

UNITED NATIONS CENTRE FOR HUMAN RIGHTS

WORLD HEALTH ORGANIZATION

INTERNATIONAL CONSULTATION ON AIDS AND

HUMAN RIGHTS

GENEVA, 26-28 JULY 1989

FINAL DOCUMENT

United Nations Centre for Human Rights
World Health Organization

International Consultation on AIDS and
Human Rights
Geneva, 26-28 July 1989

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AIDS and Human Rights

CONTENTS

	<u>Paragraphes</u>	<u>Pages</u>
1. Inter-disciplinary meeting	1 - 3	1
2. The AIDS pandemic	4 - 7	2
3. HIV/AIDS and human rights	8 - 14	4
4. General observations	15 - 21	8
5. Specific observations	22 - 28	12
6. HIV/AIDS: Harmonizing public health and human rights	29 - 32	14
RECOMMENDATIONS		15
ANNEXES:		
I. List of participants		16
II. Points for Consideration		21

International Consultation on HIV/AIDS and Human Rights

I. Inter-disciplinary meeting

1. The United Nations Centre for Human Rights (the Centre), with the technical and financial support of the World Health Organization's Global Programme on AIDS (WHO/GPA), convened a Consultation of experts at the United Nations Office at Geneva from 26 to 28 July 1989. The Centre's initiative was taken in the context of the World Public Information Campaign on Human Rights launched by the General Assembly of the United Nations on 10 December 1988. The WHO support was offered in the context of the global strategy for the prevention and control of AIDS and in accordance with resolution WHA 41.24 on the avoidance of discrimination in relation to HIV-infected people and people with AIDS. The purpose of the Consultation was to bring together experts in the fields of law, religion, ethics, human rights, public policy and public health to discuss aspects of human rights, including various forms of discrimination in relation to the human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS).

2. The interdisciplinary meeting represented the first such coming together of the disciplines mentioned under the aegis of the Centre and with the support of WHO/AIDS. Its primary objectives were to promote a better understanding of the human rights dimension of HIV/AIDS and to explore possible guidelines which might assist compliance with international human rights standards in decisions regarding law, administrative practice and policy. The Consultation also intended to give fresh emphasis to the importance of respect for human rights in the global struggle against AIDS. The participants welcomed the initiative to hold the Consultation.

Several participants noted the need to strengthen the understanding of health issues amongst human rights specialists and of human rights among public health specialists. The initiative in convening the Consultation was especially welcomed because of the particular relevance of HIV and AIDS for human rights as reviewed and discussed during the Consultation. While the present Consultation was concerned principally with those rights protected by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, it was recognized that there were many other aspects of human rights which were important for the Global AIDS Strategy (for example, the rights protected under the Convention against Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, the relevant ILO conventions, and regional conventions on human rights). Some participants expressed the hope that the relevance of these rights to the Global AIDS Strategy would be emphasized in the appropriate context.

3. A list of the participants is contained in Annex I to this report.

II. The AIDS pandemic

4. The Consultation received expert advice from the Director of GPA, Dr. Jonathan Mann, concerning the present known status and projected future course of the AIDS pandemic in all parts of the world. It noted that the latest WHO figures at 1 July involved approximately 168,000 cases of AIDS reported from 149 countries. It noted that WHO estimated that this represented only a proportion of actual cases of AIDS and that between five and ten million people were probably already infected with HIV. The available statistics indicate that HIV infection continues to spread rapidly. The World Health Organization, with constitutional responsibility to direct and co-ordinate international health work, developed the Global AIDS Strategy which has been universally adopted as the guide for global AIDS prevention and control. WHO's central role in the global effort against AIDS was formally recognized by the World Health Assembly (resolutions WHA42.33, WHA41.24 and WHA40.26), ECOSOC (resolutions 1988/56 and 1987/75) and the General Assembly (resolutions 43/15 and 42/8).

5. The Deputy Director of the Centre, Mr. Kwadwo F. Nyamekye, in an opening statement, drew the attention of the participants to the two basic issues considered by the Centre to be vital to this problem:

- (a) The issue of discrimination and the danger of the creation of new minorities and new structures of discrimination; and
- (b) The rights of everyone to equitable access to health care and facilities.

He reviewed the efforts of WHO, other components of the United Nations system and the Centre, in identifying and dealing with the human rights aspects of this issue. He pointed to the interest of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in the relationship between human rights and AIDS, and the co-operation between the Centre and WHO in that regard.

