cruel and unusual punishment, but also catalyzes HIV transmission, since hundreds of thousands incarcerated in environments where drug injection and unprotected sex continue, and where HIV treatment and prevention measures are often unavailable.

▶ **Support for political participation**

More than two decades of experience with HIV have shown that “hard-to-reach” populations are their own best advocates. Despite the importance of involving those who are directly affected in the formation of AIDS policy, drug users have often been excluded, even from those mechanisms that are intended to increase participation of people living with HIV.

Did you know?

- ▶ Some 30% of new HIV infections outside of sub-Saharan Africa are due to contaminated injection equipment.²
- ▶ In Eastern Europe and Central Asia injecting drug use accounts for more than 80% of HIV cases, but less than 24% of people receiving HIV treatment. In South and South-East Asia, injecting drug users are from 4 to 75 percent of those infected, but only 1% of the people receiving HIV treatment.³
- ▶ **Thailand’s** “War on Drugs” initiated in 2003 included:⁴
 - Arrest of tens of thousands of suspects on government “blacklists” or “watchlists ”
 - Arrest quotas, arbitrary arrest, and other breaches of due process
 - Coerced or mandatory drug treatment
 - Intimidation of human rights defenders
 - More than 2,300 extrajudicial executions.
- ▶ Drug users or even those in neighborhoods where drug use is common are rounded up in advance of national or international events such as the Olympics or the UN’s International Day against Drug Trafficking and Drug Abuse. Drug users are often forcibly tested and sent to prolonged mandatory treatment without evaluation by a medical professional or right of appeal.⁵
- ▶ Some countries, such as **Malaysia** and **Georgia**, criminalize the status of drug users. In Malaysia, law permits those suspected of drug use to be detained and forcibly tested. Those who test positive are subject to

² UNAIDS, 2006 Report on the Global AIDS Epidemic: www.unaids.org/en/HIV_data/2006GlobalReport/default.asp.

³ Aceijas, C, et al. (2006). “Antiretroviral treatment for injecting drug users in developing and transitional countries 1 year before the end of the “Treating 3 million by 2005. Making it happen. The WHO strategy” (“3 by 5”).” *Addiction*. 101(9).

⁴ Thailand- Not Enough Graves: The War on Drugs, HIV AND AIDS, and Violations of Human Rights. (2004). Human Rights Watch. Vol. 16, No. 8 (C).

⁵ Wolfe D., Malinowska-Sempruch K. (2004) *Illicit Drug Policies and the Global HIV Epidemic*, IHRD-Open Society Institute, New York.



mandatory detention in treatment centers, and those caught in possession of drugs are subjected to mandatory flogging and incarceration.⁶

- ▶ Other countries, including several in the Commonwealth of Independent States, do not criminalize drug use, but punish possession of “large” or “extra large” amounts of illicit drugs with prolonged imprisonment. “Large” amounts of drugs can be defined as the residue in a used syringe or half a cigarette of cannabis.⁷
- ▶ In parts of **Russia**, prisoners are tested for HIV and those who are positive are segregated—by a wire fence. Since injection is common but clean needles and syringes are not, injection equipment can be shared as many as forty times.⁸
- ▶ Across Asia, drug users are confined to treatment centers that are more like prisons than health care facilities, and that offer little or no psychosocial or medical support. In **China**, IDUs are arrested and forced into compulsory detoxification facilities, and those who return to drug use are sent to forced labor camps. In one study, as many as ten percent of drug users swallowed nails or glass to avoid such detention.⁹

The good news

- ▶ In **Brazil**, needle exchange services contributed to a remarkable 20 percent drop in HIV incidence among injecting drug users between 1998 and 2000.¹⁰
- ▶ Countries such as the **United Kingdom** and **Spain** have successfully targeted injecting drug users in prison with HIV prevention interventions including needle exchange and opiate substitution treatment, and have kept HIV prevalence rates among prisoners to less than 1%.¹¹
- ▶ Human rights advocacy has led to tangible victories on behalf of people who use drugs:
 - In 2007, the European Court of Human Rights found in favor of a Russian drug user who had been entrapped by police and placed in prolonged detention without a trial or medical care

⁶ Alternative Georgia (2005). *Reforming Drug Policy for HIV/AIDS Prevention*. Tbilisi: Union Alternative Georgia. Mazlan, M., Schottenfeld, R. S., & Chawarski, M. C. (2006). New challenges and opportunities in managing substance abuse in Malaysia. *Drug and Alcohol Review*, 25(5), 473-478.

⁷ Alternative Georgia. *Reforming Drug Policy for HIV/AIDS Prevention* (2005). Tbilisi: Union Alternative Georgia.

⁸ Sarang, A., T. Rhodes, et al. (2006). "Drug injecting and syringe use in the HIV risk environment of Russian penitentiary institutions: Qualitative study." *Addiction* 101(12): 1787-96.

⁹ Wolfe, D. (2007) Paradoxes in antiretroviral treatment for injecting drug users: Access, adherence and structural barriers in Asia and the former Soviet Union. *International Journal of Drug Policy* (in press).

¹⁰ UN Economic and Social Council Commission on Human Rights, submitted by the Open Society Institute (OSI), a non-governmental organization in special consultative status, 3 March 2005.

¹¹ Status paper on prisons drugs and harm reduction, Regional Office of Europe-WHO, May 2005, www.euro.who.int/document/e85877.pdf.

- In Vancouver, **Canada**, documentation of police abuse against people who use drugs led to an independent investigation of the Police Department
- In **Hungary**, a public campaign against drug raids of discos led to a dramatic decline in raids and parliamentary proposals to reform anti-drug laws.

What is OSI's work in the area of harm reduction and human rights?

OSI's work on harm reduction and human rights is led by the **International Harm Reduction Development Program (IHRD)**. Examples of harm reduction and human rights projects supported by IHRD include:

- ▶ Access to quality information and services
 - Support for access to substitution treatment in countries including **Albania, Kyrgyzstan, Lithuania, and Ukraine**.
 - The formation of harm reduction networks in Central and Eastern Europe, Russia, and Central Asia to help programs exchange information and advocate for change.

- ▶ Advocacy at national and international level
 - Highlighting the role that incarceration and forced institutionalization play in accelerating the HIV epidemic, and the policy changes that can reduce overcrowding, disease risk, and human rights violation.
 - Work with international human rights groups, such as Human Rights Watch, to ensure that abuses are carefully documented in countries such as **Russia, Ukraine, and Kazakhstan**.

- ▶ Technical assistance for harm reduction
 - Training of police and development of curricula to train law enforcement on how to work effectively without violating the rights of people who use drugs.
 - Pairing of local activists and international human rights groups for documentation projects, and analysis of relevant human rights covenants on questions relating to drug use and HIV prevention.

- ▶ Community organizing
 - Collaboration with leading advocates to ensure that concerns of drug users are represented at the UN Human Rights Council.
 - Working with groups such as the European AIDS Treatment Group, the Global Network of People Living with HIV and AIDS, the International Treatment Preparedness Coalition and local community groups to increase HIV treatment literacy and challenge the systematic exclusion of drug users from care.

For more information, visit IHRD's website: www.soros.org/harm-reduction

Which are the most relevant international and regional human rights standards related to harm reduction?

Overview

A variety of human rights standards at the international and regional levels applies to harm reduction. These standards can be used for many purposes:

- ▶ **To document** violations of the rights of people who use drugs
- ▶ **To advocate** for the cessation of these violations
- ▶ **To sue** governments for violations of national human rights laws
- ▶ **To complain** to regional and international human rights bodies.

In the tables on the following pages, **examples** of human rights violations related to harm reduction are provided. Relevant human rights **standards** are then cited, along with examples of legal **precedents** interpreting each standard.

How to read the tables

As you read through each table, ask yourself the following questions about the **violations, standards, and precedents and interpretations** that are cited:

EXAMPLES OF HUMAN RIGHTS VIOLATIONS

Do any of these violations occur in your country? Are there other violations of this human right that exist in your country?

HUMAN RIGHTS STANDARDS

Are these violations prohibited by the “human rights standards”? Can the standards be interpreted to apply to this violation?

PRECEDENTS AND INTERPRETATIONS

Do any of the “examples of precedents and interpretations” apply to this issue? Can they be interpreted to apply to this issue?

Remember that human rights law is an evolving field, and that many human rights violations are not directly addressed by existing legal standards and precedents. Through ongoing documentation and advocacy, advocates can build a stronger body of jurisprudence on harm reduction and human rights.

Abbreviations

In the tables, the seven treaties and their corresponding enforcement mechanisms are referred to with the following abbreviations:

Treaty	Enforcement Mechanism
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee (HRC)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Committee on Economic, Social and Cultural Rights (CESCR)
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee)
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child (CRC Committee)
African Charter on Human and People's Rights (ACHPR) & Protocols	African Commission on Human and People's Rights (ACHPR Commission)
[European] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)	European Court of Human Rights (ECtHR)
European Social Charter (ESC)	European Committee of Social Rights (ECSR)

Also cited are the former Commission on Human Rights (**CHR**) and various UN Special Rapporteurs (**SR**) and Working Groups (**WG**).

Table 1: Harm reduction and the right to life

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A government authorizes or fails to investigate the murder of suspected drug traffickers as part of a crackdown on drugs. • An ambulance refuses to respond to a drug overdose because the underlying activity is “illegal”. • A government imposes the death penalty for drug-related offenses. • Drug users die in locked hospital wards, such as the Moscow fire incident in December 2006. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 6(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p> <p>(2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.</p> <p>ACHPR 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.</p> <p>ECHR 2(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.</p>	<p>HRC: Expressed concern over the extrajudicial killing of people who use drugs. Also stated definitively that capital punishment for drug offences is in violation of the ICCPR (Thailand, 2005).</p> <p>SR Health: expressed concern that the Anti-Narcotics Campaign [in Thailand], coupled with limited access to harm reduction services, had inadvertently created the conditions for a more extensive spread of [HIV] in Thailand” (2005).</p>

3

Table 2: Harm reduction and freedom from torture and cruel, inhuman and degrading treatment, including in prisons

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Police or security officials officers beat and injure people suspected of using drugs. • Investigators force drug suspects into unmedicated withdrawal in order to extract confessions. • A government imposes lengthy mandatory prison sentences for minor drug-related offenses. • Persons convicted of drug offenses are detained, imprisoned, or committed to treatment in overcrowded and unsanitary facilities, without access to medical services. • Drug users are denied mental health treatment while in prison, jail, or drug treatment. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.</p> <p>ICCPR 10(1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.</p> <p>ACHPR 5 Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.</p> <p>ECHR 3 No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (1987) • European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1989) • Code of Conduct for Law Enforcement Officials (1979) • Standard Minimum Rules for the Treatment of Prisoners (1955) 	<p>HRC: expressed concern about high rates of HIV and TB in Ukraine, and recommended that Ukraine provide hygienic facilities, assure access to health care and adequate food, and reduce the prison population, including by using alternative sanctions (2006).</p> <p>SR Violence Against Women: expressed concern that the U.S. was “criminalizing a large segment of its population” through drug charges, increasingly women, and that many of these offenses “may be more appropriately handled by a community-based system of welfare and social support, as is presently the case in certain European countries.”(1999).</p> <p>ECtHR: Held that refusal of medical treatment to an HIV-positive detainee held on drug charges violated article 3 {Khudobin v. Russia, 2007}; that forcing a drug suspect to regurgitate to retrieve a balloon of heroin violated article 3 {Jalloh v. Germany, 2006}; and that the UK government breached article 3 by failing to provide necessary medical care to a heroin dependent woman who died in a UK prison while serving a four-month sentence for theft {McGlinchey and others v. UK, 2003}.</p>

Table 3: Harm reduction and freedom from arbitrary arrest and detention

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Drug users are arrested or detained based on planted evidence or evidence obtained through an illegal search or seizure. • Drug users are imprisoned on criminal charges without a fair trial. • Drug users are committed to forced treatment or detoxification without their consent. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 9(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.</p> <p>ACHPR 6 Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.</p> <p>ECHR 5(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • Code of Conduct for Law Enforcement Officials (1979) • Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) • Reports of the UN Commission on Human Rights Working Group on Arbitrary Detention (2003-2005) 	<p>HRC: has held that protections under art. 9 apply to all forms of detention, including for “drug addiction” {General Comment 8, paragraph #1}); has expressed concern in Mauritius that bail is not allowed for persons arrested or held in custody for the sale of drugs, urging the government to “review the Dangerous Drugs Act in order to enable judges to make a case-by-case assessment on the basis of the offence committed” (2005); has expressed concern in Ireland about the 7-day period of detention without charge under the Drug Trafficking Act (2005).</p> <p>CRC: has expressed concern in Brunei Darussalem “that children abusing drugs may be placed in a closed institution for a period of up to three years” and recommended that the government “develop non-institutional forms of treatment of children who abuse drugs and make the placement of children in an institution a measure of last resort.” (2003).</p> <p>WG Arbitrary Detention: from 2003-2005, has: expressed concern about arbitrary detention of “drug addicts” and “people suffering from AIDS;” recommended that persons deprived of their liberty on health grounds “have judicial means of challenging their detention;” concluded that bail conditions can be difficult to meet for people who use drugs; and recommended that states prevent over-incarceration of vulnerable groups.</p> <p>ECtHR: held that unjustified pre-trial detention of an HIV-positive detainee for one year and 23 days breached article 5(3) {Khudobin v. Russia, 2007}.</p>

3

Table 4: Harm reduction and the right to a fair trial

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • An individual is convicted of drug charges after having been lured into committing a drug offense by an undercover police officer. • A detainee is kept in pre-trial detention for drug charges for an unreasonable length of time. • An individual is convicted on a drug offense without trial. • An individual is convicted of a drug charge based on evidence obtained during an illegal police search of his or her home. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 9(3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. . .</p> <p>(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.</p> <p>ACHPR 7 1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.</p> <p>ECHR 6(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. . .</p> <p>(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.</p>	<p>ECtHR: Held that where the activity of undercover agents instigates a drug offence and there is nothing to suggest the offense would have been committed without the police's intervention, this constitutes "incitement," and evidence obtained as a result cannot be used against a defendant. {Vanyan v. Russia, 2005, Teixeira de Castro v. Portugal, 1998}.</p> <p>Applying these cases in 2007, the ECtHR held that a Russian trial court should have considered evidence that a defendant facing drug charges had been entrapped by the police, especially considering that he did not have a criminal record and the only allegations of his involvement in drug dealing came from a police informant. {Khudobin v. Russia, 2007}.</p>

Table 5: Harm reduction and the right to privacy

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Police are authorized to arrest or detain people based on suspected drug use, without having to prove possession or trafficking of drugs. • Police are authorized to test the urine of anyone suspected of using drugs. • Doctor discloses a patient’s history of drug use or addiction without consent. • Clinic shares lists of registered drug users with law enforcement. • Police raid the home of a suspected drug user without evidence or judicial authorization. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 17(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.</p> <p>ECHR 8(1) Everyone has the right to respect for his private and family life, his home and his correspondence.</p>	<p>CRC: expressed concern in Armenia at the criminalization of young drug users, and urged the government “to ensure that child drug abusers are not criminalized, but treated as victims in need of assistance towards recovery and reintegration.” (2004).</p> <p>ECtHR: Held that strip searching and examination of a mother and her mentally disabled son who were attempting to visit another brother in prison constituted a violation of article 8 {<i>Wainwright v. United_Kingdom</i>, 2006}.</p>

3

Table 6: Harm reduction and freedom of expression and information

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Drug users are denied information about HIV prevention, harm reduction, and safer drug use. • Government bans publications about drug use or harm reduction, claiming they represent propaganda for illegal activity. • Government officials harass or detain individuals who speak publicly in favor of needle exchange, methadone, or other harm reduction measures. • NGOs are compelled to oppose harm reduction as a condition of government funding for work on HIV prevention. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 19(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p> <p>ACHPR 9 (1) Every individual shall have the right to receive information.</p> <p>ECHR 10(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.</p> <p>(2) Every individual shall have the right to express and disseminate his opinions within the law.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • CRC 13 	<p>CRC: has concluded that adolescent’s right to information about HIV and AIDS is part of the right to information {General Comment 3, paragraph #4}; has called on Panama to “provide children with accurate and objective information about substance use, including hard drugs and tobacco, and protect children from harmful misinformation,” as well as to “strengthen its efforts to address adolescent health issues...[including those] to prevent and combat HIV/AIDS and the harmful effects of drugs” (2003); has expressed concern in Estonia at “the increasing number of HIV-infections among injecting drug users” and encouraged the government to continue its efforts to provide children with accurate and objective information about substance use” (2003).</p>

Table 7: Harm reduction and freedom of assembly and association

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Public authorities refuse to register a drug user association. • Police break up a peaceful demonstration against drug laws. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 21 The right of peaceful assembly shall be recognized.</p> <p>22 The right of peaceful assembly shall be recognized.</p> <p>No restrictions may be placed on the exercise of [these rights] other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (<i>ordre public</i>), the protection of public health or morals or the protection of the rights and freedoms of others.</p> <p>ACHPR 10 Every individual shall have the right to free association provided that he abides by the law</p> <p>11 Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.</p> <p>ECHR 11 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.</p>	<p><i>According to research conducted for this Table, no regional or international human rights body has applied the protection of freedom of assembly and association to the context of harm reduction.</i></p>

3

Table 8: Harm reduction and the right to bodily integrity

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A suspected drug user is abused by police. • Police fail to investigate a case of domestic violence against a drug-using woman. • Doctors compel a drug-using pregnant woman to undergo an abortion. • Police fail to investigate the assault or murder of a person suspected of using drugs, blaming it on “gang violence”. 	
Human Rights Standards	Precedents and Interpretations
<p>ACHPR 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.</p> <p>Note: The right to bodily integrity is not specifically recognized under the ICCPR or ICESCR, but has been interpreted to be part of the right to security of the person, to freedom from torture and cruel, inhuman, and degrading treatment, and the right to the highest attainable standard of health.</p> <p>Similarly, the right to bodily integrity is not specifically recognized in CEDAW, although CEDAW has been widely interpreted to include the right to protection from violence against women.</p>	<p>WG Enforced or Involuntary Disappearances: has noted that, “An aspect of disappearances that has been underreported in the past and continues at the present time relates to the way in which acts of disappearance are perpetrated in conjunction with other gross violations, with targets drawn from among the most vulnerable groups in society. . . . Common examples brought to our notice were: disappearances, combined with “social cleansing,” the urban poor, the unemployed, and the so-called “undesirables,” including <i>prostitutes, petty thieves, vagabonds, gamblers and homosexuals as the victims</i>” [emphasis added].</p>

Table 9: Harm reduction and the right to non-discrimination

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A person is denied work, housing, health care, education, or access to goods and services due to actual or suspected drug use. • Police disproportionately arrest migrants and racial minorities for drug offenses. • People who use drugs are underrepresented in HIV treatment programs despite accounting for a majority of people living with HIV. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 2(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>ICCPR 26 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>ACHPR 2 Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.</p> <p>ECHR 14 The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p>	<p>Committee on the Elimination of Racial Discrimination: has recommended that governments “should pay the greatest attention to the following possible indicators of racial discrimination: . . . The proportionately higher crime rates attributed to persons belonging to those groups, particularly as regards petty street crime and offences related to drugs and prostitution, as indicators of the exclusion or the non-integration of such persons into society” (2005).</p> <p>SR Health: expressed concern in Romania that “the stigma associated with commercial sex work and injecting drug use, for example, affects how people engaged in these activities are often treated by health-care workers, especially when requesting services such as tests for sexually transmitted infections” and encouraged the government to combat discrimination that creates barrier to services (2005).</p>

3

Table 10: Harm reduction and the right to the highest attainable standard of health

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Drug users or suspected drug users are turned away from hospitals or treated with stigma and judgmental attitudes in the health system. • Government officials ban needle exchange programs or confiscate syringes from drug users, claiming they promote illegal activity. • Government bans substitution therapy with methadone. 	
Human Rights Standards	Precedents and Interpretations
<p>ICESCR 12(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>12(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: . . .</p> <p>(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases.</p> <p>ACHPR 16 (1) Every individual shall have the right to enjoy the best attainable state of physical and mental health.</p> <p>(2) States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • CEDAW 12(1) • CRC 24(1) 	<p>CESCR: has noted that non-discrimination is an “underlying determinant of health,” including non-discrimination on the basis of “health status,” which should include drug addiction.</p> <p>CESCR: expressed concern in Tajikistan with “the rapid spread of HIV . . . in particular among drug users, prisoners, sex workers,” and recommended that the government “establish time-bound targets for extending the provision of free testing services, free treatment for HIV and harm reduction services to all parts of the country” (2006).</p> <p>CRC: has commented that governments “are obligated to ensure the implementation of programs which aim to reduce the factors that expose children to the use of substances, as well as those that provide treatment and support to children who are abusing substances” (General Comment 3).</p> <p>SR Health: expressed concern in Romania that “the stigma associated with commercial sex work and injecting drug use, for example, affects how people engaged in these activities are often treated by health-care workers, especially when requesting services such as tests for sexually transmitted infections” and encouraged the government to combat discrimination that creates barriers to services (2005).</p>

Table 11: Harm reduction and the rights of women and children

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Women are denied access to harm reduction services on an equal basis with men. • Pregnant women who use drugs are forced to undergo abortions or sterilization, or are penalized for attempting to injure their child. • Young people who use drugs are denied factual information and services about safer injection and harm reduction. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 3 The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.</p> <p>24 (1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.</p> <p>ACHPR 18 (3) The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.</p> <p>(4) The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • CEDAW 12(1) • CRC 24(1) 	<p>CRC: has identified that, “Children who use drugs are at high risk [of HIV]” and that “injecting practices using unsterilized instruments further increase the risk of HIV transmission;” has also stated that governments “are obligated to ensure the implementation of programmes which aim to reduce the factors that expose children to the use of substances, as well as those that provide treatment and support to children who are abusing substances” (General Comment 3, paragraph #39); has made country-specific recommendations on children who use drugs in Armenia (2004), El Salvador (2004), Sao Tome and Principe (2004), Indonesia (2004), Brunei Darussalem (2003), Panama (2003), Estonia (2003), Ukraine (2002), and St. Vincent and the Grenadines (2002).</p> <p>SR Violence Against Women: expressed concern that the U.S. was “criminalizing a large segment of its population” through drug charges, increasingly women, and that many of these offenses “may be more appropriately handled by a community-based system of welfare and social support, as is presently the case in certain European countries” (1999).</p>

3

What are some examples of effective human rights programming in the area of harm reduction?

Introduction

In this section, you are presented with **five examples** of effective activities in the area of harm reduction and human rights. These are:

1. Mobilizing human rights allies in advocating for harm reduction
2. Responding to police brutality against people who use drugs in Vancouver
3. Peer-to-peer human rights documentation among IDUs in **Thailand**
4. Challenging illegal policing practices and detention conditions in **Russia** before the European Court of Human Rights
5. Challenging police raids and criminalization of drug use in **Hungary**.

Rights-based programming

As you review each activity, ask yourself whether it incorporates the **five elements** of “rights-based” programming:

- ▶ **Participation**
Does the activity include participation by affected communities, civil society, marginalized groups, and others? Is it situated in close proximity to its intended beneficiaries?
- ▶ **Accountability**
Does the activity identify both the *entitlements of claim-holders* and the *obligations of duty-holders*? Does it create mechanisms of accountability for violations of rights?
- ▶ **Non-discrimination**
Does the activity identify who is most vulnerable, and how? Does it pay particular attention to the needs of vulnerable groups such as women, minorities, indigenous peoples, and prisoners?
- ▶ **Empowerment**
Does the activity give its beneficiaries the power, capability, capacity, and access to bring about a change in their own lives? Does it place them at the center of the process rather than treating them as objects of charity?
- ▶ **Linkage to rights**
Does the activity define its objectives in terms of legally enforceable rights, with links to international, regional, and national laws? Does it address the full range of civil, political, economic, social, and cultural rights?

Finally, ask yourself whether the activity might be replicated in your country:

- ▶ Does such a project **already exist** in your country?
- ▶ If not, should it be **created**? If so, does it need to be **expanded**?
- ▶ What **steps** need to be taken to replicate this project?
- ▶ What **barriers** need to be overcome to ensure its successful replication?

Example 1: Mobilizing human rights allies in advocating for harm reduction

Beginning in 2003 in collaboration with Human Rights Watch, OSI supported a series of meetings to bring together advocates for harm reduction with human rights organizations to discuss areas of common interest. The meetings led to a number of beneficial joint projects.

Project Type

Networking; research and advocacy

Health and human rights issue

Protection of human rights is inherent to harm reduction, yet human rights and harm reduction advocates often do not have the opportunity to engage with one another. This project sought to build capacity of human rights organizations in Eastern Europe and the former Soviet Union to be allies in the struggle for harm reduction and against HIV and AIDS in the region.

Actions taken

A regional meeting in Budapest provided an initial networking opportunity for selected human rights organizations and harm reduction groups to identify key issues of common concern where human rights advocacy would be particularly fruitful. Through participatory discussions, the groups:

- ▶ Identified similarities and differences, issues of mutual interest, and potential for partnerships
- ▶ Agreed on a list of common interests and explored models of collaboration
- ▶ Identified opportunities for groups from individual countries to exchange ideas informally and reflect on areas of potential collaboration.

Results and lessons learned:

- ▶ The Budapest meeting was replicated by participants in Russia, Tajikistan, and Ukraine during 2004-2005. A separate capacity-building meeting was held in Kiev in May 2003 with six participating NGOs from Ukraine, Russia and Tajikistan. The meeting also led to grants promoting research and advocacy for harm reduction-related human rights.
- ▶ The Moscow Helsinki Group, a leading human rights NGOs, received funds for a study on human rights abuses against people who use drugs in Russia. The Ukrainian Harm Reduction Network received a grant to support a human rights specialist to compile information and conduct international advocacy on human rights for people who use drugs.
- ▶ Throughout the meetings, harm reduction organizations examined how to motivate donors and governments to support human rights efforts. Benefits of creating a “common cause” between harm reduction and human rights groups can accrue to both sides, and include building new alliances, mobilizing new sources of funding, and forming productive collaborations. The meetings gave both harm reduction and human rights organizations resources and a common platform upon which to build.

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Example 2: **Responding to police brutality against people who use drugs in Vancouver**

In Vancouver, Canada, home to the worst HIV epidemic in North America, a small legal organization gathered sworn testimonies from people who use drugs about police brutality, and used these testimonies to advocate for changes in police policy and practice.

Project Type

Documentation and advocacy; legal aid

Health and human rights issue

Police abuse has been shown to increase HIV, hepatitis C, and overdose risk among people who use drugs, as it increases the likelihood that they will share or reuse syringes, stay away from needle exchange programs, and inject quickly and in concealed locations. In Vancouver, the municipal government supports needle exchange, methadone, and safer injection facilities. However, abuse of people who use drugs by police threatened to undermine the public health benefits of these programs.

Actions taken

The Pivot Legal Society, a small legal aid organization, undertook a series of actions to document police misconduct against people who use drugs and press for internal and independent investigations.

- ▶ Pivot collected over 50 affidavits from people who use drugs about improper use of force or other violations of due process by police. Affidavits are carefully documented statements that are sworn by lawyers to ensure both the veracity and accuracy of the information.
- ▶ The affidavits were compiled in a report that was used to advocate for compensation and reform of police practice.
- ▶ Following an unsatisfactory internal investigation, Pivot took the case to court and to the Police Complaints Commissioner to call for an independent audit of both the internal investigation and the underlying allegations.

Results and lessons learned

- ▶ A combination of documentation, ongoing advocacy, and sometimes litigation is necessary to bring about accountability for police abuse. Detailed recommendations such as improved complaints procedures and monitoring of police conduct are also needed.
- ▶ Both internal and independent investigations of police misconduct need to be carefully monitored. This requires time, resources, and expertise.
- ▶ Lack of access to complaint procedures and legal assistance is a barrier to justice for those who experience abuse of police authority. By the same token, increased accountability and surveillance of police officers not only benefits people who use drugs and other marginalized groups, but all people who are owed a duty of service and protection by police.

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Example 3: Peer-to-peer human rights documentation among IDUs in Thailand

In May 2002, a collaboration between an HIV-positive former injecting drug user in Thailand and a New York-based human rights advocate fused two areas of expertise to generate human rights documentation that would lead to the formation of Southeast Asia's only user advocacy group and unprecedented recognition of the health and human rights of people who use drugs in Asia.

Project Type

Documentation and advocacy; community organizing.

Health and human rights issue

In Thailand, violence and discrimination against injecting drug users (IDUs) in the criminal justice and health systems have contributed to HIV prevalence of 50% since 1988. The Thai government flouts international standards for HIV prevention and treatment among IDUs, resorting to punitive drug treatment programs and rampant police abuse. IDUs are denied the benefits of Thailand's HIV response and represent nearly one-third of the country's new HIV infections.

Actions taken

Paisan Suwannawong, an HIV-positive former injecting drug user, partnered with Karyn Kaplan, HIV/AIDS officer at the International Gay and Lesbian Human Rights Commission (IGLHRC), to document human rights abuses against IDUs in Central, North and southern Thailand. Specifically, they:

- ▶ Interviewed 33 IDUs, officials from the Narcotics Control Board, Attorney General and Ministry of Public Health, as well as drug treatment providers
- ▶ On International Human Rights Day (December 10) 2002, reported findings back to IDU and community-based AIDS organizations and conducted a human rights and harm reduction training workshop
- ▶ For the first time ever, reported violations of IDUs' rights to the National Human Rights Commission and the Thai Parliament.

Results and lessons learned

- ▶ The project helped form Southeast Asia's first user advocacy group, the Thai Drug Users' Network (TDN). TDN and three partners received US\$1.3 million from Global Fund to Fight AIDS, TB and Malaria to implement peer-driven HIV-prevention and harm reduction programs across Thailand.
- ▶ The project and Global Fund grant dramatically raised the profile of IDUs in Thailand and the region, leading to their unprecedented involvement in national and multilateral policymaking, funding, and program development.
- ▶ Additional user-driven human rights documentation projects, most notably during a violent "war on drugs" in 2003, were undertaken with Human Rights Watch and local experts, garnering further national and international awareness and solidarity for drug user issues in Thailand and the region.

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Example 4: **Challenging illegal policing practices and detention conditions in Russia before the European Court of Human Rights**

In 1999, an epileptic HIV-positive Russian citizen, Mr. Khudobin, was arrested in Moscow for buying one dose of heroin for an undercover agent. A lawyer successfully challenged several aspects of his detention and conditions of confinement before the European Court of Human Rights.

Project type

Litigation

Health and human rights issue

This case raises several health and human rights issues faced by people living with HIV who are detained on drug charges, including: conditions of pre-trial detention; respect of detainee's health status; and use of illegal policing practices.

Actions taken

Mr. Khudobin was arrested and detained on drug charges in 1999. After losing both his trial and appeal in Russia, he and his lawyer appealed to the European Court of Human Rights on the following grounds:

- ▶ That he had not received adequate medical treatment in the remand prison, and that the conditions of his detention were inhuman and degrading. (Despite his attorneys having informed the court of his medical status and requesting an independent medical review on behalf of his father, he remained in remand without a given reason)
- ▶ That, having spent more than one year in remand prison and having his detention repeatedly prolonged without reasons, his pre-trial detention exceeded the reasonable time
- ▶ That his applications for release were either delayed or not examined; and
- ▶ That his conviction was based on the police having illegally entrapped him.

Results and lessons learned

In January 2007, the European Court of Human Rights found that Russian authorities had violated Mr. Khudobin's rights under articles 3, 5(3), 5(4), and 6(1) of the ECHR. The Court's decision provides a legal basis for detainees in Russia to challenge the conditions of pre-trial detention based on their medical status. Specifically, the Court found:

- ▶ Under article 3, that Khudobin was refused proper medical assistance and denied the possibility of receiving it from other sources, and that his mental and physical suffering constituted degrading treatment.
- ▶ Under article 5(3), that Kudobin's detention of one year and 23 days was not justified by "relevant and sufficient" reasons; and under article 5(4), that the reviews of the applications for release were unduly delayed.
- ▶ Under article 6(1), that the trial court should have considered evidence that Mr. Kudobin had been entrapped by the police, especially considering that he did not have a criminal record and the only allegations of his involvement in drug dealing came from the police informant.

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Example 5: **Challenging police raids and criminalization of drug use in Hungary**

The Hempseed Association, a Hungarian drug reform activist group, and the Hungarian Civil Liberties Union, Hungary's leading drug policy NGO, challenged the police practice of raiding discos and conducting forced urine tests in order to catch people using drugs.

Project type

Strategic litigation and advocacy

Health and human rights issue

In Hungary, police regularly raided discos and forced young club-goers to undergo urine tests. This violated privacy rights and rules of criminal procedure, and potentially forced discos underground, making it more difficult to conduct harm reduction outreach with club-goers.

Actions taken

Led by the Hempseed Association and with legal advice and representation from the HCLU, in the spring of 2005 individuals reported to the National Police Headquarters in Budapest to confess their non-violent drug use. The aim of this “Civil Obedience Movement” was to challenge the practice of forced urine tests and to raise the issue of decriminalization of drug use.

- ▶ Every Wednesday for five weeks, “self-reporters” including celebrities appeared at Police Headquarters. The HCLU provided each self-reporter with a legal manual. More than 60 people self-reported in total.
- ▶ The action attracted significant media attention and dominated public debate for weeks. Activists expressed their views to the media about the illegal practice of police raids and about decriminalization.
- ▶ HCLU made freedom-of-information requests to the Police about the cost of police raids, and used the data to show the raids were not cost-effective.

Results and lessons learned

- ▶ The action succeeded in its main goal, which was to obtain a statement from the Police that urine tests could only be conducted someone following initiation of a criminal procedure against them. This effectively made the urine test raids unlawful. The number of police raids seriously decreased, with very few raids occurring in 2006.
- ▶ The campaign also succeeded in making decriminalization of drug use a subject of mainstream debate. More than 70 professionals working on the drug field signed a petition supporting the aims of the campaign. Three months after the action, the first-ever draft Bill on decriminalization was introduced in Parliament.
- ▶ The campaign showed that good stories and human faces are an important and successful way of achieving media coverage of drug policy campaigns.

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 Report at: www.drogriporter.hu (HCLU's
 drug policy site)

How can I find additional resources about harm reduction and human rights?

Resources

To further your understanding on the topic of Harm Reduction and human rights, a list of commonly used resources has been compiled and organized into the following categories:

- ▶ Declarations and resolutions: UN
- ▶ Declarations and resolutions: non-UN
- ▶ Books
- ▶ Reports, key articles, and other documents
- ▶ Periodicals
- ▶ Blogs and listserves
- ▶ Training opportunities

Declarations and resolutions: UN

- ▶ United Nations General Assembly Special Session on HIV/AIDS, Declaration of Commitment on HIV/AIDS, Resolution A/RES/S-26/2, June 27, 2001 (see references to human rights at pp. 58-61, 66, 96; see also, references to harm reduction at p. 24 in the follow-up declaration to the UNGASS in 2006)

Source:

data.unaids.org/pub/Report/2006/20060615_HLM_PoliticalDeclaration_A_RES60262_en.pdf

Declarations and Resolutions: non-UN

- ▶ Dublin Declaration of Action (2004)
The declaration on HIV and AIDS in prisons in Europe and Central Asia focuses on the magnitude of the HIV and AIDS problem in prisons and the rights of prisoners to an environment free of excess risk of infection. This includes policies and programs aimed at reducing spread and impact of disease as well as health care equal to that available outside of prisons.
Source: www.eu2004.ie/templates/document_file.asp?id=7000 especially principle 6, articles 1, 10, 11

- ▶ Vancouver Declaration (2006)
Following the International Conference on the Reduction of Drug Related Harm, an advocacy group wrote and released a declaration describing the prejudice they face as drug users around the world. They also documented their collective goals to overcome this prejudice.
Source: hardcoreharmreducer.be/VancouverDeclaration.html
- ▶ The GIPA Principles (2004)
The Principles of Greater Involvement of People with HIV/AIDS were derived from a principle embedded in the Paris AIDS Summit Declaration of 1994. This Declaration acknowledged the central role of people living with HIV in education and care, and in the design and implementation of national and international policies and programs in order to successfully tackle HIV/AIDS. It also acknowledged that, for positive people to take on a greater role in the response, they need increased support.
Source: www.gnpplus.net/cms/filemgmt/visit.php?lid=114
- ▶ Resolution of William J. Bratton, Chief of Police, Los Angeles, California (2005)
This declaration from the LA Chief of Police reaffirmed the dedication of the Los Angeles Police Department to reduce the spread of Hepatitis B, Hepatitis C and HIV through existing syringe exchange programs in the city.
- ▶ Manifesto of People Who Use Drugs
This Manifesto is included in the booklet “Nothing About Us Without Us — Greater, Meaningful Involvement of People Who Use Illegal Drugs: A public health, ethical, and human rights imperative”.
Source: www.aidslaw.ca/publications/publicationsdocEN.php?ref=67

Books

- ▶ Baer, Singer and Susser. The Pursuit of Health as a Human Right: Health Praxis and the Struggle for a Healthy World. In Baer, Singer and Susser. *Medical Anthropology and the World System (second edition)*. Westport, Connecticut: Praeger (Chapter 7, pp. 169-226), 2003.
- ▶ Institute of Medicine of the National Academies. *Preventing HIV Infection among Injecting Drug Users in High-risk Countries*. Washington, DC: National Academy of Sciences, 2006.
- ▶ International Harm Reduction Development. *Delivering HIV Care and Treatment for People Who Use Drugs: Lessons from Research and Practice*, 2006.
Source:
www.soros.org/initiatives/health/focus/ihrd/articles_publications/publications/delivering_20060801

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Source: www.soros.org/initiatives/health/focus/ihrd/articles_publications/publications/rights_20050228
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- ▶ WHO. *Evidence for Action: Effectiveness of community-based outreach in preventing HIV/AIDS among injecting drug users*. Geneva, 2004.
Source: www.who.int/hiv/pub/idu/idu/en/
- ▶ Wolfe, D. Malinowska-Sempruch, K. *Illicit Drug Policies and the Global HIV Epidemic, Effects of UN and National Government Approaches*, Open Society Institute, 2004.

Reports, key articles, and other documents

- ▶ Betteridge, G. Prisoners' health and human rights in the HIV/AIDS epidemic — *HIV/AIDS Policy and Law Review* 9(3), December 2004.
Source: www.aidslaw.ca/publications/publicationsdocEN.php?ref=177
- ▶ Burris, S., Blankenship, K.M, Donoghoe, M., Sherman, S., Vernick, J.S., Case, P., Lazzarini, Z., & Koester, S. (2004) Addressing the "Risk Environment" for Injection Drug Users: The Mysterious Case of the Missing Cop. *The Milbank Quarterly* 82 (1), 125–156.
- ▶ Canadian HIV/AIDS Legal Network (2006). Legislating for Health and Human Rights: Model Law on Drug Use and HIV/AIDS.
Source: www.aidslaw.ca/publications/publicationsdocEN.php?ref=620 - 8 modules

- ▶ Elliott, R. Harm Reduction, HIV/AIDS, and the Human Rights Challenge to Global Drug Control Policy — *Health and Human Rights: An International Journal*, Vol. 8, No. 2, 2005.
Source: www.aidslaw.ca/publications/publicationsdocEN.php?ref=78

- ▶ IHRA's 50 Best Collections Overview. These collections highlight around 50 papers in each area of harm reduction which best summarize the evidence-base, reasoning and justification for harm reduction interventions and approaches.
Source: www.ihra.net/50BestCollectionsOverview

- ▶ Judit Fridli, (2003, Spring). Harm reduction is human rights. *Harm Reduction News*, 4(1), 3, 17. (Newsletter of International Harm Reduction Development Program, Open Society Institute).
Source:
www.soros.org/initiatives/health/focus/ihrd/articles_publications/publications/hrnfocus_20030301/hrn_spring2003.pdf

- ▶ Jürgens, Ralf. Betteridge, Glenn (2005) Prisoners Who Inject Drugs: A Public Health and Human Rights Imperative, 8(2) *Health and Human Rights*.
Source: www.aidslaw.ca/publications/publicationsdocEN.php?ref=81

- ▶ Lines, Rick. (2006). From equivalence of standards to equivalence of objectives: The entitlement of prisoners to health care standards higher than those outside prisons. *International Journal of Prisoner Health*. 2(4): p. 269-280.

- ▶ Sarang, A. Stuijckte, R., Bykov, R. (2007) Implementation of harm reduction in Central and Eastern Europe and Central Asia. *International Journal of Drug Policy*. 18 (2): p.129-135.

