



# UNAIDS Global Reference Group on HIV/AIDS and Human Rights

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## Issue Paper

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### Current Rights-Based Efforts on Care and Treatment

#### Defining the Issue

A key component of comprehensive care and treatment, the lack of access to medicines is emblematic of the global human rights challenge related to HIV/AIDS care and treatment generally. It has recently been estimated that only some 300,000 people living with HIV/AIDS in developing countries had access to antiretroviral therapy (ART); this amounts to 5% of the estimated 5.5 million in need.<sup>i</sup> This reflects a much larger global problem of lack of access to essential medicines: the WHO estimates that 1/3 of the world's population lacks regular access to essential medicines.<sup>ii</sup> UNAIDS has highlighted several factors contributing to this state of affairs:

- *testing*: the majority of people living with HIV/AIDS remain unaware of their status and HIV testing is not universally available;
- *cost*: despite reductions in ARV prices, lowest prices on offer still greatly exceed annual per capita health expenditures of most low- and middle-income countries;
- *infrastructure*: health systems in many such countries are ill-equipped to deliver effective treatment of HIV/AIDS and associated illnesses; and
- *fear and stigma* related to HIV/AIDS and abuse of human rights of people living with HIV/AIDS contribute to reluctance to seek testing and treatment.<sup>iii</sup>

Care and treatment for people living with HIV/AIDS is a serious concern in high-income countries as well, although on a far different scale. It is however, affected by the same basic factors: for example, access to HIV testing may be limited in rural or more remote areas; extent of public or private insurance coverage for drugs or other health care goods and services may determine access; some regions of a country may lack inadequate infrastructure for health care delivery, such as trained personnel; and stigma and discrimination present attitudinal barriers to access, particularly for the most marginalized populations. Consequently, while many people with HIV/AIDS in high-income countries who know their status can access care and treatment, problems often remain for specific populations (eg, indigenous and/or rural communities, drug users, minorities defined by language, ethnicity, culture, immigrant/refugee status or other characteristics, those living in poverty or the "working poor", etc).

#### HIV/AIDS Care and Treatment: Law and Human Rights Norms and Standards

In recent years, the UN Commission on Human Rights has expressly recognized not only the particular necessity of addressing the global HIV/AIDS epidemic,<sup>iv</sup> but also "that access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria is one fundamental element for achieving progressively the

full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."<sup>v</sup> The *HIV/AIDS and Human Rights: International Guidelines* identify obligations related to care and treatment that flow from the right to health; most recently, Guideline 6 has been revised to reflect significant political and legal developments related to care and treatment and makes 26 recommendations for state action aimed at realizing access to HIV/AIDS prevention, care, treatment and support.<sup>vi</sup>

The UN Committee on Economic, Social and Cultural Rights has identified that the right to health, recognized as a fundamental human right in a variety of treaties and other instruments, requires functioning public health and health-care facilities, goods and services. Inextricably linked to care and treatment, this means they must be:

1. *available* in sufficient quantity;
2. *accessible* to all, meaning accessible without discrimination, physically accessible, economically accessible (ie, affordable), and complemented by accessibility of, and the ability to exchange, information regarding health issues;
3. *acceptable* in the sense of respectful of medical ethics, culturally appropriate and designed to improve health status of those concerned;
4. scientifically and medically *appropriate* and of good quality.<sup>vii</sup>

Domestic statutes and decisions of domestic courts in some countries, as well as regional human rights tribunals have confirmed the State's obligation to take positive measures to improve access to HIV/AIDS care and treatment. In relation to care and treatment, the UNGASS Declaration of Commitment commits States to: by 2003, develop national strategies (by 2003) to strengthen health-care systems and address factors affecting the provision of HIV-related drugs (including ARVs) and factors affecting technical capacity; "urgently make every effort" to provide progressively, and sustainably, the highest attainable standard of treatment for HIV/AIDS; by 2005, to develop and make significant progress in implementing comprehensive care strategies, including a variety of factors.<sup>viii</sup>

### **Overcoming Barriers to Accessing HIV/AIDS Care and Treatment: Dimensions of the Solution**

Overcoming barriers to accessing HIV/AIDS care and treatment requires an enabling *regulatory* environment, *financial* environment, *technical* environment and *social* environment. In other words, action is required on four fronts:

