



HUMAN RIGHTS



Joint United Nations Programme on HIV/AIDS
UNAIDS
UNICEF • UNDP • UNFPA • UNDCP
ILO • UNESCO • WHO • WORLD BANK

HIV/AIDS and Human Rights

International Guidelines

Revised Guideline 6

**Access to prevention,
treatment, care and support**



UNITED NATIONS

UNITED NATIONS PUBLICATION

UNAIDS/02.49E (English original, August 2002)
ISBN 92-9173-025-4
Revised reprint March 2003

© Joint United Nations Programme on HIV/AIDS (UNAIDS) 2003. All rights reserved.

Material contained in this publication may be freely reviewed, quoted, reproduced or translated, in part or in full, provided the source is acknowledged and a copy containing the reprinted material is sent to the Office of the United Nations High Commissioner for Human Rights, 1211 Geneva 10, and to UNAIDS, 1211 Geneva 27, Switzerland.

The document may not be sold or used in conjunction with commercial purposes without prior written

approval from UNAIDS (contact: UNAIDS Information Centre).

The designations employed and the presentation of the material in this publication do not imply expression of any opinion whatsoever on the part of the secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

UNAIDS - 20 avenue Appia - 1211 Geneva 27 - Switzerland
Telephone: (+41) 22 791 36 66 - Fax: (+41) 22 791 41 87
E-mail: unaids@unaids.org - Internet: <http://www.unaids.org>



OHCHR

Office of the United Nations High Commissioner
for Human Rights and the Joint United Nations
Programme on HIV/AIDS

Geneva



Joint United Nations Programme on HIV/AIDS

UNAIDS

UNICEF • UNDP • UNFPA • UNDCP
ILO • UNESCO • WHO • WORLD BANK

HIV/AIDS and Human Rights International Guidelines

Third International Consultation
on HIV/AIDS and Human Rights

Geneva, 25–26 July 2002

(Organized jointly by the Office
of the United Nations High Commissioner for Human Rights
and the Joint United Nations Programme on HIV/AIDS)



UNITED NATIONS

New York and Geneva, 2003

CONTENTS

Glossary of terms	4
Foreword	5
Acknowledgements	7
Introduction	9
Revised Guideline 6: commentary and recommendations for implementation	14
Annex I. List of participants	19

GLOSSARY OF TERMS

AIDS	acquired immunodeficiency syndrome
ASO	AIDS service organization
CBO	community-based organization
HIV	human immunodeficiency virus
IGO	intergovernmental organization
NGO	nongovernmental organization
PLWHA	people living with HIV/AIDS
VCT	voluntary counselling and testing

FOREWORD

Human rights promotion and protection is central to the response to HIV/AIDS. Denying the rights of people living with HIV, and those affected by the epidemic, imperils not only their well-being, but life itself. Across the globe more than 40 million people live with HIV, half of whom are women, and half the new infections are occurring in young people under 25. Many millions more are affected. Twenty-one years since the first reported case of AIDS, the truth is only just dawning that we are still in the early stages of the epidemic. Developing a response that is robust, enduring and, above all, effective, is more vital than ever before.

In 1998, the Office of the High Commissioner for Human Rights (OHCHR) and the Joint United Nations Programme on HIV/AIDS (UNAIDS) issued the *International Guidelines on HIV/AIDS and Human Rights*. These Guidelines built on expert advice to integrate the principles and standards of international human rights law into the HIV/AIDS response. This revision of the *Guidelines* updates them to reflect new standards in HIV treatment and evolving international law on the right to health.

Over the past six years, antiretroviral treatment for AIDS, while falling short of a cure, has slashed HIV death rates in high-income countries. But in developing countries, despite major decreases since 2000 in the prices at which these drugs have been available, they still reach fewer than 5% of those whose lives they would save. At the same time, human rights violations, including stigma and discrimination faced by people living with or affected by HIV/AIDS, still constitute a major barrier both to prevention efforts and access to care.

The Commission on Human Rights in 2001 and again in 2002 confirmed that access to AIDS medication is a key component of the right to the highest attainable standard of health, enshrined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. The Committee on Economic, Social and Cultural Rights, which monitors the Covenant, in 2000 made clear that the right to health included *inter alia* access to treatment and to HIV-related education.