6. A background document, AIDS and Human Rights, was placed before the Consultation. It was introduced by the Chief of the External Relations Section of the Centre, Mr. John Pace.

7. Closing statements were made to the Consultation by Dr. Mann and by the United Nations Under-Secretary-General for Human Rights, Mr. Jan Martenson.

Mr. J. Martenson underlined the complex nature of the problems involved and expressed the hope that the Consultation would facilitate the task of policy-makers as well as legislators.

The Centre for Human Rights, in co-ordination with WHO/GPA, would be prepared to extend technical assistance and advice in the field of Human Rights. Mr. Martenson stressed the importance of strengthening national infrastructures for the promotion and protection of human rights and also of the need to enhance education and information. The World Public Information Campaign would be most useful in this regard and the proceedings of the Consultation would be published within this context.

III. HIV-AIDS and human rights

8. The participants discussed the features of the social response to HIV/AIDS which present special risks of breach of human rights, particularly discrimination. They emphasized that a thorough understanding of the facts of HIV/AIDS was essential to sound ethical analysis and good public policy. Without exhausting all of the specially relevant features of HIV/AIDS, the participants noted in particular:

- (a) There is no present cure for AIDS, and available palliative treatment is expensive and not readily available in all parts of the world;
- (b) There is no present vaccine against HIV;
- (c) In many less economically-developed countries, systems for screening blood and blood products are still or inadequate as a result of economic constraints;
- (d) The consequences of infection by the virus are life-threatening;
- (e) The virus has been identified relatively recently, and has quickly spread and is still spreading in many parts of the world;
- (f) There are relevant limitations in the tests developed to determine whether a person who has been exposed to HIV has, in fact, been infected. In particular, the tests produce a proportion of false negative and false positive results;
- (g) Because most of the tests so far used detect antibodies which develop after infection with the virus, there is a "window period" between the time of infection and the time of a positive test result which makes present HIV antibody tests an incomplete assurance that a person whose test result is negative is in fact free of infection with HIV;

- (h) In some parts of the world, HIV has principally affected minorities who are already the subject of discrimination, stigmatization and legal sanctions. These include, in particular, persons engaged in prostitution, homosexual activity and intravenous drug use and heterosexual men and women infected with HIV. The fact that people in these groups have been particularly affected by HIV/AIDS has increased the special risks of their further marginalisation and of deprivation of their basic human rights;
- (i) As demonstrated by centuries of effort in all parts of the world, behaviour modification in drug-taking and sexual activity cannot be achieved solely through the use of law; and
- (j) Persons infected with HIV typically do not become sick for years and even decades after exposure, during which time they may be able to continue to lead useful and full lives but may - unknowingly in most cases - infect others.

9. The participants noted that the most effective means currently available to prevent the spread of HIV was to promote positive behaviours among persons infected with HIV and those at risk of exposure to infection. In some societies, the behaviours which contribute to the spread of HIV are regarded as immoral or illegal. Yet success in stemming the further spread of HIV depends upon winning the confidence and co-operation of such persons in order to be able to provide them with information, education and support to promote changes in their behaviour. However, discrimination or stigmatization may discourage them from seeking relevant services. It was for this reason, amongst others, that the World Health Assembly stressed the need to assure respect for the human rights of HIV-infected persons and those with AIDS and also those at risk, or apparent risk, of exposure to HIV. There is, thus, a clear public health rationale for protecting people from discrimination. It was also for this reason that the Centre, within the context of the World Public Information Campaign for Human Rights, took the initiative of convening the Consultation.

10. The participants recognized the risk of the adoption of measures which are not based upon a sound understanding of the features of the virus and its modes of transmission based on both the understandable fear and concern which the epidemic causes to individuals, Governments and public health officials. Already some such measures have been adopted in several countries. In the opinion of the participants, the past history of oppressive and ineffective responses to infection and disease serves as a warning to the international community of the particular risks of discrimination and loss of human rights in the face of the HIV/AIDS pandemic.