Human Rights Watch reports

- ▶ Abusing the User: Police Misconduct, Harm Reduction, and HIV/AIDS in Vancouver.
Source: www.hrw.org/reports/2003/canada/

- ▶ Fanning the Flames: How Human Rights Abuses are Fuelling the AIDS Epidemic in Kazakhstan.
Source: hrw.org/reports/2003/kazak0603/

- ▶ Injecting Reason: Human Rights and HIV Prevention for Injection Drug Users - California: A Case Study.
Source: www.hrw.org/reports/2003/usa0903/

- ▶ Locked Doors: The Human Rights of People Living with HIV/AIDS in China.
Source: www.hrw.org/reports/2003/china0803/

- ▶ Not Enough Graves: The War on Drugs, HIV/AIDS, and Violations of Human Rights.
Source: hrw.org/reports/2004/thailand0704/
- ▶ Rhetoric and Risk: Human Rights Abuses Impeding Ukraine’s Fight Against HIV/AIDS.
Source: hrw.org/reports/2006/ukraine0306/

International Journal of Drug Policy (search “human rights”; example):

- ▶ Cohen, J. and Csete, J. (2006) As strong as the weakest pillar: Harm reduction, law enforcement and human rights. *International Journal of Drug Policy*. 17(2): Pages 101-103.

Periodicals

- ▶ “AHR News”, Quarterly newsletter of the Asian Harm Reduction Network
Source: www.ahrn.net/index.php?option=content&task=view&id=2115&Itemid=2#newsletter
- ▶ Harm Reduction Journal
Source: www.harmreductionjournal.com
- ▶ “Harm Reduction News” Quarterly newsletter of International Harm Reduction Development Program, Open Society Institute
Source: www.soros.org/initiatives/health/focus/ihrd/news
- ▶ International Harm Reduction Association E-Newsletter
Source: www.ihra.net/ENewsletters
- ▶ The International Journal of Drug Policy
Source: www.journals.elsevierhealth.com/periodicals/drupol/home

Websites

- ▶ Asian Harm Reduction Network (AHRN)
www.ahrn.net
- ▶ Australian Injecting and Illicit Drug Users League
www.aivl.org.au
- ▶ Canadian HIV/AIDS Legal Network
www.aidslaw.ca



- ▶ Canadian Medical Association Journal Collections
www.cmaj.ca/cgi/collection/drug_misuse
- ▶ Central and Eastern Europe Harm Reduction Network (CEEHRN)
www.ccehrn.org
- ▶ Chicago Recovery Alliance
www.anypositivechange.org/hro.html
- ▶ Drug Action Network
www.drugactionnetwork.com
- ▶ Drug Policy Alliance
www.drugpolicy.org
- ▶ Harm Reduction Coalition (an informative source of drug related websites)
www.harmreduction.org/resources/links.html#hr
- ▶ Humanitarian Action (Russia)
www.humanitarianaction.org/index_eng.php3
- ▶ Human Rights Watch HIV/AIDS Program
hrw.org/doc/?t=hivaids&document_limit=0,2
- ▶ International Drug Policy Consortium
www.idpc.info
- ▶ International Harm Reduction Development program Open Society Institute
www.soros.org/initiatives/health/focus/ihrd
- ▶ International Harm Reduction Association
www.ihra.net
- ▶ MONAR Krakow Drugs Project (Poland)
www.monar.krakow.pl
- ▶ North American Syringe Exchange Network
www.nasen.org/index.htm
- ▶ PIVOT Legal Society
www.pivotlegal.org
- ▶ Vancouver Area Network of Drug Users
www.vandu.org

Blogs and list-serves

- ▶ AHRN
info@ahrn.net
- ▶ CEEHRN
ceehrn@yahoogroups.com
- ▶ “D’Alliance”, Drug Policy Alliance Blog, *Drug Policy Alliance*
blog.drugpolicy.org
- ▶ “Harm Reduction” *Wikipedia*
en.wikipedia.org/wiki/Harm_reduction
- ▶ Harm Reduction Coalition Mailing List
www.harmreduction.org/emailSignup.html
- ▶ Human Rights Watch
hrw.org/blogs.htm
- ▶ “Network Blog”, The Canadian Harm Reduction Network,
www.canadianharmreduction.com/comments.php?thread=1
- ▶ “Sterling on Justice and Drugs”- blog at the *Criminal Justice Policy Foundation*
justiceanddrugs.blogspot.com
- ▶ “The Speakeasy”- reader blogs at *StoptheDrugWar.org*.
stopthedrugwar.org/speakeasy/reader
- ▶ “Time to Deliver”, an independent, uncensored blog of activists at the Toronto International AIDS Conference
www.timetodeliver.org/?cat=16

Training opportunities

- ▶ Harm Reduction Training Institute
www.harmreduction.org/hrti/index.html
- ▶ OSI Public Health Seminars
health.osf.lt/en/seminars/
- ▶ Salzburg Seminar
www.salzburgseminar.org/2007/index.cfm

What are key terms related to harm reduction and human rights?

Glossary

A variety of terms is used in harm reduction and human rights work.

A

Addiction

A commonly-used term describing a pattern of drug use that indicates physical or mental dependence. It is not a diagnostic term and is no longer used by the World Health Organization (WHO).

Advocacy

Harm reduction efforts often include an advocacy component, which may involve lobbying for drug users' rights, or for funding for harm reduction programs, or trying to change public perception of drug users and of harm reduction.

AIDS

Acquired Immunodeficiency Syndrome (AIDS) is the severe manifestation of infection with the Human Immunodeficiency Virus (HIV).

Alcohol pad

A small piece of fabric soaked with alcohol, used to swab the skin before injecting. (Washing with soap and water is thought to be more effective at reducing infection than rubbing with an alcohol pad. Cleaning hands and potential sites of injection also reduces the potential for infection.)

B

Backloading and frontloading

“Backloading” and “frontloading” refer to a practice whereby one syringe is used to prepare the drug solution, which is then divided into one or more syringes for injection. The drug solution is shifted from one syringe into another with the needle (frontloading) or plunger (backloading) removed. HIV, hepatitis, and other infectious agents can be transmitted if the preparation syringe has been contaminated.

Biohazard containers

Puncture-resistant containers used for disposing of hazardous waste such as used syringes. The contents of biohazard containers are disposed of at a location specifically designed to negate the potential dangers of hazardous waste. The containers are ideally designed so that hazardous material cannot be removed once it is placed into the container.

Buprenorphine

A medication used in opioid substitution therapy programs. Buprenorphine is included in the World Health Organization (WHO) Model List of Essential Medicines.

C

Community-based outreach programs

These programs are an effective way to provide information and outreach services to drug users with the goal of prevention and health promotion.

Consumption rooms

A safe, clean place for drug users to inject sterilely and under medical supervision. Information, sterile injection equipment, and health services are often provided.

Cooker

Any item used to heat injectable drugs in order to turn them from powder or other non-liquid form into a liquid suitable for injection. (According to some experts, injection drug users often reused metal spoons for cooking drugs until harm reduction service providers began promoting the one-time use of disposable items, such as bottle caps or similarly shaped objects, in order to reduce the risk of disease transmission.)

Cotton

Any item used to filter out particles of solids from injectable liquid drugs, in order to prevent them from clogging syringes. From the point of view of sterile injection, the ideal filter is a sterilized cotton pellet, made of natural cotton fibers and especially cut for this purpose.

D

Decriminalization

Unlike legalization, decriminalization refers only to the removal of penal and criminal sanctions on an activity, which retains prohibited status and non-penal regulation.

Demand reduction

Programs and policies aimed at directly reducing demand for illicit drugs via education, treatment, and rehabilitation, without reliance on law enforcement or prevention of production and distribution of drugs.

Drop-in centre

Centers provide easy-to-access basic care and information to drug users.

Drug policy

Refers to the sum total of policies and laws affecting supply and/or demand of illicit drugs, and may include issues such as education, treatment, and law enforcement.

Drug use

Preferred term for use in harm reduction context, acknowledging that drug use is a nearly universal cultural behavior with a wide range of characteristics and impacts, depending on the individual user.

Drug-related harms

Include HIV and AIDS, other viral and bacterial infections, overdose, crime, and other negative consequences stemming from drug use and from policies and problems relating to drug use.

H

Harm reduction

Refers to a set of interventions designed to diminish the individual and societal harms associated with drug use, including the risk of HIV infection, without requiring the cessation of drug use. In practice, harm reduction programs include syringe exchange, drug substitution or replacement therapy using substances such as methadone, health and drug education, HIV and sexually transmitted disease screening, psychological counseling, and medical care.

Heroin

An illegal narcotic whose use is rare compared to the use of other drugs, but which has been viewed in many areas as a social scourge dangerous to health and related to criminality.

HIV

The Human Immunodeficiency Virus (HIV) attacks and weakens the immune system. HIV infection eventually leads to AIDS, but proper medical treatment can delay symptoms for years.

I

Injection equipment

Items such as syringes, cottons, cookers, and water used in the process of preparing and injecting drugs. Each of these can be contaminated and transmit HIV or hepatitis. The broader term “drug paraphernalia” comprises injection equipment as well as items associated with non-injection drug use, such as crack pipes.

L

Legalization

As opposed to decriminalization, legalization refers to the process of transferring an activity from prohibited status to legally controlled status.

M

Methadone

A medication used in opioid substitution therapy programs. It is included in the WHO Model List of Essential Medicines.

Methamphetamines

A group of substances, most of them synthetic, that have a stimulating effect on the central nervous system. Methamphetamines can be injected, snorted, smoked, or ingested orally. The popular term “crystal meth” usually refers to the smokeable form of methamphetamine. Other amphetamine-type stimulants include anoretics (appetite suppressants) and non-hallucinogenic drugs such as “ecstasy.”

N

Needle or syringe exchange points

Programs that provide sterile syringes in exchange for used ones. In addition to exchanging syringes, needle exchange points often provide HIV prevention information and screening, primary health care, and referrals to drug treatment and other health and social services.

Needle sharing

The use by more than one person of the same needle, or, more generally, of the same injecting or drug-preparation equipment. It is a common route of transmission for blood-borne viruses and bacteria, and the prevention of needle sharing is a major focus for many harm reduction interventions.

O

Overdose prevention

Overdosing is an important cause of morbidity and mortality among drug users, and is a major focus of harm reduction initiatives, including outreach, health services, safe injection rooms, and access to information on how to reduce the likelihood of an overdose.

R

Risk behavior reduction

Behaviors which place drug users at risk of adverse consequences are a main focus of a set of harm reduction initiatives referred to as risk reduction for their focus on reducing the risk of drug-related harm.

S

Sex worker

A non-judgmental term which avoids negative connotations and recognizes that people sell their bodies as a means of survival, or to earn a living. (UNAIDS)

Shirka

The popular name for one of the most commonly injected opiate derivatives used in Ukraine, a homemade preparation of acetylated or extracted opium. In the Odessa region, *shirka* refers to a homemade amphetamine derivative known elsewhere in the country as *vint* or *perventin*.

Substance abuse

A widely-used but poorly defined term that generally refers to a pattern of substance use that results in social or health problems, and may also refer to any use of illegal drugs.

Substitution or replacement therapy

Substitution therapy is the administration of a psychoactive substance pharmacologically related to the one creating substance dependence to substitute for that substance.

Substitution therapy

The administration, under medical supervision, of a long-acting opioid (often buprenorphine or methadone) aimed at preventing withdrawal symptoms while reducing or eliminating the need or desire for illicit drugs. Substitution therapy seeks to assist drug users in switching from illicit drugs of unknown potency, quality, and purity to legal drugs obtained from health service providers or other legal channels, thus reducing the risk of overdose and HIV risk behaviors, as well as the need to commit crimes to obtain drugs.

Syringes or needles

The main components of a syringe are a needle, a tubular syringe barrel, and a plastic plunger. Graduated markings on the barrel of a syringe are used to measure the water or saline solution used to dissolve a solid substance into liquid form. Syringes and needles vary in size and do not always come as one piece; a syringe with the needle attached is often referred to as an “insulin syringe.” While disinfection of syringes is possible, public health authorities recommend a new sterile syringe for every injection.

T**Ties or tourniquets**

Items used to enlarge or “plump up” veins to facilitate injection. Ties should be clean because blood on a tie can be a source of infection. Common ties include a piece of rope, a leather belt, a terry cloth belt, a rubber hose, and a piece of bicycle inner tube.

V**Vint or Perventin**

The popular names for an injected homemade amphetamine derivative.

W

Water

Water is used to dissolve solid substances (such as pills or powder) into a liquid form suitable for injection. Having a clean source of one's own water is important to prevent disease transmission. Harm reduction programs often distribute vials of distilled water, sterile water or sterile saline solution (all referred to as "waters") for this purpose.

Withdrawal

Clinical symptoms associated with ceasing or reducing use of a chemical agent that affects the mind or mental processes (i.e., a "psychoactive" substance). Withdrawal usually occurs when a psychoactive substance has been taken repeatedly and/or in high doses.



Photo courtesy of Open Society Institute

Chapter 4 Palliative Care and Human Rights

“You must matter because you are you,
and you matter until the last moment of
your life. We will do all we can, not only
to help you die peacefully, but also to
live until you die.”

*Dame Cicely Saunders, founder of the
modern Hospice movement*

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Introduction

This chapter will introduce you to key issues in **palliative care and human rights**.

The chapter is organized into six sections that answer the following questions:

- ▶ **How** is palliative care a human rights issue?
- ▶ **What** is OSI's work in the area of palliative care and human rights?
- ▶ **Which** are the most relevant international and regional human rights standards related to palliative care?
- ▶ **What** are some examples of effective human rights programming in the area of palliative care?
- ▶ **Where** can I find additional resources on palliative care and human rights?
- ▶ **What** are key terms related to palliative care and human rights?

As you read through this chapter, consult the **glossary of terms**, found in the last section, *What are key terms related to palliative care and human rights?*

How is palliative care a human rights issue?

What is palliative care?

Palliative care is an approach that **improves the quality of life of patients and their families** facing the problems associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of **pain and other problems, physical, psychosocial and spiritual.**

Palliative care:

- ▶ Provides relief from pain and other distressing symptoms
- ▶ Affirms life and regards dying as a normal process
- ▶ Intends neither to hasten or postpone death
- ▶ Integrates the psychological and spiritual aspects of patient care
- ▶ Offers a support system to help patients live as actively as possible until death
- ▶ Offers a support system to help the family cope during the patients illness and in their own bereavement
- ▶ Uses a multidisciplinary team approach to address the needs of patients and their families, including bereavement counseling, if indicated
- ▶ Will enhance quality of life, and may also positively influence the course of illness
- ▶ Is applicable early in the course of illness, in conjunction with other therapies that are intended to prolong life, such as chemotherapy, radiation therapy, HAART, and includes those investigations needed to better understand and manage distressing clinical complications.

Source: WHO (World Health Organization) 2002 Definition of Palliative Care. Please see www.who.int/cancer/palliative/definition/en for a more complete reference.

What are palliative care rights?

Palliative care embraces human rights that are already recognized in national laws, international human rights documents, and other consensus statements.

Palliative care rights include the **right to**:

- ▶ Pain relief
- ▶ Symptom control for physical and psychological symptoms
- ▶ Essential drugs for palliative care
- ▶ Spiritual and bereavement care
- ▶ Family-centered care
- ▶ Care by trained palliative care professionals
- ▶ Receive home-based care when dying and to die at home if desired
- ▶ Treatment of disease and to have treatment withheld or withdrawn
- ▶ Information about diagnosis, prognosis, and palliative care services
- ▶ Name a health care proxy for decision making
- ▶ Not be discriminated against in the provision of care because of age, gender, national status, or means of infection.

Did you know?

- ▶ Death statistics
 - Of the 58 million people dying annually, at least 60% will have a prolonged advanced illness and would benefit from palliative care.
 - About 80% of the dying would benefit from palliative care to alleviate pain and suffering in their final days of life. Yet, in countries such as India, only around 1% of them are able to access such care.
- ▶ Elderly
 - There are 600 million people 60 years of age or older. By 2025 there will be 1,200 million, and by 2050 the number will increase to 2,000 million.
- ▶ Cancer
 - 7 million people die from cancer each year. There are 24.6 million people living with cancer. The incidence of cancer will more than double to an estimated 24 million new cancers per year by 2050.
 - The WHO has demonstrated that up to 90% of cancer patients can receive adequate therapy for their pain with opioid analgesics. Yet, in 2005, 80% of cancer patients did not have access to pain relieving drugs.
 - Despite the WHO stating that palliative care is essential to national cancer control programs, few countries have incorporated it.
- ▶ HIV and AIDS
 - In 2005, approximately 2.8 million people died of AIDS. An estimated 39.5 million people worldwide are living with HIV and AIDS. Up to 80% of patients in the advanced stages of AIDS suffer great pain, but very few have access to pain relieving drugs or palliative care services.
 - Pain management and palliative care have been shown to increase drug treatment adherence for both cancer and AIDS therapies.
 - Cancer patients in developing countries have access to opioid analgesics for pain management, but AIDS patients do not.
 - Despite UNAIDS stating that palliative care is essential to national HIV and AIDS plans, few countries have developed palliative care programs.
- ▶ Essential drugs
 - Eighteen pain and palliative care professional organizations from all over the world have created a list of essential drugs for palliative care. Fourteen drugs are currently on the WHO Essential Drug List, but few countries have incorporated them into their health care strategies.
- ▶ Barriers
 - The International Narcotics Control Board has strongly supported the appropriate use of analgesics for medical use; yet, patients, physicians and policy makers fear addiction and are reluctant to use or prescribe these drugs. Significant regulatory barriers also limit access.

- Despite the existence of a palliative care educational curriculum, little or no training on end of life care palliative care is given to health professionals.
- ▶ Caregivers
 - Most of the burden of care at home falls on women and girls. 68% of primary caregivers in South Africa were female; in Uganda 86% were female. Women and girls often give up their jobs or drop out of school to be caregivers.
 - In many countries, after a man's death, wives lose their homes because they have no legal rights to ownership. Children without a birth certificate lose access to the estate and may be unable to attend school because they lack school fees.

What is OSI's work in the area of palliative care and human rights?

OSI has worked to improve end-of-life care for patients and their families, with a special focus on vulnerable populations, including the elderly, children, and patients with cancer or HIV and AIDS. The main public health network program supporting work in this area is the **International Palliative Care Initiative (IPCI)**. Work around the human rights implications of palliative care is still in its infancy with IPCI at the forefront. IPCI, along with OSI's Law and Health Initiative (LAHI), is supporting the development of a background paper and curriculum around palliative care as a human right, outlining the principal human rights norms relevant to palliative care and the legal procedures available to vindicate these rights. Other examples of projects supported by IPCI include:

▶ Reports

- Brennan, F. Palliative Care as an International Human Right. *Journal of Pain and Symptom Management* special issue. Volume 33, Number 5, May 2007.

▶ Convenings

- In October 2006, IPCI and LAHI convened a dialogue between palliative care providers and HIV and AIDS and legal advocates in South Africa to discuss the provision of better services to AIDS patients. A reference group formed to carry this project forward and is pursuing the pilot integration of legal services in a hospice, a joint palliative care/ legal advocates manual, and a potential test case around funeral benefits or disability grants.
- In 2005, the Worldwide Alliance for Palliative Care convened the Second Global Summit on Hospice and Palliative Care in Seoul, Korea, which released the Korean Declaration on the Right of Palliative Care.
- In 2006, OSI, with the International Association for Hospice and Palliative Care (IAHPC) and the World Health Organizations (WHO), convened 18 professional organizations to develop an essential medicines list for palliative care.
- Regional Drug Availability Meetings in Hungary, Uganda, and Ghana have developed country plans to address regulatory barriers to essential pain medications.

▶ Trainings

- Two -year International Pain Policy Fellowship, training fellows in evaluating regulatory barriers to opioid analgesics in their countries.
- Two-year Palliative Care in AIDS and Cancer Fellowships, developing palliative care expertise in infectious diseases and in hospitals caring for oncology patients.
- An annual Salzburg Palliative Care Course (AIDS, Cancer, Nursing).

For more information, visit IPCI's website: www.soros.org/initiatives/health/focus/ipci

Which are the most relevant international and regional human rights standards related to palliative care?

Overview

A wide variety of human rights standards at the international, regional, and national levels applies to palliative care. These standards can be used for many purposes:

- ▶ **To document** violations of palliative care rights
- ▶ **To advocate** for the cessation of these violations
- ▶ **To sue** governments for violations of national human rights laws
- ▶ **To complain** to regional and international human rights bodies about breaches of human rights agreements.

In the tables on the following pages, **examples** of human rights violations related to palliative care are provided. Relevant human rights **standards** are then cited, along with examples of legal **precedents** and **provisions** from patient right charters and declarations, **interpreting** each standard.

How to read the tables

As you read through each table, ask yourself the following questions about the **violations, standards, and precedents and interpretations** that are cited:

EXAMPLES OF HUMAN RIGHTS VIOLATIONS

Do any of these violations occur in your country? Are there other violations of this human right that exist in your country?

HUMAN RIGHTS STANDARDS

Are these violations prohibited by the “human rights standards”? Can the standards be interpreted to apply to this violation?

PRECEDENTS AND INTERPRETATIONS

Do any of the “examples of precedents and interpretations” apply to this issue? Can they be interpreted to apply to this issue?

Remember that human rights law is an evolving field, and that many human rights violations are not directly addressed by existing legal standards and precedents. Through ongoing documentation and advocacy, advocates can build a stronger body of jurisprudence on palliative care and human rights.

Abbreviations

In the tables, the seven treaties and their corresponding enforcement mechanisms are referred to with the following abbreviations:

Treaty	Enforcement Mechanism
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee (HRC)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Committee on Economic, Social and Cultural Rights (CESCR)
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee)
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child (CRC Committee)
African Charter on Human and People’s Rights (ACHPR) & Protocols	African Commission on Human and People’s Rights (ACHPR Commission)
[European] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)	European Court of Human Rights (ECtHR)
European Social Charter (ESC)	European Committee of Social Rights (ECSR)

Table 1: Palliative care and freedom from cruel, inhuman, and degrading treatment

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • National laws restricting opioid availability and access cause cancer and AIDS patients to suffer unnecessary pain. • Fearing prosecution by the state, a doctor refuses to prescribe morphine to relieve a patient's pain. • A country's laws prohibit the prescription of morphine to former drug users. A former drug user is in the advanced stages of AIDS and suffers a great deal. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.</p> <p>ACHPR 5 Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.</p> <p>African Women's Protocol 4(1) All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.</p> <p>ECHR 3 No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment • European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 	<p>A right to avoid unnecessary pain and suffering is an important part of most patients' rights charters. For instance, the European Charter of Patients' Rights sets out: "Each individual has the right to avoid as much suffering and pain as possible, in each phase of his or her illness. The health services must commit themselves to taking all measures useful to this end, like providing palliative care treatment and simplifying patients' access to them." [art. 11].</p> <p>The Declaration on the Promotion of Patients' Rights in Europe, promulgated by a WHO European Consultation, similarly asserts: "Patients have the right to relief of their suffering according to the current state of knowledge. . . . Patients have the right to humane terminal care and to die in dignity." [art. 5.10, 5.11].</p>

Table 2: Palliative care and the right to life

Examples of Human Rights Violations	
<ul style="list-style-type: none"> Unable to obtain pain medication, an AIDS patient is unable to adhere to required treatment and continue taking antiretrovirals. As a result, the patient does not have much time to live. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 6(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p> <p>ACHPR 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.</p> <p>ECHR 2(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.</p>	<p>HRC: explaining that the right to life “should not be interpreted narrowly” or “in a restrictive manner,” and its protection “requires that States adopt positive measures . . . to increase life expectancy.” [ICCPR GC 6, paras 1, 5].</p>

Table 3: Palliative care and the right to the highest attainable standard of health

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A country does not provide for training in palliative care to its medical personnel. As a result, end of life patients do not receive adequate pain relief and physical, psychosocial, and spiritual, care. • A state provides funding only for hospitals and not for hospices and home-based care facilities. As a result, patients must either forgo treatment or remain far from their homes and families. 	
Human Rights Standards	Precedents and Interpretations
<p>ICESCR 12(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>12(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: . . .</p> <p>(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;</p> <p>(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.</p> <p>ACHPR 16(1) Every individual shall have the right to enjoy the best attainable state of physical and mental health.</p> <p>16(2) States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.</p> <p>ESC 11 – The right to protection of health</p> <p>With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed . . .</p> <p>(2) to provide advisory and educational facilities for the promotion of health . . .</p> <p>See also:</p> <ul style="list-style-type: none"> • CRC 24, African Charter on the Rights and Welfare of the Child 14 (child’s right to the highest attainable standard of health). 	<p>CESCR: affirming the importance of “attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity.” [CESCR GC 14, para. 25].</p> <p>CESCR: indicating that access to “essential drugs, as defined by the WHO Action Programme on Essential Drugs” is part of the minimum core content of the right to health. Fourteen palliative care medications are currently on the WHO Essential Drug List. [CESCR GC 14, para. 12].</p> <p>Under the Declaration on the Promotion of Patients’ Rights in Europe, promulgated by a WHO European Consultation, “Patients have the right to enjoy support from family, relatives and friends during the course of care and treatment and to receive spiritual support and guidance at all times.” [art. 5.9].</p>

Table 4: Palliative care and the right to information

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • People are denied information about hospice and palliative care services. • People are denied information about pain management. • People are denied information about their diagnosis and prognosis. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 19(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p> <p>ACHPR 9 (1) Every individual shall have the right to receive information.</p> <p>ECHR 10 (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.</p> <p>(2) Every individual shall have the right to express and disseminate his opinions within the law.</p> <p>See also:</p> <ul style="list-style-type: none"> • European Convention on Human Rights and Biomedicine, art 10(2): “Everyone has the right to know any information collected about his or her health.” 	<p>CESCR: health care accessibility “includes the right to seek, receive and impart information and ideas concerning health issues.” [CESCR GC 14, para 12].</p> <p>A patient’s right to information about treatment and care features prominently in patients’ rights charters. For instance, under the European Charter of Patients’ Rights, “Every individual has the right of access to all kinds of information regarding their state of health and health services and how to use them, and all that scientific research and technological innovation makes available.” [art. 3].</p> <p>Likewise, the Declaration on the Promotion of Patients’ Rights in Europe emphasizes, “Patients have the right to be fully informed about their health status, including the medical facts about their conditions; about the proposed medical procedures, together with potential risks and benefits of each procedure; about alternatives to the proposed procedures, including the effect of non-treatment; and about the diagnosis, prognosis, and progress of treatment.” Moreover, “[p]atients have the right to choose who, if any one, should be informed on their behalf.” [art. 2.2, 2.6].</p>

4

Table 5: Palliative care and the right to non-discrimination and equality

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A country decides that it is not worth investing precious resources in providing care for the elderly. • Former drug users are denied access to opioid-based pain medication. • A state provides only limited health services to non-citizens and refugees, denying them access to palliative care. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 26 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>ICESCR 2(2) The States Parties to the present Covenant undertake to guarantee the rights enunciated in the present Covenant shall be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status.</p> <p>ACHPR 2 Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e)(iv) • Convention relating to the Status of Refugees • European Convention on Citizenship and the Convention Relating to the Status of Stateless Persons 	<p>CESCR: “[T]he range of matters” for which discrimination on the basis of age is acceptable “is very limited.” In fact, States parties “are obliged to pay particular attention to promoting and protecting the economic, social and cultural rights of older persons.” [CESCR GC 6, paras 12,13].</p> <p>CESCR: emphasizing the need “to eliminate any discriminatory legislation and the need to ensure the relevant budget support” for the elderly. [CESCR GC 6, para. 18].</p> <p>CESCR: upholding “the right of elderly persons to the enjoyment of a satisfactory standard of physical and mental health” and urging of “a comprehensive view, ranging from prevention and rehabilitation to the care of the terminally ill.” [CESCR GC 6, para. 34].</p> <p>CESCR: recommending that Bulgaria “take affirmative action for the well-being of older people,” in light of their increasing number. [ICESCR, E/2000/22 (1999) 46, para. 238].</p> <p>CESCR: noting “with satisfaction” Finland’s inclusion of age as a prohibited ground of discrimination in its constitution. [CESCR, E/2001/22 (2000) 73, para. 433].</p> <p>CERD: calling upon states to protect the adequate standard of health of non-citizens and refugees by ensuring their equal access to palliative health services. [CERD/C/NOR/CO/18 (CERD, 2006), para. 21; CERD/C/BWA/CO/16 (CERD, 2006), para. 19].</p>

What are some examples of effective human rights programming in the area of palliative care?

Introduction

In this section, you are presented with four **examples** of effective activities in the area of palliative care and human rights. These are:

1. Petitioning the State Human Rights Commission for access to palliative care in **India**
2. Litigation to ensure access to morphine in **India**
3. Regulatory reform in **Romania**
4. Integration of patients' rights standards in hospice accreditation in **South Africa**

Rights-based programming

As you review each activity, ask yourself whether it incorporates the **five elements** of “rights-based” programming:

- ▶ **Participation**
Does the activity include participation by affected communities, civil society, marginalized groups, and others? Is it situated in close proximity to its intended beneficiaries?
- ▶ **Accountability**
Does the activity identify both the *entitlements of claim-holders* and the *obligations of duty-holders*? Does it create mechanisms of accountability for violations of rights?
- ▶ **Non-discrimination**
Does the activity identify who is most vulnerable, and how? Does it pay particular attention to the needs of vulnerable groups such as women, minorities, indigenous peoples, and prisoners?
- ▶ **Empowerment**
Does the activity give its beneficiaries the power, capability, capacity, and access to bring about a change in their own lives? Does it place them at the center of the process rather than treating them as objects of charity?
- ▶ **Linkage to rights**
Does the activity define its objectives in terms of legally enforceable rights, with links to international, regional, and national laws? Does it address the full range of civil, political, economic, social, and cultural rights?

Finally, ask yourself whether the activity might be replicated in your country:

- ▶ Does such a project **already exist** in your country?
- ▶ If not, should it be **created**? If so, does it need to be **expanded**?
- ▶ What **steps** need to be taken to replicate this project?
- ▶ What **barriers** need to be overcome to ensure its successful replication?

Example 1: **Petitioning the state human rights commission for access to palliative care in India**

A cancer patient and the director of the Institute of Palliative Medicine petitioned the State Human Rights Commission to secure the training of palliative care professionals and the provision of palliative care in government hospitals.

Project type

Human Rights Commission Petition

Health and human rights issue

In India, training in palliative care was not included in the education of medical staff, and patients in certain districts could not obtain needed care and pain relief medication.

Actions taken

A cancer patient and the director of the Institute of Palliative Medicine, of the Kozhikode Government Medical College, petitioned the State Human Rights Commission for the provision of palliative care in government hospitals.

Results

In 2006, the Commission directed the government to:

- ▶ Take steps to include palliative medicine in the curriculum of nursing and undergraduate medical students
- ▶ Give training in palliative care to medical staff in government and private hospitals
- ▶ Set up a pain and palliative-care hospital in every panchayat
- ▶ Provide enough medicines for relieving pain.

Contact

Pain and Palliative Care Society,
Medical College (PO),
Calicut 673008, Kerala, INDIA
Email: pain@vsnl.com;
Web:
www.painandpalliativecare.org/index.htm

The Commission ordered an action-taken report from the government within 30 days.

Example 2: Litigation to ensure access to morphine in India

In 1988, a doctor took legal action to secure access to morphine for cancer patients in India.

Project type

Litigation

Health and human rights issue

In 1985, the Narcotic Drugs and Psychotropic Substances Act instituted strict controls on the distribution of morphine in India. This had tremendous impact on the use of morphine for medical purposes. Supplies of medical morphine dwindled from over 750 kilograms per year in 1985 to only 56 kilograms in 1996. Thus, while India was the major exporter of opium to the world, patients with severe pain did not have access to morphine. Moreover, a whole generation of doctors graduated without experience in its use and unaware of its potential in treating patients.

Actions taken

- ▶ Dr. Ravindra Ghooi filed a public interest litigation in the Delhi High Court on behalf of cancer patients in the country, requesting the rationalization of procedures for the supply of morphine for medical purposes.
- ▶ Dr. Ghooi filed suit after the death of his mother. His mother had breast cancer, but due to a previous history of diabetes and a stroke, she was not a candidate for aggressive cancer therapy. Nonetheless, she suffered from significant pain. Her physicians were not able to obtain even 1 mg of morphine for her treatment. Dr. Ghooi himself went through an enormous amount of bureaucratic red tape and spent his time and money meeting with government officials, but was ultimately unsuccessful.

Results

- ▶ In 1998, the High Court affirmed, “It is a right of patients to receive any medication they need, particularly morphine.”
- ▶ The Court then directed the state government to speedily attend to morphine requests and to pending hospital applications for morphine licenses. It further encouraged patients to approach the court if unsatisfied.
- ▶ Eight of the twenty-eight states in India amended their rules governing access to morphine within the next four years.

Contact

All India Lawyer’s Forum for Civil Liberties (AIFCL)

Ch.No.444, Western Wing,
Tis Hazari Court, Delhi-110 054

Example 3: **Regulatory reform in Romania**

Drawing on patient's rights arguments and international standards, advocates convinced regulators in Romania of the need to reform opioid control policies to enable the provision of palliative care.

Project type

Law reform

Health and human rights issue

Romania's drug-control policies were more than 35 years old and imposed an antiquated regulatory system on pain medication based on inpatient, post-surgical management of acute pain. This restricted prescription authority, making access to opioid treatment difficult for patients with severe chronic pain due to cancer or AIDS.

Actions taken

- ▶ In 2002, a Romanian team composed of health care professionals working on cancer, HIV AND AIDS, pain, and palliative care and representatives from narcotic authorities and the ministries of health, social welfare, and insurance attended an IPCI workshop on ensuring the availability of opioid analgesics for palliative care.
- ▶ The Romanian team returned home and advocated for the creation of a national commission to reform Romania's opioid control policies.
- ▶ To convince regulators that a change in opioid law was needed, the team pointed to Romania's patient rights law, which stated, "The patient has the right to palliative care in order to die in dignity." (24/2003, Cap VI, art. 31).
- ▶ The Ministry of Health agreed to the formation of a Palliative Care Commission (PCC) to study the matter.
- ▶ Finding that Romania's opioid control policies fell short of WHO guidelines, the PCC invited the Pain & Policy Studies Group from the University of Wisconsin to collaborate in the preparation of recommendations.

Results

- ▶ Based on the resulting report, the Ministry of Health drafted legislation to replace the old narcotics law. Parliament passed this into law in 2005. The Pain and Policy Studies Group then worked with the Ministry of Health on implementing regulations.
- ▶ Under the new law, special authorization is no longer necessary to prescribe opioids for outpatients, non-specialists can prescribe after receiving certified training, and there is no dosage limitation.
- ▶ Romania is currently conducting a country-wide effort to educate healthcare professionals in the use of opioid analgesics.

Contact

Dr. Daniela Mosoiu, Hospice Casa Sperantei, David Joranson and Karen Ryan, Pain & Policies Study Group, University of Wisconsin, Email: mosoiudaniela@xnet.ro and kmryan2@facstaff.wisc.edu, Web: www.painpolicy.wisc.edu

Example 4: *Integration of patients' rights standards in hospice accreditation in South Africa*

The Hospice and Palliative Care Association of South Africa (HPCA) developed palliative care standards for the accreditation of hospices in South Africa, incorporating key protections for patient rights.

Project type

Development of patient care standards

Health and human rights

Founded in 1988, the Hospice and Palliative Care Association of South Africa (HPCA) is a professional membership organization for hospice and palliative care organizations. One of its core missions is to ensure professional palliative care services and to guarantee a high standard of care to patients and their families. HPCA thus wished to develop accrediting standards and procedures for hospices in South Africa. Patient rights are central to HPCA's philosophy—providers view themselves as advocates for their patients—and would thus have to figure prominently in criteria developed.

Action taken

- ▶ In 1994, a HPCA Standards Committee was created to work with the Council for Health Services Accreditation of South African (Cohsasa), the accrediting body for facilities in compliance with health professional standards, to formulate comprehensive palliative care standards for hospices.
- ▶ The Committee developed standards covering 13 key areas with patient rights as one of them. Patient rights language is further embedded throughout.
- ▶ A chapter on patient rights addresses processes to: identify, protect, and promote patient rights; inform patients of their rights; include the patient and the patient's family, when appropriate, in decisions about the patient's care; obtain informed consent; educate staff about patient's rights; and guide the organization's ethical framework.

Results

- ▶ In 2005, the HPCA/Cohsasa standards for hospice accreditation were published and recognised by the International Society for Quality in Health Care Incorporated (ISQua).
- ▶ Eleven South African hospices were granted full Cohsasa accreditation in 2006, and another 26 should be fully accredited in 2007.

Contact

HPCA (Hospice Palliative Care Association of South Africa),
P.O. Box 38785, Pinelands 7430,
South Africa
Email: HPCA@IAFRICA.COM
Web: www.hospicepalliativecaresa.co.za/
Cohsasa (Council for Health Services Accreditation of South African)
P.O. Box 676, Howard Place 7450,
South Africa
Email: info@cohsasa.co.za
Web: www.cohsasa.co.za/

Where can I find additional resources on palliative care and human rights?

Resources

To further your understanding on the topic of palliative care and human rights, a list of commonly used resources has been compiled and organized into the following categories:

- ▶ Declarations and resolutions: UN
- ▶ Declarations and resolutions: non-UN
- ▶ Position statements
- ▶ Books
- ▶ Reports, key articles, and other documents
- ▶ Websites
- ▶ Training opportunities and key conferences

Declarations and resolutions: UN

- ▶ Resolution adopted by the UN General Assembly, 26th special session, Agenda item 8, S-26-2. Declaration of Commitment on HIV/AIDS. 2001.
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Source: www.hospiceafrica.or.ug
- ▶ Distance Learning Diploma Course, Makerere University and Hospice Africa Uganda
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What are key terms related to palliative care and human rights?

Glossary

A variety of terms is used in palliative care and human rights work.

A

Acute pain

Pain that has a known cause and occurs for a limited time. It usually responds to analgesic medications and treatment of the cause of the pain.

Addiction

A commonly-used term describing a pattern of drug use that indicates physical or mental dependence. It is not a diagnostic term and no longer used by the World Health Organization (WHO).

Advance medical directives

Used to give other people, including health care providers, information about a patient's own wishes for medical care. Advance directives are important in the event patients are not physically or mentally able to speak for themselves and make their wishes known. The most common types of advance directives are the living will and the durable power of attorney for health care. A Do Not Resuscitate (DNR) is also a form of an Advance Medical Directive.

Analgesic medications

Medications used to prevent or treat pain.

B

Bereavement

The act of grieving the loss of a significant other.

C

Cancer

An abnormal growth of cells which tend to proliferate in an uncontrolled way and, in some cases, to metastasize (spread).

Caregiver

Any person who provides care for the physical, emotional, or spiritual needs of a family member or friend.

Chronic pain

Pain that occurs for more than one month after an injury has healed, that occurs repeatedly over months, or is due to a lesion that is not expected to heal.

Complementary therapies

Approaches to treatment that are outside of mainstream medical practices. Complementary therapy treatments used for pain and/or comfort include: acupuncture, low-level laser therapy, meditation, aroma therapy, Chinese medicine, dance therapy, music therapy, massage, herbal medicine, therapeutic touch, yoga, osteopathy, chiropractic treatments, naturopathy, and homeopathy.

Community based care

Medical and social service care often provided by volunteer trained members of the community.

D**Death**

The end of life in a biological organism, marked by the full cessation of its vital functions.

Do-Not-Resuscitate (DNR) orders

A DNR is a medical directive that gives consent from the patient, his/her advocate or from a Medical Physician that the patient is not to be treated for cardiac or respiratory arrest. This directive is used when treatment of the patient will not be beneficial or successful to the quality or longevity of the patients' life. This is usually the case in the seriously and terminally ill, and/or the frail and elderly. These directives do not mean that comfort measures will be withheld.

Dignity

The quality of being worthy, honored, or esteemed. Human rights are based on inherent human dignity and aim to protect and promote it.

Durable power of attorney

A person who is dying may appoint someone else to manage their finances and to make economic decisions on their behalf. This person is referred to as the "agent."

E**End-of-life care**

Doctors and caregivers provide care to patients approaching the end of life that is focused on comfort, support for the family, and treatment of psychological and spiritual concerns.

Essential medicines

Medicines that satisfy the priority health-care needs of the population. Essential medicines are intended to be available at all times in adequate amounts, in the appropriate dosage forms, with assured quality, and at a price the individual and the community can afford.

Ethics

A system of moral principles and rules that are used as standards for professional conduct. Many hospitals and other health care facilities have ethics committees

that can help doctors, other healthcare providers, patients, and family members in making difficult decisions regarding medical care. This may vary with religious and cultural backgrounds.

G

Grief

The normal process of reacting to a loss. The loss may be physical (such as a death), social (such as divorce), or occupational (such as a job). Emotional reactions of grief can include anger, guilt, anxiety, sadness, and despair. Physical reactions of grief can include sleeping problems, changes in appetite, physical problems, or illness.

H

HAART

Highly active anti-retroviral therapy.

Health care proxy

A written instrument in which an individual legally delegates authority to another person to make certain health related decisions on their behalf.

Home based care

Medical and social care provided by trained health care professionals or volunteers in a person's home.

Hospice

A care program that provides a centralized program of palliative and supportive services to dying persons and their families, in the form of physical, psychological, social, and spiritual care; such services are provided by an interdisciplinary team of professionals and volunteers who are available at home and in specialized inpatient settings.