Adding to these specific international human rights instruments, all Member States of the United Nations adopted a Declaration of Commitment on HIV/AIDS in June 2001 which pledged to scale up the response to HIV/AIDS within a human rights framework. In November 2001 in Doha, the Ministerial Conference of the World Trade Organization declared that the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) should be interpreted to support public health and allow for patents to be overridden if required to respond to emergencies such as the AIDS epidemic.

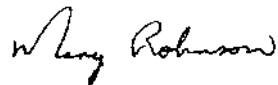
In response to these developments, in July 2002, the OHCHR and UNAIDS convened a group of experts to update the *International Guidelines on HIV/AIDS and Human Rights*. We are grateful to all those who participated in the consultation, including people living with HIV/AIDS, AIDS service organizations, health care and legal practitioners, and academics.

The resulting revised Guideline 6 on “Access to prevention, treatment, care and support” will assist States to design policy and practice to ensure respect for human rights. We hope it will be a useful resource in the necessary scaling up of the response to HIV/AIDS by all actors concerned – governments and non-governmental organizations, the United Nations system and other international and regional organizations. Human rights are more than principles to guide the national and global response to AIDS: they are among the most powerful tools to ensure its success. These revised *Guidelines* are a valuable addition to the toolkit.



Peter Piot

Executive Director
Joint United Nations Programme
on HIV/AIDS



Mary Robinson

United Nations
High Commissioner
for Human Rights

ACKNOWLEDGEMENTS

The Third International Consultation on HIV/AIDS and Human Rights took place on 25 and 26 July 2002. It brought together legal and human rights experts, with particular expertise in HIV/AIDS-related prevention, treatment, care and support, including people living with HIV/AIDS, nongovernmental organizations, human rights activists, health practitioners, AIDS service organizations and academics.

UNAIDS and OHCHR gratefully acknowledge the contributions of Justice Michael Kirby, a Judge of the High Court of Australia, who chaired the Consultation, and also chaired the Second International Consultation of 1996.

Richard Elliot of the Canadian HIV/AIDS Legal Network served as Secretary to the Consultation. He prepared a background paper, which provided an exhaustive overview of key developments related to treatment, care and support for people living with HIV/AIDS, and proposed an updated text for Guideline 6 and its related commentary.

The list of experts that participated in the Consultation is contained in Annex I to the present document.

The substantive contributions of the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations International Drug Control Programme (UNDCP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the International Labour Organization (ILO), and the World Bank are gratefully acknowledged.

INTRODUCTION

1. The Commission on Human Rights, at its fifty-second session, in its resolution 1996/43 of 19 April 1996, requested that the United Nations High Commissioner for Human Rights, *inter alia*, continue the efforts, in cooperation with UNAIDS and nongovernmental organizations, as well as groups of people living with HIV/AIDS, towards the elaboration of guidelines on promoting and protecting respect for human rights in the context of HIV/AIDS. At the same time, the Commission requested that the Secretary-General of the United Nations prepare for the consideration of the Commission at its fifty-third session a report on the above-mentioned guidelines, including the outcome of the second expert consultation on human rights and HIV/AIDS, and on their international dissemination.

2. The call for guidelines on human rights and HIV/AIDS was based on a recommendation contained in an earlier report of the Secretary-General to the Commission at its fifty-first session (E/CN.4/1995/45, para. 135), which stated that “the development of such guidelines or principles could provide an international framework for discussion of human rights considerations at the national, regional and international levels in order to arrive at a more comprehensive understanding of the complex relationship between the public health rationale and the human rights rationale of HIV/AIDS. In particular, governments could benefit from guidelines that outline clearly how human rights standards apply in the area of HIV/AIDS and indicate concrete and specific measures, both in terms of legislation and practice, that should be undertaken”.

3. In response to the above requests, the United Nations Centre for Human Rights and the Joint United Nations Programme on HIV/AIDS (UNAIDS) convened the Second International Consultation on HIV/AIDS and Human Rights in Geneva, from 23 to 25 September 1996. The first International Consultation on AIDS and Human Rights was organized by the United Nations Centre for Human Rights, in cooperation with the World Health Organization, in Geneva, from 26 to 28 July 1989. In the report of the first consultation (HR/PUB/90/2), the elaboration of guidelines to assist policy-makers and others in complying with international human rights standards regarding law, administrative practice and policy had already been proposed.