1. ensuring that *policy*, both international and domestic, facilitates access to, and delivery of, care and treatment (eg, overcoming patent-related barriers to medicines access; regulatory guarantees of the quality of drugs or health services; national strategies including plans for securing care and treatment; etc.);
2. mobilizing the *resources* necessary for providing goods, services and facilities (eg, increasing national health budgets; securing enhanced assistance from donor countries, including through mechanisms such as the Global Fund; cancellation of debt that burdens developing country spending on health, etc.);
3. ensuring the treatment available is *accessible*, *acceptable*, *appropriate* and of good *quality* (eg, attention to care and treatment needs of most marginalized

populations, implications for adherence, addressing gender-based and other barriers to care and treatment; etc.);

4. overcoming *stigma and discrimination* (eg, public education; political leadership challenging HIV-related misinformation and stigma; effective, accessible means of protection and redress against discrimination and other human rights abuses).

### Addressing Human Rights in Care and Treatment Efforts

Efforts to secure or improve HIV/AIDS care and treatment are being undertaken by: international system organizations; non-governmental organizations of various sorts; governments; and business. Attached is a brief overview of key players (aside from governments) currently involved in efforts related to HIV/AIDS care and treatment globally, and a synopsis of their initiatives (some of which involve partnerships between multiple organizations and/or across sectors). It is worth noting that explicit and implicit attention to human rights perspectives and norms and standards varies across the organizations and initiatives concerned with care and treatment. Human rights tend to be prominent in promotional and advocacy efforts, as well as to a certain degree in legal and policy efforts. There is far less attention to human rights, beyond some rhetorical statements, in the practice of organizations concerned with the delivery of care and treatment.

*This Issue Paper was prepared by Richard Elliott, Canadian HIV/AIDS Legal Network, to facilitate discussion at the Reference Group's August 2003 meeting.*

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<sup>i</sup> WHO. "Coverage of Antiretroviral therapy (ART) in developing countries, December 2002 (Adults by region)", at <http://www.who.int/hiv/events/itac/en/>. One-third of those receiving ART live in Brazil, as a result of its early introduction of a programme of free, expanded access.

<sup>ii</sup> JD Quick et al. "Twenty-five years of essential medicines". *WHO Bulletin* 2002; 80(11): 913-14.

<sup>iii</sup> UNAIDS. *AIDS Epidemic Update – December 2002* at 143.

<sup>iv</sup> See, e.g., "The right of everyone to the enjoyment of the highest attainable standard of physical and mental health." CHR Resolution 2003/28, UN Doc. E/CN.4/RES/2003/28, at: [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2003.L.33.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2003.L.33.En?Opendocument), and the *Report of the Special Rapporteur on the Right to Health* (2003), available at: [http://www.unaids.org/whatsnew/conferences/unhchr59session/SpecialRapporteur\\_Health\\_en.pdf](http://www.unaids.org/whatsnew/conferences/unhchr59session/SpecialRapporteur_Health_en.pdf).

<sup>v</sup> E.g., Access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria." CHR Resolution 2003/29, UN Doc. E/CN.4/RES/2003/29, at: [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2003.L.33.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2003.L.33.En?Opendocument), preceded by similar resolutions in 2001 and 2002. See also: *Report of the UN Secretary General on access to medication in the context of pandemics such as HIV/AIDS*. UN Doc. E/CN.4/2003/48 and Add. 1, at: [http://www.unaids.org/whatsnew/conferences/unhchr59session/SGReport\\_AccessHIVmedication\\_en.pdf](http://www.unaids.org/whatsnew/conferences/unhchr59session/SGReport_AccessHIVmedication_en.pdf)

<sup>vi</sup> *HIV/AIDS and Human Rights: International Guidelines – Revised Guideline 6*. UNAIDS/OHCHR, Geneva, September 2002, at: [http://www.unaids.org/publications/documents/human/HIVAIDSHumanRights\\_Guideline6.pdf](http://www.unaids.org/publications/documents/human/HIVAIDSHumanRights_Guideline6.pdf) (in English). Also available in French and Spanish via [www.unaids.org](http://www.unaids.org).

<sup>vii</sup> General Comment No. 14: The right to the highest attainable standard of health", UN Doc. E/C/12/2000/4 (11 August 2000), at paras. 1,4, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4,+CESCR+General+comment+14.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4,+CESCR+General+comment+14.En?OpenDocument)

<sup>viii</sup> *Declaration of Commitment on HIV/AIDS*, paras 55 & 56, at <http://www.unaids.org/UNGASS/index.html>.