Hospice care

Care designed to give support to people in the final phase of a terminal illness, and focused on comfort and quality of life, rather than a cure. The goal is to enable patients to be comfortable and free of pain so that they live each day as fully as possible. Aggressive methods of pain control may be used. Hospice programs generally are home-based, but they sometimes provide services away from home -- in freestanding facilities, in nursing homes, or within hospitals. The philosophy of hospice is to treat the whole person by providing support for the patient's emotional, social, and spiritual needs, as well as addressing medical symptoms.

I

Informed consent

The process of making decisions about medical care that is based on factual, open and honest communication between the health care provider and the patient and/or the patient's family members.

L**Life-limiting illness**

An illness with a prognosis of a year or less to live.

Life-threatening illness

An illness serious enough in which a patient may die.

Living will

A legal document which outlines the direction of medical care a patient wishes to have or not to have. The living will is used only if the patient becomes unable to make decisions for him/herself, and will be carried out as the patient has directed in the document.

M**Medical power of attorney**

A document that allows any individual to appoint another person to be their agent and make decisions for them should they become unable to make decisions for themselves.

Multidisciplinary team

A group of individuals representing different medical disciplines who work together to care for a patient and family.

N**Nursing home**

A residential facility for persons with chronic illness or disability, particularly older people who have mobility and eating problems. This is also called a convalescent home or long-term care facility.

Nutrition Hydration

Intravenous (IV) fluid and nutritional supplements given to patients who are unable to eat or drink by mouth, or those who are dehydrated or malnourished.

O**Opioid**

A type of medication related to opium. Opioids are strong analgesics used in acute and chronic pain. Opioids include morphine, codeine, and a large number of synthetic (man-made) drugs like methadone and fentanyl.

Opportunistic infections

Infections caused by organisms that usually do not cause disease in a person with a healthy [immune system](#), but can affect people with a poorly functioning or suppressed [immune system](#).

P

Pain

An unpleasant feeling that may or may not be related to an injury, illness, or other bodily trauma. Pain is complex and differs from person to person, as related to the individual's pain threshold.

Palliative care

Palliative care is an approach that improves the quality of life of patients and their families facing the problems associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual.

Palliative care standards

Standards reflecting the level of care a patient and family can expect to receive when dealing with a diagnosis of a life-limiting illness.

Permanent guardianship of minor children

Offers a parent the option of permanently placing their child (a minor) in the care of another person.

Power of attorney for personal care

A legal document that specifies one or more individuals a patient would like to make medical decisions on his/her behalf if unable to do so on their own.

Psychology

Science dealing with phenomena of the [mind](#), the [conscious subject](#), or [self](#).

Psychosocial care

Care given to meet a constellation of social, mental health, and emotional needs.

R

Rehabilitation

Treatment for an injury, illness, or pain with the goal of restoring partial or full function.

S

Social work

Work carried out by professionals concerned with social problems, their causes, their solutions, and their human impacts. Social workers work with individuals, families, groups, organizations, and communities, as members of a profession committed to social justice and human rights.

Spiritual care

Providing the necessary resources to address and support people's values and beliefs, provided these values and beliefs place no individuals at risk. It is based on treating each person with respect and dignity, promoting love, hope, faith, and

helping vulnerable people to find the strength to cope at times of life crises when overcome by despair, grief and confusion.

Suffering

Absence of any power to control or to meaningfully influence a perceived process of one's own disintegration.

Symptom management

Care given to improve the quality of life of patients who have a serious or life-threatening disease. The goal of symptom management is to prevent or treat as early as possible the symptoms of the disease, side effects caused by treatment of the disease, and psychological, social, and spiritual problems related to the disease or its treatment. Also called palliative care, comfort care, and supportive care.

T

Terminal

A progressive disease that is expected to cause death.

Treatment withholding

When treatment is considered to be ineffective, disproportionate, or of no value to the patient's quality of life, it may be withdrawn or withheld.

Treatment withdrawal

The ending of treatment that is medically futile in promoting an eventual cure or possible control of the disease.

W

Will

A legal document that allows a person to leave any portion of his/her estate and any specific positions to any other person or organization.

Withholding care

Not offering a specific treatment to a patient.

Withdrawing care

Withdrawing a treatment that has already started in a patient.



Chapter 5 Sexual Health and Human Rights

Photo: Quentin Deltour, courtesy of the International Committee on the Rights of Sex Workers in Europe, street demonstration in Brussels, Belgium October 2005

“The correct understanding of fundamental human rights principles, as well as existing human rights norms, leads ineluctably to the recognition of sexual rights as human rights.”

Paul Hunt, United Nations Special Rapporteur on the Human Right to the Highest Attainable Standard of Health

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Introduction

This chapter will introduce you to key issues and resources in **sexual health and human rights**, with a particular focus on lesbian, gay, bisexual and transgender (LGBT) persons and sex workers. These two populations are priorities for OSI's work on sexual health and rights. The broader field of sexual health and rights includes women's sexual reproductive health, adolescent sexual and reproductive health, and the sexual and reproductive health of racial, ethnic, and indigenous minorities.

The chapter is organized into six sections that answer the following questions:¹

- ▶ **How** is sexual health a human rights issue for LGBT and sex workers?
- ▶ **What** is OSI's work in the area of sexual health and human rights for LGBT and sex workers?
- ▶ **Which** are the most relevant international and regional human rights standards related to the sexual health of LGBT and sex workers?
- ▶ **What** are some examples of effective human rights programming in the area of sexual health for LGBT and sex workers?
- ▶ **Where** can I find additional resources on sexual health and human rights for LGBT and sex workers?
- ▶ **What** are key terms related to sexual health and human rights for LGBT and sex workers?

As you read through this chapter, consult the **glossary of terms**, found in the last section, *What are key terms related to sexual health and human rights for LGBT and sex workers?*

¹ Some of these questions are also addressed in Chapter 2, HIV/AIDS and Human Rights.

How is sexual health a human rights issue for LGBT and sex workers?

What is sexual health?

Sexual health is not merely the absence of disease, but **a state of physical, emotional, mental and social well-being** in relation to sexuality. According to the World Health Organization, “sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, **the sexual rights of all persons must be respected, protected and fulfilled.**”²

Socially marginalized groups such as **sex workers** and **lesbian, gay, bisexual, and transgender (LGBT) persons** are especially vulnerable to violations of their sexual rights, and are priority target populations for OSI’s Sexual Health and Rights Program. Other groups that suffer disproportionately from violations of sexual rights include young people, female injecting drug users, Roma women, and people living with HIV and AIDS.

What are sexual rights?

Sexual rights derive from human rights that are recognized in national, regional, and international human rights laws. Sexual rights include the right of all persons, free of coercion, discrimination and violence, to:

- ▶ The highest attainable standard of sexual health, including access to sexual and reproductive health care services
- ▶ Seek, receive and impart information related to sexuality
- ▶ Sexuality education
- ▶ Respect for bodily integrity
- ▶ Choice of one’s partner or partners
- ▶ Decision whether to be sexually active or not
- ▶ Consensual sexual relations
- ▶ Consensual marriage
- ▶ Decision whether or not, and when, to have children; and
- ▶ Pursue a satisfying, safe, and pleasurable sexual life.

² WHO Defining Sexual Health, Report of a Technical Consultation 2002.

Did you know?

- ▶ More than 80 countries prohibit sexual relations between consenting adults of the same sex. At least 7 countries make homosexual activity punishable by death.
- ▶ A study of men who have sex with men (MSM) in Senegal found that 43 percent of MSM had been raped at least once outside of the family home. 13 percent of MSM reported having been raped by a policeman.³
- ▶ According to the NGO Transgender Day of Remembrance, one transgender person is killed every month in the United States.⁴
- ▶ A study in India revealed that 70 percent of sex workers from 13 districts in Tamil Nadu had been beaten by police. More than 80 percent had been arrested without evidence.⁵
- ▶ In a study in Cambodia, 97 percent of 1,000 sex workers interviewed reported having been raped in the previous year.⁶
- ▶ When sex workers face violence at the hands of clients or pimps, they often cannot report it or seek a remedy because of anti-prostitution laws or laws against brothel-keeping and living off the earnings of prostitution.
- ▶ Laws against “trafficking in persons” can have the unintended result of closing borders to migrant workers, driving sex workers into dangerous underground situations, and undermining efforts to reach out to trafficked persons with HIV-prevention and other health services.⁷
- ▶ Even in countries where prostitution is legal, sex workers can be detained under laws against brothel-keeping, living off the earnings of prostitution, or simply being present in a residence where prostitution is taking place.⁸

Human rights violations against sex workers and LGBT communities not only have serious consequences for individuals. They can also threaten public health by driving marginalized groups' further underground and impeding their access to HIV-prevention and other health services.

³ Population Council Horizons Project, Meeting the Sexual Health Needs of Men who Have Sex with Men in Senegal, 2001.

⁴ Transgender Day of Remembrance, www.gender.org/remember/day/.

⁵ Sangram, Point of View and VAMP Newsletter, 2002.

⁶ C. Jenkins, "Violence and Exposure to HIV among Sex Workers in Phnom Penh, Cambodia" (Policy Project c/o Futures Group, Washington, DC, 2006). Found at: www.researchforsexwork.org/downloads/Jenkins-CambodiaFinal.pdf.

⁷ Open Society Institute, Fostering Enabling Legal Environments for Sex Workers' Health and Human Rights, 2006.

⁸ Canadian HIV/AIDS Legal Network, Criminalization of sex work(ers): The human rights case for law reform, 2006.

What is OSI's work in the area of sexual health and human rights for LGBT and sex workers?

OSI's work in sexual health and human rights focuses on the human rights of socially marginalized groups—particularly sex workers and lesbian, gay, bisexual, and transgender persons—in relation to HIV and AIDS. The main Network Program supporting work in this area is the **Sexual Health and Rights Project (SHARP)**.

OSI also supports LGBT rights through the **Human Rights and Governance Grants Program (HRGGP)**, which provides funding to groups combating discrimination against the LGBT community in Central and Eastern Europe and the former Soviet Union. HRGGP support has helped groups to decriminalize homosexuality, document and legally challenge rights abuses, and monitor the extent to which states are effectively implementing domestic and international non-discrimination standards. In addition, HRGGP provides support to a number of efforts promoting reproductive rights through a combination of litigation and advocacy in Central and Southeastern Europe.

Some examples of projects supported by SHARP include:

▶ Reports

- A regional report on barriers to sex workers' human rights by the Central and Eastern European Harm Reduction Network, 2005.
- Support for ground-breaking reports on the health of LGBT people in Central and Eastern Europe and sex workers, LGBT and MSM in Thailand.

▶ Convening

- “Fostering Enabling Legal Environments for Sex Workers' Health and Human Rights”, a global meeting in June 2006 to articulate a global vision for human rights approaches to sex workers' health.
- Support for a European Conference on the Rights of Sex Workers, which adopted a Manifesto and Declaration on the Rights of Sex Workers.

▶ Training

- A week-long training and hands-on advocacy workshop at the African Commission of Human and Peoples Rights, Banjul for self-identified LGBT rights advocates and their allies, May 2006.

▶ Networking

- Networking, community building sessions, and venues for people in sex work and LGBT advocates at the 2006 International AIDS Conference (IAC), including a regular conference digest, “IAC in SHARP Focus.”
- A coalition-building project to support allies in sex work, women's rights, health and human rights working together to educate media and policy makers globally and in US foreign policy and funding.

For more information, visit SHARP's website:
www.soros.org/initiatives/health/focus/sharp

Which are the most relevant international and regional human rights standards related to the sexual health of LGBT and sex workers?

Overview

A variety of human rights standards at the international and regional levels applies to sexual health. These standards can be used for many purposes:

- ▶ **To document** violations of sexual rights
- ▶ **To advocate** for the cessation of these violations
- ▶ **To sue** governments for violations of national human rights laws
- ▶ **To complain** to regional and international human rights bodies.

In the tables on the following pages, **examples** of human rights violations related to sexual health are provided. Relevant human rights **standards** are then cited, along with examples of legal **precedents** interpreting each standard.

How to read the tables

As you read through each table, ask yourself the following questions about the **violations, standards, and precedents and interpretations** that are cited:

EXAMPLES OF HUMAN RIGHTS VIOLATIONS

- Do any of these violations occur in your country? Are there other violations of this human right that exist in your country?

HUMAN RIGHTS STANDARDS

- Are these violations prohibited by the “human rights standards”? Can the standards be interpreted to apply to this violation?

PRECEDENTS AND INTERPRETATIONS

- Do any of the “examples of precedents and interpretations” apply to this issue? Can they be interpreted to apply to this issue?

Remember that human rights law is an evolving field, and that many human rights violations are not directly addressed by existing legal standards and precedents. Through ongoing documentation and advocacy, advocates can build a stronger body of jurisprudence on sexual health and human rights.

Abbreviations

In the tables, the seven treaties and their corresponding enforcement mechanisms are referred to with the following abbreviations:

Treaty	Enforcement Mechanism
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee (HRC)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Committee on Economic, Social and Cultural Rights (CESCR)
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee)
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child (CRC Committee)
African Charter on Human and People’s Rights (ACHPR) & Protocols	African Commission on Human and People’s Rights (ACHPR Commission)
[European] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)	European Court of Human Rights (ECtHR)
European Social Charter (ESC)	European Committee of Social Rights (ECSR)

Also cited are the former Commission on Human Rights (**CHR**) and various UN Special Rapporteurs (**SR**) and Working Groups (**WG**).

Table 1: Sexual health and the right to life

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A penal code imposes the death penalty for (homosexual or heterosexual) sex outside of marriage, or for sex work or related acts such as pimping. • Police officers rape or violently assault a homeless transgender person. • Sex workers or LGBT communities are denied access to services to prevent HIV, a fatal disease. • Police fail to investigate murders of people in sex work, whether, male, female or trans-identified. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 6(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p> <p>(2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.</p> <p>ACHPR 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.</p> <p>ECHR 2(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • CRC 6 	<p>CHR: has acknowledged that sexual orientation is grounds for concern for application of the death penalty or extrajudicial execution.</p> <p>HRC: has linked denial of the right to life to execution for same sex or other sexual behavior outside marriage; has also linked prostitution to increased susceptibility to violence, threatening sex workers' right to life {Colombia 1997}</p> <p>CEDAW Committee has repeatedly called for protection of sex workers' right to life through access to reproductive health services (e.g., Armenia (1997), Azerbaijan (1998), Namibia (1997), Cameroon (2000), DR Congo (1999)</p> <p>CRC: "The obligation to realize the right to life, survival and development also highlights the need to give careful attention to sexuality as well as to the behaviors and lifestyles of children, even if they do not conform with what society determines to be acceptable under prevailing cultural norms" {General Comment 3, Paragraph 9}</p> <p>SR Arbitrary and Extrajudicial Executions: have noted that capital punishment should not be applied to "morals" offences, and also called on states to prevent and investigate the killing of sexual minorities by non-state actors.</p>

Table 2: Sexual health and freedom from torture and cruel, inhuman and degrading treatment, including in prisons

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A psychiatrist provides “treatment” to an LGBT person with electric shock or hormone therapy without consent. • A gay man in prison is denied a bed and repeatedly assaulted and raped by cell mates, with the complicity or inaction of prison guards and correctional officials. • A sex worker is raped by police in detention with no investigation or remedy. • Police officials fail to investigate the sexual assault of a woman who uses drugs. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.</p> <p>ACHPR 5 Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.</p> <p>ECHR 3 No one shall be subjected to torture or to inhuman or degrading treatment or punishment</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (1987) • European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1989) • Code of Conduct for Law Enforcement Officials (1979) 	<p>HRC, CAT: have condemned the torture and ill-treatment of persons in detention based on their sexual orientation or gender identity.</p> <p>CEDAW Committee: has noted that sex workers "are at increased risk of violence and need equal protection of laws against rape and other forms of violence." {General Recommendation 19}</p> <p>ECtHR: has considered the rape of a woman in detention as torture and CID {Aydin v. Turkey, 1997}.</p> <p>SR Torture: has expressed concern at torture and CID directed at persons because of their sexual orientation or gender identity or expression, noting that torture and CID protections apply in criminal detention as well as to health and immigration facilities.</p>

Table 3: Sexual health and freedom from slavery and servitude

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A child is recruited and taken from his or her home for the purposes of sexual exploitation. • A man or woman is tricked into forced prostitution by the promise of work abroad. • A migrant worker is held against his or her will in a brothel and forced into sexual servitude. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 8 (1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.</p> <p>(2) No one shall be held in servitude.</p> <p>ECHR 4 (1) No one shall be held in slavery or servitude.</p> <p>ACHPR 5 All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.</p> <p>Note:</p> <p>These provisions should not interfere with freedom of movement and to choose one's residence. Consenting adults who migrate for work, including sex work, are not necessarily victims of slavery, servitude, or trafficking.</p> <p>See also:</p> <ul style="list-style-type: none"> • CEDAW 6 (prevention of prostitution and trafficking) • CRC 34 (protection from sexual exploitation) • Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2001) • UN Principles and Guidelines on Human Rights and Trafficking (2003) 	<p>HRC: has emphasized governments' duty to prosecute procurers of forced prostitution {Lithuania, 1997}.</p> <p>CAT: has defined trafficking in women as a form of violence, within CAT's mandate Greece (2001), Georgia (2001).</p> <p>CEDAW Committee: has defined trafficking as violence and a clear violation of women's rights {General Recommendation 19}; has noted that "States parties should ensure, without prejudice and discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country" (General Recommendation 24); has urged States to decriminalize or review laws that criminalize prostitution, e.g., China (1999) and Sweden (2001), and to enforce anti-prostitution laws in a non-discriminatory way or change laws that punish sex workers but not procurers, e.g., Hong Kong (1999), Egypt (2001), Guyana (2001), India (2000), Indonesia (1998), Lithuania (2000)).</p> <p>SR Human Rights Aspects of Trafficking: recommended that "potential victims of trafficking and exploitation, including women that have contracted HIV/AIDS or other sexually transmitted diseases, must not be immediately deported but given adequate legal, medical and social assistance, including access to interpretation in language they understand" {Lebanon, 2006}.</p>

Table 4: Sexual health and freedom from arbitrary arrest and detention

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Police arbitrarily arrest sex workers for violating municipal laws against public loitering. • A gay man is arrested without charge by undercover police officers in a “cruising” area. • A lesbian adolescent is detained without charge after her parents discover her sexual orientation and call the police. • A transgender or transvestite person is detained at a border for “suspicious behavior.” • A woman using drugs is detained in the hospital after giving birth and denied custody of her child. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 9(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.</p> <p>ACHPR 6 Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.</p> <p>ECHR 5(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • Code of Conduct for Law Enforcement Officials (1979) • Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) 	<p>ACHPR: asked Cameroon in 2006 about the arrest and detention of men for their alleged homosexuality.</p> <p>ACHPR Womens’ Protocol: has recognized gender-specific protections for women’s “life, integrity and security of the person.”</p> <p>WG Arbitrary Detention: issued view that the arrest and detention of men for having sex with men was an arbitrary act by the Egyptian police, not justified by claims of morality; also considered the detention of men in Cameroon a violation.</p>

Table 5: Sexual health and the right to privacy

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A penal code punishes non-marital sex or non-reproductive sex, such as any form of anal or oral sex, same-sex sexual behavior, commercial sex, sex with a condom, masturbation. • A doctor discloses a patient’s sexual history, health status, or sexual partner without consent. • Police officials keep lists of “suspected homosexuals” with photographs and fingerprints. • A newspaper publishes an article condemning the sexual orientation of a teacher or journalist. • Police raid a suspected brothel without evidence or judicial authorization. • Health care workers require young people to obtain parental consent as a condition of receiving sexual health services. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 17(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.</p> <p>ECHR 8(1) Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • CRC 16 	<p>HRC: established for the first time under an international treaty that the penalization of same sex behaviour is a violation of privacy and non-discrimination under ICCPR articles 2 and 17 {<i>Toonen v. Australia</i>, 1994}.</p> <p>CEDAW Committee: since <i>Toonen</i>, has used privacy as the basis for numerous comments on sexual rights {see, e.g., CEDAW General Recommendation 24, 2000}.</p> <p>ECtHR: affirmed that the penalization of same sex behaviour violates the right to privacy (<i>Dudgeon v. UK</i> and later cases), and protected the right to transition from one gender to another, although not to remain between genders {<i>Goodwin v. UK</i>, 2002}.</p>

Table 6: Sexual health and freedom of expression and information

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • Young people are denied information about HIV and AIDS, safer sex, and condoms, as well as about sexual behaviors such as homosexuality. • A state agency in charge of newspaper distribution refuses to distribute an LGBT publication. • A transvestite student is forced by school authorities to dress according to his “biological sex”. • Nongovernmental organizations are compelled to adopt a policy “opposing prostitution” as a condition of government funding for work on HIV and AIDS or anti-trafficking. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 19(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p> <p>ACHPR 9 (1) Every individual shall have the right to receive information.</p> <p>ECHR 10(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.</p> <p>(2) Every individual shall have the right to express and disseminate his opinions within the law.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • ICESCR 13 (right to education) • CRC 13 (right to education) 	<p>CRC: concluded that adolescent’s right to information about HIV and AIDS is part of the right to information {General Comment 3, Paragraph 4, 2003}.</p> <p>SR Education: has noted the need for sexuality education in schools, and for schools to ensure the safety of gay and lesbian students.</p> <p>SR Freedom of Expression and Information: has commented on or expressed concern about: the abuse of the rights of sex workers and LGBT persons; restrictions on public speech and denial of HIV and AIDS information to these communities; detention of persons in Kuwait because of a letter mentioning a lesbian relationship, and the arrests and harassment of two gender-non-conforming women in Uganda.</p> <p>SR Human Rights Defenders, SR Racism, SR Violence against Women, and SR Health: collectively criticized a Bill in Nigeria that would criminalize persons seeking same sex relationships and marriage, as well as organizations working on or speaking about such issues (2007).</p>

Table 7: Sexual health and freedom of assembly and association

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A government prohibits and criminalizes any associations for promotion of LGBT rights, or refuses to register an LGBT association. • A gay pride parade is banned by city authorities. • A sex worker group is denied the right to register as an NGO on the grounds that it is “promoting criminality”. • In order to discourage prostitution, a government prohibits sex workers from forming a union or professional association. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 21 The right of peaceful assembly shall be recognized.</p> <p>22 The right of peaceful assembly shall be recognized.</p> <p>No restrictions may be placed on the exercise of [these rights] other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (<i>ordre public</i>), the protection of public health or morals or the protection of the rights and freedoms of others.</p> <p>ACHPR 10 Every individual shall have the right to free association provided that he abides by the law.</p> <p>11 Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.</p> <p>ECHR 11 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.</p>	<p>Various mechanisms: have noted denial of LGBT rights to public assembly and marching as well as related violations to their security and safety.</p> <p>SR Human Rights Defenders, SR Racism, SR Violence against Women, and SR Health: collectively criticized a Bill in Nigeria that would criminalize persons seeking same sex relationships and marriage, as well as organizations working on or speaking about such issues (2007).</p> <p>ECtHR: declared ban on LGBT pride march in Warsaw in 2005 illegal and discriminatory {Baczowski and Others v. Poland, 2007}.</p>

Table 8: Sexual health and the right to marry and found a family

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A government refuses to accord to unmarried same-sex couples the same rights and responsibilities it accords to unmarried different-sex couples • A lesbian woman is denied the right to artificial insemination services • A single gay man is denied the right to adopt a child • A woman living with HIV is forced to terminate her pregnancy or abandon her child • Sex workers are denied legal and social status for their families • The law prevents adult children of sex workers from living with their parents, on the grounds this constitutes “living off the avails of prostitution.” 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 23(2) The right of men and women of marriageable age to marry and to found a family shall be recognized.</p> <p>ECHR 12 Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • CEDAW 16.1 • African Women’s Protocol 14 	<p>No UN-based expert has specifically applied this right to LGBT identified persons, same-sex relationships, or sex workers who have faced abuses of their family rights including respect for marriage and parental rights. However:</p> <p>HRC: found Australia’s failure to ensure same sex pension rights violated the right to equal protection under law {Young v. Australia}.</p> <p>ECtHR: found Portugal’s denial of custody rights to a biological father in a same-sex relationship violated rights of privacy and family life {<i>da Silva Mutua v. Portugal</i>}; also found UK’s restricting two transsexual women from marrying violates privacy and family rights if the state does not recognize their new identity {Goodwin v. UK and I v. UK}.</p> <p>ECtHR: decided that the state cannot justify discrimination of unmarried same-sex couples by “protection of traditional family”, thus saying that the state should give same rights to same-sex and different-sex unmarried couples (Karner v. Austria, 2003)</p> <p>SR Human Rights Defenders, SR Racism, SR Violence against Women, and SR Health: collectively criticized a Bill in Nigeria that would criminalize persons seeking same sex relationships and marriage, as well as organizations working on or speaking about such issues (2007).</p>

Table 9: Sexual health and right to bodily integrity

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A transsexual or transgender person is raped or assaulted by police. • A lesbian is raped by family friends to “make her straight”. • The police fail to investigate beatings and sexual assaults of men having sex with men. • Schools fail to protect students from attacks for sexual or gender non-conformity. • Police fail to investigate the rape of a sex worker, claiming she “asked for it”. • A Roma woman is sterilized against her will. 	
Human Rights Standards	Precedents and Interpretations
<p>ACHPR 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.</p> <p>Note:</p> <p>The right to bodily integrity is not specifically recognized under the ICCPR or ICESCR, but has been interpreted to be part of the right to security of the person, to freedom from torture and cruel, inhuman, and degrading treatment, and the right to the highest attainable standard of health. Similarly, the right to bodily integrity is not specifically recognized in CEDAW, although CEDAW has been widely interpreted to include the right to protection from violence against women.</p> <p>See also:</p> <ul style="list-style-type: none"> • CRC 19.1 • CEDAW 5(a) • African Women's Rights Protocol 3, 4, 5 	<p>CEDAW Committee: has noted that sex workers "are at increased risk of violence and need equal protection of laws against rape and other forms of violence." {General Recommendation 19}</p> <p>WG Enforced or Involuntary Disappearances: has noted that, “An aspect of disappearances that has been underreported in the past and continues at the present time relates to the way in which acts of disappearance are perpetrated in conjunction with other gross violations, with targets drawn from among the most vulnerable groups in society. . . . Common examples brought to our notice were: disappearances, combined with “social cleansing,” the urban poor, the unemployed, and the so-called “undesirables,” including <i>prostitutes, petty thieves, vagabonds, gamblers and homosexuals as the victims</i>” [emphasis added].</p>

Table 10: Sexual health and the right to non-discrimination

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A person is denied a job, housing, health care, education, or access to goods and services because of sexual orientation, gender identity or expression, or being a sex worker. • A TV program is prohibited by authorities because it features a same-sex kiss while allowing different-sex kisses to be aired regularly. • An organization for boys (e.g., “Boy Scouts”) denies membership to LGBT people. • A young woman is expelled from school because of pregnancy. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 2(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>ICCPR 26 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>ACHPR 2 Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.</p> <p>ECHR 14 The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. For a similar provision, Protocol 12 of ECHR 1, "other status" has been interpreted by the ECtHR to include sexual orientation.</p>	<p>HRC: has recognized the right to non-discrimination on the basis of sexual orientation in relation to privacy {<i>Toonen v. Australia</i>} and access to benefits {<i>Young v. Australia</i>}, but not access to marriage {<i>Joslin v. New Zealand</i>}; has also observed importance of non-discrimination on the basis of sexual orientation and gender identity or expression in access to health care and housing, as well as freedom of speech, freedom from torture, and right to life.</p> <p>Note: UN treaty bodies have not determined whether to criticize laws against adultery, sodomy, and fornication, rather than recommending <i>equal penalties</i> for men and women under these laws {see, e.g., HRC concluding comments to Egypt, 2002}.</p> <p>CEDAW Committee: has noted impact of prostitution laws on stigma and violence against sex workers, but has not questioned laws themselves.</p> <p>CRC: has considered the equal right of adolescents on the basis of sexual orientation and health status to gain access to HIV-prevention tools {General Comment 4, 2003}.</p>

Table 11: Sexual health and right to the highest attainable standard of health

Examples of Human Rights Violations	
<ul style="list-style-type: none"> • A national health system fails to provide anti-retroviral treatment to LGBT people or sex workers, while making it accessible to others. • Perceived LGBT persons are treated with stigma and judgmental attitudes in the health system. • Police confiscate condoms from sex workers, claiming they are evidence of illegal activity. • A woman living with HIV is denied condoms or services to prevent mother-to-child transmission of HIV, and instead discouraged from having sex. 	
Human Rights Standards	Precedents and Interpretations
<p>ICESCR 12(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>12(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: . . . (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases.</p> <p>ACHPR 16 (1) Every individual shall have the right to enjoy the best attainable state of physical and mental health.</p> <p>(2) States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • CEDAW 12(1) • CRC 24(1) • ESC (1) 	<p>CESCR: has urged governments to protect sex workers' right to health as part of overall public health {Dominican Republic, 1997}.</p> <p>CEDAW Committee: has called for access to access to sexual health information, education, and services for all women {General Recommendation 24}; in Uganda (2002) and Cameroon (2000), has recommended that the government ensure health services for sex workers so as to curb rise in HIV and AIDS; has repeatedly called for protection of sex workers' right to health through access to reproductive health services {e.g., Armenia (1997), Azerbaijan (1998), Namibia (1997), Cameroon (2000), DR Congo (1999)}.</p> <p>SR Health: Included freedom of sexual orientation in report on fundamental principles in sexual and reproductive rights (2004); expressed concern that stigma against sex workers and injecting drug users in health facilities poses a barrier to services {Report of Mission to Romania, 2005}.</p> <p>SR Violence Against Women, Torture, Freedom of Expression: have all addressed barriers faced by sexually stigmatized people in receiving health care with respect and safety.</p>

What are some examples of effective human rights programming in the area of sexual health for LGBT and sex workers?

Introduction

In this section, you are presented with **four examples** of effective activities in the area of sexual health and human rights. These are:

1. Reforming Federal Prostitution Laws in **New Zealand**
2. Organizing to End Abuse of Sexual and Gender Minorities in **India**
3. Gay Rights Advocacy in **Romania**
4. Lesbian Rights as Women’s Rights in **Namibia**.

Right-based programming

As you review each activity, ask yourself whether it incorporates the **five elements** of “rights-based” programming:

- ▶ **Participation**
Does the activity include participation by affected communities, civil society, marginalized groups, and others? Is it situated in close proximity to its intended beneficiaries?
- ▶ **Accountability**
Does the activity identify both the *entitlements of claim-holders* and the *obligations of duty-holders*? Does it create mechanisms of accountability for violations of rights?
- ▶ **Non-discrimination**
Does the activity identify who is most vulnerable, and how? Does it pay particular attention to the needs of vulnerable groups such as women, minorities, indigenous peoples, and prisoners?
- ▶ **Empowerment**
Does the activity give its beneficiaries the power, capability, capacity, and access to bring about a change in their own lives? Does it place them at the center of the process rather than treating them as objects of charity?
- ▶ **Linkage to rights**
Does the activity define its objectives in terms of legally enforceable rights, with links to international, regional, and national laws? Does it address the full range of civil, political, economic, social, and cultural rights?

Finally, ask yourself whether the activity might be replicated in your country:

- ▶ Does such an activity **already exist** in your country?
- ▶ If not, should it be **created**? If so, does it need to be **expanded**?
- ▶ What **steps** need to be taken to replicate this activity?
- ▶ What **barriers** need to be overcome to ensure its successful replication?

Example 1: Reforming federal prostitution laws in New Zealand

In 2003, New Zealand, an island country of about 4 million persons, reformed its sexual offences law to legalize some forms of prostitution and brothel-keeping. Leading the effort were the members of New Zealand Prostitutes' Collective, an organization made up of current and past sex workers.

Project type

Law reform

Health and human rights issue

Sex workers in New Zealand sought a safe work environment to protect their rights. Health and human rights advocates argued that criminal laws encouraged operators of massage parlours, escort agencies, and brothels to go underground. This made operators unwilling to display safer sex literature and other products, impeded sex workers' access to sexual health information, and allowed unacceptable working conditions—including unfair dismissals, withholding payment, and denial of the right to refuse clients—to persist.

Actions taken

NZPC took a series of actions to reform the law to allow some forms of prostitution and brothel-keeping. Specifically, they:

- ▶ Formed a participatory law reform coalition made up sex workers, health professionals, HIV/AIDS groups, human rights groups, some professional women's groups (including the YWCA), parliamentarians, and civil servants
- ▶ Developed carefully-researched arguments for how reforming prostitution laws would contribute to the protecting the rights of people in prostitution, ending the exploitation of adults, and keeping children out of prostitution
- ▶ Developed relationships with the media, so that journalists asked NZPC for its opinion anytime they reported on the reform of prostitution laws.

Results and lessons learned

- ▶ The coalition recruited a diverse membership, proving that sex workers can be leaders in a law reform effort. However, the coalition had difficulty attracting street-based (as opposed to brothel-based) sex workers.
- ▶ NZPC emerged as a respected voice in the media on the issue of prostitution laws in New Zealand. However, sensational stories about prostitution continued and undermined the case for law reform.
- ▶ In 2003, the national law was reformed to allow some forms of prostitution and brothel-keeping. However, the intent of the reform has been undermined at the local level, as municipal authorities have resisted its implementation and found other ways to crack down on sex work.

Contact

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Example 2: Organizing to end abuse of sexual and gender minorities in India

SANGAMA, a queer resource centre in Bangalore, and the People's Union for Civil Liberties-Karnataka (PULC-K), a well-known human rights group in India, released two reports that became the basis of a many different actions in support of the health and human rights.

Project type

Documentation and advocacy; legal services

Health and human rights issue

Sexual and gender minorities in Bangalore, India faced ongoing police abuse, discrimination, and criminalization under anti-sodomy and anti-trafficking laws. Particularly vulnerable were *hijras*, a group of people born as men but who dress as women and enact some women's roles as well as a culturally-specific third-gender role. Outreach workers providing these communities with HIV-prevention services were also targets of police abuse.

Actions taken

With leadership from affected communities, SANGAMA and PULC-K undertook a documentation project to build the case for human rights protections for sexual and gender minorities and sex workers. Specifically, they:

- ▶ Formed effective collaborations with a human rights organization, a feminist collective, and lawyers working with sexual and gender minorities
- ▶ Conducted extensive interviews with victims and perpetrators of human rights abuses, and documented human rights violations
- ▶ Initiated direct interventions such as providing legal services “on-call” to persons in detention and persons facing abuse.

Results and lessons learned

- ▶ Due to the participatory and collaborative nature of the project, new leaders from the LGBT and *hijra* communities began to emerge and to influence prominent national campaigns for the repeal of sodomy laws. Advocates from diverse fields—health, women’s rights, Dalit rights—began to work together for the first time. This leadership was difficult to sustain, however, due to low budgets, stigma, and the mobility of marginalized groups.
- ▶ Through interviews, many human rights violations that had not previously been documented were finally exposed. This placed several human rights issues—such as rape of sexual minorities and the right to sexuality information—“on the map.” Researchers and advocates began to criticize a range of laws affecting the health and rights of marginalized groups.
- ▶ At the local level, the conduct of police, family members, and medical professionals was publicly challenged. However, health professionals were reluctant to accept that their conduct toward sexual minorities was abusive. Local challenges, moreover, were not enough to influence national and international laws and policies.

Contact

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Example 3: **Gay rights advocacy in Romania**

Through a pair of influential human rights reports, as well as leveraging European Union accession and HIV/AIDS arguments, a gay rights group in Romania won reform of the penal code and the adoption of legislation prohibiting discrimination on the basis of sexual orientation.

Project type

Law reform, documentation and advocacy

Health and human rights issue

LGBT persons in Romania faced rampant discrimination and state-sponsored homophobia. Until 2001, the Romanian Penal Code penalized same-sex relations with 1-5 years in prison, with the support of religious and nationalist groups. One of the effects of the law was to drive same-sex activity underground and to impede HIV-prevention and outreach efforts among men having sex with men.

Actions taken

Romanian and international groups working to protect the rights and health of LGBT populations developed a range of claims within European and international rights frameworks. Specifically, they:

- ▶ Issued two major reports on LGBT rights in Romania, one by Human Rights Watch and the International Gay and Lesbian Human Rights Commission, and the other commissioned by UNAIDS
- ▶ Registered the LGBT rights group, ACCEPT, as a non-governmental organization (the NGO had to register as a human rights organization, not an LGBT organization, because the law denied LGBT persons the right to freedom of assembly and association)
- ▶ Pressured Romania to conform to European Union and Council of Europe standards on non-discrimination on the basis of sexual orientation, as part of Romania's process of accession to the EU.

Results and lessons learned

- ▶ The penal code of Romania was amended in 2000 and further revised again in 2001. With guidance from the EU, Romania adopted comprehensive anti-discrimination mechanism that includes protection from discrimination on the grounds of both sexual orientation and HIV status.
- ▶ ACCEPT successfully registered as a human rights group. While it was illegal to advocate for LGBT rights, it made arguments and alliances with other human rights groups around freedom of expression and association. It has been less successful at connecting to advocacy against gender inequality, violence against women, and transgender rights.
- ▶ Accession to the EU and pressure to prevent HIV/AIDS—especially when voiced by international agencies—provided important leverage for reforming the penal law. However, some religious and political leaders continue to foment anti-gay prejudice and violence.

Contact

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Example 4: Lesbian rights as women's rights in Namibia

In the Southern African country of Namibia, a network of women's organizations led by the NGO Sister Namibia included lesbian rights in a national Manifesto on women's rights. Many political attacks followed, but the network continued to advocate for lesbian rights as part of women's rights.

Project type

Networking and coalition-building

Health and human rights issue

The elimination of all forms of discrimination against women, the protection of gender equality, and the promotion of women's health must include lesbian as well as heterosexual women. Yet it can be challenging to include lesbians in the women's movement, particularly when they are politically useful targets for politicians claiming to protect "national values."

Actions

Sister Namibia, a collective of women committed to gender and racial equality, undertook a series of actions to include lesbian rights in their advocacy. Specifically, they:

- ▶ Included references to lesbian rights in a 90-page Manifesto on women's rights, following a broad national consultation beginning in 1999
- ▶ Challenged numerous attacks by the dominant political party in Namibia (SWAPO, the South West African People's Organization) that lesbians and homosexuals are selfish, individualistic, and anti-Namibian—including from women's rights advocates in the government
- ▶ Continued to advance the rights of lesbians, including by creating a lesbian working group to work with Black women in townships, beginning a continent-wide Coalition of African Lesbians, and exploring how the Women's Protocol to the ACHPR can be used to advance lesbian rights.

Results and lessons learned

- ▶ The government attacks had the ironic effect of creating more support for lesbian rights, and increasing solidarity among women's rights and lesbian rights advocates. At workshops in rural areas, participants found new and creative arguments to defend the Manifesto and the rights of lesbians.

"They are our daughters, our mothers and our sisters, we can't just throw them out; they pay taxes like everyone else; we know who is leading the women's movement here and fighting for all women's rights."

- ▶ However, advocacy for lesbian rights has not attracted the same attention in Africa as advocacy against sodomy laws and for the rights of gay men.
- ▶ Lesbians become politically useful targets when governments—including some feminist-identified government officials who are anti-lesbian—want to claim to protect "African values."

Contact

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Where can I find additional resources on sexual health and human rights for LGBT and sex workers?