4. The Second International Consultation on HIV/AIDS and Human Rights brought together 35 experts in the field of HIV/AIDS and human rights, comprising government officials and staff of national AIDS programmes,

people living with HIV/AIDS (PLWHA), human rights activists, academics, representatives of regional and national networks on ethics, law, human rights and HIV/AIDS, and representatives of United Nations bodies and agencies, nongovernmental organizations and AIDS service organizations (ASOs).

5. The Second International Consultation on HIV/AIDS and Human Rights had before it five background papers that had been commissioned for the purpose of eliciting specific regional and thematic experiences and concerns regarding HIV/AIDS and human rights, prepared by the following nongovernmental organizations and networks of people living with HIV/AIDS: the Alternative Law Research and Development Center (ALTERLAW) (Philippines); the Network of African People Living with HIV/AIDS (NAP+) (Zambia); Colectivo Sol (Mexico); the International Community of Women Living with HIV/AIDS (ICW+) (global); and the Global Network of People Living with HIV/AIDS (GNP+). The groups were asked, each within its specific context, to identify the most important human rights principles and concerns in the context of HIV/AIDS, as well as concrete measures that States could take to protect HIV/AIDS-related human rights.

6. The full text of the *International Guidelines on HIV/AIDS and Human Rights*, as adopted by the Second International Consultation, is contained in Annex I to the report of the Secretary-General to the Commission on Human Rights in document E/CN.4/1997/37. The summary of the 12 guidelines is provided below:

GUIDELINE 1: *States should establish an effective national framework for their response to HIV/AIDS, which ensures a coordinated, participatory, transparent and accountable approach, integrating HIV/AIDS policy and programme responsibilities across all branches of government.*

GUIDELINE 2: *States should ensure, through political and financial support, that community consultation occurs in all phases of HIV/AIDS policy design, programme implementation and evaluation and that community organizations are enabled to carry out their activities, including in the field of ethics, law and human rights, effectively.*

GUIDELINE 3: *States should review and reform public health laws to ensure that they adequately address public health issues raised by HIV/AIDS, that their provisions applicable to casually transmitted diseases are not inappropriately applied to HIV/AIDS and that they are consistent with international human rights obligations.*

GUIDELINE 4: *States should review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV/AIDS or targeted against vulnerable groups.*

GUIDELINE 5: *States should enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV/AIDS and people with disabilities from discrimination in both the public and private sectors, ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation, and provide for speedy and effective administrative and civil remedies.*

GUIDELINE 6: *States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of qualitative prevention measures and services, adequate HIV prevention and care information, and safe and effective medication at an affordable price.*

GUIDELINE 7: *States should implement and support legal support services that will educate people affected by HIV/AIDS about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues and utilize means of protection in addition to the courts, such as offices of ministries of justice, ombudspersons, health complaint units and human rights commissions.*

GUIDELINE 8: *States, in collaboration with and through the community, should promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups.*

GUIDELINE 9: *States should promote the wide and ongoing distribution of creative education, train-ing and media programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS to understanding and acceptance.*

GUIDELINE 10: *States should ensure that government and the private sector develop codes of conduct regarding HIV/AIDS issues that translate human rights principles into codes of professional responsibility and practice, with accompanying mechanisms to implement and enforce these codes.*

GUIDELINE 11: *States should ensure monitoring and enforcement mechanisms to guarantee the protection of HIV-related human rights, including those of people living with HIV/AIDS, their families and communities.*

GUIDELINE 12: *States should cooperate through all relevant programmes and agencies of the United Nations system, including UNAIDS, to share knowledge and experience concerning HIV-related human rights issues and should ensure effective mechanisms to protect human rights in the context of HIV/AIDS at international level.*

7. The *International Guidelines on HIV/AIDS and Human Rights* were subsequently issued in 1998 by OHCHR and UNAIDS as a joint policy paper.

8. Since their publication in 1998, the *International Guidelines on HIV/AIDS and Human Rights* have provided policy guidance to governments, international organizations, nongovernmental organizations and civil society groups on the development and implementation of effective national strategies for combating HIV/AIDS. The Commission on Human Rights has asked States to take all necessary steps to ensure the respect, protection and fulfilment of HIV-related human rights as contained in the guidelines, and has urged States to ensure that their laws, policies and practices comply with the guidelines¹. The Secretary-General has submitted reports to the Commission on steps taken by governments and United Nations organs, programmes and specialized agencies to promote and implement the guidelines².