11. The participants recalled the unprecedented efforts of the international community, particularly under the aegis of the United Nations, to produce a body of international human rights law expressing universal human rights standards. These standards are specifically relevant and applicable to persons with HIV/AIDS and also relate to the right of others to health, including access to information necessary in order to avoid exposure to HIV and the risk of AIDS. Provisions in binding international human rights instruments and in declarations, resolutions of the General Assembly and other sources were reviewed by the participants. In this review, the participants also had before them the background document (HR/AIDS/1989/1), and the study by the late Mr. Paul Sieghart "AIDS and Human Rights - A U.K. Perspective" (British Medical Association Foundation for AIDS; London, 1989).

12. The attention of the participants was drawn to applicable provisions of fundamental human rights. The participants recognized that the fundamental rights of one individual were sometimes affected by the assertion of the fundamental rights of another. The achievements of a proper reconciliation between their respective rights requires knowledge, judgment and a careful balancing of the applicable rights with special care to avoid the risk of discrimination or the unjustifiable loss of basic human rights by the one in the name of protecting the human rights of the other.

13. In the past, departures from respect of universal human rights have sometimes been justified by an appeal to the exception applicable in some cases for measures required to achieve a legitimate aim of society. In the context of HIV/AIDS, the protection of the rights and freedoms of others and the protection of public health are frequently mentioned. But the participants stressed that an exemption from observance of universal human rights could not be justified simply by claiming that a measure was required for "public health" reasons. The participants stressed that international human rights law was significantly more precise than this. It was also necessary, in each case, to establish that the exception was provided for with precision:

- (a) by a specific law, duly made, which is accessible and which contains foreseeable standards as opposed to administrative policy or individual discretion not based on legal rules;
- (b) by such a law which in the circumstances could be shown to be strictly required to achieve a legitimate purpose of society for which a pressing social need could clearly be shown; and
- (c) in measures strictly proportional to the achievement of the pressing objective so defined and to any harm inflicted, and which are the least intrusive and restrictive measures available.

14. Some participants expressed the view that a reconsideration of the "public health" exception in certain human rights instruments was required by a consideration of the particular dangers to human rights demonstrated by certain measures described as being for "public health" purposes. Other participants thought it sufficient to stress the fact that universal human rights continue to apply and that the exception for "public health" is strictly limited in the ways referred to above.

IV. General observations

15. The participants then turned to a consideration of:

- (a) the audience to which the special concerns about the respect for human rights in the context of HIV/AIDS needed to be particularly addressed;
- (b) the particular concerns that should be addressed given the necessary constraints of their meeting; and
- (c) the form in which future initiatives to protect human rights in the context of HIV/AIDS should be expressed.

16. The participants laid emphasis upon the need for education in international human rights standards at the following levels:

- (a) the components of the United Nations System;
- (b) other international, regional and inter-governmental bodies;
- (c) member states to which the relevant international instruments were expressly addressed;
- (d) non-governmental organizations and community groups; and
- (e) individuals.

Although it was recognized that in many of the above there was a full appreciation of applicable human rights standards, and that important progress in this regard had been made, this has not always been the case. In the past, the content of such human rights standards may either not have been known or understood by public health officials or was regarded as not applicable due to the exigencies of public health. Likewise, the point was made that, in the past, legal advisers may not have always been aware of the needs of public health. The participants considered that it was important to bring home to officials in all relevant national and international agencies, concerned with developing and implementing HIV/AIDS policy, the importance and the relevance of international Human Rights standards to their tasks. In many cases,

such standards have been specifically accepted by member states and therefore must be complied with in the context of HIV/AIDS.

17. The participants also drew attention to the importance of translating human rights standards, in international instruments and elsewhere, to actual observance when they were most needed. In this context, they stressed the necessity of education in human rights, the work of non-governmental and governmental agencies, and the need to provide for the enforcement of human rights by international supervisory bodies or in independent courts or tribunals. In addition, anti-discrimination legislation could provide individual redress where this is justified and assist community education in replacing fear and ignorance with knowledge and enlightenment. The fulfilment of the right to health information and education about HIV/AIDS and the means of preventing the spread of HIV was emphasized as an indispensable first step in self-protection and the protection of others.