Resources

To further your understanding on the topic of sexual health and human rights, a list of commonly used resources has been compiled and organized into the following categories:

- ▶ Declarations and resolutions: UN
- ▶ Declarations and resolutions: non-UN
- ▶ Books
- ▶ Reports, key articles, and other documents
- ▶ Health guidelines
- ▶ Periodicals
- ▶ Blogs, wikis, search engines, and list-serves
- ▶ Training opportunities

When applicable, resources for this chapter have been further divided into three areas of sexual rights work:

- ▶ LGBT rights
- ▶ Sex workers' rights
- ▶ Sexual and reproductive health

Declarations and resolutions: UN

- ▶ Fourth World Conference on Women (Beijing 1995)
The Platform for Action of the Beijing Conference states that “the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.”
Source: www.un.org/womenwatch/daw/beijing/platform/index.html

- ▶ International Conference on Population and Development (Cairo 1994)
The Programme of Action of the ICPD does not refer to sexual rights, but it contains references to the link between sexuality, sexual health, and reproductive health, and to the right of adolescents to information about sexuality and sexual health.
Source: www.unfpa.org/icpd/summary.htm

Declarations and Resolutions: non-UN

LGBT rights

- ▶ ADEFRA Declaration on Violence Against Lesbian Women in Africa
Source:
www.ilga.org/news_results.asp?LanguageID=1&FileCategoryID=1&FileID=901&ZoneID=4/
- ▶ American Psychological Association Policy Statement on Discrimination against Homosexuals
Source: Conger, J.J. (1975). Proceedings of the American Psychological Association, Incorporated, for the year 1974: Minutes of the annual meeting of the Council of Representatives. *American Psychologist*, 30, 620-651.
www.apa.org/pi/lgbc/policy/discrimination.html.
- ▶ European Parliament Resolutions on Racism and Homophobia (January 2006)
Source: www.ilga.org/news_results.asp?FileID=736
- ▶ Petition: Putting Sexuality on the Agenda (NGO petition to put sexuality on the agenda at the Fourth World Conference on Women in Beijing, 1995)
Source:
www.qrd.org/qrd/orgs/LAMBDALLETTERS/1995/un.womens.conf-02.95
- ▶ The Montreal Declaration (adopted by the International Scientific Committee of the International Conference on LGBT Human Rights, July 2006)
Source: www.declarationofmontreal.org
- ▶ Transfeminist Manifesto by Emi Koyama
Source: www.eminism.org/readings/index.html
- ▶ Recommendation 1474, Parliamentary Assembly of the Council of Europe (“Situation of Lesbians and Gays in the Council of Europe Member States”)
Source:
assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta00/ercc1474.htm

- ▶ Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity
Source: yogyakartaprinciples.org, released March 26, 2007 by a group of 29 international human rights experts

Sex workers' rights

- ▶ A Declaration on the International Day to End Violence against Sex Workers (Zi Teng, Hong Kong, 2005)
Source: www.ziteng.org.hk/news_e.html
- ▶ Declaration on the Rights of Sex Workers (International Committee on the Rights of Sex Workers in Europe, 2005)
Source: www.sexworkeurope.org
- ▶ Durbar Mahila Samanwaya Committee Manifesto for Sex Workers' Rights. (1997)
Source: www.nswp.org
- ▶ Sex Workers in Europe Manifesto (International Committee on the Rights of Sex Workers in Europe, 2005)
Source: www.sexworkeurope.org
- ▶ Sisonke Sex Worker Movement Mission Statement (South Africa, 2004)
Source: www.sweat.org.za
- ▶ World Charter for Prostitutes Rights (International Committee for Prostitutes Rights, Amsterdam 1985)
Source: www.walnet.org/csis/groups/icpr_charter.html

Sexual and reproductive health and rights

- ▶ Adolescent Sexual and Reproductive Health Rights Document (National Adolescent Friendly Clinic Initiative)
Source: www.lovelife.org.za
- ▶ A New Bill of Sexual Rights and Responsibilities (American Humanist Association, 1976)
Source: www.americanhumanist.org/about/sexual-rights.html.
- ▶ Charter on Sexual and Reproductive Rights (International Planned Parenthood Federation, March 2000 update)
Source: www.ippf.org/NR/rdonlyres/6C9013D5-5AD7-442A-A435-4C219E689F07/0/charter.pdf
- ▶ HERA: Health, Empowerment, Rights & Accountability (Women's Sexual and Reproductive Rights and Health Action Sheets, 1998)
www.iwhc.org/resources/heraactionsheets.cfm

- ▶ SexPanic! (A Declaration of Sexual Rights, 1997)
Source: www.worldsexology.org/about_sexualrights.asp
- ▶ Declaration of Sexual Rights (XIV World Congress of Sexology, 1999)
Source: www.worldsexology.org/about_sexualrights.asp.

Books

General

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Reports, key articles, and other documents

General

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Source:
daccessdds.un.org/doc/UNDOC/GEN/G04/109/33/PDF/G0410933.pdf?OpenElement
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Source: hrw.org/reports/2004/egypt0304/
- ▶ IGLHRC. *Off the Map: How HIV/AIDS Programming Is Failing Same-Sex Practicing People in Africa* (2007).
- ▶ IGLHRC, *Making the Mountain Move: An Activist's Guide to How International Human Rights Mechanisms Can Work for You*
Source: www.iglhrc.org/files/iglhrc/reports/unguide.pdf
- ▶ Joint Statement: Four key experts (on proposed Nigerian legislation to criminalize same-sex relations, February 2007).
Source: www.unhchr.ch/hurricane/hurricane.nsf/view01/A8F5CC6EAC2D6C52C125728B0054CD9B?opendocument
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Source:
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- ▶ Litigating Reproductive Rights: Using Public Interest Litigation and International Law to Promote Gender Justice in India. Source: www.reproductiverights.org/pdf/media_bo_India1215.pdf

Health guidelines

Health protocols for LGBT and intersex people

- ▶ Callen-Lorde Community Health Center, New York City
Many community clinics use a combination of Tom Waddell Health Center and Callen-Lorde CHC Protocols. The Callen Lorde Protocols are only available by direct request (use link for request form). Providers like them because they are visit-by-visit specific and have a strong informed consent component. [PDF Document]

Source: www.callen-lorde.org/documents/TG_Protocol_Request_Form2.pdf

- ▶ Shifting the Paradigm of Intersex Treatment - Key Points of Comparison Between the Concealment-centered Model and the Patient-centered Model. Prepared by Dr. Alice Dreger for the Intersex Society of North America. [includes link to PDF Document]
Source: www.isna.org/compare.
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Occupational safety standards for sex workers

- ▶ “A Guide to Best Practice: Occupational Health and Safety in the Australian Sex Industry.” 2000. Website of the Australian Federation of AIDS Organizations.
Source:
www.afao.org.au/view_articles.asp?pxa=ve&pxs=100&pxsc=&pxsgc=&id=204
- ▶ “A Guide to Occupational Health and Safety in the New Zealand Sex Industry.” Website of the Department of Occupational Safety and Health of New Zealand, 2004.
Source: www.osh.dol.govt.nz/order/catalogue/235.shtml

Periodicals

- ▶ Health and Human Rights: An International Journal: Special Focus: Sexuality, Human Rights, and Health Vol. 7, No. 2.
Source: www.hsph.harvard.edu/xfbcenter/v7n2.htm
- ▶ *Research for Sex Work* is the annual journal of the Network of Sex Work Projects.
Source: www.researchforsexwork.org, www.nswp.org/r4sw/index.html

Websites

General

- ▶ Human Rights Watch
www.hrw.org
- ▶ Amnesty International
www.amnesty.org
- ▶ Canadian HIV/AIDS Legal Network
www.aidslaw.ca/EN/index.htm
- ▶ Open Society Institute Sexual Health and Rights Project (SHARP)
www.soros.org/initiatives/health/focus/sharp

LGBT rights

- ▶ Africa: Behind the Mask
www.mask.org.za
- ▶ ARC International
www.arc-international.net/index.html
- ▶ Asian & Pacific Islander Wellness Center Transgender Page
www.apowellness.org/transgen.html
- ▶ Center for Research and Comparative Legal Studies on Sexual Orientation and Gender Identity
www.cersgosig.informagay.it/inglese/progetto.html
- ▶ Critical Health Needs for MTF Transgenders of Color - Center for AIDS Prevention Studies [PDF Document]
- ▶ Emi Koyama's website www.eminism.org, and resource page. [Eminism.org](http://www.eminism.org) is the web site for Emi Koyama, the activist/author/academic working on intersex, sex workers' rights, (queer) domestic violence, gender queer, anti-racism, and other issues.
www.eminism.org/readings/index.html
- ▶ Equality and Parity: A Statewide Action for Transgender HIV Prevention and Care - Transcripts and audio recordings from conference held in San Francisco, May 5, 2005.
hivinsite.ucsf.edu/InSite?page=cftgcare-00-00
- ▶ *Europe*: European Region of the International Lesbian and Gay Association
www.ilga-europe.org

- ▶ Gender Identity Project
www.gaycenter.org/program_folders/gip/index_html/program_view_caps.ucsf.edu/projects/TRANS/transresearch.php
- ▶ Hudson's FTM Resource Guide
www.ftmguide.org
- ▶ International Gay and Lesbian Human Rights Commission
www.iglhrc.org
- ▶ International Lesbian and Gay Association
www.ilga.org
- ▶ Russian LGBT Network
lgbtnet.ru
- ▶ Southeastern Europe Queer Network
www.seequer.net
- ▶ Survivor Project - Non-profit organization for intersex and trans survivors of domestic and sexual violence
www.survivorproject.org
- ▶ The Sylvia Rivera Law Project works to guarantee that all people are free to self-determine gender identity and expression, regardless of income or race, and without facing harassment, discrimination or violence.
www.srlp.org/ and www.srlp.org/index.php?sec=03A&page=issues. Training materials: www.srlp.org/index.php?sec=03L&page=trainingmat
- ▶ Transgender Care Project from the Transgender Health Program in Vancouver, Canada
www.vch.ca/transhealth/resources/tcp.html
- ▶ Transgender Awareness Training and Advocacy
www.tgtrain.org
- ▶ Pacific AIDS Education and Training Center transgender training resources
Powerpoint slideshows available for download
www.ucsf.edu/paetc/resources/index.html#transgender
- ▶ Trans-health.com - a volunteer-run website providing information on health and fitness for trans people.
www.trans-health.com
- ▶ TS Roadmap.com - Resources focused on MTF transition concerns.
www.tsroadmap.com

- ▶ Transsexual Women's Resources by Anne Lawrence
www.annelawrence.com/twr
- ▶ "A Human Rights Investigation in the Medical "Normalization" of Intersex People" [PDF]. The product of years of work, this long-awaited report was released on May 5, 2005 by the San Francisco Human Rights Commission.
www.isna.org/files/SFHRC_Intersex_Report.pdf

Sex workers' rights

- ▶ The Asia Pacific Network of Sex Workers site features extensive information about rights violations in 100% Condom Use Programs and information for transgender sex workers.
www.apnsw.org
- ▶ Bay Area Sex Worker Advocacy Network. This is sex worker and activist Carol Leigh's website.
www.bayswan.org
- ▶ Central and Eastern European Harm Reduction Network and allied organization (SWAN/HCLU)
www.ccehrn.org/old_site
- ▶ HOOK Online is "an informative 'zine and program by, for and about men in the sex industry."
www.hookonline.org
- ▶ International Committee for the Rights of Sex Workers in Europe
www.sexworkeurope.org
- ▶ International Union of Sex Workers
www.iusw.org
- ▶ Network of Sex Work Projects
www.nswp.org
- ▶ UNAIDS
www.unaids.org/en/Issues/Affected_communities/sex_workers_and_clients.asp
- ▶ Scarlet Alliance
www.scarletalliance.org.au
- ▶ Sex Worker Rights Advocacy Network (SWAN)
www.tasz.hu/index.php?op=contentlist2&catalog_id=2735&cookieLanguage=en
- ▶ TAMPEP
tampep.com

Sexual and reproductive health and rights

- ▶ Africa Regional Sexuality Resource Centre
www.arsrc.org
- ▶ PEPFAR Watch
www.pepfarwatch.org
- ▶ Reproductive Health Matters
www.rhmjournal.org.uk
- ▶ South and South East Asia Resource Center on Sexuality
www.asiasrc.org
- ▶ WHO
www.who.int/reproductive-health/gender/sexual_health.html
- ▶ World Health Organization, Sexual Health Homepage
www.who.int/reproductive-health/gender/sexual_health.html
- ▶ Eldis – Sexual and Reproductive Health and Rights
www.eldis.org/health/srhr/index.htm

Blogs, Wikis, and list-serves

LGBT rights (check out items in yellow – not clear what the URL is)

- ▶ List of gay rights organizations
en.wikipedia.org/wiki/List_of_gay-rights_organizations
- ▶ SOGI (global sexual orientation / gender identity / human rights listserv) moderated by ARC International
postmaster@list.arc-international.net
- ▶ EuroQueer (European LGBT rights listserv, used to share information and debate hot current issues, hosted by QueerNet Project)
euro-queer-owner@groups.queernet.org
- ▶ SEEQ Network (open e-mail list of Western Balkans LGBT activists: see qmreza@yahoo.com)
www.biresource.org/bidir-cgi/view_entry.cgi?record_id=8YWcn7a1

Sex workers' rights

- ▶ The Network of Sex Work Projects maintains various listservs, one general, and others regional.
 - There are two African lists, one using French and one using English.

- To join, write to secretariat@nswp.org, including your reasons for wanting to join.
- The Asia Pacific Network of Sex Workers listserv uses English. To join, write to apnswbkk@gmail.com.
- ▶ Laura Agustín maintains a romance-language listserv. To join, write to laura@nodo50.org explaining why you would like to join.
- ▶ International Union of Sex Workers website has instructions for joining their listserv.
www.iusw.org
- ▶ Sex Worker Rights Advocacy Network (SWAN) Newsletter
To subscribe or unsubscribe to SWAN News, send a message to [swan-subscription at tasz dot hu](mailto:swan-subscription@tasz.hu) with the following text in the subject line: “Subscribe SWAN News”
- ▶ Sex Workers Present is the video blog of the Network of Sex Work Projects
sexworkerspresent.blip.tv

Sexual and reproductive health and rights

- ▶ Family Care International. “Sexual and Reproductive Health: Presentation Tools.” 2001. CD-ROM.
- ▶ *Global Reproductive Health Forum*: A research library with bibliographic references on sexual rights.
www.hsph.harvard.edu/organizations/healthnet (This site is unavailable at this writing.)
- ▶ Reproductive and Sexual Health law list-serv ((REPROHEALTHLAW-L): an electronic mailing list managed by the Reproductive and Sexual Health Law Programme at the University of Toronto. To subscribe, email reporhealth.law@utoronto.ca
- ▶ *Women’s Human Rights Resources*: Annotated bibliographic references on a wide range of topics, including sexual orientation, reproductive rights, violence against women, health and well-being, among others.
www.law-lib.utoronto.ca/Diana

Training opportunities

- ▶ CREA Sexuality and Rights Institute
Source: www.sexualityinstitute.org/home.htm

- ▶ François-Xavier Bagnoud (FXB) Center for Health and Human Rights, Harvard University, *Health and Human Rights Conference List*: An on-line listing of news, meetings and events, and information and resources.
Source: www.fxb.org

- ▶ Goodrum, Alexander John. Gender Identity 101: A Transgender Primer.
Source: sagatucson.org/saga/index.php?option=com_content&task=view&id=42&Itemid=94

- ▶ Program for the Study of Sexuality, Gender, Health, and Human Rights, Columbia University, New York. Program description, seminar listings, fellowship applications and other resources.
Source: cpmcnet.columbia.edu/dept/gender/

- ▶ The South and Southeast Asia Resource Centre on Sexuality.
Source: www.asiasrc.org

- ▶ SIDA, LGBT and Human Rights – 2007 Training Curriculum.
Source: app.rfsl.se/apa/19/public_files/Sida_LGBT_and_Human_Rights_2007.pdf

- ▶ Summer Institute on Sexuality, Culture and Society, University of Amsterdam, The Netherlands.
Source: www.ishss.uva.nl/SummerInstitute

- ▶ The Swedish Association for Sexuality Education (RFSU)
Source: www.rfsu.se/training_programmes.asp

- ▶ TARSHI South and South East Asia Training
Source: www.asiasrc.org/regional-institute.php

What are key terms related to sexual health and human rights for LGBT and sex workers?

Glossary

A variety of terms is used in sexual health and human rights work. In this section, the terms are organized into the following categories:

- ▶ Terms related to sex and sexuality
- ▶ Terms related to gender and gender identity
- ▶ Terms related to sexual orientation
- ▶ Terms related to prostitution and sex work

Terms related to sex and sexuality

I

Intersex

Refers to a variety of conditions in which an individual is born with aspects of reproductive/sexual anatomy or physiology that do not fit the conventional assignment of having only a male or only female body.

M

MSM (Men who have sex with men)

A public health term describing any man who has sex with another man, whether occasionally, regularly, or as an expression of a gay identity. The term is meant to be *descriptive* without attaching an identity or meaning to the behaviour, so that health interventions—especially HIV/AIDS education and services—can be directed to persons on the basis of need. While useful, it can also be used to avoid or deny a right to an identity. Some men have begun to refer to themselves as “MSM,” suggesting the term is developing as an identity.

S

Sex

Refers to the biological characteristics that are used to define humans as female or male. Some individuals possess both female and male biological characteristics.

Sexual health

A state of physical, emotional, mental, and social well-being in relation to sexuality. Like health generally, it is not merely the absence of disease, but encompasses positive and complex experiences of sexuality as well as freedom to

determine sexual relationships, as well as the possibility of having pleasurable sexual experiences, free of coercion, discrimination and violence.

Sexual minorities

A catch-all phrase referring to any group that adopts a sexual identity, gender identity, sexual orientation, or sexual behaviour that differs from a defined “majority.” Thus, in various cultural contexts, it may refer to homosexual or trans persons, or even persons who sell sex or practice sado-masochistic sex. It is always important to clarify which kind of people or practices are included in the “sexual minority” being referred to.

Sexual rights

Human rights that are already recognized in national laws, international human rights documents and other consensus statements. Important sexual rights include the right to sexual and reproductive health services, sexuality education, respect for bodily integrity, rights of privacy and non-discrimination and expression that encompass the choice of sexual partner, consensual sexual relations, and consensual marriage without discrimination and the means to effect these decisions. *For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected, and fulfilled.*

Sexuality

Consists of thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles, and relationships related to sex, erotic desire. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious and spiritual factors.

T

Transsexual (or “trans”)

Individuals who identify with a different sex than that associated with the biological sex that was ascribed to them at birth. A transsexual person can be male-to-female or female-to-male. Transsexual persons can have a homosexual, heterosexual, or bisexual orientation.

Transvestite

Persons who, to different extents and with different regularity, dress in clothes traditionally ascribed to persons of the different sex. Transvestites may have a homosexual, heterosexual or bisexual orientation. Transvestites are sometimes called cross-dressers. See also transgender below.

Terms related to gender and gender identity

G

Gender expression

A broader term than gender identity, referring to masculine or feminine expressions such as dress, mannerisms, role-playing in private or social groups, or

speech patterns. Gender expression is not always associated with a fixed gender identity and often changes.

Gender identity

A personal identity each person creates from their deeply felt sense of being a man, a woman, or an identity spanning both or aspects of each, which may not correspond to their body. *Gender identity is distinct from sexual orientation.*

T

Transgender

Most commonly used as the umbrella term for people whose gender identity and/or gender expression differs from the sex they were assigned at birth. The term may include, but is not limited to: transsexuals, intersex people, cross-dressers, and other gender variant people. **Transgender** (or “trans”) persons are those who move across genders, meaning their gender identity may span identities associated with men or women, or change between the two.

Transgender persons are sometimes but not always transsexual (see above): they may transition by medical means (altering their physiology or hormones), or by way of dress, roles, or behaviour. Trans people can have any sexual orientation.

Terms related to sexual orientation

B

Bisexual

Refers to an emotional, affective and sexual attraction to persons of both the same or a different sex/gender.

G

Gay

Can refer to either male or female-identified persons with homosexual orientations. In some cultural contexts the term gay only refers to male homosexuals.

H

Heterosexual

Refers to an emotional, affective and sexual attraction to persons of a different sex/gender.

Homophobia

Typically used in a disapproving sense to refer to policies and individuals who display fear, avoidance, prejudice, or condemnation of same-sex sexual practices or homosexuality in general.

Homosexual

Refers to an emotional, affective and sexual attraction to a person of the same sex/gender.

L**Lesbian**

While the term gay can refer to either male or female-identified persons with homosexual orientations, many prefer the term **lesbian** for homosexual women, in part to ensure women's visibility in LGBT rights advocacy.

LGBT

An acronym that groups together sexual orientation-based identities (**lesbian, gay, bisexual**) with a non-sexual orientation created category (**transgender or transsexual**). In some contexts and policy documents a broader acronym LGBTIQ is used (**intersex and questioning or queer**).

S**Sexual orientation**

One of the components of sexuality distinguished by an enduring emotional, romantic, sexual or affectional attraction to individuals of a particular gender. Sexual orientation is different from sexual behavior because it refers to feelings and self-concept. Persons may or may not express their sexual orientation in their behaviors. The main terms used to describe sexual orientation are **homosexual, gay, lesbian, straight, and bisexual**.

Terms related to prostitution and sex work**C****Criminalization/Decriminalization (of prostitution)**

Criminalization is the inclusion of prostitution or related activities in the criminal legal code. This is different from the inclusion of prostitution in business or other regulatory or civil legal codes.

Decriminalization is the removal of prostitution and related activities from the criminal legal code. This is the legal approach to prostitution recommended by most sex worker organizations and advocates of sex workers' rights.

P**Penalization (of prostitution)**

Applying criminal punishments to person engaged in the exchange of sexual services for money. The **penalization** can be applied to sellers or buyers only, or both, or to the range of activities connected with living on sex work.

Prostitution

Refers to exchanging sexual services for material compensation.

R

Regulation (of prostitution)

The application of rules and laws to sex work, conditioning the legality of the work on the obedience to specific criteria and tests, often mandatory health checks for sex workers. Regulatory systems exist side by side with sex work that remains criminal because persons do not fit the criteria to register (women only, health test, nationals only etc).

S

Sex work

Refers to varied forms of sexual commerce engaged in by adults. Some forms of sex work are more informal and occasional; others are more regular and organized. Many who work in sexual commerce resist the term “prostitute” because of the stigma associated with it. This is especially true for those who are engaged in forms of sex work, such as telephone sex and stripping, which are not covered by legal prohibitions against prostitution. LGBT as well as conventional heterosexual persons can all engage in sex work.

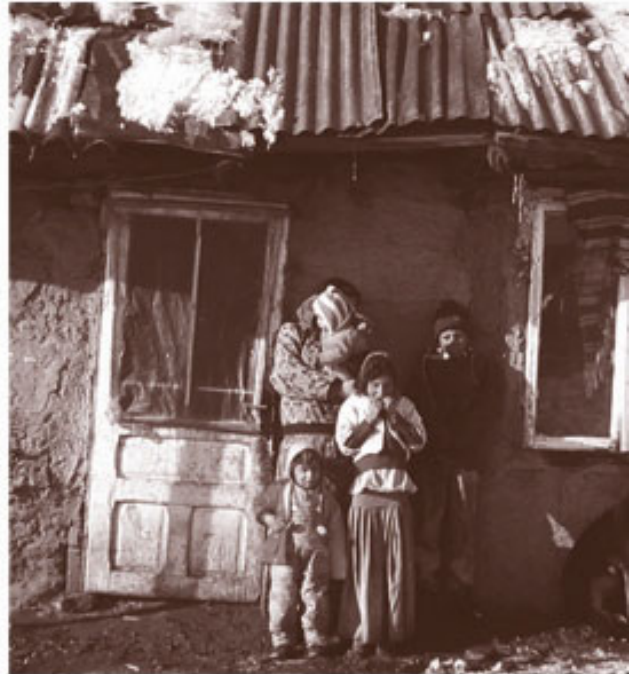
Swedish model

Refers to a law passed in 1999 in Sweden that penalizes “[t]he person who, for payment, obtains a casual sexual relationship... with fines or imprisonment for a maximum of 6 months.” Swedish legislators believed that prostitution would be reduced if the purchasers of sexual services, as opposed to sex workers themselves, could be deterred from exchanging money for sex. There have been attempts to replicate the Swedish model in other countries.

T

Trafficking

Under current international law, **trafficking** is the coerced or fraudulent movement of any person into a position of exploitation, including into domestic work, sex work, agricultural or factory work etc. However, the historical association of ‘trafficking’ solely with the movement of girls and women into prostitution means that many national laws and policies still treat trafficking and all movement into prostitution as if they were the crime of trafficking.



Photos courtesy of Willem Odendaal and Open Society Institute

Chapter 6 Health and Human Rights in Minority Communities: *The Roma and San*

“It’s not simply that poor material circumstances are harmful to health; the social meaning of being poor, unemployed, socially excluded, or otherwise stigmatized also matters.”

WHO: the Solid Facts, Richard Wilkinson and Michael Marmot

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Introduction

This chapter will introduce you to key health and human rights issues facing ethnic, racial, or indigenous minorities, particularly the **Roma** communities in Central and Eastern Europe and the Newly Independent States and **San communities** in Southern Africa.

The chapter is organized into seven sections that answer the following questions:

- ▶ **How** is minority health a human rights issue?
- ▶ **What** is OSI's work in the area of health and human rights in minority communities?
- ▶ **Which** are the most relevant international and regional human rights standards related to the health of minority communities?
- ▶ **What** are some examples of effective human rights programming in the area of minority health, in particular the Roma and San communities?
- ▶ **What** steps can government and key stakeholders take to improve the health status of minority populations?
- ▶ **Where** can I find additional resources on health and human rights in Roma and San communities?
- ▶ **What** are key terms related to Roma and San health and human rights?

As you read through this chapter, consult the **glossary of terms** found in the last section, "*What are key terms related to Roma and San health and human rights?*"

How is minority health a human rights issue?

What are minority health rights?

It is widely recognized that ethnic, racial, or indigenous minorities often suffer increased illness and greater mortality in comparison to the majority ethnic population in the same region and socio-economic class. This disparity signals a health inequity, defined by the European Office of the World Health Organization as “differences in health which are not only unnecessary and avoidable but, in addition, are . . . unfair and unjust.”¹ In other words, even if all individually determined risk factors for poor health were equal, minorities would still suffer from poorer health status.

Major factors contributing to the poorer health of minorities are discrimination, social exclusion, and an overrepresentation of minorities in the ranks of the poor. The right to the highest attainable standard of health recognizes the importance of broader social determinants of health, such as a respect for human rights.² Thus, public health and human rights approaches are inseparable in addressing the disparate health situation of minorities.

The human rights of minorities impacting the protection and promotion of health include:

- ▶ Freedom from discrimination in all areas including health, education, employment, housing, and social services
- ▶ Equal access to health care and social services
- ▶ Freedom from any distinction, exclusion, restriction, or preference based on race, color, national or ethnic origin, language, religion, birth, or any other status, which has the purpose or effect of impairing the enjoyment of human rights and fundamental freedoms
- ▶ Equal recognition as a person before the law, equality before the courts, and equal protection of the law
- ▶ Equal participation in shaping decisions and policies concerning their group and community at local, national, and international levels
- ▶ The right to maintain and enjoy their culture, religion, and language
- ▶ The requirement not only to respect and protect fundamental rights, but also to fulfill them, for all persons.

Who are the Roma?

Roma are a diverse people originally of Indian origin who make up the largest ethnic minority in Europe, estimated at up to 9 million people.³ Approximately 70% of Roma live in Central, Eastern, and South-East Europe and constitute

¹ Whitehead, M. *The concepts and principles of equity and health*.: WHO/EURO, Copenhagen, 1991.

² CESCR General Comment 14, The Right to the Highest Attainable Standard of Health, para. 4.

³ For further details, see the [World Bank website on Roma](#).

between 6-11% of the populations of Bulgaria, Former Yugoslav Republic, Macedonia, Romania, and the Slovak Republic.⁴ The term Roma refers to persons describing themselves as Romas, Gypsies, Travellers, Manouches, and Sinti. The Roma language, Romanis, is an Indic language closely related to Hindi. Many dialects exist, but there is broad recognition of the unity of Romanis.

The history of the Roma in Eastern and Central Europe is marked by racism and human rights abuses. State policies towards the Roma have vacillated between intense assimilation efforts (forced sterilization, removal of children to state institutions) and social exclusion. Massive social and economic transitions in the region since 1989 have brought about a resurgence of anti-Roma sentiment and a worsening of their social and economic standing. Western Europe has also seen a rise in anti-Roma violence as a reaction to real and perceived increased migration. Despite centuries of discrimination and attempts at forced assimilation, many Roma communities have maintained a distinct identity characterized by strong extended-familial bonds and an adherence to traditional cultural practices. The discrimination and abuses against Roma continue to be one of the gravest human rights dilemmas facing Europe.⁵

Who are the San?

The San are the oldest inhabitants of Southern Africa, where they resided in the Kalahari Desert—now divided between Angola, Botswana, Namibia, and South Africa. They lived there for at least 20,000 years, and sources trace San communities to as early as 8000 BC. Bantu-speaking peoples from East and Central Africa arrived in San territory around the 15th century to be followed by European colonists in the 17th to 19th centuries. San today number close to 100,000, and around 80% live in Botswana and Namibia. The San are also known, somewhat derogatively, as Basarwa,⁶ Khwe, and Bushmen. Despite their popular image as leather-clad hunters and gatherers, hardly any San today subsist entirely through these traditional means.

Marginalized and displaced from their land, the San suffer from a host of social problems. Access to resources is low, as is the availability of social and medical services. Education facilities are poor, and illiteracy rates are high. Many have been relocated from their land through a mixture of force and bribery.⁷ Perceived as childlike, the San have little say in policy decisions. As a result, the

⁴ European Commission. *Roma in an Enlarged European Union*. DG Employment and Social Affairs of the European Commission, Brussels, October 2004.

⁵ For further information, see the report *The Situation of Roma in an Enlarged European Union*: ec.europa.eu/employment_social/publications/2005/ke6204389_en.pdf.

⁶ Basarwa is a Tswana word meaning “inanimate (not quite human) original dwellers.” Hugh Brody, “Botswana, the Bushmen/San, and HIV/AIDS,” p. 2, August 2003.

⁷ In 2002, the government of Botswana expelled the San from their ancestral land in the Central Kalahari Game Reserve and placed them in resettlement villages. International observers pointed to prospective diamond mining as motivating the expulsion, while the government claimed it was bringing the San into the modern age. Conditions in the resettlement villages were poor, and the health of displaced San suffered. The San filed suit, and in December 2006, the High Court of Botswana ruled that they were illegally expelled and entitled to return to their home in the Central Kalahari Game Reserve. For more information, please see *Roy Sesana and Ke/wa Setlohobogwa and Others v. The Attorney General*, Misca. No. 52 of 2002 (Dec. 13 2006).

San are plagued by high unemployment, poverty, alcohol abuse, and drug dependency—bringing with them domestic violence and petty crime.⁸

Did you know?

About Roma health

- ▶ A representative survey in Hungary found that 25% of Roma interviewed reported having faced discriminatory treatment in hospitals and other health care institutions, and 44.5% reported discriminatory treatment by general practitioners.⁹
- ▶ Until 1990, the Czechoslovak government sterilized Roma women programmatically as part of policies aimed at reducing the “high, unhealthy” birth rate of Roma women. This practice has been documented in the Czech Republic and Slovakia as late as 2004.¹⁰
- ▶ In late 2001, more than half of all Roma in Serbia did not have a birth certificate or any document proving their citizenship. Almost one-third did not possess a health card.¹¹
- ▶ In Bulgaria, the World Bank estimates that though Roma account for only 8.8% of the population, they make up almost half (46%) of the country’s poor.¹²
- ▶ Poverty among the Roma in Serbia is between 4 and 5 times higher than among the general population.¹³
- ▶ The majority of Roma in South East Europe (53%) reported going hungry in the previous month, compared with only 9% in average population. Almost twice as many of the Roma children have low weight at birth compared with the national average population.¹⁴
- ▶ Data from the Czech Republic indicated that 64% of Roma children in primary schools are in special schools, in comparison with 4% for the total population. In Hungary, Roma make up approximately half the number of students enrolled in special schools.¹⁵

⁸ For more information, please see SUZMAN, J. “An assessment of the status of the San in Namibia.” Regional assessment of the status of the San in Southern Africa. Report series 4 of 5 (2001). Legal Assistance Centre, Windhoek; Megan Biesele, Robert K. Hitchcock, Richard B. Lee, “The San of Southern Africa: A Status Report,” 2003.

⁹ Delphio Consulting. *Cigányok Magyarországon – szociális-gazdasági helyzet, egészségi állapot, szociális és egészségügyi szolgáltatásokhoz való hozzáférés*. Budapest 2004, p.6. Available at: www.delphoi.hu/download-pdf/roma-szoc-eu.pdf. See also European Roma Rights Centre. *Ambulance not on the way: the Disgrace of Health Care for Roma in Europe*. Open Society Institute 2006, p. 39 .

¹⁰ European Roma Rights Centre. *Ambulance not on the way: the Disgrace of Health Care for Roma in Europe*. Open Society Institute 2006, p. 42 .

¹¹ Cameron, L. ‘The Right to an Identity’. *Roma Rights Quarterly*. European Roma Rights Centre, 2007. The article is available at www.errc.org/cikk.php?cikk=1066

¹² World Bank. *Bulgaria: Poverty Assessment*. Washington, DC, 2002 p.xi.

¹³ E/C.12/1/ADD.108 (CESCR, 2005).

¹⁴ UNICEF. *Breaking the Cycle of Exclusion: Roma Children in South East Europe*. Belgrade, February 2007, P. 7 Available at www.unicef.org/ceecis/070305-Subregional_Study_Roma_Children.pdf

¹⁵ World Bank. *Roma in an Expanding Europe*,. Washington, DC, 2005, p. 45.

About San health

- ▶ The San are the only ethnic group in Namibia whose health and economic status have declined since independence. San life expectancy is 22% below the national average.¹⁶
- ▶ Maternal and infant mortality is extremely high. About 40% of all deaths of women of childbearing age are related to sexual and reproductive rights.¹⁷
- ▶ Namibia has highest tuberculosis rate in the world. In parts of Tsumkwe where the San reside, rates of more than 1,500 TB cases per 100,000 people were recorded in 2004.¹⁸
- ▶ Access to health information and services is very low in San communities. Three quarters of respondents in Tsumkwe indicated that there is “little that a person can do to prevent getting malaria” and that “health workers cannot do a lot for malaria.”¹⁹
- ▶ Namibia has an HIV prevalence rate of 21.3%. 80% of females in Tsumkwe did not know if HIV/AIDS was a problem in their community, 85% responded “do not know” when asked about their risk of infection, while 26% had their first sexual contact under age 15.²⁰
- ▶ Alcohol-related violence in San communities is responsible for a substantial number of injuries to women, children, and men. The San also suffer from a high prevalence of folate, thiamin, and iron deficiency, likely linked to alcohol consumption.²¹

¹⁶ Indigenous Peoples – Health Issues. Summary of Presentation at Indigenous Peoples and Socioeconomic Rights Expert Workshop March 20th and 21st. <www.cpsu.org.uk/downloads/Health%20Issues.pdf>.

¹⁷ Ibid.

¹⁸ Health Unlimited 2004.

¹⁹ Health Unlimited 2003.

²⁰ Health Unlimited 2003-2004.

²¹ Robert K. Hitchcock & Patricia Draper, Health Issues among the San of Western Botswana.

What is OSI's work in the area of health and human rights in minority communities?

OSI's Public Health Program (PHP) works to promote the health of minority communities facing stigma and discrimination. A goal of the program is to enable minority communities to better participate in decision-making for health policy by ensuring they have the skills and resources to identify health issues and advocate for programs tailored to their needs. OSI works extensively with Roma communities in Central and Eastern Europe/ South Eastern Europe (CEE/SEE), and the Open Society Initiative of Southern Africa is starting a new project to address the needs of the San in Southern Africa. The following is a selection of work undertaken by OSI's Roma Health Project (RHP).

▶ Convenings

- TB and Social Exclusion in Eastern Europe (2/07), Salzburg, Austria – OSI's Roma Health Project and the International Union Against Tuberculosis and Lung Disease sponsored the gathering of 42 national health planners, TB coordinators, and representatives of civil society to discuss the response to TB in marginalized and minority communities throughout Central and Eastern Europe and make concrete recommendations to improve strategies.
- Left Out: Access of Roma to Health Care (3/07), Bratislava, Slovakia – OSI sponsored a panel discussion at the annual European Public Health Alliance Conference, "Health in an Enlarged EU," featuring Roma health service and advocacy projects by OSI grantees.

▶ Reports

- *Confronting a Hidden Disease: TB in Roma Communities* outlines the available literature and data on Roma and TB in Central and Eastern Europe and current efforts by governments and NGOs to address TB in Roma communities. The report aims to bring research needs and program opportunities to the attention of key stakeholders.
- *Ambulance Not on the Way: The Disgrace of Health Care for Roma in Europe*, published by OSI grantee the European Roma Rights Centre (ERRC), explores major systemic causes for exclusion of Roma from access to health care and documents inferior medical services and other forms of human rights abuse in health care provision.

▶ Capacity building and partnerships

- OSI provides core institutional support to organizations working on programming and policy initiatives to improve access to health care for Roma women. The grants include a training component to strengthen the capacity of organizations to address minority health issues.
- OSI gives grants to harm reduction organizations for outreach to Roma communities to increase the availability and access of HIV/AIDS prevention and treatment services. OSI is planning a conference in the fall of 2007 with Roma activists on drug use in Roma communities and approaches to protect individuals from HIV/AIDS, including a harm reduction approach.

For more information, please visit the RHP website at:

www.soros.org:80/initiatives/health/focus/roma

In addition, the Human Rights and Governance Grants Program (HRGGP) provides institutional support to many of the leading Roma rights organizations in Central and Eastern Europe and the former Soviet Union whose work includes promoting access to health care. Many of these organizations are also leading efforts to ensure that state commitments made in the framework of the Decade for Roma Inclusion are honoured. HRGGP support focuses on groups providing legal aid, monitoring and reporting on abuses, and taking strategic litigation to protect the rights of vulnerable minority communities.

Which are the most relevant international and regional human rights standards related to the health of minority communities?

Overview

A wide variety of human rights standards at the international, regional, and national levels applies to health and human rights in minority communities. These standards can be used for many purposes:

- ▶ **To document** violations of the human rights of the Roma and San people
- ▶ **To advocate** for the cessation of these violations
- ▶ **To sue** governments for violations of national human rights laws
- ▶ **To report** to regional and international human rights bodies about breaches of human rights agreements.

In the tables on the following pages, **examples** of human rights violations against minority communities, in particular the Roma and San are provided. Relevant human rights **standards** are then cited, along with examples of legal **precedents** interpreting each standard.

How to read the tables

As you read through each table, ask yourself the following questions about the **violations, standards, and precedents and interpretations** that are cited:

EXAMPLES OF HUMAN RIGHTS VIOLATIONS

Do any of these violations occur in your country? Are there other violations of this human right that exist in your country?

HUMAN RIGHTS STANDARDS

Are these violations prohibited by the “human rights standards”? Can the standards be interpreted to apply to this violation?

PRECEDENTS AND INTERPRETATIONS

Do any of the “examples of precedents and interpretations” apply to this issue? Can they be interpreted to apply to this issue?

Remember that human rights law is an evolving field, and that many human rights violations are not directly addressed by existing legal standards and precedents. Through ongoing documentation and advocacy, advocates can build a stronger body of jurisprudence on health and human rights in minority communities.

Abbreviations

In the tables, the ten treaties and their corresponding enforcement mechanisms are referred to with the following abbreviations:

Treaty	Enforcement Mechanism
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee (HRC)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Committee on Economic, Social and Cultural Rights (CESCR)
International Convention on the Elimination of all forms of Racial Discrimination (ICERD)	Committee on the Elimination of Racial Discrimination (CERD)
Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Con)	International Labour Organization (ILO)
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee)
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child (CRC Committee)
African Charter on Human and People's Rights (ACHPR) & Protocols	African Commission on Human and People's Rights (ACHPR Commission)
[European] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)	European Court of Human Rights (ECtHR)
European Social Charter (ESC)	European Committee of Social Rights (ECSR)
Framework Convention for the Protection of National Minorities (FCNM)	Committee of Ministers of the Council of Europe & Advisory Committee (AC)

Also cited in this report is the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (**SR**).