9. Significant developments have taken place with regard to the right to health and access to HIV/AIDS-related prevention, treatment, care and support, including advances in the availability of diagnostic tests and HIV/AIDS-related treatments, including antiretroviral therapies. There have been increased commitments at the international, regional and domestic levels towards the full realization of all human rights related to HIV/AIDS, including improved access to health services for people living with HIV/AIDS. Key among these are the Declaration of Commitment on HIV/AIDS³; the Millennium Development Goals⁴; General Comment 14 of the Committee on Economic, Social and

¹ Commission on Human Rights resolutions 1997/33, 1999/49, 2001/51.

² E/CN.4/1999/76, E/CN.4/2001/80.

³ United Nations General Assembly Declaration of Commitment on HIV/AIDS ('Global Crisis—Global Action'), resolution A/RES/S-26/2 (27 June 2001).

⁴ United Nations Millennium Declaration, resolution 55/2 (8 September 2000), A/RES/55/2

Cultural Rights⁵; and Commission on Human Rights resolutions on the right to the highest attainable standard of health and access to medication⁶.

10. In light of these developments, the High Commissioner for Human Rights and the Executive Director of UNAIDS decided to convene a Third International Consultation on HIV/AIDS and Human Rights in order to update Guideline 6. The third consultation reviewed advances in HIV/AIDS-related treatment and antiretroviral medication, the current global disparity in access to treatment, as well as political and legal developments since the elaboration of the guidelines in 1996. The mandate of the third consultation was limited to a consideration of changes relevant to Guideline 6 that had occurred since the second consultation in 1996.

11. The revised Guideline 6 provides relevant and up-to-date policy guidance based on the current state of international law and on best practice experiences at the country level. It is based upon the following key premises:

- access to HIV/AIDS-related treatment is fundamental to realizing the right to health;
- prevention, treatment, care and support are a continuum;
- access to medication is one element of comprehensive treatment, care and support;
- ensuring sustainable access to medication requires action on numerous fronts; and
- international cooperation is vital in realizing equitable access to care, treatment and support to all in need.

12. The revised Guideline 6, its related commentary and recommendations for implementation are contained in this document. The revised guideline replaces the original Guideline 6 of the *International Guidelines on HIV/AIDS and Human Rights*.

⁵ General Comment 14: The right to the highest attainable standard of health. Adopted 11 May 2000; UN Doc. E/C.12/2000/4

⁶ E/CN.4/RES/2002/31.

⁷ E/CN.4/RES/2001/33, E/CN.4/RES/2002/32.

REVISED GUIDELINE 6:

ACCESS TO PREVENTION, TREATMENT, CARE AND SUPPORT

States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of quality prevention measures and services, adequate HIV prevention and care information, and safe and effective medication at an affordable price.

States should also take measures necessary to ensure for all persons, on a sustained and equal basis, the availability and accessibility of quality goods, services and information for HIV/AIDS prevention, treatment, care and support, including antiretroviral and other safe and effective medicines, diagnostics and related technologies for preventive, curative and palliative care of HIV/AIDS and related opportunistic infections and conditions.

States should take such measures at both the domestic and international levels, with particular attention to vulnerable individuals and populations.

COMMENTARY ON GUIDELINE 6

Prevention, treatment, care and support are mutually reinforcing elements and a continuum of an effective response to HIV/AIDS. They must be integrated into a comprehensive approach, and a multifaceted response is needed. Comprehensive treatment, care and support include antiretroviral and other medicines, diagnostics and related technologies for the care of HIV/AIDS, related opportunistic infections and other conditions, good nutrition, and social, spiritual and psychological support, as well as family, community and home-based care. HIV-prevention technologies include condoms, lubricants, sterile injection equipment, antiretroviral medicines (e.g. to prevent mother-to-child transmission or as post-exposure prophylaxis) and, once developed, safe and effective microbicides and vaccines. Based on human rights principles, universal access requires that these goods, services and information not only be available, acceptable and of good quality, but also within physical reach and affordable for all.

