



Joint United Nations Programme on HIV/AIDS

**UNAIDS**

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**59th Session of the  
United Nations Commission on Human Rights,**

**Agenda item 11:**

**Civil and political rights, including the question of:**

- (a) Torture and detention ;**
- (b) Disappearances and summary executions;**
- (c) Freedom of expression;**
- (d) Independence of the Judiciary, administration of justice, impunity;**
- (e) Religious intolerance.**

**Geneva, 8 April 2003**

Chairperson, distinguished delegates

The enjoyment of all rights – economic, social and cultural rights and civil and political are essential for an effective HIV/AIDS response. The lack of human rights protection exacerbates the negative impact of the epidemic at a personal and societal level, as the rights of people who are infected or assumed to be infected are constantly violated; vulnerability to HIV/AIDS is increased and the response is hindered.

For example-

The right to freedom from torture, cruel, inhuman or degrading treatment and Freedom from slavery, servitude<sup>1</sup> is constantly violated.

People living with HIV/AIDS are often segregated in schools and hospitals, including under cruel and degrading conditions. Cases of degrading treatment are particularly significant in prisons where inmates are often mandatorily tested, and if found HIV-positive, isolated or put in solitary confinement, often without their basic needs being met, including access to sufficient medical care.

In the context of HIV/AIDS, deprivations of the right to liberty and security<sup>2</sup> are often done in the name of public health. This is despite the fact that there is no public health rationale to justify isolation or quarantine, based solely on the fact that a person is suspected or known to be HIV-positive.

Deprivations of the right to liberty and security take the form of compulsory blood tests, arrest, detention, segregation, and isolation because of a person actual or presumed HIV status. Furthermore, since these deprivations of liberty occur in administrative settings, procedural and judicial safeguards are not applied.

Further, persons belonging to certain groups, such as commercial sex workers, injecting drug users and men who have sex with men, are often deprived of liberty because they are suspected of HIV infection as they are associated with high risk behavior..

The fundamental right to freedom of movement<sup>3</sup> is often restricted on the basis of HIV/AIDS status. Some States under their immigration laws require that nationals returning to their country submit themselves to HIV testing. Other States restrict movement of nationals and foreigners living with HIV/AIDS within their countries, through segregation or quarantine. Such measures are often imposed on persons suspected of HIV, such as migrants from certain countries, commercial sex workers and injecting drug users.

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<sup>1</sup> *Articles 4 & 5 of the Universal Declaration on Human Rights; Article 7 & 8 of the International Covenant on Civil and Political Rights; Articles 37 & 39 of the Convention on the Rights of the Child; and Article 6 of Convention on Elimination of All Forms of Discrimination Against Women*

<sup>2</sup> *Article 3 of the Universal Declaration on Human Rights; and Article 9 & 10 of the International Covenant on Civil and Political Rights*

<sup>3</sup> *Article 13 of the Universal Declaration on Human Rights; and Article 12 of the International Covenant on Civil and Political Rights*

Foreigners living with or suspected of HIV/AIDS often face the threat of expulsion. Such expulsions may be carried out in the name of public health under administrative procedures without adequate procedural or legal safeguards. During such expulsions, confidentiality of health status may not be maintained either with regard to the expelling or receiving States.

States also impose some form of HIV screening with regard to the entry and stay of aliens for either short or long-term periods.

These actions run counter to the fundamental human right principles of non-discrimination and freedom of movement. Additionally, these restrictions may interfere with other rights, such as the right family unity and the right to liberty and security.

Although it is particularly important that the right to privacy<sup>4</sup> be protected in the context of HIV/AIDS where association with HIV/AIDS results in prejudice, stigma and discrimination, this is not the reality. Information of HIV/AIDS status is often collected and published or used without the informed consent of the individual. This is a serious breach of the right to privacy.

Violation of the right to privacy also takes the form of compulsory registration of HIV-positive people or those suspected of it, compulsory collection and storage of information on HIV/AIDS status without confidentiality, and the disclosure of HIV status to third parties. This may occur due to government policies, occur in health care settings as part of routine or hidden testing, or be required by private parties, such as employers, for access to services.

UNAIDS advocates that any testing for HIV should be voluntary and done with the informed consent of the person involved. Voluntary testing should be performed with pre-and posttest counseling. It is in the context of pre-test counseling that informed consent should be obtained.

Experience has shown that mandatory testing, mandatory registration and mandatory publication of people's HIV status are not useful measures because they do not prevent transmission of HIV on the contrary they drive people away from HIV prevention and care programs.

In the context of HIV/AIDS, the right to seek, receive and impart information<sup>5</sup> has often been denied or curtailed, because information about HIV/AIDS is politically unpopular and/or perceived to conflict with obscenity laws or with religious, moral or cultural norms. For these reasons, Some States have been reluctant to disseminate information pertaining to the extent of the problem, the population groups most affected, and the ways by which to avoid infection. Such censorship prevents people from obtaining life-saving information, increases vulnerability to infection, and increases the devastating social impact of the disease, including the discrimination and stigma associated with it.

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<sup>4</sup> *Article 12 of the Universal Declaration on Human Rights and Article 17 of the International Covenant on Civil and Political Rights and Article 37 of the Convention on the Rights of the Child*

<sup>5</sup> *Article 19 of the Universal Declaration on Human Rights, Article 17 of the International Covenant on Civil and Political Rights and Article 37 of the Convention on the Rights of the Child*

UNAIDS is encouraged by the report of the Special Rapporteur on Freedom of opinion contained in document E/CN. 4/2003/67 which highlights some good policies and practices that some States have adopted in addressing the right to information and the right to freedom of expression in the context of HIV/AIDS prevention.

In conclusion, chairperson we wish to emphasize that promoting human rights in the context of HIV/AIDS entails ensuring that these human rights are enjoyed and enforceable at national level.

States should ensure that human rights principles contained in the international human rights instruments are integrated into national policies, strategies and laws. This would provide mechanisms to those whose rights have been violated to enforce their rights; this would create accountability systems and where appropriate, provide redress.

Thank you.