Table 1: Minority health and the right to non-discrimination and equality

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ▪ Housing policies force Roma communities into separate settlements that lack basic infrastructure and render inhabitants more vulnerable to illness and disease. ▪ Roma members are further more likely to be evicted from their homes and left to fend for themselves on the street. ▪ San communities have been expelled from their land and forced into settlements with inadequate facilities. ▪ Hospitals place Roma women in a separate maternity ward. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 26 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>ICERD 2(1) States condemn racial discrimination and undertake to pursue by all appropriate means a policy of eliminating racial discrimination in all its forms. 2(2) State Parties shall . . . take . . . special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. 2(3) States particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction. 2(5) State Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . (e) . . . [t]he right to housing; [t]he right to . . . social services.</p>	<p>CCPR: referring to ongoing discrimination faced by the Roma in Hungary in almost all aspects of life covered by the ICCPR. [CCPR/CO/74/HUN (HRC, 2002), para. 7].</p> <p>CESCR: noting persistent discrimination against the Roma in Greece, Lithuania, and Serbia in the fields of housing, health, employment, and education. [E/C.12/1/ADD.97 (CESCR, 2004), para. 11; E/C.12/1/ADD.96 (CESCR, 2004), para. 9; e/c.12/1/ADD.108 (CESCR, 2005) para. 13].</p> <p>CERD: urging the Czech Republic to ensure that domestic legislation clearly prohibits racial discrimination in the enjoyment of the right to housing and protects the Roma from evictions. [CERD/C/CZE/CO/7, March 2007].</p> <p>CESCR: noting that many Roma settlements in Serbia lack access to basic services such as electricity, running water, sewage facilities, medical care, and schools. [E/C.12/1/ADD.108 (CESCR, 2005), para. 30].</p> <p>CERD: linking the critical health situation of Roma communities in Lithuania to their poor living conditions and calling for addressing issues of drinking water supplies and sewage disposal systems in Roma settlements. [CERD/C/LTU/CO/3 (CERD, 2006), para. 22].</p>

Table 1: Minority health and the right to non-discrimination and equality, **continued**

Human Rights Standards	Precedents and Interpretations
<p>ILO Con 2 Governments shall have the responsibility for . . . [a]ssisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between the indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life. 3(1) Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. 4(1) Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.</p> <p>FCNM 4(1) The parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited. 4(2) The parties undertake to adopt . . . adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority.</p> <p><i>See also:</i></p> <p>ICCPR 2(1); CEDAW 2(a),(e), African Women’s Protocol 2 (elimination of discrimination against women); ACHPR 2; European Race Directive 2000/43/EC</p>	<p>CEDAW Committee: referring to the multiple forms of discrimination faced by Roma women and girls in Romania, who remain marginalized with regard to their education, health, housing, employment, and participation in political and public life. [CEDAW/C/ROM/CO/6 (CEDAW, 2006), para. 26].</p> <p>CRC Committee: remarking that children in Roma communities in Greece are exposed to substandard living conditions, including inadequate housing, poor sanitation and waste disposal, and no running water. [CRC/C/15/ADD.170 (CRC, 2002), para. 64].</p>

Table 2: Minority health and the right to the highest attainable standard of health

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ▪ Doctors and health facilities are not located in or in close proximity to Roma and San neighbourhoods. ▪ Roma and San patients are refused treatment, given inferior care, or abused in public health facilities. ▪ Roma and San women lack access to maternal and reproductive health services. ▪ Social policies disproportionately exclude Roman individuals from access to health insurance. ▪ Displaced from their lands, the San have been deprived of their traditional livelihood, and their health has suffered. 	
Human Rights Standards	Precedents and Interpretations
<p>ICESCR 12(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 12(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: . . . (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.</p> <p>ICERD 5 State Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . (e) . . . [t]he right to public health, medical care, social security and social services.</p> <p>ILO Con 25(1) Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.</p> <p>CEDAW 12(1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health services, including those related to family planning. 12(2) State Parties shall ensure to women appropriate services in connection with pregnancy, confinement and post-natal period.</p>	<p>CESCR: “States have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities, and to prevent any discrimination on internationally prohibited grounds.” [CESCR GC 14, para. 19].</p> <p>CESCR: “[I]ndigenous peoples have the right to specific measures to improve their access to health services and care. . . . [D]evelopment-related activities that lead to the displacement of indigenous peoples against their will from traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.” [CESCR GC 14, para. 27].</p> <p>CESCR: calling for the Roma’s inclusion in Serbia’s health insurance scheme. [E/C.12/1/Add.108, June 2005, para. 60].</p> <p>CERD: encouraging the implementation of programs to improve Roma health in Lithuania, bearing in mind their disadvantaged situation resulting from extreme poverty and low levels of education. [CERD/C/LTU/CO/3 (CERD, 2006), para. 22].</p> <p>CEDAW Committee: noting the Roma women’s marginalization and lack of access to health care and calling upon Macedonia to provide information on concrete projects to address these problems. [CEDAW/C/MKD/CO/3, Feb 2006, para. 28].</p>

Table 2: Minority health and the right to the highest attainable standard of health, **continued**

Human Rights Standards	Precedents and Interpretations
<p>14(2)(b) To have access to adequate health care facilities including information, counselling and services family planning.</p> <p>ACHPR 16(1) Every individual shall have the right to enjoy the best attainable state of physical and mental health. 16(2) States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.</p> <p>African Women’s Protocol 14(1) State Parties shall ensure the right to health of women, including sexual and reproductive health is respected and promoted.</p> <p>ESC 11 – The right to protection of health With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed . . . (2) to provide advisory and educational facilities for the promotion of health . . .</p> <p><i>See also:</i></p> <p>CRC 24, African Charter on the Rights and Welfare of the Child 14 (child’s right to the highest attainable standard of health)</p>	<p>CRC Committee: noting the limited access to health services for Roma children in Hungary. [CRC/C/HUN/CO/2 (CRC, 2006), para. 41]</p> <p>SR Indigenous: recommending that South African social services, health, and education departments give high priority attention to San needs and grievances. [E/CN.4/2006/78/Add.2 (SR Indigenous, 2005), para. 92].</p>

Table 3: Minority health and the right to information

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ▪ There are fewer health facilities in Roma and San communities, and there is little attempt to provide them with basic health information. ▪ Due to poor educational facilities in San communities, illiteracy rates are high, and children are unable to access important health information. ▪ Roma children are channeled into “special schools,” which provide an inferior education and limit their access to health information. ▪ Roma women lack access to information on sexual and reproductive health. ▪ Data on Roma and San health is inadequate, hindering the development of policies to address the needs of these communities. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 19(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p> <p>ICESCR 13(1) The State Parties . . . recognize the right of everyone to education. . . . [E]ducation shall be directed to the full development of the human personality and the sense of its dignity.</p> <p>ILO Con 26 Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.</p> <p>CEDAW 10(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning. 16(1) (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.</p>	<p>CCPR: noting the “grossly disproportionate” number of Roma children assigned to special schools and urging Slovakia to take immediate steps to eradicate this segregation. [CCPR/CO/78/SVK (HRC, 2003), para. 18].</p> <p>CESCR: urging the elimination of discrimination against Roma children in the Czech Republic by removing them from special schools and integrating them into the mainstream educational system. [E/C.12/1/ADD.76 (CESCR, 2002), para. 44]</p> <p>CERD: calling upon the Czech Republic to promptly eradicate racial segregation and the placement of a disproportionate number of Roma children in special schools. [CERD/C/304/ADD.109 (CERD, 2001), para. 10].</p> <p>CERD: noting that cultural and linguistic rights of the San are not fully respected in educational curricula in Botswana. [A/57/18(Supp) (CERD, 2001), para. 305].</p> <p>CEDAW Committee: noting the lack of information on Roma women and their access to health services in Hungary; recommending data collection disaggregated by sex and the implementation of health awareness campaigns. [A/57/38(SUPP), Aug 2002, para. 332].</p> <p>CEDAW Committee: urging the collection of statistical information on the health of Roma women and girls in Romania in order to develop policies responsive to their needs. [CEDAW/C/ROM/CO/6 (CEDAW 2006) para. 27].</p>

Table 3: Minority health and the right to information, **continued**

Human Rights Standards	Precedents and Interpretations
<p>ACHPR 9 (1) Every individual shall have the right to receive information.</p> <p>ECHR 10 (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 10(2) Every individual shall have the right to express and disseminate his opinions within the law.</p> <p>FCNM 9(1) The Parties undertake to recognize that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language. 12(3) The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.</p> <p>See also:</p> <p>CRC 29, African Charter on the Rights and Welfare of the Child 11 (right to education); African Women’s Protocol 14(2)(a) (right to health education and information)</p>	<p>CRC Committee: calling upon Moldova, Poland, and the Ukraine to develop and implement a plan aimed at integrating all Roma children into mainstream education and prohibiting their segregation into special classes. [CRC/C/15/ADD.191 (CRC, 2002), para. 75; CRC/C/15/ADD.194 (CRC, 2002), para. 53; CRC/C/15/ADD.192 (CRC, 2002), para. 50].</p> <p>CRC Committee: urging South Africa to guarantee the rights of San children, particularly concerning language and access to information. [CRC/C/15/ADD.122 (CRC, 2000), para. 41].</p> <p>AC: highlighting the need for data to assess Roma (and particularly Roma women’s) access to health services and education in Slovakia; data would have to be provided voluntarily, and Roma communities should be informed about the methods and purpose of data collection. [ACFC/OP/II(2005)004, May 2005, para. 11].</p>

Table 4: Minority health and the right to participate in public life

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ▪ Roma members are unable to obtain citizenship papers and a health card, leaving them without access to social and health services. ▪ Labeled child-like, San members have little say in policy decisions affecting their health and well-being. ▪ Roma, particularly women, are unable to participate in public life and access needed social services. 	
Human Rights Standards	Precedents and Interpretations
<p>ICCPR 25 Every citizen shall have the right and the opportunity, without . . . distinctions . . . (a) To take part in the conduct of public affairs, directly or through freely chosen representatives.</p> <p>ICERD 5(c) States will guarantee political rights, in particular the right to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public services. 5(d) States guarantee the right to nationality.</p> <p>ILO Con 6(1) Governments shall . . . (b) [e]stablish means by which these peoples can freely participate . . . at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them. 7(1) The peoples . . . shall have the right to decide their own priorities for the process of development . . . and to exercise control, to the extent possible, over their economic, social and cultural development.</p> <p>CEDAW 7 State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: . . . (b) [t]o participate in the formulation of government policy and the implementation thereof.</p>	<p>CCPR: calling for the removal of all administrative obstacles and fees to enable the Roma in Bosnia to obtain personal documents necessary for them to access health insurance and other basic rights. [CCPR/C/BIH/CO/1 (HRC, 2006), para. 22].</p> <p>CCPR: urging Slovenia to enhance Roma participation in public life. [CCPR/CO/84/SVN (HRC, 2005), para. 16].</p> <p>CESCR: stressing the importance of “participation in political decisions relating to the right to health taken at both the community and national levels.” [CESCR GC 14, para. 17].</p> <p>CERD: expressing concern that a lack of identification documents effectively deprive the Roma in the Ukraine of their right to equal access to health care, housing, social security, education, and the legal system. [CERD/C/UKR/CO, August 2006, para. 11].</p> <p>CERD: indicating that the Roma Council in Bosnia does not have sufficient funding or resources to fulfill its mandate and is rarely consulted by the Council of Ministers. [CERD/C/BIH/CO/6 (CERD, 2006), para. 14].</p> <p>CERD: noting the cultural, social, economic, and political exclusion of San peoples in Botswana. [A/57/18(SUPP) (CERD, 2001), para. 301].</p> <p>CEDAW Committee: calling for the immediate issuance of identity documents to Roma women in Romania. [CEDAW/C/ROM/CO/6 (CEDAW 2006) para. 27].</p>

Table 4: Minority health and the right to participate in public life, **continued**

Human Rights Standards	Precedents and Interpretations
<p>FCNM 15 The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.</p> <p>African Women’s Protocol 9(1) States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries. <i>See also:</i></p> <p>CEDAW 14(2)(a) (right of rural women to participate in development planning); European Convention on Citizenship and the Convention Relating to the Status of Stateless Persons</p>	<p>CRC Committee: noting that Roma children in Bosnia are often not registered due to the parents’ lack of identification documents. [CRC/C/15/Add.260 (CRC, 2005), para. 32].</p> <p>SR Indigenous: highlighting that the San are not sufficiently empowered to impact government decisions regarding allocation of limited resources in South Africa. [E/CN.4/2006/78/Add.2 (SR Indigenous, 2005), para. 75].</p> <p>AC: noting the “weak and ineffective participation by the Roma community” in design and implementation of health strategies in Romania. [ACFC/OP/II(2005)007, Nov 2005, para. 54].</p>

Table 5: Minority health and the right to bodily integrity

Examples of Human Rights Violations	
<ul style="list-style-type: none"> ▪ Roma children are disproportionately targeted by police officers and subjected to ill-treatment and abuse. ▪ Roma women are coercively sterilized without their fully informed consent. ▪ Roma and San women and children are frequent victims of domestic violence due to extreme living conditions such as land dispossession, community isolation, high unemployment, poverty, and alcohol abuse. ▪ Due to discriminatory attitudes, Police are especially reluctant to interfere when Roma women are victims of domestic violence. 	
Human Rights Standards	Precedents and Interpretations
<p>ICERD 5 State Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . (b) [t]he right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.</p> <p>ACHPR 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.</p> <p>African Women’s Protocol 4(1) Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.</p>	<p>CESCR: noting police violence against the Roma in Greece, including sweeping arrests and arbitrary raids of Roma settlements. [E/C.12/1/ADD.97 (CESCR, 2004), para. 11].</p> <p>CERD: remarking on police brutality against the Roma in the Ukraine, including arbitrary arrests and illegal detention. [A/56/18(SUPP) (CERD, 2001), para. 373].</p> <p>CERD: noting that Roma members, especially the young, in Albania are subjected to ill-treatment and improper use of force by police officers. [CERD/C/63/CO/1 (CERD, 2003), para. 18].</p> <p>CERD: recommending that Slovakia take all necessary measures to end forced sterilization, including the adoption of a new health care law, and ensure victims just and effective remedies. [CERD/C/65/CO/7, 10 December 2004].</p>

Table 5: Minority health and the right to bodily integrity, **continued**

Human Rights Standards	Precedents and Interpretations
<p>FCNM 6(1) The parties undertake to take appropriate measure to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.</p> <p><i>See also:</i></p> <p>CRC 19(1) (protecting the child from all forms of physical or mental violence); Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment²²</p>	<p>CEDAW Committee: noting the continuing gender-based discrimination and violence that Roma women face in their own communities in Sweden. [A/56/38(SUPP) (CEDAW, 2000), para. 356].</p> <p>CEDAW Committee: calling upon the Czech Republic to provide redress to Roma women victimized by coercive sterilization and to prevent further involuntary sterilizations. [CEDAW/C/CZE/CO/3 (CEDAW, 2006), para. 24].</p> <p>CEDAW Committee: decision calling for compensation to a victim of coerced sterilization in Hungary and a review of legislation to ensure informed consent for sterilization. [12 February 2004].</p> <p>CRC Committee: observing continued allegations of ill-treatment and torture by the police of Roma children in the Ukraine and urging investigation. [CRC/C/15/ADD.191 (CRC, 2002), para. 36].</p> <p>AC: pointing to cases of abusive behavior, hostile attitudes, and violence by police against Roma members in Romania. [ACFC/OP/II(2005)007, November 2005].</p>

²² The right to bodily integrity is not specifically recognized under the ICCPR, ICESCR, or European conventions, but has been interpreted to be part of the right to security of the person (ICCPR 9, ECHR 5), the right to freedom from torture and

What are some examples of effective human rights programming in the area of minority health, in particular the Roma and San communities?

Introduction

In this section, you are presented with **four examples** of effective activities addressing health and human rights in minority communities. These are:

1. Justice for Roma women coercively sterilized in central Europe
2. A shadow report on women’s double discrimination in **Serbia**
3. San health care through rights protection and community participation in **Namibia**
4. Health and human rights nexus: mediators and monitors in **Romania**

Rights based programming

As you review each activity, ask yourself whether it incorporates the **five elements** of “rights-based” programming:

- ▶ **Participation**
Does the activity include participation by affected communities, civil society, marginalized groups, and others? Is it situated in close proximity to its intended beneficiaries?
- ▶ **Accountability**
Does the activity identify both the *entitlements of claim-holders* and the *obligations of duty-holders*? Does it create mechanisms of accountability for violations of rights?
- ▶ **Non-discrimination**
Does the activity identify who is most vulnerable, and how? Does it pay particular attention to the needs of vulnerable groups such as women, minorities, indigenous peoples, and prisoners?
- ▶ **Empowerment**
Does the activity give its beneficiaries the power, capability, capacity, and access to bring about a change in their own lives? Does it place them at the center of the process rather than treating them as objects of charity?
- ▶ **Linkage to rights**
Does the activity define its objectives in terms of legally enforceable rights, with links to international, regional, and national laws? Does it address the full range of civil, political, economic, social, and cultural rights?

cruel, inhuman, and degrading treatment (ICCPR 7, ECHR 3), and the right to the highest attainable standard of health (ICESCR 12, ESC 11). The CESCR remarked that a “major goal” under the right to health should be “protecting women from domestic violence.” [CESCR GC 14, para. 21]. Although CEDAW does not specifically address bodily integrity, the CEDAW Committee indicated that the “definition of discrimination includes gender-based violence.” CEDAW Committee, General Rec. 19, paras 6-7].

Finally, ask yourself whether the activity might be replicated in your country:

- ▶ Does such an activity **already exist** in your country?
- ▶ If not, should it be **created**? If so, does it need to be **expanded**?
- ▶ What **steps** need to be taken to replicate this activity?
- ▶ What **barriers** need to be overcome to ensure its successful replication?

Example 1: Justice for Roma women coercively sterilized in Central Europe

The European Roma Rights Centre, a Roma NGO, and a Roma victim advocacy group worked together on a litigation and advocacy campaign to secure public recognition and compensation for harms suffered by coercively sterilized Roma women.

Project type

Ombudsman compliant; Litigation; CEDAW Committee advocacy

Health and human rights issue

From the 1970s until 1990, the Czechoslovak government sterilised Roma women programmatically aiming to reduce the “high, unhealthy” birth rate of Roma women. Coercive sterilization has been documented as late as 2004. Cases have also occurred in Hungary, Romania, and Slovakia. Hundreds of Roma women await justice.

Actions taken

- ▶ In 2004, The European Roma Rights Center (ERRC), and Life Together, a Roma-Czech NGO, documented cases of coercive sterilization and filed complaints with the Ombudsman—the Czech Public Defender of Rights.
- ▶ In 2005, Roma women established a Czech victim advocacy group, the Group of Women Harmed by Sterilisation (GWHS), to push the government and medical authorities for a formal apology and to establish a compensation fund.
- ▶ GWHS used demonstrations and awareness campaigns, and in 2006, a member testified before the CEDAW Committee.
- ▶ In 2004, ERRC helped file a complaint with the CEDAW Committee on behalf of a Hungarian Roma woman, coercively sterilized when she sought treatment for a miscarriage.

Results and lessons learned

- ▶ In 2005, the Ombudsman undertook an investigation and published a report recognizing coercive sterilization and racial targeting in the Czech medical community. The report recommended changes in domestic law to ensure informed consent and the simplification of compensation procedures.
- ▶ The Ombudsman also filed 54 criminal complaints with the local prosecuting office, but many have been dismissed.
- ▶ The 2006 CEDAW report to the Czech government expressed concern over cases of coercive sterilization and recommended the adoption of legislative changes to ensure informed consent and victim compensation.
- ▶ In 2006, the CEDAW Committee found Hungary in violation and likewise called for informed consent and compensation legislation.
- ▶ International treaties and standards were critical to the litigation to complement the scant domestic laws relevant to patients’ rights.
- ▶ Patients whose rights have been violated are the best advocates for change. Collaborations between legal service providers, patient advocates, and Roma activists brought attention to the matter and helped address larger issues.

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Example 2: A shadow report on Roma women's double discrimination in Serbia

The European Roma Rights Centre and six Serbian NGOs partnered to gather data on double discrimination faced by Roma women in Serbia. They submitted a shadow report to the UN CEDAW Committee, bringing attention to these issues and launching an advocacy campaign.

Project type

Human rights documentation; International advocacy

Health and human rights issue

Roma women living in Serbia face double discrimination as female members of an ethnic minority. This is a leading factor responsible for their significantly lower health status, as compared with the majority population. Roma and health activists have recognized domestic violence, access to health insurance, and discrimination in health care settings as major issues affecting Roma women's health. However, little data and documentation existed to bring these concerns to human rights monitors.

Actions taken

- ▶ In 2006-2007, six women from the European Roma Rights Centre (ERRC) and the Roma Serbian NGOs: Bibija, Eureka, and Women's Space undertook research to document abuses against Roma women.
- ▶ This NGO partnership then submitted a shadow report to the CEDAW Committee, which will be presented at Serbia's May 2007 review.

Results and lessons learned:

- ▶ Less than half of the 198 women interviewed agreed to talk about domestic violence. Of the remaining 81 women, the majority experienced domestic violence. Issues particular to Roma women included police non-responsiveness or an inappropriate response due to discriminatory attitudes and criteria at safe-houses disproportionately excluding Roma women.
- ▶ Discrimination against Roma women is especially evident in most commonly used health services—in the areas of reproductive and maternal health and emergency care.
- ▶ Project partners hope to follow up on research findings with advocacy on the most pertinent and strategic issues.
- ▶ A partnership between an international human rights organization, well-versed in the CEDAW process, and local NGOs with an understanding of the community can be particularly effective.

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Example 3: **San health care through rights protection and community participation in Namibia**

Health Unlimited has worked in partnership with remote San communities and the Ministry of Health in Namibia to ensure the provision of basic health services through community education and participation in health care delivery.

Project type

A rights approach to the delivery of health services

Health and human rights issue

In recent years, the growing threat of HIV and AIDS is combining with TB and malaria to present a real threat to San survival. San access to basic health care is constrained by financial, geographic, and cultural barriers. Moreover, rural communities are low on governments' priority lists as services in remote areas are difficult and costly to provide. Where services are available, the San are often reluctant or afraid to use them due to staff discrimination and insensitivity.

Actions taken

- ▶ Health Unlimited (HU), an international NGO, is working in partnership with the San in Omaheke and Otjozondjupa ("Bushmanland") and the Namibian Ministry of Health to help ensure basic health services in these remote communities and access to state health care.
- ▶ The partnership established Namibia's first community based screening and treatment programmes for TB. Trained San volunteers help identify and treat patients in their villages, eliminating the need for treatment at clinics many miles away.
- ▶ The partnership also initiated a health training program for Community Based Resource Persons, or volunteers acting as a link between local health services and communities to facilitate communication and ensure needs are met.
- ▶ In 2006, the partnership started a project to improve San adolescent sexual and reproductive health in the remote Omaheke and Tsumkwe regions. Village health committee representatives, teachers, and peer counsellors will be trained to encourage discussions in the local community on adolescent health, STIs, and HIV and AIDS and to help reduce stigma and discrimination against those affected.

Results

- ▶ The community based screening and treatment program for TB has led to an over 80% cure rate.
- ▶ The Community Based Resource Persons were able to create a mutually supportive relationship in communities where before there was antagonism and mistrust.

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Example 4: **Health and human rights nexus: mediators and monitors in Romania**

Romani CRISS developed a program in Romania whereby health mediators helped improve communications between the Roma community and health providers and referred cases of abuse and discrimination in health facilities to human rights monitors for documentation and legal advocacy.

Project type

Human rights documentation and advocacy

Health and human rights issue

Roma are disproportionately excluded from accessing health care services and encounter prevalent discrimination by providers. In a 2005 survey among 717 Romanian Roma women, 70% reported discrimination from health providers based on their race/ethnicity. Particular problems faced by Roma women include coerced sterilization and separate maternity wards. There is no administrative mechanism to address these abuses against the Roma and other vulnerable groups.

Actions taken

- ▶ In the early 1990's, the Romanian human rights NGO, Romani CRISS, developed a health mediator program to facilitate Roma access to health care. Mediators are from Roma communities but situated in health clinics to improve communications with providers. They educate communities on how to access health services and sensitize doctors on Roma health needs.
- ▶ Romani CRISS also has a network of human rights monitors responsible for documenting cases of discrimination and violence against Roma.
- ▶ In 2007, Romani CRISS initiated a program to create a link between health mediators and the human rights monitors. Health mediators were trained in human rights and human rights monitors were trained in health issues. This way, the mediators knew to refer cases of discrimination or abuse to the monitors for documentation, and they could also sensitize communities on human rights issues. The monitors would then document cases of discrimination in health care settings and bring them for redress before the National Council to Combat Discrimination, the College of Physicians, and other institutions.

Results and lessons learned

- ▶ Currently, approximately 200 mediators work in 39 communities and 20 human rights monitors in 15 counties.
- ▶ The roles of health mediators and human rights monitors must be kept separate to maintain the independence of monitors and mediators' facilitating role with health service providers. This separation is particularly important as the Ministry of Health has funded many of the mediators since 2006.
- ▶ Legal advocacy work must be combined with an effective outreach and advocacy campaign targeted at policy makers and the public.

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What steps can government and key stakeholders take to improve the health status of minority populations?

The preceding case studies are concrete examples of projects using human rights mechanisms to improve access to health care and the health status of minority individuals and communities. The spectrum of barriers to health care for minority populations is broad, including discrimination in health care settings, a legacy of ineffective public policies, and geographic isolation. The table below presents some steps that governments and other key stakeholders can take immediately to begin to overcome these obstacles.

Ten steps for overcoming barriers to health care for minority populations:

Governments:

1. Appoint minority representatives to participate in the design, implementation, and evaluation of health programs and policies that affect their lives.
2. Ensure that policies and legislation address social factors that determine health and the needs of minorities. Interventions that aim to improve housing, for example, are critical to reducing TB infections.
3. Support the collection of ethnically disaggregated data and, based on this data, allocate resources to populations most in need of basic health services. Communities should be involved in the data collection and analysis process.
4. Train health care workers in communicating and working with minority and marginalized populations.
5. Establish an ombudsman office or other monitoring mechanism in health care systems to follow up reports of abuse or discrimination in health care settings.
6. Grant under-represented minority students incentives and assistance to enter health care professions.

Civil society, donors, researchers, media:

7. Civil society should become more familiar with instruments designed to protect and promote human rights, including the right to health for minorities.
8. Donors should invest in the institutional and capacity development of Roma leadership to engage effectively on policy issues affecting access to health and social services.
9. Academic, government, and other research communities should explore the inequities in access to health care for minorities and other marginalized populations.
10. Media should investigate and report systemic causes of the inequity in health status between minorities and the majority population in a balanced and fair manner.

Source: Open Society Institute Public Health Program. Left Out: Roma and Access to Health Care in Eastern Europe and South Eastern Europe, 2007.

Where can I find additional resources on health and human rights in Roma and San communities?

Resources

To further your understanding on the topic of health and human rights in minority communities, a list of commonly used resources has been compiled and organized into the following categories:

- ▶ Declarations and resolutions
- ▶ European regional instruments
- ▶ Books
- ▶ Reports, key articles, and other documents
- ▶ Websites

Declarations and Resolutions: UN

- ▶ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
Source: www.ohchr.org/english/law/minorities.htm
- ▶ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
Source: www.unhchr.ch/html/menu3/b/d_intole.htm
- ▶ Declaration on Race and Racial Prejudice
Source: www.ohchr.org/english/law/race.htm
- ▶ World Conference against Racism, 2001 - Durban Declaration and Programme of Action
Source: www.unhchr.ch/html/racism/02-documents-cnt.html
- ▶ International Labour Organization conventions on labour standards and non-discrimination in employment
Source: www.ilo.org/ilolex/english/convdisp1.htm
- ▶ Jakarta Declaration on Leading Health Promotion into the 21st Century (WHO)
Source: www.who.int/hpr/NPH/docs/jakarta_declaration_en.pdf

European regional instruments

European Union

- ▶ European Commission Racial Equality Directive
- ▶ European Commission Employment Framework Directive

- ▶ European Commission website on action against discrimination
Source:
ec.europa.eu/employment_social/fundamental_rights/legis/lgdirect_en.htm
- ▶ The Charter of Fundamental Rights of the European Union

Council of Europe treaties and recommendations

- ▶ Council of Europe's treaties
conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG
- ▶ Convention for the Protection of Human Rights and Fundamental Freedoms
conventions.coe.int/Treaty/en/Treaties/Html/005.htm
- ▶ European Charter for Regional or Minority Languages
conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=148&CL=ENG
- ▶ European Social Charter and Revised Social Charter
conventions.coe.int/treaty/en/Treaties/Html/163.htm
- ▶ Framework Convention for the Protection of National Minorities
conventions.coe.int/treaty/en/Treaties/Html/157.htm
- ▶ Oviedo Convention on Human Rights and Biomedicine (Convention for the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine)
www.coe.int/t/e/legal_affairs/legal_co-operation/bioethics/Texts_and_documents/1Treaties_COE.asp
- ▶ Recommendation (2006)10 of the Committee of Ministers to member states on better access to health care for Roma and Travellers in Europe
[www.coe.int/t/dg3/romatravellers/documentation/recommendations/CMR_ec\(2006\)10accesshealth_en.asp](http://www.coe.int/t/dg3/romatravellers/documentation/recommendations/CMR_ec(2006)10accesshealth_en.asp)
- ▶ Recommendation (2001)17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe
www.coe.int/T/DG3/RomaTravellers/documentation/recommendations/recemployment200117_en.asp
- ▶ Recommendation (2000)4 of the Committee of Ministers to member states on the education of Roma/Gypsy children in Europe
www.coe.int/T/DG3/RomaTravellers/documentation/recommendations/receducation20004_en.asp
- ▶ Recommendation (2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe
www.coe.int/T/DG3/RomaTravellers/documentation/recommendations/rechousing20054_en.asp

Other relevant commitments

- ▶ Decade of Roma Inclusion (2005-2015) and the National Action Plans for Health.
www.romadecade.com
- ▶ Guiding Principles for Improving the Situation of Roma in Candidate Countries
www.coe.int/t/dg3/romatravellers/documentation/recommendations/MiscCOCEnguidelineseu_en.asp
- ▶ Millennium Development Goals

Books

General

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Roma

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Reports, key articles, and other documents

General

- ▶ European Commission Directorate General of Employment and Social Affairs. *Equality and non-discrimination in an Enlarged European Union*. Green Paper. Brussels, 2005.
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The goal of the Center is to promote health and quality of life by preventing and controlling the disproportionate burden of disease, injury and disability among racial and ethnic minority populations.
www.cdc.gov/omh
- ▶ European Center for Minority Issues
The Center is an interdisciplinary institution with main activities including practice-oriented research, information, documentation and advisory services on minority-majority relations in Europe.
www.ecmi.de
- ▶ International Society for Equity in Health (ISEqH)
The ISEqH promotes equity in health and health services internationally through education, research, publication, communication, and charitable support.
www.iseqh.org
- ▶ Organization for Security and Cooperation in Europe (OSCE)
OSCE is the largest regional security organization in the world with 55 participating states from Europe, Central Asia, and North America. It works in early warning, conflict prevention, crisis management, and post-conflict rehabilitation.
www.osce.org/index.php
- ▶ Project on Ethnic Relations
The Project is dedicated to preventing ethnic conflict in Central and Eastern Europe, the Balkans, and the former Soviet Union.
www.per-usa.org/per.html
- ▶ The European Union Agency for Fundamental Rights
The Agency is a body of the European Union built upon the former European Monitoring Centre on Racism and Xenophobia (EUMC). Its main objective is to provide assistance and expertise related to fundamental rights to institutions and authorities of the European Community and its Member States when implementing Community law.
eumc.europa.eu/eumc/index.php

Roma

- ▶ Council of Europe's Roma and Travellers Division
The Division works on bringing about a long-term improvement in the situation of Roma and Travellers by encouraging member states to adopt a comprehensive approach in fighting racism, intolerance and social exclusion.
www.coe.int/T/DG3/RomaTravellers/Default_en.asp

- ▶ Decade of Roma Inclusion
The Decade of Roma Inclusion 2005–2015 is a political commitment by governments in Central and Southeastern Europe to combat Roma poverty, exclusion, and discrimination within a regional framework. The Decade is an international initiative that brings together governments, intergovernmental and nongovernmental organizations, as well as Romani civil society to accelerate progress toward improving the welfare of Roma and to review such progress in a transparent and quantifiable way. Each country has agreed to implement Health Action Plans which include indicators.
www.romadecade.org
- ▶ Dosta
Dosta, a Romani word meaning "enough", is an awareness raising campaign which aims at bringing non-Roma closer to Roma citizens.
dosta.org/?q=
- ▶ European Roma Information Office (ERIO)
ERIO is an international advocacy organization promoting political and public discussion on Roma issues by serving as a policy information resource office for European Union institutions, Roma civil organizations, governmental authorities and intergovernmental bodies.
www.erionet.org
- ▶ European Roma Rights Center
The center is an international public interest law organization that monitors the human rights situation of Roma and provides legal defense in cases of human rights abuse.
www.errc.org
- ▶ Fundacion Secretariado General Gitano
The Foundation is a non-profit intercultural social organization that promotes the development of Roma communities in Spain and on the European level. FSGG has implemented and reported on a number of health programs and issues.
www.fsgg.org
- ▶ OSI's Roma Initiatives Office (RIO)
RIO works to guide and coordinate all aspects of OSI network programming and grant-making activity related to Roma beneficiaries, including work undertaken by other OSI initiatives and Soros foundations.
www.soros.org/initiatives/roma
- ▶ OSI's Roma Participation Program (RPP)
RPP is an OSI grants program that supports Roma activists in Central and Eastern Europe to take charge of their lives, to participate in decisions that affect them, and to advocate for their rights as equal citizens of their own countries.
www.soros.org/initiatives/roma/focus/rpp

- ▶ Romani CRISS - Roma Center for Social Intervention and Studies
Romani CRISS is an NGO promoting the rights of the Roma communities in Romania by means of conflict resolution, mediation, litigation, legal aid, and advocacy. Its aim is to combat and prevent racial discrimination against Roma in all areas of public life, including health, education, employment, and housing.
www.romanicriss.org
- ▶ The League of the Decade in Serbia
The League is a coalition of Roma and non-Roma NGOs advocating for efficient implementation of a National Action Plan for Health by the Serbian Government for the Decade of Roma Inclusion (2005 – 2015). The League works closely with the Serbian Ministry of Health for monitoring allocation of resources to promote Roma health based on civil society research and input.
Source:
www.romadecade.com/index.php?option=com_content&task=view&id=167&Itemid=85
- ▶ World Bank site for Roma
The involvement of the World Bank in Roma issues stems from its agenda of economic and social development in Central and Eastern Europe. The World Bank addresses the challenges faced by Roma in its efforts to promote the process of building cohesive and inclusive societies in the region. The World Bank published the resource “Roma in an Expanding Europe – Breaking the Poverty Cycle.”
Source:
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San

- ▶ Indigenous peoples of Africa coordination committee. Who are Indigenous Peoples?
www.ipacc.org.za/eng/who.asp
- ▶ International working group on indigenous affairs.
www.iwgia.org
- ▶ United nations on permanent forum on indigenous issues, Fact sheet 1. *Who are indigenous peoples?*
www.un.org/esa/socdev/unpfi/en/session_fifth.html
- ▶ Legal Assistance Centre
www.lac.org.na
- ▶ Survival International
www.survival-international.org

- ▶ Working Group of Indigenous Minorities in Southern Africa
www.wimsanet.org
- ▶ Health Unlimited
www.healthunlimited.org

What are key terms related to Roma and San health and human rights?

Glossary

A variety of terms is used in Roma and San health and human rights work.

C

Civil rights

Rights individuals have in their role as citizens in relation to the state.

Collective rights

Rights associated with a community or people.

D

Direct racial discrimination

Any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life (ICERD).

F

Forcible assimilation

Policies which seek to forcibly incorporate a minority group into the majority population by erasing any distinctiveness in culture, religion, language, or practices.

G

Gender equity

Equality in social roles and opportunities available to women and men.

H

Health equity

Concern with reducing unequal opportunities for health associated with membership in a less privileged social group, such as an ethnic minority.

Health inequality

Systematic and potentially remediable differences in one or more aspects of health across populations or population groups defined socially, economically, demographically, or geographically.

I

Indigenous people

People descended from populations which inhabited the country at the time of conquest or colonization, or the establishment of present state boundaries, and

who retain some or all of their social, economic, and political institutions (ILO). This term is somewhat problematic in the African context, where many countries define it exclusively against European colonialism and in reference to the majority Bantu population, rather than just for Khoesan populations like the San.

Indirect discrimination

An apparently neutral practice or criterion, which nonetheless places a group at social disadvantage based on group characteristics.

M

Minority

Groups with unequal power compared with the dominant majority and which may need protection from that majority (Minority Rights Group International). Minorities are defined by number (smaller than the majority population), non-dominance, and differences in ethnicity, culture, religion, or language.

Minority rights

A rights-based approach stressing the importance of cultural preservation as a means of improving the condition of minority groups. This embodies two separate concepts: first, normal individual rights as applied to members of racial, ethnic, class, religious, linguistic, or sexual minorities, and second, collective rights accorded to minority groups.

S

Self identification

Determination of belonging to a minority group made by the individuals themselves.

Social determinants of health

The broad range of factors that contribute to a person's health including nutrition, housing, education, availability of social services, income, etc.

Social exclusion

The prevention of people from participating fully in economic, social, and civil life and/or when their access to income and other resources (personal, family, social, and cultural) is so inadequate as to exclude them from enjoying a standard of living and quality of life regarded acceptable by the society in which they live.

Social integration

Policies which seek to integrate a minority without coercion into the majority society, while ensuring the protection of individual rights.



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Human Rights Education

Appendix Thirteen Health and Human Rights Documents

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International Covenant on Civil and Political Rights (ICCPR)

Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976.

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article I

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III**Article 6**

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

- (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
- (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in

public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this Article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association

and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in Article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with Article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in Article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding Articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with Article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with Article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
 - (a) Twelve members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
 - (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
 - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this Article.

Article 41

1. A State Party to the present Covenant may at any time declare under this Article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if

submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

- (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;
- (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
- (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
- (d) The Committee shall hold closed meetings when examining communications under this Article;
- (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;
- (f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;
- (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
 - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
 - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this Article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-

General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.(a) If a matter referred to the Committee in accordance with Article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under Article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with Article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information. 7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this Article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this Article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under Article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI**Article 48**

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this Article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority

of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under Article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under Article 48;
- (b) The date of the entry into force of the present Covenant under Article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in Article 48.

Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights (Siracusa Principles)

Anne United Nations, Economic and Social Council, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1985/4 (1985).

I. Limitation Clauses

A. General Interpretative Principles Relating to the Justification of Limitations*

1. No limitations or grounds for applying them to rights guaranteed by the Covenant are permitted other than those contained in the terms of the Covenant itself.
2. The scope of a limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned.
3. All limitation clauses shall be interpreted strictly and in favour of the rights at issue.
4. All limitations shall be interpreted in the light and context of the particular right concerned.
5. All limitations on a right recognized by the Covenant shall be provided for by law and be compatible with the objects and purposes of the Covenant.
6. No limitation referred to in the Covenant shall be applied for any purpose other than that for which it has been prescribed.
7. No limitation shall be applied in an arbitrary manner.
8. Every limitation imposed shall be subject to the possibility of challenge to and remedy against its abusive application.
9. No limitation on a right recognized by the Covenant shall discriminate contrary to Article 2, paragraph 1.
10. Whenever a limitation is required in the terms of the Covenant to be "necessary," this term implies that the limitation:
 - (a) is based on one of the grounds justifying limitations recognized by the relevant Article of the Covenant,
 - (b) responds to a pressing public or social need,
 - (c) pursues a legitimate aim, and
 - (d) is proportionate to that aim.

Any assessment as to the necessity of a limitation shall be made on objective considerations.
11. In applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation.

* The term "limitations" in these principles includes the term "restrictions" as used in the Covenant.

12. The burden of justifying a limitation upon a right guaranteed under the Covenant lies with the state.

13. The requirement expressed in Article 12 of the Covenant, that any restrictions be consistent with other rights recognized in the Covenant, is implicit in limitations to the other rights recognized in the Covenant.

14. The limitation clauses of the Covenant shall not be interpreted to restrict the exercise of any human rights protected to a greater extent by other international obligations binding upon the state.

B. Interpretative Principles Relating to Specific Limitation Clauses

i. "prescribed by law"

15. No limitation on the exercise of human rights shall be made unless provided for by national law of general application which is consistent with the Covenant and is in force at the time the limitation is applied.

16. Laws imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable.

17. Legal rules limiting the exercise of human rights shall be clear and accessible to everyone.

18. Adequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition or application of limitations on human rights.

ii. "in a democratic society"

19. The expression "in a democratic society" shall be interpreted as imposing a further restriction on the limitation clauses it qualifies.

20. The burden is upon a state imposing limitations so qualified to demonstrate that the limitations do not impair the democratic functioning of the society.

21. While there is no single model of a democratic society, a society which recognizes and respects the human rights set forth in the United Nations Charter and the Universal Declaration of Human Rights may be viewed as meeting this definition.

iii. "public order (ordre public)"

22. The expression "public order (ordre public)" as used in the Covenant may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (ordre public).

23. Public order (ordre public) shall be interpreted in the context of the purpose of the particular human right which is limited on this ground.

24. State organs or agents responsible for the maintenance of public order (ordre public) shall be subject to controls in the exercise of their power through the parliament, courts, or other competent independent bodies.

iv. "public health"

25. Public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be

specifically aimed at preventing disease or injury or providing care for the sick and injured.

26. Due regard shall be had to the international health regulations of the World Health Organization.

v. "public morals"

27. Since public morality varies over time and from one culture to another, a state which invokes public morality as a ground for restricting human rights, while enjoying a certain margin of discretion, shall demonstrate that the limitation in question is essential to the maintenance of respect for fundamental values of the community.

28. The margin of discretion left to states does not apply to the rule of non-discrimination as defined in the Covenant.

vi. "national security"

29. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.

30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

31. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exists adequate safeguards and effective remedies against abuse.

32. The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.

vii. "public safety"

33. Public safety means protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property.

34. The need to protect public safety can justify limitations provided by law. It cannot be used for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.

viii. "rights and freedoms of others" or the "rights or reputations of others"

35. The scope of the rights and freedoms of others that may act as a limitation upon rights in the Covenant extends beyond the rights and freedoms recognized in the Covenant.

36. When a conflict exists between a right protected in the Covenant and one which is not, recognition and consideration should be given to the fact that the Covenant seeks to protect the most fundamental rights and freedoms. In this context especial weight should be afforded to rights not subject to limitations in the Covenant.

37. A limitation to a human right based upon the reputation of others shall not be used to protect the state and its officials from public opinion or criticism.

ix. "restrictions on public trial"

38. All trials shall be public unless the Court determines in accordance with law that:

(a) the press or the public should be excluded from all or part of a trial on the basis of specific findings announced in open court showing that the interest of the private lives of the parties or their families or of juveniles so requires; or

(b) the exclusion is strictly necessary to avoid publicity prejudicial to the fairness of the trial or endangering public morals, public order (*ordre public*), or national security in a democratic society.

II. Derogations in a Public Emergency

A. "Public Emergency which Threatens the Life of the Nation"

39. A state party may take measures derogating from its obligations under the International Covenant on Civil and Political Rights pursuant to Article 4 (hereinafter called "derogation measures") only when faced with a situation of exceptional and actual or imminent danger which threatens the life of the nation. A threat to the life of the nation is one that:

(a) affects the whole of the population and either the whole or part of the territory of the State, and

(b) threatens the physical integrity of the population, the political independence or the territorial integrity of the State or the existence or basic functioning of institutions indispensable to ensure and project the rights recognized in the Covenant.