RECOMMENDATIONS FOR IMPLEMENTATION OF GUIDELINE 6

- a. States should develop and implement national plans to progressively realize universal access to comprehensive treatment, care and support for all persons living with HIV/AIDS, as well as universal access to a full range of goods, services and information for HIV prevention. National plans should be developed in consultation with nongovernmental organizations to ensure the active participation of people living with HIV/AIDS and vulnerable groups.
- b. Universal access to HIV/AIDS prevention, treatment, care and support is necessary to respect, protect and fulfil human rights related to health, including the right to enjoy the highest attainable standard of health. Universal access will be achieved progressively over time. However, States have an immediate obligation to take steps, and to move as quickly and effectively as possible, towards realizing access for all to HIV/AIDS prevention, treatment, care and support at both the domestic and global levels. This requires, among other things, setting benchmarks and targets for measuring progress⁸.
- c. Access to HIV/AIDS-related information, goods and services is affected by a range of social, economic, cultural, political and legal factors. States should review and, where necessary, amend or adopt laws, policies, programmes and plans to realize universal and equal access to medicines, diagnostics and related technologies, taking these factors into account. As one example, duties, customs laws and value-added taxes may hinder access to medicines, diagnostics and related technologies at affordable prices. Such laws should be revised so as to maximize access. States should ensure that national laws, policies, programmes and plans affecting access to HIV/AIDS-related goods, services or information are consistent with international human rights norms, principles and standards. States should consider the experience and expertise of other States, and consult with people living with HIV/AIDS, nongovernmental organizations, and domestic and international health organizations with relevant expertise.

⁸ For example, States could make use of the indicators developed by UNAIDS for measuring follow-up on the United Nations General Assembly's 2001 Declaration of Commitment on HIV/AIDS, in particular the National Composite Policy Index, which assesses a country's progress in developing laws, policies and strategies to address HIV/AIDS at the national level in relation to prevention, treatment, care and support, as well as specific human rights issues. See UNAIDS/02.51E, August 2002.

- d. States should also ensure that their laws, policies, programmes and practices do not exclude, stigmatize or discriminate against people living with HIV/AIDS or their families, either on the basis of their HIV status or on other grounds contrary to international or domestic human rights norms, with respect to their entitlement or access to health-care goods, services and information⁹.
- e. States' legislation, policies, programmes, plans and practices should include positive measures to address factors that hinder the equal access of vulnerable individuals and populations to prevention, treatment, care and support, such as poverty, migration, rural location or discrimination of various kinds¹⁰. These factors may have a cumulative effect. For example, children (particularly girls) and women may be the last to receive access even if treatment is otherwise available in their communities.
- f. States should recognize, affirm and strengthen the involvement of communities as part of comprehensive HIV/AIDS prevention, treatment, care and support, while also complying with their own obligations to take steps in the public sector to respect, protect and fulfil human rights related to health. Mechanisms should be developed to enable affected communities to access resources to assist families who have lost income earners to AIDS. Particular attention must be paid to gender inequalities, with respect to access to care in the community for women and girls, as well as the burdens that delivering care at the community level may impose on them.
- g. To assist caregivers and, where relevant, employers and insurers, States should ensure the availability, use and implementation of sound, scientifically up-to-date guidelines for prevention, treatment, care and support to people living with HIV/AIDS in respect of available health-care goods, services and information. States should develop mechanisms to monitor and improve, as necessary, the availability, use and implementation of these guidelines.

⁹ See also Guideline 5, regarding protections against discrimination, including in areas such as health care, social security, welfare benefits and other services.

¹⁰ Depending on legal, social and economic conditions, which may vary widely within countries and across regions, individuals and groups that may be vulnerable to discrimination and marginalization include women, children, those living in poverty, indigenous people(s), gay men and other men who have sex with men, migrants, refugees and internally displaced persons, people with disabilities, prisoners and other detained persons, sex workers, transgender people, people who use illegal drugs, and racial, religious, ethnic, linguistic or other minorities. See also: Guideline 3, paragraph 28(j), and Guideline 10, paragraph 42(a), on measures to address discrimination in the provision of health care; Guideline 4, paragraph 29(e), on the specific issue of access to HIV-related prevention, treatment and care for prisoners; and Guideline 8, paragraphs 38(b) and 38(j), regarding specific attention to the needs of vulnerable groups.