18. As to the general concerns of the participants, the following in particular were noted:

(a) The participants observed that the Global AIDS Strategy developed by WHO and endorsed by the General Assembly of the United Nations had accepted, from the outset, the imperative necessity, in the realization of its objectives, for the respect of the human rights of all those concerned including the prevention of discrimination against HIV infected persons, persons with AIDS or persons at risk, or thought to be at risk, of exposure to HIV. The participants endorsed the strategy of WHO/GPA in this regard. In their view, no other strategy would be consistent with observance of internationally-accepted human rights standards. Moreover, no other strategy would, for the reasons already referred to, be likely to succeed in the prevention and control of HIV/AIDS;

(b) The participants believed that the United Nations World Campaign on Human Rights provided an important channel through which relevant information and education could be promoted. The work which was initiated in the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities could provide a useful basis upon which applicable health and human rights priorities could be identified. In this regard, it was necessary that the Centre and WHO/GPA continue to work closely together;

- (c) Although human rights are, by their nature, universal, the participants recognized that there was room for legitimate differences of view upon the interpretation of some rights, their applicability in particular situations and the relevance to them of some cultural differences. Different views of the meaning of provisions of international standards which have not yet been interpreted by the relevant bodies are, in part, an inescapable aspect of the ambiguity of language which gives rise to opportunities for judgement and choice of meaning. Nevertheless, the global challenge of AIDS and its international character draws new attention to the universality of human rights standards and to the fact that they inhere in people as human beings. Human rights must be respected as an attribute of the uniquely precious value of each human life and not just because they are laid down by law or because their observance promises greater success in combatting AIDS.
- (d) Although the human rights of all need to be observed and protected, the features of the AIDS pandemic and the urgent necessity of its containment call particular attention to the need for protection of the human rights of those specially at risk of exposure to HIV so that they will be empowered to protect themselves. By so doing, they are enabled to fulfill their responsibility to protect others. In different parts of the world this includes the special need to ensure the protection of the human rights of persons engaged in both female and male prostitution, in male homosexual activity, intravenous drug use, and the protection of heterosexual men and women infected with HIV.
- (e) The participants considered that, in the context of HIV/AIDS, special attention should be given to the human rights of women. There are certain factors relating to the reproductive role of women and their subordinate position in society which render women particularly vulnerable to infection. The subordination of women may vary in degree in different societies, but its nature remains the same. Women typically lack equal access to education, health, training, independent income, property and legal rights. This affects both their access to knowledge about

AIDS and the measures that may be taken to prevent transmission of HIV infection, as well as their ability to protect themselves from infection.

19. There was considerable discussion amongst participants about the desirability, in the current circumstances of HIV/AIDS, of the elaboration, by the Commission on Human Rights, of a relevant international instrument specifically addressed to the human rights problems raised by HIV/AIDS, including the need for measures to prevent and redress discrimination. Upon this subject, the views of the participants differed. In summary, without exhausting the opinions expressed, those who opposed such an initiative expressed the views that:

- (a) it would require the devotion of much time and resources in circumstances of urgency where there were already applicable provisions;
- (b) it ran the risk of isolating HIV/AIDS from its proper conceptual setting as a matter of health care and social justice or as an illness or disability and of thereby promoting the further marginalization of persons with HIV/AIDS;
- (c) it ran counter to the current tendency to resist the expansion of international human rights law, in order to to allow concentration upon the implementation of the law already adopted, of which there was a great deal that was clearly applicable to HIV/AIDS; and that
- (d) it ran the risk, by re-opening debates on the specific topic of HIV/AIDS in present circumstances, of undermining the welcome strategy of WHO concerning human rights and AIDS and providing an outlet for ill-informed fears and prejudice.

20. On the other hand those who favoured such a course referred to the following considerations, amongst others:

- (a) the existence of particular and specific international human rights instruments addressed to particular and specific problems of which AIDS is undoubtedly as important and challenging as many;

- (b) the evidence of the benefit to the advancement of respect for human rights in the existence of human rights laws, both national and international;
- (c) the stimulus given to the enactment and effective implementation of national and sub-national laws and the adoption of policies by the achievement of international instruments dealing with particular issues of importance for human rights;
- (d) the focus which such an instrument would provide to individuals and advocacy groups working towards preventing or redressing discrimination;
- (e) the opportunity which such an instrument would present to strengthen the protection of the human rights of persons suffering from all forms of ill-health or disability;
- (f) the assistance given to the national and sub-national political process in the protection of the human rights of unpopular or stigmatized minorities by the existence of an instrument representing the consensus of the international community; and
- (g) the probability that the challenges to human rights in the context of HIV/AIDS would become more pressing and serious with the global spread of the epidemic.

21. The participants invited international, intergovernmental and regional bodies concerned as well as national governments, in the light of these considerations, to consider whether there was need for new human rights instruments concerning HIV/AIDS at the international and national levels.