40. Internal conflict and unrest that do not constitute a grave and imminent threat to the life of the nation cannot justify derogations under

Article 4

41. Economic difficulties per se cannot justify derogation measures.

B. Proclamation, Notification, and Termination of a Public Emergency

42. A state party derogating from its obligations under the Covenant shall make an official proclamation of the existence of the public emergency threatening the life of the nation.

43. Procedures under national law for the proclamation of a state of emergency shall be prescribed in advance of the emergency.

44. A state party derogating from its obligations under the Covenant shall immediately notify the other states parties to the Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and the reasons by which it was actuated.

45. The notification shall contain sufficient information to permit the states parties to exercise their rights and discharge their obligations under the Covenant. In particular it shall contain:

(a) the provisions of the Covenant from which it has derogated;

(b) a copy of the proclamation of emergency, together with the constitutional provisions,

legislation, or decrees governing the state of emergency in order to assist the states parties to appreciate the scope of the derogation;

(c) the effective date of the imposition of the state of emergency and the period for which it has been proclaimed;

(d) an explanation of the reasons which actuated the government's decision to derogate, including a brief description of the factual circumstances leading up to the proclamation of the state of emergency; and

(e) a brief description of the anticipated effect of the derogation measures on the rights recognized by the Covenant, including copies of decrees derogating from these rights issued prior to the notification.

46. States parties may require that further information necessary to enable them to carry out their role under the Covenant be provided through the intermediary of the Secretary-General.

47. A state party which fails to make an immediate notification in due form of its derogation is in breach of its obligations to other states parties and may be deprived of the defenses otherwise available to it in procedures under the Covenant.

48. A state party availing itself of the right of derogation pursuant to Article 4 shall terminate such derogation in the shortest time required to bring to an end the public emergency which threatens the life of the nation.

49. The state party shall on the date on which it terminates such derogation inform the other state parties, through the intermediary of the Secretary-General of the United Nations, of the fact of the termination.

50. On the termination of a derogation pursuant to Article 4 all rights and freedoms protected by the Covenant shall be restored in full. A review of the continuing consequences of derogation measures shall be made as soon as possible. Steps shall be taken to correct injustices and to compensate those who have suffered injustice during or in consequence of the derogation measures.

C. "Strictly Required by the Exigencies of the Situation"

51. The severity, duration, and geographic scope of any derogation measure shall be such only as are strictly necessary to deal with the threat to the life of the nation and are proportionate to its nature and extent.

52. The competent national authorities shall be under a duty to assess individually the necessity of any derogation measure taken or proposed to deal with the specific dangers posed by the emergency.

53. A measure is not strictly required by the exigencies of the situation where ordinary measures permissible under the specific limitations clauses of the Covenant would be adequate to deal with the threat to the life of the nation.

54. The principle of strict necessity shall be applied in an objective manner. Each measure shall be directed to an actual, clear, present, or imminent danger and may not be imposed merely because of an apprehension of potential danger.

55. The national constitution and laws governing states of emergency shall provide for prompt and periodic independent review by the legislature of the necessity for derogation measures.

56. Effective remedies shall be available to persons claiming that derogation measures affecting them are not strictly required by the exigencies of the situation.

57. In determining whether derogation measures are strictly required by the exigencies of the situation the judgment of the national authorities cannot be accepted as conclusive.

D. Non-Derogable Rights

58. No state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenant's guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; the right not to be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience and religion. These rights are not derogable under any conditions even for the asserted purpose of preserving the life of the nation.

59. State parties to the Covenant, as part of their obligation to ensure the enjoyment of these rights to all persons within their jurisdiction (Art. 2(1)) and to adopt measures to secure an effective remedy for violations (Art. 2(3)), shall take special precautions in time of public emergency to ensure that neither official nor semi-official groups engage in a practice of arbitrary and extra-judicial killings or involuntary disappearances, that persons in detention are protected against torture and other forms of cruel, inhuman or degrading treatment or punishment, and that no persons are convicted or punished under laws or decrees with retroactive effect.

60. The ordinary courts shall maintain their jurisdiction, even in a time of public emergency, to adjudicate any complaint that a non-derogable right has been violated.

E. Some General Principles on the Introduction and Application of a Public Emergency and Consequent Derogation Measures

61. Derogation from rights recognized under international law in order to respond to a threat to the life of the nation is not exercised in a legal vacuum. It is authorized by law and as such it is subject to several legal principles of general application.

62. A proclamation of a public emergency shall be made in good faith based upon an objective assessment of the situation in order to determine to what extent, if any, it poses a threat to the life of the nation. A proclamation of a public emergency, and consequent derogations from Covenant obligations, that are not made in good faith are violations of international law.

63. The provisions of the Covenant allowing for certain derogations in a public emergency are to be interpreted restrictively.

64. In a public emergency the rule of law shall still prevail. Derogation is an authorized and limited prerogative in order to respond adequately to a threat to

the life of the nation. The derogating state shall burden of justifying its actions under law.

65. The Covenant subordinates all procedures to the basic objectives of human rights. Article 5(1) of the Covenant sets definite limits to actions taken under the Covenant:

Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

Article 29(2) of the Universal Declaration of Human Rights sets out the ultimate purpose of law:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

These provisions apply with full force to claims that a situation constitutes a threat to the life of a nation and hence enables authorities to derogate.

66. A bona fide proclamation of the public emergency permits derogation from specified obligations in the Covenant, but does not authorize a general departure from international obligations. The Covenant in Article 4(1) and 5(2) expressly prohibits derogations which are inconsistent with other obligations under international law. In this regard, particular note should be taken of international obligations which apply in a public emergency under the Geneva and I.L.O. Conventions.

67. In a situation of a non-international armed conflict a state party to the 1949 Geneva Conventions for the protection of war victims may under no circumstances suspend the right to a trial by a court offering the essential guarantees of independence and impartiality (Article 3 common to the 1949 Conventions). Under the 1977 additional Protocol, the following rights with respect to penal prosecution shall be respected under all circumstances by state parties to the Protocol:

- (a) the duty to give notice of charges without delay and to grant the necessary rights and means of defense;
- (b) conviction only on the basis of individual penal responsibility;
- (c) the right not to be convicted, or sentenced to a heavier penalty, by virtue of retroactive criminal legislation;
- (d) presumption of innocence;
- (e) trial in the presence of the accused;
- (f) no obligation on the accused to testify against himself or to confess guilt;
- (g) the duty to advise the convicted person on judicial and other remedies.

68. The I.L.O. basic human rights conventions contain a number of rights dealing with such matters as forced labor, freedom of association, equality in employment and trade union and workers' rights which are not subject to

derogation during an emergency; others permit derogation, but only to the extent strictly necessary to meet the exigencies of the situation.

69. No state, including those that are not parties to the Covenant, may suspend or violate, even in times of public emergency:

- (a) the right to life;
- (b) freedom from torture or cruel, inhuman or degrading treatment or punishment and from medical or scientific experimentation;
- (c) the right not to be held in slavery or involuntary servitude; and,
- (d) the right not to be subjected to retroactive criminal penalties as defined in the Covenant.

Customary international law prohibits in all circumstances the denial of such fundamental rights.

70. Although protections against arbitrary arrest and detention (Art. 9) and the right to a fair and public hearing in the determination of a criminal charge (Art. 14) may be subject to legitimate limitations if strictly required by the exigencies of an emergency situation, the denial of certain rights fundamental to human dignity can never be strictly necessary in any conceivable emergency. Respect for these fundamental rights is essential in order to ensure enjoyment of non-derogable rights and to provide an effective remedy against their violation. In particular:

- (a) all arrests and detention and the place of detention shall be recorded, if possible centrally, and make available to the public without delay;
- (b) no person shall be detained for an indefinite period of time, whether detained pending judicial investigation or trial or detained without charge;
- (c) no person shall be held in isolation without communication with his family, friend, or lawyer for longer than a few days, e.g., three to seven days;
- (d) where persons are detained without charge the need of their continued detention shall be considered periodically by an independent review tribunal;
- (e) any person charged with an offense shall be entitled to a fair trial by a competent, independent and impartial court established by law;
- (f) civilians shall normally be tried by the ordinary courts; where it is found strictly necessary to establish military tribunals or special courts to try civilians, their competence, independence and impartiality shall be ensured and the need for them reviewed periodically by the competent authority;
- (g) any person charged with a criminal offense shall be entitled to the presumption of innocence and to at least the following rights to ensure a fair trial:
 - the right to be informed of the charges promptly, in detail and in a language he understands,
 - the right to have adequate time and facilities to prepare the defense including the right to communicate confidentially with his lawyer,
 - the right to a lawyer of his choice, with free legal assistance if he does not have the means to pay for it,

- the right to be present at the trial,
 - the right not to be compelled to testify against himself or to make a confession,
 - the right to obtain the attendance and examination of defense witnesses,
 - the right to be tried in public save where the court orders otherwise on grounds of security with adequate safeguards to prevent abuse,
 - the right to appeal to a higher court;
- (h) an adequate record of the proceedings shall be kept in all cases; and,
- (i) no person shall be tried or punished again for an offense for which he has already been convicted or acquitted.

F. Recommendations Concerning the Functions and Duties of the Human Rights Committee and United Nations Bodies

71. In the exercise of its power to study, report, and make general comments on states parties' reports under Article 40 of the Covenant, the Human Rights Committee may and should examine the compliance of states parties with the provisions of Article 4. Likewise it may and should do so when exercising its powers in relevant cases under Article 41 and the Optional Protocol relating, respectively, to interstate and individual communications.

72. In order to determine whether the requirements of Article 4(1) and (2) have been met and for the purpose of supplementing information in states parties' reports, members of the Human Rights Committee, as persons of recognized competence in the field of human rights, may and should have regard to information they consider to be reliable provided by other inter-governmental bodies, non-governmental organizations, and individual communications.

73. The Human Rights Committee should develop a procedure for requesting additional reports under Article 40(1)(b) from states parties which have given notification of derogation under Article 4(3) or which are reasonably believed by the Committee to have imposed emergency measures subject to Article 4 constraints. Such additional reports should relate to questions concerning the emergency insofar as it affects the implementation of the Covenant and should be dealt with by the Committee at the earliest possible date.

74. In order to enable the Human Rights Committee to perform its fact-finding functions more effectively, the committee should develop its procedures for the consideration of communications under the Optional Protocol to permit the hearing of oral submissions and evidence as well as visits to states parties alleged to be in violation of the Covenant. If necessary, the states parties to the Optional Protocol should consider amending it to this effect.

75. The United Nations Commission on Human Rights should request its Sub-Commission on Prevention of Discrimination and Protection of Minorities to prepare an annual list if states, whether parties to the Covenant or not, that proclaim, maintain, or terminate a public emergency together with:

- (a) in the case of a state party, the proclamation and notification; and,
- (b) in the case of other states, any available and apparently reliable information concerning the proclamation, threat to the life of the nation, derogation measures

and their proportionality, non-discrimination, and respect for non-derogable rights.

76. The United Nations Commission on Human Rights and its Sub-Commission should continue to utilize the technique of appointment of special rapporteurs and investigatory and fact-finding bodies in relation to prolonged public emergencies.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

Preamble

The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following Articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social

and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this Article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this Article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts thereof, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts thereof, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with Articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under Article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this Article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a

conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under Article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under Article 26;
- (b) The date of the entry into force of the present Covenant under Article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in Article 26.

Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health

Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health (Twenty-second session, 2000), U.N. Doc. E/C.12/2000/4 (2000), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 85 (2003).

The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)

1. Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programmes developed by the World Health Organization (WHO), or the adoption of specific legal instruments. Moreover, the right to health includes certain components which are legally enforceable.⁽¹⁾

2. The human right to health is recognized in numerous international instruments. Article 25.1 of the Universal Declaration of Human Rights affirms: "Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services". The International Covenant on Economic, Social and Cultural Rights provides the most comprehensive article on the right to health in international human rights law. In accordance with article 12.1 of the Covenant, States parties recognize "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health", while article 12.2 enumerates, by way of illustration, a number of "steps to be taken by the States parties ... to achieve the full realization of this right". Additionally, the right to health is recognized, inter alia, in article 5 (e) (iv) of the International Convention on the Elimination of All forms of Racial Discrimination of 1965, in articles 11.1 (f) and 12 of the Convention on the Elimination of all forms of Discrimination against Women of 1979 and in article 24 of the Convention on the Rights of the Child of 1989. Several regional human rights instruments also recognize the right to health, such as the European Social Charter of 1961 as revised (art. 11), the African Charter on Human and Peoples' Rights of 1981 (art. 16) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (art. 10). Similarly, the right to health has been proclaimed by the Commission on Human Rights,⁽²⁾ as well as in the Vienna Declaration and Programme of Action of 1993 and other international instruments.⁽³⁾

3. The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination,

equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.

4. In drafting Article 12 of the Covenant, the Third Committee of the United Nations General Assembly did not adopt the definition of health contained in the preamble to the Constitution of WHO, which conceptualizes health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". However, the reference in article 12.1 of the Covenant to "the highest attainable standard of physical and mental health" is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

5. The Committee is aware that, for millions of people throughout the world, the full enjoyment of the right to health still remains a distant goal. Moreover, in many cases, especially for those living in poverty, this goal is becoming increasingly remote. The Committee recognizes the formidable structural and other obstacles resulting from international and other factors beyond the control of States that impede the full realization of Article 12 in many States parties.

6. With a view to assisting States parties' implementation of the Covenant and the fulfilment of their reporting obligations, this General Comment focuses on the normative content of Article 12 (Part I), States parties' obligations (Part II), violations (Part III) and implementation at the national level (Part IV), while the obligations of actors other than States parties are addressed in Part V. The General Comment is based on the Committee's experience in examining States parties' reports over many years.

I. Normative content of article 12

7. Article 12.1 provides a definition of the right to health, while article 12.2 enumerates illustrative, non-exhaustive examples of States parties' obligations.

8. The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

9. The notion of "the highest attainable standard of health" in Article 12.1 takes into account both the individual's biological and socio-economic preconditions and a State's available resources. There are a number of aspects which cannot be addressed solely within the relationship between States and individuals; in particular, good health cannot be ensured by a State, nor can States provide protection against every possible cause of human ill health. Thus, genetic factors, individual susceptibility to ill health and the adoption of unhealthy or risky lifestyles may play an important role with respect to an individual's health. Consequently, the right to health must be understood as a right to the enjoyment

of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.

10. Since the adoption of the two International Covenants in 1966 the world health situation has changed dramatically and the notion of health has undergone substantial changes and has also widened in scope. More determinants of health are being taken into consideration, such as resource distribution and gender differences. A wider definition of health also takes into account such socially-related concerns as violence and armed conflict.⁽⁴⁾ Moreover, formerly unknown diseases, such as Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome (HIV/AIDS), and others that have become more widespread, such as cancer, as well as the rapid growth of the world population, have created new obstacles for the realization of the right to health which need to be taken into account when interpreting Article 12.

11. The Committee interprets the right to health, as defined in Article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.

12. The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party:

(a) Availability. Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs.⁽⁵⁾

(b) Accessibility. Health facilities, goods and services ⁽⁶⁾ have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.⁽⁷⁾

Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

Information accessibility: accessibility includes the right to seek, receive and impart information and ideas (8) concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

(c) Acceptability. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

(d) Quality. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

13. The non-exhaustive catalogue of examples in Article 12.2 provides guidance in defining the action to be taken by States. It gives specific generic examples of measures arising from the broad definition of the right to health contained in article 12.1, thereby illustrating the content of that right, as exemplified in the following paragraphs.(9)

Article 12.2 (a). The right to maternal, child and reproductive health

14. "The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child" (art. 12.2 (a)) (10) may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, (11) emergency obstetric services and access to information, as well as to resources necessary to act on that information. (12)

Article 12.2 (b). The right to healthy natural and workplace environments

15. "The improvement of all aspects of environmental and industrial hygiene" (art. 12.2 (b)) comprises, inter alia, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. (13) Furthermore, industrial hygiene refers to the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment. (14) Article 12.2 (b) also embraces adequate housing and safe and hygienic working conditions, an adequate supply of food and proper nutrition, and discourages the abuse of alcohol, and the use of tobacco, drugs and other harmful substances.

Article 12.2 (c). The right to prevention, treatment and control of diseases

16. "The prevention, treatment and control of epidemic, endemic, occupational and other diseases" (art. 12.2 (c)) requires the establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS, and those adversely affecting sexual and reproductive health, and the promotion of social determinants of good health, such as environmental safety, education, economic development and gender equity. The right to treatment includes the creation of a system of urgent medical care in cases of accidents, epidemics and similar health hazards, and the provision of disaster relief and humanitarian assistance in emergency situations. The control of diseases refers to States' individual and joint efforts to, inter alia, make available relevant technologies, using and improving epidemiological surveillance and data collection on a disaggregated basis, the implementation or enhancement of immunization programmes and other strategies of infectious disease control.

Article 12.2 (d). The right to health facilities, goods and services (15)

17. "The creation of conditions which would assure to all medical service and medical attention in the event of sickness" (art. 12.2 (d)), both physical and mental, includes the provision of equal and timely access to basic preventive, curative, rehabilitative health services and health education; regular screening programmes; appropriate treatment of prevalent diseases, illnesses, injuries and disabilities, preferably at community level; the provision of essential drugs; and appropriate mental health treatment and care. A further important aspect is the improvement and furtherance of participation of the population in the provision of preventive and curative health services, such as the organization of the health sector, the insurance system and, in particular, participation in political decisions relating to the right to health taken at both the community and national levels.

Article 12. Special topics of broad application

Non-discrimination and equal treatment

18. By virtue of Article 2.2 and article 3, the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health. The Committee stresses that many measures, such as most strategies and programmes designed to eliminate health-related discrimination, can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information. The Committee recalls General Comment No. 3, paragraph 12, which states that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.

19. With respect to the right to health, equality of access to health care and health services has to be emphasized. States have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services, especially with

respect to the core obligations of the right to health. (16) Inappropriate health resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favour expensive curative health services which are often accessible only to a small, privileged fraction of the population, rather than primary and preventive health care benefiting a far larger part of the population.

Gender perspective

20. The Committee recommends that States integrate a gender perspective in their health-related policies, planning, programmes and research in order to promote better health for both women and men. A gender-based approach recognizes that biological and socio-cultural factors play a significant role in influencing the health of men and women. The disaggregation of health and socio-economic data according to sex is essential for identifying and remedying inequalities in health.

Women and the right to health

21. To eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span. Such a strategy should include interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services. A major goal should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence. The realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health. It is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.

Children and adolescents

22. Article 12.2 (a) outlines the need to take measures to reduce infant mortality and promote the healthy development of infants and children. Subsequent international human rights instruments recognize that children and adolescents have the right to the enjoyment of the highest standard of health and access to facilities for the treatment of illness. (17)

The Convention on the Rights of the Child directs States to ensure access to essential health services for the child and his or her family, including pre- and post-natal care for mothers. The Convention links these goals with ensuring access to child-friendly information about preventive and health-promoting behaviour and support to families and communities in implementing these practices. Implementation of the principle of non-discrimination requires that girls, as well as boys, have equal access to adequate nutrition, safe environments, and physical as well as mental health services. There is a need to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children. (18) Children with disabilities should be given the opportunity to enjoy a fulfilling and decent life and to participate within their community.

23. States parties should provide a safe and supportive environment for adolescents, that ensures the opportunity to participate in decisions affecting their health, to build life-skills, to acquire appropriate information, to receive counselling and to negotiate the health-behaviour choices they make. The realization of the right to health of adolescents is dependent on the development of youth-friendly health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services.

24. In all policies and programmes aimed at guaranteeing the right to health of children and adolescents their best interests shall be a primary consideration.

Older persons

25. With regard to the realization of the right to health of older persons, the Committee, in accordance with paragraphs 34 and 35 of General Comment No. 6 (1995), reaffirms the importance of an integrated approach, combining elements of preventive, curative and rehabilitative health treatment. Such measures should be based on periodical check-ups for both sexes; physical as well as psychological rehabilitative measures aimed at maintaining the functionality and autonomy of older persons; and attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity.

Persons with disabilities

26. The Committee reaffirms paragraph 34 of its General Comment No. 5, which addresses the issue of persons with disabilities in the context of the right to physical and mental health. Moreover, the Committee stresses the need to ensure that not only the public health sector but also private providers of health services and facilities comply with the principle of non-discrimination in relation to persons with disabilities.

Indigenous peoples

27. In the light of emerging international law and practice and the recent measures taken by States in relation to indigenous peoples, (19) the Committee deems it useful to identify elements that would help to define indigenous peoples' right to health in order better to enable States with indigenous peoples to implement the provisions contained in Article 12 of the Covenant. The Committee considers that indigenous peoples have the right to specific measures to improve their access to health services and care. These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines. States should provide resources for indigenous peoples to design, deliver and control such services so that they may enjoy the highest attainable standard of physical and mental health. The vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected. The Committee notes that, in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.

Limitations

28. Issues of public health are sometimes used by States as grounds for limiting the exercise of other fundamental rights. The Committee wishes to emphasize that the Covenant's limitation clause, Article 4, is primarily intended to protect the rights of individuals rather than to permit the imposition of limitations by States. Consequently a State party which, for example, restricts the movement of, or incarcerates, persons with transmissible diseases such as HIV/AIDS, refuses to allow doctors to treat persons believed to be opposed to a government, or fails to provide immunization against the community's major infectious diseases, on grounds such as national security or the preservation of public order, has the burden of justifying such serious measures in relation to each of the elements identified in article 4. Such restrictions must be in accordance with the law, including international human rights standards, compatible with the nature of the rights protected by the Covenant, in the interest of legitimate aims pursued, and strictly necessary for the promotion of the general welfare in a democratic society.

29. In line with Article 5.1, such limitations must be proportional, i.e. the least restrictive alternative must be adopted where several types of limitations are available. Even where such limitations on grounds of protecting public health are basically permitted, they should be of limited duration and subject to review.

II. States Parties' Obligations

General legal obligations

30. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2.2) and the obligation to take steps (art. 2.1) towards the full realization of Article 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to health. (20)

31. The progressive realization of the right to health over a period of time should not be interpreted as depriving States parties' obligations of all meaningful content. Rather, progressive realization means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of Article 12. (21)

32. As with all other rights in the Covenant, there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources. (22)

33. The right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil contains obligations to facilitate, provide and promote. (23) The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to protect

requires States to take measures that prevent third parties from interfering with Article 12 guarantees. Finally, the obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health.

Specific legal obligations

34. In particular, States are under the obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women's health status and needs.

Furthermore, obligations to respect include a State's obligation to refrain from prohibiting or impeding traditional preventive care, healing practices and medicines, from marketing unsafe drugs and from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness or the prevention and control of communicable diseases. Such exceptional cases should be subject to specific and restrictive conditions, respecting best practices and applicable international standards, including the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. (24)

In addition, States should refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health, from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, as well as from preventing people's participation in health-related matters. States should also refrain from unlawfully polluting air, water and soil, e.g. through industrial waste from State-owned facilities, from using or testing nuclear, biological or chemical weapons if such testing results in the release of substances harmful to human health, and from limiting access to health services as a punitive measure, e.g. during armed conflicts in violation of international humanitarian law.

35. Obligations to protect include, *inter alia*, the duties of States to adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties; to ensure that privatization of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services; to control the marketing of medical equipment and medicines by third parties; and to ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct. States are also obliged to ensure that harmful social or traditional practices do not interfere with access to pre- and post-natal care and family-planning; to prevent third parties from coercing women to undergo traditional practices, e.g. female genital mutilation; and to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence. States should also ensure that third parties do not limit people's access to health-related information and services.

36. The obligation to fulfil requires States parties, *inter alia*, to give sufficient recognition to the right to health in the national political and legal systems, preferably by way of legislative implementation, and to adopt a national health policy with a detailed plan for realizing the right to health. States must ensure provision of health care, including immunization programmes against the major

infectious diseases, and ensure equal access for all to the underlying determinants of health, such as nutritiously safe food and potable drinking water, basic sanitation and adequate housing and living conditions. Public health infrastructures should provide for sexual and reproductive health services, including safe motherhood, particularly in rural areas. States have to ensure the appropriate training of doctors and other medical personnel, the provision of a sufficient number of hospitals, clinics and other health-related facilities, and the promotion and support of the establishment of institutions providing counselling and mental health services, with due regard to equitable distribution throughout the country. Further obligations include the provision of a public, private or mixed health insurance system which is affordable for all, the promotion of medical research and health education, as well as information campaigns, in particular with respect to HIV/AIDS, sexual and reproductive health, traditional practices, domestic violence, the abuse of alcohol and the use of cigarettes, drugs and other harmful substances. States are also required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline. Furthermore, States parties are required to formulate, implement and periodically review a coherent national policy to minimize the risk of occupational accidents and diseases, as well as to provide a coherent national policy on occupational safety and health services. (25)

37. The obligation to fulfil (facilitate) requires States inter alia to take positive measures that enable and assist individuals and communities to enjoy the right to health. States parties are also obliged to fulfil (provide) a specific right contained in the Covenant when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal. The obligation to fulfil (promote) the right to health requires States to undertake actions that create, maintain and restore the health of the population. Such obligations include: (i) fostering recognition of factors favouring positive health results, e.g. research and provision of information; (ii) ensuring that health services are culturally appropriate and that health care staff are trained to recognize and respond to the specific needs of vulnerable or marginalized groups; (iii) ensuring that the State meets its obligations in the dissemination of appropriate information relating to healthy lifestyles and nutrition, harmful traditional practices and the availability of services; (iv) supporting people in making informed choices about their health.

International obligations

38. In its General Comment No. 3, the Committee drew attention to the obligation of all States parties to take steps, individually and through international assistance and cooperation, especially economic and technical, towards the full realization of the rights recognized in the Covenant, such as the right to health. In the spirit of Article 56 of the Charter of the United Nations, the specific provisions of the Covenant (articles 12, 2.1, 22 and 23) and the Alma-Ata Declaration on primary health care, States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to health. In this regard, States parties are referred to the Alma-Ata Declaration which proclaims that the existing gross inequality in the health status of the people, particularly

between developed and developing countries, as well as within countries, is politically, socially and economically unacceptable and is, therefore, of common concern to all countries. (26)

39. To comply with their international obligations in relation to Article 12, States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law. Depending on the availability of resources, States should facilitate access to essential health facilities, goods and services in other countries, wherever possible and provide the necessary aid when required. (27) States parties should ensure that the right to health is given due attention in international agreements and, to that end, should consider the development of further legal instruments. In relation to the conclusion of other international agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to health. Similarly, States parties have an obligation to ensure that their actions as members of international organizations take due account of the right to health. Accordingly, States parties which are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these institutions.

40. States parties have a joint and individual responsibility, in accordance with the Charter of the United Nations and relevant resolutions of the United Nations General Assembly and of the World Health Assembly, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Each State should contribute to this task to the maximum of its capacities. Priority in the provision of international medical aid, distribution and management of resources, such as safe and potable water, food and medical supplies, and financial aid should be given to the most vulnerable or marginalized groups of the population. Moreover, given that some diseases are easily transmissible beyond the frontiers of a State, the international community has a collective responsibility to address this problem. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.

41. States parties should refrain at all times from imposing embargoes or similar measures restricting the supply of another State with adequate medicines and medical equipment. Restrictions on such goods should never be used as an instrument of political and economic pressure. In this regard, the Committee recalls its position, stated in General Comment No. 8, on the relationship between economic sanctions and respect for economic, social and cultural rights.

42. While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society - individuals, including health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities regarding the realization of the right to health. State parties should therefore provide an environment which facilitates the discharge of these responsibilities.

Core obligations

43. In General Comment No. 3, the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care. Read in conjunction with more contemporary instruments, such as the Programme of Action of the International Conference on Population and Development, (28) the Alma-Ata Declaration provides compelling guidance on the core obligations arising from Article 12. Accordingly, in the Committee's view, these core obligations include at least the following obligations:

- (a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- (b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
- (c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
- (d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
- (e) To ensure equitable distribution of all health facilities, goods and services;
- (f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.

44. The Committee also confirms that the following are obligations of comparable priority:

- (a) To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care;
- (b) To provide immunization against the major infectious diseases occurring in the community;
- (c) To take measures to prevent, treat and control epidemic and endemic diseases;
- (d) To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them;
- (e) To provide appropriate training for health personnel, including education on health and human rights.

45. For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties and other actors in a position to assist, to provide "international assistance and cooperation, especially economic and technical" (29) which enable developing countries to fulfil their core and other obligations indicated in paragraphs 43 and 44 above.

III. Violations

46. When the normative content of Article 12 (Part I) is applied to the obligations of States parties (Part II), a dynamic process is set in motion which facilitates identification of violations of the right to health. The following paragraphs provide illustrations of violations of article 12.

47. In determining which actions or omissions amount to a violation of the right to health, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations under Article 12. This follows from article 12.1, which speaks of the highest attainable standard of health, as well as from article 2.1 of the Covenant, which obliges each State party to take the necessary steps to the maximum of its available resources. A State which is unwilling to use the maximum of its available resources for the realization of the right to health is in violation of its obligations under article 12. If resource constraints render it impossible for a State to comply fully with its Covenant obligations, it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy, as a matter of priority, the obligations outlined above. It should be stressed, however, that a State party cannot, under any circumstances whatsoever, justify its non-compliance with the core obligations set out in paragraph 43 above, which are non-derogable.

48. Violations of the right to health can occur through the direct action of States or other entities insufficiently regulated by States. The adoption of any retrogressive measures incompatible with the core obligations under the right to health, outlined in paragraph 43 above, constitutes a violation of the right to health. Violations through acts of commission include the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to health or the adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to health.

49. Violations of the right to health can also occur through the omission or failure of States to take necessary measures arising from legal obligations. Violations through acts of omission include the failure to take appropriate steps towards the full realization of everyone's right to the enjoyment of the highest attainable standard of physical and mental health, the failure to have a national policy on occupational safety and health as well as occupational health services, and the failure to enforce relevant laws.

Violations of the obligation to respect

50. Violations of the obligation to respect are those State actions, policies or laws that contravene the standards set out in Article 12 of the Covenant and are likely to result in bodily harm, unnecessary morbidity and preventable mortality. Examples include the denial of access to health facilities, goods and services to particular individuals or groups as a result of de jure or de facto discrimination; the deliberate withholding or misrepresentation of information vital to health protection or treatment; the suspension of legislation or the adoption of laws or policies that interfere with the enjoyment of any of the components of the right to health; and the failure of the State to take into account its legal obligations regarding the right to health when entering into bilateral or multilateral

agreements with other States, international organizations and other entities, such as multinational corporations.

Violations of the obligation to protect

51. Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others; the failure to protect consumers and workers from practices detrimental to health, e.g. by employers and manufacturers of medicines or food; the failure to discourage production, marketing and consumption of tobacco, narcotics and other harmful substances; the failure to protect women against violence or to prosecute perpetrators; the failure to discourage the continued observance of harmful traditional medical or cultural practices; and the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.

Violations of the obligation to fulfil

52. Violations of the obligation to fulfil occur through the failure of States parties to take all necessary steps to ensure the realization of the right to health. Examples include the failure to adopt or implement a national health policy designed to ensure the right to health for everyone; insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to health by individuals or groups, particularly the vulnerable or marginalized; the failure to monitor the realization of the right to health at the national level, for example by identifying right to health indicators and benchmarks; the failure to take measures to reduce the inequitable distribution of health facilities, goods and services; the failure to adopt a gender-sensitive approach to health; and the failure to reduce infant and maternal mortality rates.

IV. Implementation at the national level

Framework legislation

53. The most appropriate feasible measures to implement the right to health will vary significantly from one State to another. Every State has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances. The Covenant, however, clearly imposes a duty on each State to take whatever steps are necessary to ensure that everyone has access to health facilities, goods and services so that they can enjoy, as soon as possible, the highest attainable standard of physical and mental health. This requires the adoption of a national strategy to ensure to all the enjoyment of the right to health, based on human rights principles which define the objectives of that strategy, and the formulation of policies and corresponding right to health indicators and benchmarks. The national health strategy should also identify the resources available to attain defined objectives, as well as the most cost-effective way of using those resources.

54. The formulation and implementation of national health strategies and plans of action should respect, *inter alia*, the principles of non-discrimination and people's participation. In particular, the right of individuals and groups to participate in decision-making processes, which may affect their development, must be an integral component of any policy, programme or strategy developed

to discharge governmental obligations under Article 12. Promoting health must involve effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health. Effective provision of health services can only be assured if people's participation is secured by States.

55. The national health strategy and plan of action should also be based on the principles of accountability, transparency and independence of the judiciary, since good governance is essential to the effective implementation of all human rights, including the realization of the right to health. In order to create a favourable climate for the realization of the right, States parties should take appropriate steps to ensure that the private business sector and civil society are aware of, and consider the importance of, the right to health in pursuing their activities.

56. States should consider adopting a framework law to operationalize their right to health national strategy. The framework law should establish national mechanisms for monitoring the implementation of national health strategies and plans of action. It should include provisions on the targets to be achieved and the time-frame for their achievement; the means by which right to health benchmarks could be achieved; the intended collaboration with civil society, including health experts, the private sector and international organizations; institutional responsibility for the implementation of the right to health national strategy and plan of action; and possible recourse procedures. In monitoring progress towards the realization of the right to health, States parties should identify the factors and difficulties affecting implementation of their obligations.

Right to health indicators and benchmarks

57. National health strategies should identify appropriate right to health indicators and benchmarks. The indicators should be designed to monitor, at the national and international levels, the State party's obligations under Article 12. States may obtain guidance on appropriate right to health indicators, which should address different aspects of the right to health, from the ongoing work of WHO and the United Nations Children's Fund (UNICEF) in this field. Right to health indicators require disaggregation on the prohibited grounds of discrimination.

58. Having identified appropriate right to health indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator. During the periodic reporting procedure the Committee will engage in a process of scoping with the State party. Scoping involves the joint consideration by the State party and the Committee of the indicators and national benchmarks which will then provide the targets to be achieved during the next reporting period. In the following five years, the State party will use these national benchmarks to help monitor its implementation of Article 12. Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered.

Remedies and accountability

59. Any person or group victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both national and international levels. (30) All victims of such violations should be entitled to adequate reparation, which may take the form of restitution, compensation,

satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, consumer forums, patients' rights associations or similar institutions should address violations of the right to health.

60. The incorporation in the domestic legal order of international instruments recognizing the right to health can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. (31) Incorporation enables courts to adjudicate violations of the right to health, or at least its core obligations, by direct reference to the Covenant.

61. Judges and members of the legal profession should be encouraged by States parties to pay greater attention to violations of the right to health in the exercise of their functions.

62. States parties should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting vulnerable or marginalized groups in the realization of their right to health.

V. Obligations of actors others than states parties

63. The role of the United Nations agencies and programmes, and in particular the key function assigned to WHO in realizing the right to health at the international, regional and country levels, is of particular importance, as is the function of UNICEF in relation to the right to health of children. When formulating and implementing their right to health national strategies, States parties should avail themselves of technical assistance and cooperation of WHO. Further, when preparing their reports, States parties should utilize the extensive information and advisory services of WHO with regard to data collection, disaggregation, and the development of right to health indicators and benchmarks.

64. Moreover, coordinated efforts for the realization of the right to health should be maintained to enhance the interaction among all the actors concerned, including the various components of civil society. In conformity with Articles 22 and 23 of the Covenant, WHO, The International Labour Organization, the United Nations Development Programme, UNICEF, the United Nations Population Fund, the World Bank, regional development banks, the International Monetary Fund, the World Trade Organization and other relevant bodies within the United Nations system, should cooperate effectively with States parties, building on their respective expertise, in relation to the implementation of the right to health at the national level, with due respect to their individual mandates. In particular, the international financial institutions, notably the World Bank and the International Monetary Fund, should pay greater attention to the protection of the right to health in their lending policies, credit agreements and structural adjustment programmes. When examining the reports of States parties and their ability to meet the obligations under article 12, the Committee will consider the effects of the assistance provided by all other actors. The adoption of a human rights-based approach by United Nations specialized agencies, programmes and bodies will greatly facilitate implementation of the right to health. In the course of its examination of States parties' reports, the Committee will also consider the role of health professional associations and other non-governmental organizations in relation to the States' obligations under article 12.

65. The role of WHO, the Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross/Red Crescent and UNICEF, as well as non governmental organizations and national medical associations, is of particular importance in relation to disaster relief and humanitarian assistance in times of emergencies, including assistance to refugees and internally displaced persons. Priority in the provision of international medical aid, distribution and management of resources, such as safe and potable water, food and medical supplies, and financial aid should be given to the most vulnerable or marginalized groups of the population.

Adopted on 11 May 2000.

Notes:

¹ For example, the principle of non-discrimination in relation to health facilities, goods and services is legally enforceable in numerous national jurisdictions.

² In its resolution 1989/11.

³ The Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care adopted by the United Nations General Assembly in 1991 (resolution 46/119) and the Committee's General Comment No. 5 on persons with disabilities apply to persons with mental illness; the Programme of Action of the International Conference on Population and Development held at Cairo in 1994, as well as the Declaration and Programme for Action of the Fourth World Conference on Women held in Beijing in 1995 contain definitions of reproductive health and women's health, respectively.

⁴ Common Article 3 of the Geneva Conventions for the protection of war victims (1949); Additional Protocol I (1977) relating to the Protection of Victims of International Armed Conflicts, art. 75 (2) (a); Additional Protocol II (1977) relating to the Protection of Victims of Non-International Armed Conflicts, art. 4 (a).

⁵ See WHO Model List of Essential Drugs, revised December 1999, WHO Drug Information, vol. 13, No. 4, 1999.

⁶ Unless expressly provided otherwise, any reference in this General Comment to health facilities, goods and services includes the underlying determinants of health outlined in paras. 11 and 12 (a) of this General Comment.

⁷ See paras. 18 and 19 of this General Comment.

⁸ See Article 19.2 of the International Covenant on Civil and Political Rights. This General Comment gives particular emphasis to access to information because of the special importance of this issue in relation to health.

⁹ In the literature and practice concerning the right to health, three levels of health care are frequently referred to: primary health care typically deals with common and relatively minor illnesses and is provided by health professionals and/or generally trained doctors working within the community at relatively low cost; secondary health care is provided in centres, usually hospitals, and typically deals with relatively common minor or serious illnesses that cannot be managed at community level, using specialty-trained health professionals and doctors, special equipment and sometimes in-patient care at comparatively higher cost; tertiary health care is provided in relatively few centres, typically deals with small numbers of minor or serious illnesses requiring specialty-trained health professionals and doctors and special equipment, and is often relatively expensive. Since forms of primary, secondary and tertiary health care frequently overlap and often interact, the use of this typology does not always provide sufficient distinguishing criteria to be helpful for assessing which levels of health care States parties must provide, and is therefore of limited assistance in relation to the normative understanding of Article 12.

¹⁰ According to WHO, the stillbirth rate is no longer commonly used, infant and under-five mortality rates being measured instead.

¹¹ Prenatal denotes existing or occurring before birth; perinatal refers to the period shortly before and after birth (in medical statistics the period begins with the completion of 28 weeks of gestation and is variously defined as ending one to four weeks after birth); neonatal, by contrast, covers the period pertaining to the first four weeks

after birth; while post-natal denotes occurrence after birth. In this General Comment, the more generic terms pre- and post-natal are exclusively employed.

¹² Reproductive health means that women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right of access to appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth.

¹³ The Committee takes note, in this regard, of Principle 1 of the Stockholm Declaration of 1972 which states: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being", as well as of recent developments in international law, including General Assembly resolution 45/94 on the need to ensure a healthy environment for the well-being of individuals; Principle 1 of the Rio Declaration; and regional human rights instruments such as Article 10 of the San Salvador Protocol to the American Convention on Human Rights.

¹⁴ ILO Convention No. 155, art. 4.2.

¹⁵ See para. 12 (b) and note 8 above.

¹⁶ For the core obligations, see paras. 43 and 44 of the present General Comments.

¹⁷ Article 24.1 of the Convention on the Rights of the Child.

¹⁸ See World Health Assembly resolution WHA47.10, 1994, entitled "Maternal and child health and family planning: traditional practices harmful to the health of women and children".

¹⁹ Recent emerging international norms relevant to indigenous peoples include the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989); Articles 29 (c) and (d) and 30 of the Convention on the Rights of the Child (1989); article 8 (j) of the Convention on Biological Diversity (1992), recommending that States respect, preserve and maintain knowledge, innovation and practices of indigenous communities; Agenda 21 of the United Nations Conference on Environment and Development (1992), in particular chapter 26; and Part I, paragraph 20, of the Vienna Declaration and Programme of Action (1993), stating that States should take concerted positive steps to ensure respect for all human rights of indigenous people, on the basis of non-discrimination. See also the preamble and article 3 of the United Nations Framework Convention on Climate Change (1992); and article 10 (2) (e) of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (1994). During recent years an increasing number of States have changed their constitutions and introduced legislation recognizing specific rights of indigenous peoples.