- h. Legislation, policies and programmes should take into account the fact that persons living with HIV/AIDS may recurrently and progressively experience ill-health and greater health-care needs, which should be accommodated accordingly within benefit schemes in both the public and private sectors. States should work with employers, and employers' and workers' organizations, to adopt or adapt benefit schemes, where necessary, to ensure universal and equal access to benefits for workers living with HIV/AIDS. Particular attention must also be paid to ensuring access to health care for individuals outside the formal employment sector, who lack work-related health-care benefits¹¹.
- i. States should ensure that domestic legislation provides for prompt and effective remedies in cases in which a person living with HIV/AIDS is denied or not provided access to treatment, care and support. States should also ensure due process of law so that the merits of such complaints can be independently and impartially assessed. At the international level, States should strengthen existing mechanisms, and develop new mechanisms where they do not currently exist, enabling persons living with HIV/AIDS to seek prompt, effective redress for breaches of States' international legal obligations to respect, protect and fulfil rights related to health.
- j. States should ensure the quality assurance and control of HIV/AIDS-related products. States should ensure, through legislative and other measures (e.g. functional systems for pre-marketing approval and post-marketing surveillance), that medicines, diagnostics and related technologies are safe and effective.
- k. States should take legislative and other measures to ensure that medicines are supplied in adequate quantities and in a timely fashion, and with accurate, current and accessible information regarding their use. For example, consumer protection laws or other relevant legislation should be enacted or strengthened to prevent fraudulent claims regarding the safety and efficacy of drugs, vaccines and medical devices, including those relating to HIV/AIDS.
- l. Laws and/or regulations should be enacted to ensure the quality and availability of HIV tests and counselling. If home tests and/or rapid HIV test kits are permitted on the market, they should be strictly regulated to ensure quality and accuracy. The consequences of loss of

¹¹ See also Guideline 5, paragraph 30(d), and the *Code of practice on HIV/AIDS and the world of work*, adopted in 2001 by the International Labour Organization.

epidemiological information, the lack of accompanying counselling and the risk of unauthorized use, such as for employment or immigration, should also be addressed. Legal and social support services should be established to protect individuals from any abuses arising from HIV testing. States should also ensure supervision of the quality of delivery of voluntary counselling and testing (VCT) services.

- m. Legal quality control of condoms should be enforced, and compliance with the International Condom Standard should be monitored in practice. Restrictions on the availability of preventive measures, such as condoms, bleach, clean needles and syringes, should be repealed. Widespread provision of these preventive measures through various means, including vending machines in appropriate locations, should be considered, in light of the greater effectiveness provided by the increased accessibility and anonymity afforded by this method of distribution. Condom promotion initiatives should be coupled with HIV/AIDS information campaigns for optimal impact.
- n. Laws and/or regulations should be enacted to enable widespread provision of information about HIV/AIDS through the mass media. This information should be aimed at the general public, as well as at various vulnerable groups that may have difficulty in accessing information. HIV/AIDS information should be effective for its designated audience and not be inappropriately subject to censorship or other broadcasting standards, particularly as this will have the effect of damaging access to information vital to life, health and human dignity.
- o. In order to improve prevention and therapeutic options related to HIV/AIDS, States should increase funds allocated to the public sector for researching, developing and promoting therapies and technologies for the prevention, treatment, care and support of HIV/AIDS and related infections and conditions. The private sector should also be encouraged to undertake such research and development and to make the resulting options widely and promptly available at prices affordable to those who need them.
- p. States and the private sector should pay special attention to supporting research and development that address the health needs of developing countries. In recognition of the human right to share in scientific advancement and its benefits, States should adopt laws and policies, at the domestic and international levels, ensuring that the outcomes of research and development are of national and global benefit, with

particular attention to the needs of people in developing countries and people who are poor or otherwise marginalized.

- q. States should integrate HIV/AIDS prevention, treatment, care and support into all aspects of their planning for development, including in poverty eradication strategies, national budget allocations and sectoral development plans. In so doing, States should have particular regard, at a minimum, for internationally agreed targets in addressing HIV/AIDS¹².
- r. States should increase their national budget allocations for measures promoting secure and sustainable access to affordable HIV/AIDS prevention, treatment, care and support, at both the domestic and international levels. States should, among other steps, make contributions, in proportion to their resources, to mechanisms such as the Global Fund to Fight AIDS, Tuberculosis and Malaria. Developed countries should make concrete commitments of increased official development assistance that will move them without delay towards meeting international targets to which they have agreed, paying particular attention to assistance in realizing access to health-care goods, services and information¹³.
- s. States should ensure that international and bilateral mechanisms for financing responses to HIV/AIDS provide funds for prevention, treatment, care and support, including the purchase of antiretroviral and other medicines, diagnostics and related technologies. States should support and implement policies maximizing the benefit of donor assistance, including policies ensuring that such resources are used to purchase generic medicines, diagnostics and related technologies, where these are more economical.
- t. States' international and bilateral financing mechanisms should also provide funding for strengthening health-care systems, for improving the capacity and working conditions of health-care personnel and the effectiveness of supply systems, for financing plans and referral

¹² Examples include the Millennium Development Goals agreed in 2000 by the United Nations General Assembly, and the specific HIV/AIDS-related goals agreed in the United Nations General Assembly's Declaration of Commitment on HIV/AIDS in 2001.

¹³ For example, in their 2001 Declaration of Commitment on HIV/AIDS, all United Nations Member States urged developed countries that have not done so to meet, as soon as possible, the long-standing target of dedicating 0.7% of their gross national product to overall official development assistance and earmarking 0.15–0.20% of their gross national product as official development assistance for least developed countries. States formally reiterated this call in the outcome document of the 2002 International Conference on Financing for Development (Monterrey, Mexico).

mechanisms to provide access to prevention, treatment, care and support, and for family, community and home-based care.

- u. States should collaborate with nongovernmental organizations, intergovernmental organizations, and United Nations bodies, agencies and programmes in creating, maintaining and expanding international, publicly-accessible sources of information on the sources, quality and worldwide prices of medicines, diagnostics and related technologies for the preventive, curative and palliative care of HIV/AIDS and related opportunistic infections and conditions¹⁴.
- v. Creditor countries and international financing institutions should implement debt relief for developing countries more quickly and extensively, and should ensure that resources provided for this purpose do not detract from those made available for official development assistance. Developing countries should use the resources freed up by debt relief (as well as other sources of development finance) in a manner that fully takes into account their obligations to respect, protect and fulfil rights related to health. States should, among other things, dedicate an appropriate proportion of such resources, in the light of domestic conditions, priorities and internationally agreed commitments, to HIV/AIDS prevention, treatment, care and support.
- w. States should support and cooperate with international mechanisms for monitoring and reporting on the measures they have taken for progressively realizing access to comprehensive HIV/AIDS prevention, treatment, care and support, including anti-retroviral and other medicines, diagnostics and related technologies. States should include relevant information in their reports to bodies monitoring their progress in complying with their international legal obligations. The data in these reports should be disaggregated in a manner that helps identify and remedy possible disparities in access to prevention, treatment, care and support, and should use existing, or develop new, evaluation tools such as indicators or audits to measure implementation. States should actively involve nongovernmental organizations, including those representing people living with HIV/AIDS and vulnerable groups, in preparing such reports and in acting on the observations and recommendations received from such monitoring bodies¹⁵.

¹⁴ For example, UNICEF, UNAIDS, WHO and the nongovernmental organization *Médecins Sans Frontières* jointly produce and update a publication identifying sources and prices of selected drugs and diagnostics used in providing care and treatment to people living with HIV/AIDS. Similarly, in 2001 the World Health Organization initiated an ongoing project that produces and maintains a list of HIV/AIDS drugs and diagnostics, and their suppliers, who meet WHO quality standards.

- x. States should pursue and implement international and regional cooperation aimed at transferring to developing countries technologies and expertise for HIV/AIDS prevention, treatment, care and support. States should support cooperation between developing countries in this regard, and should join international organizations in providing and supporting technical assistance aimed at realizing access to HIV/AIDS prevention, treatment, care and support.
- y. In their conduct in international forums and negotiations, States should take due account of international norms, principles and standards relating to human rights. In particular, they should take account of their obligations to respect, protect and fulfil rights related to health, as well as of their commitments to provide international assistance and cooperation¹⁶. States should also avoid taking measures that would undermine access to HIV/AIDS prevention, treatment, care and support, including access to antiretroviral and other medicines, diagnostics and related technologies, either domestically or in other countries, and should ensure that medicine is never used as a tool for political pressure. Particular attention must be paid by all States to the needs and situations of developing countries.
- z. States should, in light of their human rights obligations, ensure that bilateral, regional and international agreements, such as those dealing with intellectual property, do not impede access to HIV/AIDS prevention, treatment, care and support, including access to antiretroviral and other medicines, diagnostics and related technologies.

States should ensure that, in interpreting and implementing international agreements, domestic legislation incorporates to the fullest extent any safeguards and flexibilities therein that may be used to promote and ensure access to HIV/AIDS prevention, treatment, care and support for all, including access to medicines, diagnostics and related technologies. States should make use of these safeguards to the extent necessary to satisfy their domestic and international obligations in relation to human rights. States should review their international agreements (including on trade and investment) to ensure that these are consistent with treaties, legislation and policies designed to promote and protect all human rights and, where those agreements impede access to prevention, treatment, care and support, should amend them as necessary.