²⁰ See General Comment No. 13, para. 43.

²¹ See General Comment No. 3, para. 9; General Comment No. 13, para. 44.

²² See General Comment No. 3, para. 9; General Comment No. 13, para. 45.

²³ According to General Comments Nos. 12 and 13, the obligation to fulfil incorporates an obligation to facilitate and an obligation to provide. In the present General Comment, the obligation to fulfil also incorporates an obligation to promote because of the critical importance of health promotion in the work of WHO and elsewhere.

²⁴ General Assembly resolution 46/119 (1991).

²⁵ Elements of such a policy are the identification, determination, authorization and control of dangerous materials, equipment, substances, agents and work processes; the provision of health information to workers and the provision, if needed, of adequate protective clothing and equipment; the enforcement of laws and regulations through adequate inspection; the requirement of notification of occupational accidents and diseases, the conduct of inquiries into serious accidents and diseases, and the production of annual statistics; the protection of workers and their representatives from disciplinary measures for actions properly taken by them in conformity with such a policy; and the provision of occupational health services with essentially preventive functions. See ILO Occupational Safety and Health Convention, 1981 (No. 155) and Occupational Health Services Convention, 1985 (No. 161).

²⁶ Article II, Alma-Ata Declaration, Report of the International Conference on Primary Health Care, Alma-Ata, 6-12 September 1978, in: World Health Organization, "Health for All" Series, No. 1, WHO, Geneva, 1978.

²⁷ See para. 45 of this General Comment.

²⁸ Report of the International Conference on Population and Development, Cairo, 5-13 September 1994 (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex, chaps. VII and VIII.

²⁹ Covenant, art. 2.1.

³⁰ Regardless of whether groups as such can seek remedies as distinct holders of rights, States parties are bound by both the collective and individual dimensions of Article 12. Collective rights are critical in the field of health; modern public health policy relies heavily on prevention and promotion which are approaches directed primarily to groups.

³¹ See General Comment No. 2, para. 9.

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Maastricht Guidelines)

Maastricht Guidelines on Violations of Economic, Social and Cultural Rights,
Maastricht, January 22-26, 1997

I. The significance of economic, social and cultural rights

1. Since the Limburg Principles were adopted in 1986, the economic and social conditions have declined at alarming rates for over 1.6 billion people, while they have advanced also at a dramatic pace for more than a quarter of the world's population. The gap between rich and poor has doubled in the last three decades, with the poorest fifth of the world's population receiving 1.4% of the global income and the richest fifth 85%. The impact of these disparities on the lives of people - especially the poor - is dramatic and renders the enjoyment of economic, social and cultural rights illusory for a significant portion of humanity.
2. Since the end of the Cold War, there has been a trend in all regions of the world to reduce the role of the state and to rely on the market to resolve problems of human welfare, often in response to conditions generated by international and national financial markets and institutions and in an effort to attract investments from the multinational enterprises whose wealth and power exceed that of many states. It is no longer taken for granted that the realization of economic, social and cultural rights depends significantly on action by the state, although, as a matter of international law, the state remains ultimately responsible for guaranteeing the realization of these rights. While the challenge of addressing violations of economic, social and cultural rights is rendered more complicated by these trends, it is more urgent than ever to take these rights seriously and, therefore, to deal with the accountability of governments for failure to meet their obligations in this area.
3. There have also been significant legal developments enhancing economic, social and cultural rights since 1986, including the emerging jurisprudence of the Committee on Economic, Social and Cultural Rights and the adoption of instruments, such as the revised European Social Charter of 1996 and the Additional Protocol to the European Charter Providing for a System of Collective Complaints, and the San Salvador Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988. Governments have made firm commitments to address more effectively economic, social and cultural rights within the framework of seven UN World Summits conferences (1992-1996). Moreover, the potential exists for improved accountability for violations of economic, social and cultural rights through the proposed Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of all forms of Discrimination Against Women. Significant developments within national civil society movements and regional and international NGOs in the field of economic, social and cultural rights have taken place.
4. It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, states are as

responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights.

5. As in the case of civil and political rights, the failure by a State Party to comply with a treaty obligation concerning economic, social and cultural rights is, under international law, a violation of that treaty. Building upon the Limburg Principles, the considerations below relate primarily to the International Covenant on Economic, Social and Cultural Rights (hereinafter "the Covenant"). They are equally relevant, however, to the interpretation and application of other norms of international and domestic law in the field of economic, social and cultural rights.

II. The meaning of violations of economic, social and cultural rights

Obligations to respect, protect and fulfill

6. Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfil. Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions. The obligation to protect requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work. The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation.

Obligations of conduct and of result

7. The obligations to respect, protect and fulfil each contain elements of obligation of conduct and obligation of result. The obligation of conduct requires action reasonably calculated to realize the enjoyment of a particular right. In the case of the right to health, for example, the obligation of conduct could involve the adoption and implementation of a plan of action to reduce maternal mortality. The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard. With respect to the right to health, for example, the obligation of result requires the reduction of maternal mortality to levels agreed at the 1994 Cairo International Conference on Population and Development and the 1995 Beijing Fourth World Conference on Women.

Margin of discretion

8. As in the case of civil and political rights, States enjoy a margin of discretion in selecting the means for implementing their respective obligations. State practice and the application of legal norms to concrete cases and situations by international treaty monitoring bodies as well as by domestic courts have contributed to the development of universal minimum standards and the common understanding of the scope, nature and limitation of economic, social and cultural rights. The fact that the full realization of most economic, social and cultural rights can only be achieved progressively, which in fact also applies to most civil and political rights, does not alter the nature of the legal obligation of States which requires that certain steps be taken immediately and others as soon as possible. Therefore, the burden is on the State to demonstrate that it is making measurable progress toward the full realization of the rights in question. The

State cannot use the "progressive realization" provisions in Article 2 of the Covenant as a pretext for non-compliance. Nor can the State justify derogations or limitations of rights recognized in the Covenant because of different social, religious and cultural backgrounds.

Minimum core obligations

9. Violations of the Covenant occur when a State fails to satisfy what the Committee on Economic, Social and Cultural Rights has referred to as "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights [...]. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, violating the Covenant." Such minimum core obligations apply irrespective of the availability of resources of the country concerned or any other factors and difficulties.

Availability of resources

10. In many cases, compliance with such obligations may be undertaken by most States with relative ease, and without significant resource implications. In other cases, however, full realization of the rights may depend upon the availability of adequate financial and material resources. Nonetheless, as established by Limburg Principles 25-28, and confirmed by the developing jurisprudence of the Committee on Economic, Social and Cultural Rights, resource scarcity does not relieve States of certain minimum obligations in respect of the implementation of economic, social and cultural rights.

State policies

11. A violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result. Furthermore, any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant.

Gender discrimination

12. Discrimination against women in relation to the rights recognized in the Covenant, is understood in light of the standard of equality for women under the Convention on the Elimination of all forms of Discrimination Against Women. That standard requires the elimination of all forms of discrimination against women including gender discrimination arising out of social, cultural and other structural disadvantages.

Inability to comply

13. In determining which actions or omissions amount to a violation of an economic, social or cultural right, it is important to distinguish the inability from the unwillingness of a State to comply with its treaty obligations. A State claiming that it is unable to carry out its obligation for reasons beyond its control has the burden of proving that this is the case. A temporary closure of an educational institution due to an earthquake, for instance, would be a circumstance beyond the control of the State, while the elimination of a social security scheme without

an adequate replacement programme could be an example of unwillingness by the State to fulfil its obligations.

Violations through acts of commission

14. Violations of economic, social and cultural rights can occur through the direct action of States or other entities insufficiently regulated by States. Examples of such violations include:

- (a) The formal removal or suspension of legislation necessary for the continued enjoyment of an economic, social and cultural right that is currently enjoyed;
- (b) The active denial of such rights to particular individuals or groups, whether through legislated or enforced discrimination;
- (c) The active support for measures adopted by third parties which are inconsistent with economic, social and cultural rights;
- (d) The adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights, unless it is done with the purpose and effect of increasing equality and improving the realization of economic, social and cultural rights for the most vulnerable groups;
- (e) The adoption of any deliberately retrogressive measure that reduces the extent to which any such right is guaranteed;
- (f) The calculated obstruction of, or halt to, the progressive realization of a right protected by the Covenant, unless the State is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure;
- (g) The reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone.

Violations through acts of omission

15. Violations of economic, social, cultural rights can also occur through the omission or failure of States to take necessary measures stemming from legal obligations. Examples of such violations include:

- (a) The failure to take appropriate steps as required under the Covenant;
- (b) The failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the Covenant;
- (c) The failure to enforce legislation or put into effect policies designed to implement provisions of the Covenant;
- (d) The failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights;
- (e) The failure to utilize the maximum of available resources towards the full realization of the Covenant;
- (f) The failure to monitor the realization of economic, social and cultural rights, including the development and application of criteria and indicators for assessing compliance;

- (g) The failure to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfillment of a right guaranteed by the Covenant;
- (h) The failure to implement without delay a right which it is required by the Covenant to provide immediately;
- (i) The failure to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- (j) The failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations.

III. Responsibility for violations

State responsibility

16. The violations referred to in section II are in principle imputable to the State within whose jurisdiction they occur. As a consequence, the State responsible must establish mechanisms to correct such violations, including monitoring investigation, prosecution, and remedies for victims.

Alien domination or occupation

17. Under circumstances of alien domination, deprivations of economic, social and cultural rights may be imputable to the conduct of the State exercising effective control over the territory in question. This is true under conditions of colonialism, other forms of alien domination and military occupation. The dominating or occupying power bears responsibility for violations of economic, social and cultural rights. There are also circumstances in which States acting in concert violate economic, social and cultural rights.

Acts by non-state entities

18. The obligation to protect includes the State's responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-state actors.

Acts by international organizations

19. The obligations of States to protect economic, social and cultural rights extend also to their participation in international organizations, where they act collectively. It is particularly important for States to use their influence to ensure that violations do not result from the programmes and policies of the organizations of which they are members. It is crucial for the elimination of violations of economic, social and cultural rights for international organizations, including international financial institutions, to correct their policies and practices so that they do not result in deprivation of economic, social and cultural rights. Member States of such organizations, individually or through the governing bodies, as well as the secretariat and nongovernmental organizations should encourage and generalize the trend of several such organizations to revise their policies and programmes to take into account issues of economic, social and cultural rights, especially when these policies and programmes are implemented in countries that lack the resources to resist the pressure brought by international

institutions on their decision-making affecting economic, social and cultural rights.

IV. Victims of violations

Individuals and groups

20. As is the case with civil and political rights, both individuals and groups can be victims of violations of economic, social and cultural rights. Certain groups suffer disproportionate harm in this respect such as lower-income groups, women, indigenous and tribal peoples, occupied populations, asylum seekers, refugees and internally displaced persons, minorities, the elderly, children, landless peasants, persons with disabilities and the homeless.

Criminal sanctions

21. Victims of violations of economic, social and cultural rights should not face criminal sanctions purely because of their status as victims, for example, through laws criminalizing persons for being homeless. Nor should anyone be penalized for claiming their economic, social and cultural rights.

V. Remedies and other responses to violations

Access to remedies

22. Any person or group who is a victim of a violation of an economic, social or cultural right should have access to effective judicial or other appropriate remedies at both national and international levels.

Adequate reparation

23. All victims of violations of economic, social and cultural rights are entitled to adequate reparation, which may take the form of restitution, compensation, rehabilitation and satisfaction or guarantees of non-repetition.

No official sanctioning of violations

24. National judicial and other organs must ensure that any pronouncements they may make do not result in the official sanctioning of a violation of an international obligation of the State concerned. At a minimum, national judiciaries should consider the relevant provisions of international and regional human rights law as an interpretive aide in formulating any decisions relating to violations of economic, social and cultural rights.

National institutions

25. Promotional and monitoring bodies such as national ombudsman institutions and human rights commissions, should address violations of economic, social and cultural rights as vigorously as they address violations of civil and political rights.

Domestic application of international instruments

26. The direct incorporation or application of international instruments recognizing economic, social and cultural rights within the domestic legal order can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases.

Impunity

27. States should develop effective measures to preclude the possibility of impunity of any violation of economic, social and cultural rights and to ensure that no person who may be responsible for violations of such rights has immunity from liability for their actions.

Role of the legal professions

28. In order to achieve effective judicial and other remedies for victims of violations of economic, social and cultural rights, lawyers, judges, adjudicators, bar associations and the legal community generally should pay far greater attention to these violations in the exercise of their professions, as recommended by the International Commission of Jurists in the Bangalore Declaration and Plan of Action of 1995.

Special rapporteurs

29. In order to further strengthen international mechanisms with respect to preventing, early warning, monitoring and redressing violations of economic, social and cultural rights, the UN Commission on Human Rights should appoint thematic Special Rapporteurs in this field.

New standards

30. In order to further clarify the contents of States obligations to respect, protect and fulfil economic, social and cultural rights, States and appropriate international bodies should actively pursue the adoption of new standards on specific economic, social and cultural rights, in particular the right to work, to food, to housing and to health.

Optional protocols

31. The optional protocol providing for individual and group complaints in relation to the rights recognized in the Covenant should be adopted and ratified without delay. The proposed optional protocol to the Convention on the Elimination of all forms of Discrimination Against Women should ensure that equal attention is paid to violations of economic, social and cultural rights. In addition, consideration should be given to the drafting of an optional complaints procedure under the Convention on the Rights of the Child.

Documenting and monitoring

32. Documenting and monitoring violations of economic, social and cultural rights should be carried out by all relevant actors, including NGOs, national governments and international organizations. It is indispensable that the relevant international organizations provide the support necessary for the implementation of international instruments in this field. The mandate of the United Nations High Commissioner for Human Rights includes the promotion of economic, social and cultural rights and it is essential that effective steps be taken urgently and that adequate staff and financial resources be devoted to this objective. Specialized agencies and other international organizations working in the economic and social spheres should also place appropriate emphasis upon economic, social and cultural rights as rights and, where they do not already do so, should contribute to efforts to respond to violations of these rights.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969.

Preamble

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

PART I

Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
 - (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure

that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
 - (i) The right to freedom of movement and residence within the border of the State;
 - (ii) The right to leave any country, including one's own, and to return to one's country;
 - (iii) The right to nationality;
 - (iv) The right to marriage and choice of spouse;
 - (v) The right to own property alone as well as in association with others;
 - (vi) The right to inherit;
 - (vii) The right to freedom of thought, conscience and religion;
 - (viii) The right to freedom of opinion and expression;
 - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
 - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) The right to form and join trade unions;
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training; (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

PART II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5.

(a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;

(b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention:

(a) within one year after the entry into force of the Convention for the State concerned; and

(b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

Article 10

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

3. The secretariat of the Committee shall be provided by the Secretary General of the United Nations.

4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.

3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.
5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12

1.
 - (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;
 - (b) If the States Parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.
5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.
6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.
8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.
3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
2. Any State Party which makes a declaration as provided for in paragraph I of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.
3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.
4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.
5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.
6.
 - (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;
 - (b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7.

(a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;

(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph I of this article.

Article 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2.

(a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;

(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

PART III**Article 17**

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention. 2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.

Article 22

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

Article 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

- (a) Signatures, ratifications and accessions under articles 17 and 18;
- (b) The date of entry into force of this Convention under article 19;
- (c) Communications and declarations received under articles 14, 20 and 23;
- (d) Denunciations under article 21.

Article 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.

Preamble

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this Article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this Article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- (f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this Article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

- (a) Within one year after the entry into force for the State concerned;
- (b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

- 1. The Committee shall adopt its own rules of procedure.
- 2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with Article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this Article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this Article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

Committee on the Elimination of Discrimination against Women, General Recommendation 24, Women and Health

Committee on the Elimination of Discrimination against Women, General Recommendation 24, Women and Health (Twentieth session, 1999), U.N. Doc. A/54/38 at 5 (1999), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 271 (2003).

Women and Health

Article 12 of the Convention on the Elimination of all forms of Discrimination Against Women

1. The Committee on the Elimination of Discrimination against Women, affirming that access to health care, including reproductive health, is a basic right under the Convention on the Elimination of all forms of Discrimination against Women, decided at its twentieth session, pursuant to Article 21, to elaborate a general recommendation on article 12 of the Convention.

Background

2. States parties' compliance with Article 12 of the Convention is central to the health and well-being of women. It requires States to eliminate discrimination against women in their access to health-care services throughout the life cycle, particularly in the areas of family planning, pregnancy and confinement and during the post-natal period. The examination of reports submitted by States parties pursuant to article 18 of the Convention demonstrates that women's health is an issue that is recognized as a central concern in promoting the health and well-being of women. For the benefit of States parties and those who have a particular interest in and concern with the issues surrounding women's health, the present general recommendation seeks to elaborate the Committee's understanding of article 12 and to address measures to eliminate discrimination in order to realize the right of women to the highest attainable standard of health.

3. Recent United Nations world conferences have also considered these objectives. In preparing this general recommendation, the Committee has taken into account relevant programmes of action adopted at United Nations world conferences and, in particular, those of the 1993 World Conference on Human Rights, the 1994 International Conference on Population and Development and the 1995 Fourth World Conference on Women. The Committee has also noted the work of the World Health Organization (WHO), the United Nations Population Fund (UNFPA) and other United Nations bodies. It has collaborated with a large number of non-governmental organizations with a special expertise in women's health in preparing this general recommendation.

4. The Committee notes the emphasis that other United Nations instruments place on the right to health and to the conditions that enable good health to be achieved. Among such instruments are the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of all forms of Racial Discrimination.

5. The Committee refers also to its earlier general recommendations on female circumcision, human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), disabled women, violence against women and equality in family relations, all of which refer to issues that are integral to full compliance with Article 12 of the Convention.

6. While biological differences between women and men may lead to differences in health status, there are societal factors that are determinative of the health status of women and men and can vary among women themselves. For that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.

7. The Committee notes that the full realization of women's right to health can be achieved only when States parties fulfil their obligation to respect, protect and promote women's fundamental human right to nutritional well-being throughout their lifespan by means of a food supply that is safe, nutritious and adapted to local conditions. To this end, States parties should take steps to facilitate physical and economic access to productive resources, especially for rural women, and to otherwise ensure that the special nutritional needs of all women within their jurisdiction are met.

Article 12

8. Article 12 reads as follows:

"1. States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health-care services, including those related to family planning.

"2. Notwithstanding the provisions of paragraph 1 of this Article, States parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."

States parties are encouraged to address the issue of women's health throughout the woman's lifespan. For the purposes of the present general recommendation, therefore, "women" includes girls and adolescents. The general recommendation will set out the Committee's analysis of the key elements of Article 12.

Key elements

Article 12 (1)

9. States parties are in the best position to report on the most critical health issues affecting women in that country. Therefore, in order to enable the Committee to evaluate whether measures to eliminate discrimination against women in the field of health care are appropriate, States parties must report on their health legislation, plans and policies for women with reliable data disaggregated by sex on the incidence and severity of diseases and conditions hazardous to women's health and nutrition and on the availability and cost-effectiveness of preventive and curative measures. Reports to the Committee must demonstrate that health legislation, plans and policies are based on scientific and ethical research and assessment of the health status and needs of women in that country and take into

account any ethnic, regional or community variations or practices based on religion, tradition or culture.

10. States parties are encouraged to include in their reports information on diseases, health conditions and conditions hazardous to health that affect women or certain groups of women differently from men, as well as information on possible intervention in this regard.

11. Measures to eliminate discrimination against women are considered to be inappropriate if a health-care system lacks services to prevent, detect and treat illnesses specific to women. It is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.

12. States parties should report on their understanding of how policies and measures on health care address the health rights of women from the perspective of women's needs and interests and how it addresses distinctive features and factors that differ for women in comparison to men, such as:

(a) Biological factors that differ for women in comparison with men, such as their menstrual cycle, their reproductive function and menopause. Another example is the higher risk of exposure to sexually transmitted diseases that women face;

(b) Socio-economic factors that vary for women in general and some groups of women in particular. For example, unequal power relationships between women and men in the home and workplace may negatively affect women's nutrition and health. They may also be exposed to different forms of violence which can affect their health. Girl children and adolescent girls are often vulnerable to sexual abuse by older men and family members, placing them at risk of physical and psychological harm and unwanted and early pregnancy. Some cultural or traditional practices such as female genital mutilation also carry a high risk of death and disability;

(c) Psychosocial factors that vary between women and men include depression in general and post-partum depression in particular as well as other psychological conditions, such as those that lead to eating disorders such as anorexia and bulimia;

(d) While lack of respect for the confidentiality of patients will affect both men and women, it may deter women from seeking advice and treatment and thereby adversely affect their health and well-being. Women will be less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence.

13. The duty of States parties to ensure, on a basis of equality of men and women, access to health-care services, information and education implies an obligation to respect, protect and fulfil women's rights to health care. States parties have the responsibility to ensure that legislation and executive action and policy comply with these three obligations. They must also put in place a system that ensures effective judicial action. Failure to do so will constitute a violation of Article 12.

14. The obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals. States parties should report on how public and private health-care providers meet their duties to respect women's rights to have access to health care. For example, States parties should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women. Other barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women punish women who undergo those procedures.

15. The obligation to protect rights relating to women's health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations. Since gender-based violence is a critical health issue for women, States parties should ensure:

- (a) The enactment and effective enforcement of laws and the formulation of policies, including health-care protocols and hospital procedures to address violence against women and sexual abuse of girl children and the provision of appropriate health services;
- (b) Gender-sensitive training to enable health-care workers to detect and manage the health consequences of gender-based violence;
- (c) Fair and protective procedures for hearing complaints and imposing appropriate sanctions on health-care professionals guilty of sexual abuse of women patients;
- (d) The enactment and effective enforcement of laws that prohibit female genital mutilation and marriage of girl children.

16. States parties should ensure that adequate protection and health services, including trauma treatment and counselling, are provided for women in especially difficult circumstances, such as those trapped in situations of armed conflict and women refugees.

17. The duty to fulfil rights places an obligation on States parties to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to ensure that women realize their rights to health care. Studies such as those that emphasize the high maternal mortality and morbidity rates worldwide and the large numbers of couples who would like to limit their family size but lack access to or do not use any form of contraception provide an important indication for States parties of Possible breaches of their duties to ensure women's access to health care. The Committee asks States parties to report on what they have done to address the magnitude of women's ill-health, in particular when it arises from preventable conditions, such as tuberculosis and HIV/AIDS. The Committee is concerned about the evidence that States are relinquishing these obligations as they transfer State health functions to private agencies. States and parties cannot absolve themselves of responsibility in these areas by delegating or transferring these powers to private sector agencies. States parties should therefore report on what they have done to organize governmental processes and all structures through which public power is exercised to promote and protect women's health. They should include information on positive measures taken to curb violations of

women's rights by third parties and to protect their health and the measures they have taken to ensure the provision of such services.

18. The issues of HIV/AIDS and other sexually transmitted diseases are central to the rights of women and adolescent girls to sexual health. Adolescent girls and women in many countries lack adequate access to information and services necessary to ensure sexual health. As a consequence of unequal power relations based on gender, women and adolescent girls are often unable to refuse sex or insist on safe and responsible sex practices. Harmful traditional practices, such as female genital mutilation, polygamy, as well as marital rape, may also expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted diseases. Women in prostitution are also particularly vulnerable to these diseases. States parties should ensure, without prejudice or discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country. In particular, States parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their right to privacy and confidentiality.

19. In their reports, States parties should identify the test by which they assess whether women have access to health care on a basis of equality of men and women in order to demonstrate compliance with Article 12. In applying these tests, States parties should bear in mind the provisions of article 1 of the Convention. Reports should therefore include comments on the impact that health policies, procedures, laws and protocols have on women when compared with men.

20. Women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives.

21. States parties should report on measures taken to eliminate barriers that women face in access to health-care services and what measures they have taken to ensure women timely and affordable access to such services. Barriers include requirements or conditions that prejudice women's access, such as high fees for health-care services, the requirement for preliminary authorization by spouse, parent or hospital authorities, distance from health facilities and the absence of convenient and affordable public transport.

22. States parties should also report on measures taken to ensure access to quality health-care services, for example, by making them acceptable to women. Acceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives. States parties should not permit forms of coercion, such as non-consensual sterilization, mandatory testing for sexually transmitted diseases or mandatory pregnancy testing as a condition of employment that violate women's rights to informed consent and dignity.

23. In their reports, States parties should state what measures they have taken to ensure timely access to the range of services that are related to family planning, in particular, and to sexual and reproductive health in general. Particular attention should be paid to the health education of adolescents, including information and counselling on all methods of family planning.

24. The Committee is concerned about the conditions of health-care services for older women, not only because women often live longer than men and are more likely than men to suffer from disabling and degenerative chronic diseases, such as osteoporosis and dementia, but because they often have the responsibility for their ageing spouses. Therefore, States parties should take appropriate measures to ensure the access of older women to health services that address the handicaps and disabilities associated with ageing.

25. Women with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation. States parties should take appropriate measures to ensure that health services are sensitive to the needs of women with disabilities and are respectful of their human rights and dignity.

Article 12 (2)

26. Reports should also include what measures States parties have taken to ensure women appropriate services in connection with pregnancy, confinement and the post-natal period. Information on the rates at which these measures have reduced maternal mortality and morbidity in their countries, in general, and in vulnerable groups, regions and communities, in particular, should also be included.

27. States parties should include in their reports how they supply free services where necessary to ensure safe pregnancies, childbirth and post-partum periods for women. Many women are at risk of death or disability from pregnancy-related causes because they lack the funds to obtain or access the necessary services, which include antenatal, maternity and post-natal services. The Committee notes that it is the duty of States parties to ensure women's right to safe motherhood and emergency obstetric services and they should allocate to these services the maximum extent of available resources.

Other relevant Articles in the Convention

28. When reporting on measures taken to comply with Article 12, States parties are urged to recognize its interconnection with other articles in the Convention that have a bearing on women's health. Those articles include article 5 (b), which requires States parties to ensure that family education includes a proper understanding of maternity as a social function; article 10, which requires States parties to ensure equal access to education, thus enabling women to access health care more readily and reducing female student drop-out rates, which are often a result of premature pregnancy; article 10 (h), which requires that States parties provide to women and girls access to specific educational information to help ensure the health and well-being of families, including information and advice on family planning; article 11, which is concerned, in part, with the protection of women's health and safety in working conditions, including the safeguarding of the reproductive function, special protection from harmful types of work during pregnancy and with the provision of paid maternity leave; article 14, paragraph 2 (b), which requires States parties to ensure access for rural women to adequate health-care facilities, including information, counselling and services in family planning, and (h), which obliges States parties to take all appropriate measures to ensure adequate living conditions, particularly housing, sanitation, electricity and

water supply, transport and communications, all of which are critical for the prevention of disease and the promotion of good health care; and article 16, paragraph 1 (e), which requires States parties to ensure that women have the same rights as men to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise those rights. Article 16, paragraph 2 proscribes the betrothal and marriage of children, an important factor in preventing the physical and emotional harm which arise from early childbirth.

Recommendations for government action

29. States parties should implement a comprehensive national strategy to promote women's health throughout their lifespan. This will include interventions aimed at both the prevention and treatment of diseases and conditions affecting women, as well as responding to violence against women, and will ensure universal access for all women to a full range of high-quality and affordable health care, including sexual and reproductive health services.

30. States parties should allocate adequate budgetary, human and administrative resources to ensure that women's health receives a share of the overall health budget comparable with that for men's health, taking into account their different health needs.

31. States parties should also, in particular:

- (a) Place a gender perspective at the centre of all policies and programmes affecting women's health and should involve women in the planning, implementation and monitoring of such policies and programmes and in the provision of health services to women;
- (b) Ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health, and, in particular, allocate resources for programmes directed at adolescents for the prevention and treatment of sexually transmitted diseases, including HIV/AIDS;
- (c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion;
- (d) Monitor the provision of health services to women by public, non-governmental and private organizations, to ensure equal access and quality of care;
- (e) Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice;
- (f) Ensure that the training curricula of health workers include comprehensive, mandatory, gender-sensitive courses on women's health and human rights, in particular gender-based violence.

Notes

* Contained in document A/54/38/Rev.1, chapter I.

1. See Official Records of the General Assembly, Forty-ninth Session, Supplement No. 38 (A/49/38), chapter I, section A, General recommendation 21, para. 29.
2. Health education for adolescents should further address, inter alia, gender quality, violence, prevention of sexually transmitted diseases and reproductive and sexual health rights

African [Banjul] Charter on Human and Peoples' Rights (ACHPR)

African [Banjul] Charter on Human and Peoples' Rights (ACHPR) adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986: [excerpts] . . .

Preamble

The African States members of the Organization of African Unity, parties to the present convention entitled "African Charter on Human and Peoples' Rights",
Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of a "preliminary draft on an African Charter on Human and Peoples' Rights providing inter alia for the establishment of bodies to promote and protect human and peoples' rights";

Considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples";

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights;

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand that the reality and respect of peoples rights should necessarily guarantee human rights;

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, color, sex, language, religion or political opinions;

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instrument adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations;

Firmly convinced of their duty to promote and protect human and people' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;

Have agreed as follows:

Part I: Rights and Duties

Chapter I – Human and Peoples' Rights

Article 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law.

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 7

1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal. 2. No one may be condemned

for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Article 9

1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 10

1. Every individual shall have the right to free association provided that he abides by the law. 2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.

Article 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Article 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. 2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality. 3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions. 4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law. 5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. 2. Every citizen shall have the right of equal access to the public service of his country. 3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

Article 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

Article 15

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

Article 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 17

1. Every individual shall have the right to education. 2. Every individual may freely, take part in the cultural life of his community. 3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

Article 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral. 2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community. 3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. 4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

Article 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

Article 20

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen. 2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community. 3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

Article 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law. 4. States parties to the present Charter shall

individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity. 5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

Article 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States. 2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that: (a) any individual enjoying the right of asylum under 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter; (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

Article 24

All peoples shall have the right to a general satisfactory environment favorable to their development.

Article 25

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

Article 26

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

Chapter II – Duties

Article 27

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community. 2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

Article 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Article 29

The individual shall also have the duty: 1. to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need; 2. To serve his national community by placing his physical and intellectual abilities at its service; 3. Not to compromise the security of the State whose national or resident he is; 4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened; 5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law; 6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society; 7. to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society; 8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

Part II: Measures of Safeguard**Chapter I – Establishment and Organization of the African Commission on Human and Peoples' Rights****Article 30**

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

Article 31

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.
2. The members of the Commission shall serve in their personal capacity. . . .

Article 41

The Secretary-General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall also provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear the costs of the staff and services. . . .

Chapter II – Mandate of the Commission**Article 45**

The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular:

(a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and

conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.

(b) to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.

(c) co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.

3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU.

4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

Chapter III – Procedure of the Commission

Article 46

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organization of African Unity or any other person capable of enlightening it.

Communication From States

Article 47

If a State party to the present Charter has good reasons to believe that another State party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the communication, the State to which the communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible relevant information relating to the laws and rules of procedure applied and applicable, and the redress already given or course of action available.

Article 48

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

Article 49

Notwithstanding the provisions of 47, if a State party to the present Charter considers that another State party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organization of African Unity and the State concerned.

Article 50

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

Article 51

1. The Commission may ask the States concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

Article 52

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples' Rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in 48, a report stating the facts and its findings. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Government.

Article 53

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

Article 54

The Commission shall submit to each ordinary Session of the Assembly of Heads of State and Government a report on its activities.

Other Communications

Article 55

1. Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

Article 56

Communications relating to human and peoples' rights referred to in 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter request anonymity,
2. Are compatible with the Charter of the Organization of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. Are not based exclusively on news discriminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and
7. Do not deal with cases which have been settled by these States involved in

accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

Article 57

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

Article 58

1. When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.
2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations.
3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

Article 59

1. All measures taken within the provisions of the present Chapter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide. . . .
2. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

Chapter IV – Applicable Principles

Article 60

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

Article 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and people's rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

Article 62

Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter. . . .

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women's Protocol to the African Charter)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, July 11 – August 13, 2003.

Preamble

The States Parties to this Protocol,

CONSIDERING that Article 66 of the African Charter on Human and Peoples' Rights provides for special protocols or agreements, if necessary, to supplement the provisions of the African Charter, and that the Assembly of Heads of State and Government of the Organization of African Unity meeting in its Thirty-first Ordinary Session in Addis Ababa, Ethiopia, in June 1995, endorsed by resolution AHG/Res.240 (XXXI) the recommendation of the African Commission on Human and Peoples' Rights to elaborate a Protocol on the Rights of Women in Africa;

CONSIDERING that Article 2 of the African Charter on Human and Peoples' Rights enshrines the principle of non-discrimination on the grounds of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;

FURTHER CONSIDERING that Article 18 of the African Charter on Human and Peoples' Rights calls on all States Parties to eliminate every discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions;

NOTING that Articles 60 and 61 of the African Charter on Human and Peoples' Rights recognise regional and international human rights instruments and African practices consistent with international norms on human and peoples' rights as being important reference points for the application and interpretation of the African Charter;

RECALLING that women's rights have been recognised and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of Discrimination Against Women and its Optional Protocol, the African Charter on the Rights and Welfare of the Child, and all other international and regional conventions and covenants relating to the rights of women as being inalienable, interdependent and indivisible human rights;

NOTING that women's rights and women's essential role in development, have been reaffirmed in the United Nations Plans of Action on the Environment and Development in 1992, on Human Rights in 1993, on Population and Development in 1994 and on Social Development in 1995;

RECALLING ALSO United Nations Security Council's Resolution 1325 (2000) on the role of Women in promoting peace and security;

REAFFIRMING the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union as well as the New Partnership for Africa's Development, relevant Declarations, Resolutions and Decisions, which underline the commitment of the African States to ensure the full participation of African women as equal partners in Africa's development;

FURTHER NOTING that the African Platform for Action and the Dakar Declaration of 1994 and the Beijing Platform for Action of 1995 call on all Member States of the United Nations, which have made a solemn commitment to implement them, to take concrete steps to give greater attention to the human rights of women in order to eliminate all forms of discrimination and of gender-based violence against women;

RECOGNISING the crucial role of women in the preservation of African values based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy;

BEARING IN MIND related Resolutions, Declarations, Recommendations, Decisions, Conventions and other Regional and Sub-Regional Instruments aimed at eliminating all forms of discrimination and at promoting equality between women and men;

CONCERNED that despite the ratification of the African Charter on Human and Peoples' Rights and other international human rights instruments by the majority of States Parties, and their solemn commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices;

FIRMLY CONVINCED that any practice that hinders or endangers the normal growth and affects the physical and psychological development of women and girls should be condemned and eliminated;

DETERMINED to ensure that the rights of women are promoted, realised and protected in order to enable them to enjoy fully all their human rights;

HAVE AGREED AS FOLLOWS:

Article 1–Definitions

For the purpose of the present Protocol:

- a) "African Charter" means the African Charter on Human and Peoples' Rights;
- b) "African Commission" means the African Commission on Human and Peoples' Rights;
- c) "Assembly" means the Assembly of Heads of State and Government of the African Union;
- d) "AU" means the African Union;
- e) "Constitutive Act" means the Constitutive Act of the African Union;
- f) "Discrimination against women" means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life;

- g) "Harmful Practices" means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity;
- h) "NEPAD" means the New Partnership for Africa's Development established by the Assembly;
- i) "States Parties" means the States Parties to this Protocol;
- j) "Violence against women" means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war;
- k) "Women" means persons of female gender, including girls;

Article 2–Elimination of Discrimination Against Women

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:
 - a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
 - b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;
 - c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
 - d) take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;
 - e) support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.
2. States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

Article 3–Right to Dignity

1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights;
2. Every woman shall have the right to respect as a person and to the free development of her personality;
3. States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women;
4. States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

Article 4–The Rights to Life, Integrity and Security of the Person

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.
2. States Parties shall take appropriate and effective measures to:
 - a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
 - b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;
 - c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
 - d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;
 - e) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;
 - f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;
 - g) prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;
 - h) prohibit all medical or scientific experiments on women without their informed consent;
 - i) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;
 - j) ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;
 - k) ensure that women and men enjoy equal rights in terms of access to refugee status, determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.

Article 5–Elimination of Harmful Practices

- States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:
- a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;

- b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;
- c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;
- d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

Article 6–Marriage

States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

- a) no marriage shall take place without the free and full consent of both parties;
- b) the minimum age of marriage for women shall be 18 years;
- c) monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;
- d) every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised;
- e) the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;
- f) a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's surname;
- g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;
- h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;
- i) a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;
- j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

Article 7–Separation, Divorce and Annulment of Marriage

States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that:

- a) separation, divorce or annulment of a marriage shall be effected by judicial order;
- b) women and men shall have the same rights to seek separation, divorce or annulment of a marriage;

c) in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance;

d) in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.

Article 8–Access to Justice and Equal Protection before the Law

Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure:

a) effective access by women to judicial and legal services, including legal aid;

b) support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid;

c) the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women;

d) that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;

e) that women are represented equally in the judiciary and law enforcement organs;

f) reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

Article 9–Right to Participation in the Political and Decision-Making Process

1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:

a) women participate without any discrimination in all elections;

b) women are represented equally at all levels with men in all electoral processes;

c) women are equal partners with men at all levels of development and implementation of State policies and development programmes.

2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

Article 10–Right to Peace

1. Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.

2. States Parties shall take all appropriate measures to ensure the increased participation of women:

a) in programmes of education for peace and a culture of peace;

b) in the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels;

- c) in the local, national, regional, continental and international decision making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women;
 - d) in all levels of the structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular, women;
 - e) in all aspects of planning, formulation and implementation of post conflict reconstruction and rehabilitation.
3. States Parties shall take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular.

Article 11–Protection of Women in Armed Conflicts

- 1. States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations which affect the population, particularly women.
- 2. States Parties shall, in accordance with the obligations incumbent upon them under the international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict.
- 3. States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.
- 4. States Parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier.

Article 12–Right to Education and Training

- 1. States Parties shall take all appropriate measures to:
 - a) eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;
 - b) eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination;
 - c) protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices;
 - d) provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment;
 - e) integrate gender sensitisation and human rights education at all levels of education curricula including teacher training.
- 2. States Parties shall take specific positive action to:
 - a) promote literacy among women;

- b) promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology;
- c) promote the enrolment and retention of girls in schools and other training institutions and the organisation of programmes for women who leave school prematurely.

Article 13–Economic and Social Welfare Rights

States Parties shall adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. In this respect, they shall:

- a) promote equality of access to employment;
- b) promote the right to equal remuneration for jobs of equal value for women and men;
- c) ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace;
- d) guarantee women the freedom to choose their occupation, and protect them from exploitation by their employers violating and exploiting their fundamental rights as recognised and guaranteed by conventions, laws and regulations in force;
- e) create conditions to promote and support the occupations and economic activities of women, in particular, within the informal sector;
- f) establish a system of protection and social insurance for women working in the informal sector and sensitise them to adhere to it;
- g) introduce a minimum age for work and prohibit the employment of children below that age, and prohibit, combat and punish all forms of exploitation of children, especially the girl-child;
- h) take the necessary measures to recognise the economic value of the work of women in the home;
- i) guarantee adequate and paid pre and post-natal maternity leave in both the private and public sectors;
- j) ensure the equal application of taxation laws to women and men;
- k) recognise and enforce the right of salaried women to the same allowances and entitlements as those granted to salaried men for their spouses and children;
- l) recognise that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the State and the private sector have secondary responsibility;
- m) take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.

Article 14–Health and Reproductive Rights

1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:

- a) the right to control their fertility;
- b) the right to decide whether to have children, the number of children and the spacing of children;

- c) the right to choose any method of contraception;
- d) the right to self protection and to be protected against sexually transmitted infections, including HIV/AIDS;
- e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices;
- g) the right to have family planning education.

2. States Parties shall take all appropriate measures to:

- a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;
- b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;
- c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

Article 15–Right to Food Security

States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to:

- a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food;
- b) establish adequate systems of supply and storage to ensure food security.

Article 16–Right to Adequate Housing

Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States Parties shall grant to women, whatever their marital status, access to adequate housing.

Article 17–Right to Positive Cultural Context

- 1. Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.
- 2. States Parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.

Article 18–Right to a Healthy and Sustainable Environment

- 1. Women shall have the right to live in a healthy and sustainable environment.
- 2. States Parties shall take all appropriate measures to:
 - a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;

- b) promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control;
- c) protect and enable the development of women's indigenous knowledge systems;
- d) regulate the management, processing, storage and disposal of domestic waste;
- e) ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.

Article 19–Right to Sustainable Development

Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to:

- a) introduce the gender perspective in the national development planning procedures;
- b) ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes;
- c) promote women's access to and control over productive resources such as land and guarantee their right to property;
- d) promote women's access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women;
- e) take into account indicators of human development specifically relating to women in the elaboration of development policies and programmes; and
- f) ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.

Article 20–Widows' Rights

States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:

- a) that widows are not subjected to inhuman, humiliating or degrading treatment;
- b) a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;
- c) a widow shall have the right to remarry, and in that event, to marry the person of her choice.

Article 21–Right to Inheritance

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.

2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.

Article 22 –Special Protection of Elderly Women

The States Parties undertake to:

- a) provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training;
- b) ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.

Article 23–Special Protection of Women with Disabilities

The States Parties undertake to:

- a) ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making;
- b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.

Article 24–Special Protection of Women in Distress

The States Parties undertake to:

- a) ensure the protection of poor women and women heads of families including women from marginalized population groups and provide them an environment suitable to their condition and their special physical, economic and social needs;
- b) ensure the right of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity.

Article 25–Remedies

States Parties shall undertake to:

- a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated;
- b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.

Article 26–Implementation and Monitoring

1. States Parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with Article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights herein recognised.
2. States Parties undertake to adopt all necessary measures and in particular shall provide budgetary and other resources for the full and effective implementation of the rights herein recognised.

Article 27–Interpretation

The African Court on Human and Peoples' Rights shall be seized with matters of interpretation arising from the application or implementation of this Protocol.

Article 28–Signature, Ratification and Accession

1. This Protocol shall be open for signature, ratification and accession by the States Parties, in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the AU.

Article 29–Entry into Force

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15) instrument of ratification.
2. For each State Party that accedes to this Protocol after its coming into force, the Protocol shall come into force on the date of deposit of the instrument of accession.
3. The Chairperson of the Commission of the AU shall notify all Member States of the coming into force of this Protocol.

Article 30–Amendment and Revision

1. Any State Party may submit proposals for the amendment or revision of this Protocol.
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.
3. The Assembly, upon advice of the African Commission, shall examine these proposals within a period of one (1) year following notification of States Parties, in accordance with the provisions of paragraph 2 of this Article.
4. Amendments or revision shall be adopted by the Assembly by a simple majority.
5. The amendment shall come into force for each State Party, which has accepted it thirty (30) days after the Chairperson of the Commission of the AU has received notice of the acceptance.

Article 31–Status of the Present Protocol

None of the provisions of the present Protocol shall affect more favourable provisions for the realisation of the rights of women contained in the national legislation of States Parties or in any other regional, continental or international conventions, treaties or agreements applicable in these States Parties.

Article 32–Transitional Provisions

Pending the establishment of the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights shall be seized with matters of interpretation arising from the application and implementation of this Protocol.

[European] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

[European] Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively.

Preamble

Rome, 4.XI.1950

The text of the Convention had been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols are replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, is repealed and Protocol No. 10 (ETS No. 146) has lost its purpose.

The governments signatory hereto, being members of the Council of Europe,
Considering the Universal Declaration of Human Rights proclaimed by the
General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective
recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater
unity between its members and that one of the methods by which that aim is to
be pursued is the maintenance and further realisation of human rights and
fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the
foundation of justice and peace in the world and are best maintained on the one
hand by an effective political democracy and on the other by a common
understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded
and have a common heritage of political traditions, ideals, freedom and the rule
of law, to take the first steps for the collective enforcement of certain of the
rights stated in the Universal Declaration,

Have agreed as follows:

Article 1 – Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction
the rights and freedoms defined in Section I of this Convention.

Section I – Rights and freedoms

Article 2 – Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - a) in defence of any person from unlawful violence;
 - b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3 – Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4 – Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term “forced or compulsory labour” shall not include:
 - a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - d) any work or service which forms part of normal civic obligations.

Article 5 – Right to liberty and security

- 1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a the lawful detention of a person after conviction by a competent court;
 - b the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - c the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

d the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

e the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

f the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3 Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6 – Right to a fair trial

1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have adequate time and facilities for the preparation of his defence;

c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7 – No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9 – Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 – Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 – Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests

of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12 – Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13 – Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15 – Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 16 – Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17 – Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18 – Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Section II – European Court of Human Rights

Article 19 – Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

Article 20 – Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21 – Criteria for office

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurists of recognised competence.
2. The judges shall sit on the Court in their individual capacity.
3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22 – Election of judges

1. The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.
2. The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

Article 23 – Terms of office

1. The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.
2. The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.
3. In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.
4. In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.
5. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.
6. The terms of office of judges shall expire when they reach the age of 70.

7. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

Article 24 – Dismissal

No judge may be dismissed from his office unless the other judges decide by a majority of two-thirds that he has ceased to fulfil the required conditions.

Article 25 – Registry and legal secretaries

The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court. The Court shall be assisted by legal secretaries.

Article 26 – Plenary Court

The plenary Court shall

- a) elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;
- b) set up Chambers, constituted for a fixed period of time;
- c) elect the Presidents of the Chambers of the Court; they may be re-elected;
- d) adopt the rules of the Court, and
- e) elect the Registrar and one or more Deputy Registrars.

Article 27 – Committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
2. There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in respect of the State Party concerned or, if there is none or if he is unable to sit, a person of its choice who shall sit in the capacity of judge.
3. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned.

Article 28 – Declarations of inadmissibility by committees

A committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an application submitted under Article 34 where such a decision can be taken without further examination. The decision shall be final.

Article 29 – Decisions by Chambers on admissibility and merits

1. If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34.
2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33.
3. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 30 – Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Article 31 – Powers of the Grand Chamber

The Grand Chamber shall

- a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and
- b) consider requests for advisory opinions submitted under Article 47.

Article 32–Jurisdiction of the Court

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.
2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33–Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 34 – Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35– Admissibility criteria

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that
 - a) is anonymous; or
 - b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
3. The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36 – Third party intervention

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Article 37–Striking out applications

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

- a) the applicant does not intend to pursue his application; or
- b) the matter has been resolved; or
- c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 38–Examination of the case and friendly settlement proceedings

1. If the Court declares the application admissible, it shall

- a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;
- b) place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.

2. Proceedings conducted under paragraph 1.b shall be confidential.

Article 39–Finding of a friendly settlement

If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

Article 40 – Public hearings and access to documents

1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.

2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41 – Just satisfaction

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 42 – Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

Article 43 – Referral to the Grand Chamber

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44 – Final judgments

1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final
 - a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or
 - b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
 - c) when the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

Article 45 – Reasons for judgments and decisions

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46 – Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

Article 47 – Advisory opinions

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.

2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 48 – Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

Article 49 – Reasons for advisory opinions

1. Reasons shall be given for advisory opinions of the Court.
2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 50 – Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

Article 51 – Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

Section III – Miscellaneous provisions

Article 52 – Inquiries by the Secretary General¹

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

Article 53 – Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

Article 54 – Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

Article 55 – Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between

them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

Article 56 – Territorial application

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

Article 57 – Reservations

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.
2. Any reservation made under this Article shall contain a brief statement of the law concerned.

Article 58 – Denunciation

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

Article 59 – Signature and ratification

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
 2. The present Convention shall come into force after the deposit of ten instruments of ratification.
 3. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
 4. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.
- Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

European Social Charter (ESC)

European Social Charter (revised) Strasbourg, 3.V.1996

Preamble

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the [Convention for the Protection of Human Rights and Fundamental Freedoms](#) signed at Rome on 4 November 1950, and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that in the [European Social Charter](#) opened for signature in Turin on 18 October 1961 and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being;

Recalling that the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need, on the one hand, to preserve the indivisible nature of all human rights, be they civil, political, economic, social or cultural and, on the other hand, to give the European Social Charter fresh impetus;

Resolved, as was decided during the Ministerial Conference held in Turin on 21 and 22 October 1991, to update and adapt the substantive contents of the Charter in order to take account in particular of the fundamental social changes which have occurred since the text was adopted;

Recognising the advantage of embodying in a Revised Charter, designed progressively to take the place of the European Social Charter, the rights guaranteed by the Charter as amended, the rights guaranteed by the Additional Protocol of 1988 and to add new rights,

Have agreed as follows:

Part I

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

Everyone shall have the opportunity to earn his living in an occupation freely entered upon.

All workers have the right to just conditions of work.

All workers have the right to safe and healthy working conditions.

All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.

All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.

All workers and employers have the right to bargain collectively.

Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.

Employed women, in case of maternity, have the right to a special protection.

Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.

Everyone has the right to appropriate facilities for vocational training.

Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

All workers and their dependents have the right to social security.

Anyone without adequate resources has the right to social and medical assistance.

Everyone has the right to benefit from social welfare services.

Disabled persons have the right to independence, social integration and participation in the life of the community.

The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.

Children and young persons have the right to appropriate social, legal and economic protection.

The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.

Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.

Workers have the right to be informed and to be consulted within the undertaking.

Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.

Every elderly person has the right to social protection.

All workers have the right to protection in cases of termination of employment.

All workers have the right to protection of their claims in the event of the insolvency of their employer.

All workers have the right to dignity at work.

All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as

far as possible without conflict between their employment and family responsibilities.

Workers' representatives in undertakings have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions.

All workers have the right to be informed and consulted in collective redundancy procedures.

Everyone has the right to protection against poverty and social exclusion.

Everyone has the right to housing.

Part II

The Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following Articles and paragraphs.

Article 1 – The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;

to protect effectively the right of the worker to earn his living in an occupation freely entered upon;

to establish or maintain free employment services for all workers;

to provide or promote appropriate vocational guidance, training and rehabilitation.

Article 2 – The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

to provide for public holidays with pay;

to provide for a minimum of four weeks' annual holiday with pay;

to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;

to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Article 3 – The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;

to issue safety and health regulations;

to provide for the enforcement of such regulations by measures of supervision;

to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;

to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

to recognise the right of men and women workers to equal pay for work of equal value;

to recognise the right of all workers to a reasonable period of notice for termination of employment;

to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this Article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

to promote joint consultation between workers and employers;

to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;
and recognise:

the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;

to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;

to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;

to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;

to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;

to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;

to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;

to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;

to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;

to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

Article 8 – The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;

to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;

to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;

to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;

to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

Article 9 – The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.

Article 10 – The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;

to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;

to provide or promote, as necessary:

adequate and readily available training facilities for adult workers;

special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;

to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;

to encourage the full utilisation of the facilities provided by appropriate measures such as:

reducing or abolishing any fees or charges;

granting financial assistance in appropriate cases;
 including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
 ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

to remove as far as possible the causes of ill-health;
 to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
 to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Article 12 – The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

to establish or maintain a system of social security;
 to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;
 to endeavour to raise progressively the system of social security to a higher level;
 to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
 equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;
 the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

Article 13 – The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
 to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;

to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;

to apply the provisions referred to in paragraphs 1, 2 and 3 of this Article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Article 14 – The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;

to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;

to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;

to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

Article 16 – The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 17 – The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
 - b) to protect children and young persons against negligence, violence or exploitation;
 - c) to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
- to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article 18 – The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

- to apply existing regulations in a spirit of liberality;
 - to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
 - to liberalise, individually or collectively, regulations governing the employment of foreign workers; and recognise:
- the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

Article 19 – The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

- to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
- to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
- to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

remuneration and other employment and working conditions;

membership of trade unions and enjoyment of the benefits of collective bargaining;

accommodation;

to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this Article;

to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

to extend the protection and assistance provided for in this Article to self-employed migrants insofar as such measures apply;

to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;

to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

access to employment, protection against dismissal and occupational reintegration;

vocational guidance, training, retraining and rehabilitation;

terms of employment and working conditions, including remuneration;

career development, including promotion.

Article 21 – The right to information and consultation

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or

encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

to the determination and the improvement of the working conditions, work organisation and working environment;

to the protection of health and safety within the undertaking;

to the organisation of social and socio-cultural services and facilities within the undertaking;

to the supervision of the observance of regulations on these matters.

Article 23 – The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

to enable elderly persons to remain full members of society for as long as possible, by means of:

adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;

provision of information about services and facilities available for elderly persons and their opportunities to make use of them;

to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:

provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

the health care and the services necessitated by their state;

to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

Article 24 – The right to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;

the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;

to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

to take appropriate measures:

to enable workers with family responsibilities to enter and remain in employment, as well as to reenter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;

to take account of their needs in terms of conditions of employment and social security;

to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;

to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;

to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Article 28 – The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;

they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Article 29 – The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Article 30 – The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

to review these measures with a view to their adaptation if necessary.

Article 31 – The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

to promote access to housing of an adequate standard;

to prevent and reduce homelessness with a view to its gradual elimination;

to make the price of housing accessible to those without adequate resources.

Part III

Article A – Undertakings

Subject to the provisions of Article B below, each of the Parties undertakes:

to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;

to consider itself bound by at least six of the following nine Articles of Part II of this Charter: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20;

to consider itself bound by an additional number of Articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs.

The Articles or paragraphs selected in accordance with sub-paragraphs b and c of paragraph 1 of this article shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification, acceptance or approval is deposited.

Any Party may, at a later date, declare by notification addressed to the Secretary General that it considers itself bound by any Articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of the notification.

Each Party shall maintain a system of labour inspection appropriate to national conditions.

Article B – Links with the European Social Charter and the 1988 Additional Protocol

No Contracting Party to the European Social Charter or Party to the Additional Protocol of 5 May 1988 may ratify, accept or approve this Charter without considering itself bound by at least the provisions corresponding to the provisions of the European Social Charter and, where appropriate, of the Additional Protocol, to which it was bound.

Acceptance of the obligations of any provision of this Charter shall, from the date of entry into force of those obligations for the Party concerned, result in the corresponding provision of the European Social Charter and, where appropriate, of its Additional Protocol of 1988 ceasing to apply to the Party concerned in the event of that Party being bound by the first of those instruments or by both instruments.

Part IV

Article C – Supervision of the implementation of the undertakings contained in this Charter

The implementation of the legal obligations contained in this Charter shall be submitted to the same supervision as the European Social Charter.

Article D – Collective complaints

The provisions of the Additional Protocol to the European Social Charter providing for a system of collective complaints shall apply to the undertakings given in this Charter for the States which have ratified the said Protocol.

Any State which is not bound by the Additional Protocol to the European Social Charter providing for a system of collective complaints may when depositing its instrument of ratification, acceptance or approval of this Charter or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that it accepts the supervision of its obligation

Under this Charter following the procedure provided for in the said Protocol.

Part V**Article E – Non-discrimination**

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

Article F – Derogations in time of war or public emergency

In time of war or other public emergency threatening the life of the nation any Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

Any Party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.

Article G – Restrictions

The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article H – Relations between the Charter and domestic law or international agreements

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

Article I – Implementation of the undertakings given

Without prejudice to the methods of implementation foreseen in these Articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:

laws or regulations;

agreements between employers or employers' organisations and workers' organisations;

a combination of those two methods;

other appropriate means.

Compliance with the undertakings deriving from the provisions of paragraphs 1, 2, 3, 4, 5 and 7 of Article 2, paragraphs 4, 6 and 7 of Article 7, paragraphs 1, 2, 3 and 5 of Article 10 and Articles 21 and 22 of Part II of this Charter shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of this article, to the great majority of the workers concerned.

Article J – Amendments

Any amendment to Parts I and II of this Charter with the purpose of extending the rights guaranteed in this Charter as well as any amendment to Parts III to VI, proposed by a Party or by the Governmental Committee, shall be communicated to the Secretary General of the Council of Europe and forwarded by the Secretary General to the Parties to this Charter.

Any amendment proposed in accordance with the provisions of the preceding paragraph shall be examined by the Governmental Committee which shall submit the text adopted to the Committee of Ministers for approval after consultation with the Parliamentary Assembly. After its approval by the Committee of Ministers this text shall be forwarded to the Parties for acceptance.

Any amendment to Part I and to Part II of this Charter shall enter into force, in respect of those Parties which have accepted it, on the first day of the month following the expiration of a period of one month after the date on which three Parties have informed the Secretary General that they have accepted it.

In respect of any Party which subsequently accepts it, the amendment shall enter into force on the first day of the month following the expiration of a period of one month after the date on which that Party has informed the Secretary General of its acceptance.

Any amendment to Parts III to VI of this Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Part VI

Article K – Signature, ratification and entry into force

This Charter shall be open for signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

This Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which three member States of the Council of Europe have expressed their consent to be bound by this Charter in accordance with the preceding paragraph.

In respect of any member State which subsequently expresses its consent to be bound by this Charter, it shall enter into force on the first day of the month following the expiration of a period of one month after the date of the deposit of the instrument of ratification, acceptance or approval.

Article L – Territorial application

This Charter shall apply to the metropolitan territory of each Party. Each signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, specify, by declaration addressed to the Secretary General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.

Any signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible or for which it assumes international responsibility. It shall specify in the declaration the Articles or paragraphs of Part II of the Charter which it accepts as binding in respect of the territories named in the declaration.

The Charter shall extend its application to the territory or territories named in the aforesaid declaration as from the first day of the month following the expiration of a period of one month after the date of receipt of the notification of such declaration by the Secretary General.

Any Party may declare at a later date by notification addressed to the Secretary General of the Council of Europe that, in respect of one or more of the territories to which the Charter has been applied in accordance with paragraph 2 of this Article, it accepts as binding any articles or any numbered paragraphs which it has not already accepted in respect of that territory or territories. Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of receipt of such notification by the Secretary General.

Article M – Denunciation

Any Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force for it, or at the end of any subsequent period of two years, and in either case after giving six months' notice to the Secretary General of the Council of Europe who shall inform the other Parties accordingly.

Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any Article or paragraph of Part II of the Charter accepted by it provided that the number of articles or paragraphs by which this Party is bound shall never be less than sixteen in the former case and sixty-three in the latter and that this number of articles or paragraphs shall continue to include the

articles selected by the Party among those to which special reference is made in Article A, paragraph 1, sub-paragraph b.

Any Party may denounce the present Charter or any of the Articles or paragraphs of Part II of the Charter under the conditions specified in paragraph 1 of this article in respect of any territory to which the said Charter is applicable, by virtue of a declaration made in accordance with paragraph 2 of Article L.

Article N – Appendix

The appendix to this Charter shall form an integral part of it.

Article O – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and the Director General of the International Labour Office of:

any signature;

the deposit of any instrument of ratification, acceptance or approval;

any date of entry into force of this Charter in accordance with Article K;

any declaration made in application of Articles A, paragraphs 2 and 3, D, paragraphs 1 and 2, F, paragraph 2, L, paragraphs 1, 2, 3 and 4;

any amendment in accordance with Article J;

any denunciation in accordance with Article M;

any other act, notification or communication relating to this Charter.

In witness whereof, the undersigned, being duly authorised thereto, have signed this revised Charter.

Done at Strasbourg, this 3rd day of May 1996, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the Director General of the International Labour Office.

Appendix to the European Social Charter

Scope of the Revised European Social Charter in terms of persons protected

Preamble

Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19. This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.

Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and in the Protocol of 31 January 1967, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees.

Each Party will grant to stateless persons as defined in the Convention on the Status of Stateless Persons done in New York on 28 September 1954 and lawfully staying in its territory, treatment as favourable as possible and in any case not less favourable than under the obligations accepted by the Party under the said instrument and under any other existing international instruments applicable to those stateless persons.

Part I, paragraph 18, and Part II, Article 18, paragraph 1

It is understood that these provisions are not concerned with the question of entry into the territories of the Parties and do not prejudice the provisions of the European Convention on Establishment, signed in Paris on 13 December 1955.

Part II

Article 1, paragraph 2

This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.

Article 2, paragraph 6

Parties may provide that this provision shall not apply:

to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;

where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.

Article 3, paragraph 4

It is understood that for the purposes of this provision the functions, organisation and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 4, paragraph 4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Article 4, paragraph 5

It is understood that a Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.

Article 6, paragraph 4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Article 7, paragraph 2

This provision does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons.

Article 7, paragraph 8

It is understood that a Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under eighteen years of age shall not be employed in night work.

Article 8, paragraph 2

This provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases:

if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship;

if the undertaking concerned ceases to operate;

if the period prescribed in the employment contract has expired.

Article 12, paragraph 4

The words "and subject to the conditions laid down in such agreements" in the introduction to this paragraph are taken to imply inter alia that with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties.

Article 13, paragraph 4

Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Charter in respect of this paragraph provided that they grant to nationals of other Parties a treatment which is in conformity with the provisions of the said convention.

Article 16

It is understood that the protection afforded in this provision covers single-parent families.

Article 17

It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.

This does not imply an obligation to provide compulsory education up to the above-mentioned age.

Article 19, paragraph 6

For the purpose of applying this provision, the term "family of a foreign worker" is understood to mean at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker.

Article 20

It is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor's benefit, may be excluded from the scope of this Article.

Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to be discrimination as referred to in this Article.

This Article shall not prevent the adoption of specific measures aimed at removing de facto inequalities.

Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this Article or some of its provisions. This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.

Articles 21 and 22

For the purpose of the application of these Articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.

For the purpose of the application of these Articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.

It is understood that religious communities and their institutions may be excluded from the application of these Articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing

activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.

It is understood that where in a state the rights set out in these Articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.

The Parties may exclude from the field of application of these Articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Article 22

This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.

The terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

Article 23, paragraph 1

For the purpose of the application of this paragraph, the term "for as long as possible" refers to the elderly person's physical, psychological and intellectual capacities.

Article 24

It is understood that for the purposes of this Article the terms "termination of employment" and "terminated" mean termination of employment at the initiative of the employer.

It is understood that this Article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons: workers engaged under a contract of employment for a specified period of time or a specified task;

workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration;

workers engaged on a casual basis for a short period.

For the purpose of this Article the following, in particular, shall not constitute valid reasons for termination of employment:

trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;

seeking office as, acting or having acted in the capacity of a workers' representative;

the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

maternity or parental leave;

temporary absence from work due to illness or injury.

It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 25

It is understood that the competent national authority may, by way of exemption and after consulting organisations of employers and workers, exclude certain categories of workers from the protection provided in this provision by reason of the special nature of their employment relationship.

It is understood that the definition of the term "insolvency" must be determined by national law and practice.

The workers' claims covered by this provision shall include at least:

the workers' claims for wages relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment;

b. the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred;

the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or the termination of the employment.

National laws or regulations may limit the protection of workers' claims to a prescribed amount, which shall be of a socially acceptable level.

Article 26

It is understood that this Article does not require that legislation be enacted by the Parties.

It is understood that paragraph 2 does not cover sexual harassment.

Article 27

It is understood that this Article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. The terms "dependent children" and "other members of their immediate family who clearly need their care and support" mean persons defined as such by the national legislation of the Party concerned.

Articles 28 and 29

For the purpose of the application of this Article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

Part III

It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof.

Article A, paragraph 1

It is understood that the numbered paragraphs may include Articles consisting of only one paragraph.

Article B, paragraph 2

For the purpose of paragraph 2 of Article B, the provisions of the revised Charter correspond to the provisions of the Charter with the same article or paragraph number with the exception of:

- a. Article 3, paragraph 2, of the revised Charter which corresponds to Article 3, paragraphs 1 and 3, of the Charter;
- b. Article 3, paragraph 3, of the revised Charter which corresponds to Article 3, paragraphs 2 and 3, of the Charter;
- c. Article 10, paragraph 5, of the revised Charter which corresponds to Article 10, paragraph 4, of the Charter;
- d. Article 17, paragraph 1, of the revised Charter which corresponds to Article 17 of the Charter.

Part V

Article E

A differential treatment based on an objective and reasonable justification shall not be deemed discriminatory.

Article F

The terms "in time of war or other public emergency" shall be so understood as to cover also the threat of war.

Article I

It is understood that workers excluded in accordance with the appendix to Articles 21 and 22 are not taken into account in establishing the number of workers concerned.

Article J

The term "amendment" shall be extended so as to cover also the addition of new Articles to the Charter.

European Charter of Patients' Rights

Active Citizenship Network. Rome, November 2002.

Preamble

Despite their differences, national health systems in European Union countries place the same rights of patients, consumers, users, family members, weak populations and ordinary people at risk. Despite solemn declarations on the “European Social Model” (the right to universal access to health care), several constraints call the reality of this right into question.

As European citizens, we do not accept that rights can be affirmed in theory, but then denied in practice, because of financial limits. Financial constraints, however justified, cannot legitimise denying or compromising patients’ rights. We do not accept that these rights can be established by law, but then left not respected, asserted in electoral programmes, but then forgotten after the arrival of a new government.

The Nice Charter of Fundamental Rights will soon be part of the new European constitution. It is the basis of the declaration of the fourteen concrete patients’ rights currently at risk: the right to preventive measures, access, information, consent, free choice, privacy and confidentiality, respect of patients’ time, observance of quality standards, safety, innovation, avoidance of unnecessary suffering and pain and personalised treatment, and the right to complain and to receive compensation. These rights are also linked to several international declarations and recommendations, issued by both the WHO and the Council of Europe. They regard organisational standards and technical parameters, as well as professional patterns and behaviour.

Each of the national health systems of the EU countries manifests quite different realities with respect to patients’ rights. Some systems may have patients’ rights charters, specific laws, administrative regulations, charters of services, bodies such as ombudspersons, procedures like alternative dispute resolution, etc. Others may have none of these. In any case, the present Charter can reinforce the degree of protection of patients/citizens’ rights in the different national contexts, and can be a tool for the harmonisation of national health systems that favours citizens’ and patients’ rights. This is of the utmost importance, especially because of the freedom of movement within the EU and the enlargement process.

The Charter is submitted for consideration by civil society, national and EU institutions, and everyone who is able to contribute, by actions and omissions, to the protection or the undermining of these rights. Because of its connection to the present European reality, and to trends in health care, the Charter may be submitted to future reviews and will evolve over time.

The implementation of the Charter shall be primarily entrusted to those active citizenship organisations working on patients’ rights at national level. It will also require the commitment of health care professionals, as well as managers, governments, legislatures and administrative bodies.

Part One: Fundamental Rights

1. The EU Charter of Fundamental Rights

The Charter of Fundamental Rights, which will represent the first “brick” in the European constitution, is the main reference point of the present Charter. It affirms a series of inalienable, universal rights, which EU organs and Member States cannot limit, and individuals cannot waive. These rights transcend citizenship, attaching to a person as such. They exist even when national laws do not provide for their protection; the general articulation of these rights is enough to empower persons to claim that they be translated into concrete procedures and guarantees. According to Article 51, national laws will have to conform to the Nice Charter, but this shall not override national constitutions, which will be applied when they guarantee a higher level of protection (Article 53).

In conclusion, the particular rights set forth in the Nice Charter are to be interpreted extensively, so that an appeal to the related general principles may cover any gaps in the individual provisions.

Article 35 of the Charter provides for a right to health protection as the “*right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices*”.

Article 35 specifies that the Union must guarantee “*a high level of protection of human health,*” meaning health as both an individual and social good, as well as health care. This formula sets a guiding standard for the national governments: do not stop at the floor of the “minimum guaranteed standards” but aim for the highest level, notwithstanding differences in the capacity of the various systems to provide services.

In addition to Article 35, the Charter of Fundamental Rights contains many provisions that refer either directly or indirectly to patients’ rights, and are worth recalling: the inviolability of human dignity (article 1) and the right to life (article 2); the right to the integrity of the person (article 3); the right to security (article 6); the right to the protection of personal data (article 8); the right to non-discrimination (article 21); the right to cultural, religious and linguistic diversity (article 22); the rights of the child (article 24); the rights of the elderly (article 25); the right to fair and just working conditions (article 31); the right to social security and social assistance (article 34); the right to environmental protection (article 37); the right to consumer protection (article 38); the freedom of movement and of residence (article 45).

2. Other international references

The fourteen rights illustrated below are also linked to other international documents and declarations, emanating in particular from the WHO and the Council of Europe.

As regards the WHO, the most relevant documents are the following:

The Declaration on the Promotion of Patients’ Rights in Europe, endorsed in Amsterdam in 1994;

The Ljubljana Charter on Reforming Health Care, endorsed in 1996;

The Jakarta Declaration on Health Promotion into the 21st Century, endorsed in 1997.

As regards the Council of Europe, one must recall in particular the 1997 Convention on Human Rights and Biomedicine, as well as Recommendation Rec(2000)5 for the development of institutions for citizen and patient participation in the decision-making process affecting health care.

All these documents consider citizens' health care rights to derive from fundamental rights and they form, therefore, part of the same process as the present Charter.

PART Two: Fourteen right of the the patient

This part proposes the proclamation of fourteen patients' rights, which together seek to render the fundamental rights recalled above concrete, applicable and appropriate to the current transitory situation in the health services. These rights all aim to guarantee a “*high level of human health protection*” (Article 35 of the Charter of Fundamental Rights), to assure the high quality of services provided by the various national health services. They must be protected throughout the entire territory of the European Union.

With regard to the fourteen patients' rights, some preliminary statements are called for:

The definition of rights implies that both citizens and health care stakeholders assume their own responsibilities. Rights are indeed correlated with both duties and responsibilities.

The Charter applies to all individuals, recognising the fact that differences, such as age, gender, religion, socio-economic status and literacy etc., may influence individual health care needs.

The Charter does not intend to take sides on ethical issues.

The Charter defines rights as they are valid in contemporary European health systems. It shall therefore be reviewed and modified to allow for their evolution, and the development of scientific knowledge and technology.

- The fourteen rights are an embodiment of fundamental rights and, as such, they must be recognised and respected independently of financial, economic or political constraints, taking the criteria of the appropriateness of care into consideration.

Respect for these rights implies the fulfilment of both technical / organisational requirements, and behavioural/professional patterns. They therefore require a global reform of the ways national health systems operate.

Each article of the Charter refers to a right and defines and illustrates it, without claiming to foresee all possible situations.

1-Right to Preventive Measures

Every individual has the right to a proper service in order to prevent illness.

The health services have the duty to pursue this end by raising people's awareness, guaranteeing health procedures at regular intervals free of charge for various groups of the population at risk, and making the results of scientific research and technological innovation available to all.

2-Right of Access

Every individual has the right of access to the health services that his or her health needs require. The health services must guarantee equal access to everyone, without discriminating on the basis of financial resources, place of residence, kind of illness or time of access to services.

An individual requiring treatment, but unable to sustain the costs, has the right to be served free of charge.

Each individual has the right to adequate services, independently of whether he or she has been admitted to a small or large hospital or clinic.

Each individual, even without a required residence permit, has the right to urgent or essential outpatient and inpatient care.

An individual suffering from a rare disease has the same right to the necessary treatments and medication as someone with a more common disease.

3-Right to Information

Every individual has the right to access to all kind of information regarding their state of health, the health services and how to use them, and all that scientific research and technological innovation makes available.

Health care services, providers and professionals have to provide patient-tailored information, particularly taking into account the religious, ethnic or linguistic specificities of the patient.

The health services have the duty to make all information easily accessible, removing bureaucratic obstacles, educating health care providers, preparing and distributing informational materials.

A patient has the right of direct access to his or her clinical file and medical records, to photocopy them, to ask questions about their contents and to obtain the correction of any errors they might contain.

A hospital patient has the right to information which is continuous and thorough; this might be guaranteed by a “tutor”.

Every individual has the right of direct access to information on scientific research, pharmaceutical care and technological innovations. This information can come from either public or private sources, provided that it meets the criteria of accuracy, reliability and transparency.

4-Right to Consent

Every individual has the right of access to all information that might enable him or her to actively participate in the decisions regarding his or her health; this information is a prerequisite for any procedure and treatment, including the participation in scientific research.

Health care providers and professionals must give the patient all information relative to a treatment or an operation to be undergone, including the associated risks and discomforts, side-effects and alternatives. This information must be given with enough advance time (at least 24 hours notice) to enable the patient to actively participate in the therapeutic choices regarding his or her state of health.

Health care providers and professionals must use a language known to the patient and communicate in a way that is comprehensible to persons without a technical background.

In all circumstances which provide for a legal representative to give the informed consent, the patient, whether a minor or an adult unable to understand or to will, must still be as involved as possible in the decisions regarding him or her.

The informed consent of a patient must be procured on this basis.

A patient has the right to refuse a treatment or a medical intervention and to change his or her mind during the treatment, refusing its continuation.

A patient has the right to refuse information about his or her health status.

5-Right to Free Choice

Each individual has the right to freely choose from among different treatment procedures and providers on the basis of adequate information.

The patient has the right to decide which diagnostic exams and therapies to undergo, and which primary care doctor, specialist or hospital to use. The health services have the duty to guarantee this right, providing patients with information on the various centres and doctors able to provide a certain treatment, and on the results of their activity. They must remove any kind of obstacle limiting exercise of this right.

A patient who does not have trust in his or her doctor has the right to designate another one.

6-Right to Privacy and Confidentiality

Every individual has the right to the confidentiality of personal information, including information regarding his or her state of health and potential diagnostic or therapeutic procedures, as well as the protection of his or her privacy during the performance of diagnostic exams, specialist visits, and medical/surgical treatments in general.

All the data and information relative to an individual's state of health, and to the medical/surgical treatments to which he or she is subjected, must be considered private, and as such, adequately protected.

Personal privacy must be respected, even in the course of medical/surgical treatments (diagnostic exams, specialist visits, medications, etc.), which must take place in an appropriate environment and in the presence of only those who absolutely need to be there (unless the patient has explicitly given consent or made a request).

7-Right to Respect of Patients' Time

Each individual has the right to receive necessary treatment within a swift and predetermined period of time. This right applies at each phase of the treatment.

The health services have the duty to fix waiting times within which certain services must be provided, on the basis of specific standards and depending on the degree of urgency of the case.

The health services must guarantee each individual access to services, ensuring immediate sign-up in the case of waiting lists.

Every individual that so requests has the right to consult the waiting lists, within the bounds of respect for privacy norms.

Whenever the health services are unable to provide services within the predetermined maximum times, the possibility to seek alternative services of

comparable quality must be guaranteed, and any costs borne by the patient must be reimbursed within a reasonable time.

Doctors must devote adequate time to their patients, including the time dedicated to providing information.

8-Right to the Observance of Quality Standards

Each individual has the right of access to high quality health services on the basis of the specification and observance of precise standards.

The right to quality health services requires that health care institutions and professionals provide satisfactory levels of technical performance, comfort and human relations. This implies the specification, and the observance, of precise quality standards, fixed by means of a public and consultative procedure and periodically reviewed and assessed.

9-Right to Safety

Each individual has the right to be free from harm caused by the poor functioning of health services, medical malpractice and errors, and the right of access to health services and treatments that meet high safety standards.

To guarantee this right, hospitals and health services must continuously monitor risk factors and ensure that electronic medical devices are properly maintained and operators are properly trained.

All health professionals must be fully responsible for the safety of all phases and elements of a medical treatment.

Medical doctors must be able to prevent the risk of errors by monitoring precedents and receiving continuous training.

Health care staff that report existing risks to their superiors and/or peers must be protected from possible adverse consequences.

10-Right to Innovation

Each individual has the right of access to innovative procedures, including diagnostic procedures, according to international standards and independently of economic or financial considerations.

The health services have the duty to promote and sustain research in the biomedical field, paying particular attention to rare diseases.

Research results must be adequately disseminated.

11-Right to Avoid Unnecessary Suffering and Pain

Each individual has the right to avoid as much suffering and pain as possible, in each phase of his or her illness.

The health services must commit themselves to taking all measures useful to this end, like providing palliative treatments and simplifying patients' access to them.

12-Right to Personalized Treatment

Each individual has the right to diagnostic or therapeutic programmes tailored as much as possible to his or her personal needs.

The health services must guarantee, to this end, flexible programmes, oriented as much as possible to the individual, making sure that the criteria of economic sustainability does not prevail over the right to health care.

13-Right to Complain

Each individual has the right to complain whenever he or she has suffered a harm and the right to receive a response or other feedback.

The health services ought to guarantee the exercise of this right, providing (with the help of third parties) patients with information about their rights, enabling them to recognise violations and to formalise their complaint.

A complaint must be followed up by an exhaustive written response by the health service authorities within a fixed period of time.

The complaints must be made through standard procedures and facilitated by independent bodies and/or citizens' organizations and cannot prejudice the patients' right to take legal action or pursue alternative dispute resolution.

14-Right to Compensation

Each individual has the right to receive sufficient compensation within a reasonably short time whenever he or she has suffered physical or moral and psychological harm caused by a health service treatment.

The health services must guarantee compensation, whatever the gravity of the harm and its cause (from an excessive wait to a case of malpractice), even when the ultimate responsibility cannot be absolutely determined.

PART Three: Rights of active citizenship

The rights set forth in the Charter refer to the “individual” rather than the “citizen” insofar as fundamental rights override the criteria of citizenship, as noted in the first part. Nevertheless, each individual who acts to protect his or her own rights and/or the rights of others performs an act of “active citizenship.” This section thus employs the term “citizens” to refer to active persons working in the territory of the European Union.

In order to promote and verify the implementation of the above stated patients' rights, some citizens' rights must be proclaimed. They mainly regard different groups of organized citizens (patients, consumers, advocacy groups, advice-givers, self-help groups, voluntary and grassroots organisations, etc.) that have the unique role of supporting and empowering individuals in the protection of their own rights. These rights are pegged to the rights of civic association, contained in article 12, section 1, of the Charter of Fundamental Rights.

1. Right to perform general interest activities

Citizens, whether individuals or members of an association, have the right, rooted in the principle of subsidiarity, to perform general interest activities for the protection of health care rights; there is a concomitant duty on the part of the authorities and all relevant actors to favour and encourage such activity.

2. Right to perform advocacy activities

Citizens have the right to perform activities for the protection of rights in the area of health care, and in particular:

The right to the free circulation of persons and information in public and private health services, within the bounds of respect for privacy rights;

The right to carry out auditing and verification activities in order to measure the effective respect for the rights of citizens in the health care system;

The right to perform activities to prevent violation of rights in the field of health care;

The right to directly intervene in situations of violation or inadequate protection of rights;

The right to submit information and proposals, and the consequent obligation, on the part of the authorities responsible for the administration of public and private health services, to consider them and reply;

The right to public dialogue with public and private health authorities.

3. Right to participate in policy-making in the area of health

Citizens have the right to participate in the definition, implementation and evaluation of public policies relating to the protection of health care rights, on the basis of the following principles:

The principle of bilateral communication with regard to agenda setting, or, in other words, the ongoing exchange of information among citizens and institutions in the definition of the agenda;

The principle of consultation in the two phases of policy planning and decision, with the obligation on the part of institutions to listen to the proposals of citizens' organisations, to give feedback on these proposals, to consult them before taking each decision, and to justify their decisions if they differ from the opinions expressed;

The principle of partnership in implementation activities, which means that all partners (citizens, institutions and other private or corporate partners) are fully responsible and operate with equal dignity;

The principle of shared evaluation, which implies that the outcomes of the activities of the civic organisations ought to be considered as tools for evaluating public policies.

PART Four: Guidelines for implementing the charter

The dissemination and application of the contents of this Charter will have to be carried out at many different levels, particularly at the European, national and local levels.

Information and Education

As a means of informing and educating citizens and health care workers, the Charter may be promoted in hospitals, the specialised media and other health care institutions and organisations. The Charter may also be promoted in the schools, universities and all other places where questions regarding the construction of the "Europe of Rights" are addressed. Special attention should be devoted to training and educational activities for doctors, nurses and other health care stakeholders.

Support

Support for and subscription to the Charter could be gathered from health care stakeholders and citizens' organisations. The special commitments of those health services and professionals that subscribe to the Charter should be defined.

Monitoring

The Charter may also be used as a means of monitoring the state of patients' rights in Europe by civic organisations, the information media and independent authorities, with the use of appropriate tools. A periodic report could be published to further awareness of the situation and outline new objectives.

Protection

The Charter may be used to launch activities for the protection of patients' rights, conceived as prevention as well as actions to restore rights that have been violated. Such activities may be pursued by active citizenship organisations, by institutions and bodies like ombudspersons, ethical committees or Alternative Dispute Resolution commissions, justices of the peace, as well as by the courts. Institutions, procedures and tools coming from the "European legal space" should be employed to this end.

Dialogue

A dialogue among the stakeholders can be pursued on the basis of the Charter's contents, in order to work out policies and programmes for the protection of patients' rights. Such a dialogue would take place among governmental authorities, public and private companies involved in health care, as well as professional associations and labour unions.

Budgeting

In relation to the patients' rights contained in this Charter, quotas, representing a percentage of the health budget to set aside for the resolution of specific situations (for example, waiting lists), or for 12 the protection of those in particularly critical situations (like the mentally ill), could be set and applied. The respect for such quotas, or the degree of deviation from them, could be verified by annual reporting.

Legislation

The Charter rights may be incorporated into national and European laws and regulations in full or in part, to make the goal of protecting patients' rights an ordinary part of public policies, notwithstanding the immediate implementation of such rights in light of the European Union Charter of Fundamental Rights.

Health and Human Rights

A Resource Guide for the Open Society Institute and Soros Foundations Network

*Edited by Jonathan Cohen, Tamar Ezer, Paul McAdams, and Minda Miloff
With a Preface by Aryeh Neier*

The field of health and human rights brings together two of the Open Society Institute's and Soros Foundations Network's largest priorities. For health providers, human rights provide an essential tool for promoting accountability and the health of socially marginalized groups. For human rights advocates, the protection of public health is a mark of democracy, good governance, and open society.

This Resource Guide provides a practical tool for all foundation staff working at the intersection of health and human rights. It includes fact sheets, program descriptions, jurisprudence, case studies, and glossary definitions on six priority areas of health and human rights: patient care; HIV/AIDS; harm reduction; palliative care; sexual health; and minority health. It also contains thirteen foundational human rights documents containing health-related provisions.

Prepared by OSI and Equitas staff together with leading experts in the field, this Guide is designed to anchor advocacy and grant-making in health and human rights for years to come.

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