¹⁵ See also Guideline 11, for further guidance on State monitoring and enforcement of human rights.

¹⁶ See also Guideline 11, paragraph 44(e), regarding promotion of HIV/AIDS-related human rights in international forums and ensuring their integration into the policies and programmes of international organizations.

ANNEX I

List of participants

Chair

Justice Michael Kirby
Judge of the High Court of Australia, Canberra

Participants (in alphabetical order)

Mr Javier Luis Hourcade Bellocq
Secretario Regional
Red Latinoamericana de Personas
Viviendo con el VIH/SIDA RED LA+
Argentina

Ms Pascale Boulet
Legal Adviser
Access to Essential Medicines Campaign
Médecins Sans Frontières
France

Mr Richard Burzynski
Director
Central Secretariat
International Council of AIDS Service Organization
Canada

Hon. Justice Edwin Cameron
Judge of the Supreme Court of Appeal
South Africa

Mr Edgar Carrasco
Secretary-General
Acción Ciudadana Contra el SIDA (ACCSI) and
Latin America and the Caribbean AIDS Service Organization
Venezuela

Ms Joanne Csete
Director
HIV/AIDS & Human Rights Program,
Human Rights Watch
United States of America

Dr Mandeep Dhaliwal
Care and Support Adviser
International HIV/AIDS Alliance
United Kingdom

Mr Vivek Divan
Coordinator
Lawyers Collective HIV/AIDS Unit
India

Mr Richard Elliott
Director, Policy & Research
Canadian HIV/AIDS Legal Network
Canada

Ms Michaela Figueira
Coordinator
AIDS Law Unit
Legal Assistance Centre
Namibia

Dr Charles Gilks
Senior Adviser in Care
Surveillance, Monitoring, Research and Evaluation Team
HIV Department
World Health Organization
Switzerland

Dr Sofia Gruskin
Associate Professor on Health and Human Rights
Director, International Health and Human Rights Program
François-Xavier Bagnoud Center for Health and Human Rights
Harvard School for Public Health
United States of America

Mr Mark Heywood
Head: AIDS Law Project
National Secretary: Treatment Action Campaign (TAC)
Centre for Applied Legal Studies
University of the Witwatersrand
South Africa

Dr Ralf Jürgens
Executive Director
Canadian HIV/AIDS Legal Network
Canada

Ms Esther Mayambala Kisaakye
Chairperson
Uganda Network on Human Rights, Ethics and Law
Uganda

Mr Felix Morka
Executive Director
Social and Economic Rights Action Centre
Nigeria

Dr Helen Watchirs
Regulatory Institutions Network
Law Programme
Research School of Social Sciences
Australian National University
Australia

Mr Bretton Wong
Regional Coordinator
Asia Pacific Network of People Living with HIV/AIDS (APN+)
APN+ Secretariat
Singapore

Convening agencies

Office of the High Commissioner for Human Rights

Ms Mary Robinson
High Commissioner for Human Rights
Palais des Nations
Switzerland

Ms Stefanie Grant
Chief, Research and Right to
Development Branch
Office of the High Commissioner for
Human Rights
Switzerland

Ms Lisa Oldring
Human Rights Officer
Office of the High Commissioner for
Human Rights
Switzerland

Joint United Nations Programme on HIV/AIDS

Ms Marika Fahlen
Director
Social Mobilization and
Information Department
UNAIDS
Switzerland

Ms Miriam Maluwa
Law and Human Rights Adviser
Office of the Director
Social Mobilization and
Information Department
UNAIDS
Switzerland

The Joint United Nations Programme on HIV/AIDS (UNAIDS) is the leading advocate for global action on HIV/AIDS. It brings together eight United Nations agencies in a common effort to fight the epidemic: the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations International Drug Control Programme (UNDCP), the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO) and the World Bank.

UNAIDS both mobilizes the responses to the epidemic of its eight cosponsoring organizations and supplements these efforts with special initiatives. Its purpose is to lead and assist an expansion of the international response to HIV/AIDS on all fronts: medical, public health, social, economic, cultural, political and human rights. UNAIDS works with a broad range of partners—governmental and NGO, business, scientific and lay—to share knowledge, skills and best practice across boundaries.