V. Specific observations

22. The participants noted that the fundamental basis of human rights law and standards is the recognition of the equal worth and dignity of every man, woman and child and that this is reflected in the principle of non-discrimination. As the Secretary-General of the United Nations has stressed, the common fight of humanity is against HIV/AIDS, not against those persons with HIV/AIDS.

23. In the context of HIV/AIDS, the participants stressed the particular importance of the obligation to respect the rights to information and education, and the right to the highest attainable standard of physical and mental health, as well as the need to prevent discrimination at the local, national and international levels.

24. The rights to information and education require that every individual should have access to accurate and up-to-date information about HIV/AIDS, the means by which HIV is spread and how best they might protect themselves and others from infection. The contents of such educational material and the means by which it is disseminated will necessarily vary in different cultural environments.

25. It was further recognized that particular attention needs to be given to ensuring that such information reaches the most disadvantaged sectors of society such as those who are illiterate. In addition, it was noted that experience already gained in educational projects aimed at combating the spread of HIV has indicated that the most successful projects are those in which the inherent dignity of the members of the target group has been recognized. Projects were more likely to be effective where members of the population concerned were actively encouraged and empowered to design and implement their own educational projects.

26. The right of everyone to the enjoyment of the highest attainable standard of physical and mental health requires, amongst other things, that persons should be entitled to equal access to those health care and welfare services which are available.

27. Another factor to be recognized is that the right to health care, including measures to prevent the spread of HIV, are restricted in some States by lack of resources on the part of the individual, community or State. The full realization of the highest attainable state of health, as well as the limitation of the spread of HIV, requires assistance to individuals, and the support of the world community to less economically-developed countries.

28. Whilst recognizing the efforts being made by Governments and international bodies to prevent and control the spread of HIV, the participants noted that some of the policies proposed or implemented on the grounds of protecting public health raised very serious ethical and human

rights issues. The participants were not able to consider all of the relevant issues. However, they noted, for example, the inequality of resources available in the fight against the spread of HIV, the need for a more equitable distribution of presently available drugs; the need for compliance with strict ethical and human rights principles with respect to vaccine and drug testing and the future need for an equitable distribution of effective drugs and vaccine which might be discovered. This Consultation specifically examined existing human rights standards relating to a number of areas of particular concern. A list of issues raised for further study by human rights specialists is found in Annex II. The often-controversial issues, and others not mentioned in Annex II, need further detailed and wide consultation and will form the basis of ongoing work on HIV/AIDS and human rights.

VI. HIV/AIDS: Harmonizing public health and human rights.

29. The participants expressed their appreciation of the initiative of the Centre and WHO in promoting the consultation on the interrelationship of AIDS and international human rights standards. They expressed the hope that this Consultation and its outcome would result in other such joint initiatives concerning the interaction of human rights, law, ethics, health law and policy in connection with HIV/AIDS and also with other health issues. In all areas of health the observance of human rights is essential. But in the context of HIV/AIDS, as the Consultation demonstrated, there are particularly urgent concerns. The most urgent of these is to remind those formulating relevant policies of the existence and terms of the applicable international human rights standards.

30. The participants strongly endorsed continued close cooperation between the Centre and WHO/GPA to harness the potential of both bodies in developing practical programmes aimed at furthering the results of this Consultation.

31. Observance of international human rights standards in the context of HIV/AIDS is not only legally required, but pragmatically useful to the prevention and control of AIDS and a moral imperative of humanity.

32. The participants emphasized that it is important to recognize expressly their consensus and not just differences in relation to issues raised by HIV/AIDS. All of humanity can unite in endeavours to combat the spread of HIV and to support persons with AIDS. All share the common objective to prevent the further transmission of HIV.

Recommendations

1. The participants recommended that the Centre for Human Rights and WHO/GPA transmit this statement to the following bodies with a request to place this item on their agenda and to consider what action should be taken to protect the human rights of persons at risk or affected by HIV/AIDS:
 - (a) each of the four human rights treaty bodies (the Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, and Committee on the Elimination of All Forms of Discrimination against Women),
 - (b) each regional human rights treaty body (the European Commission on Human Rights, Inter-American Commission on Human Rights, and the African Commission on Human and Peoples' Rights)
2. The participants recommended that Governments ensure that measures relating to HIV/AIDS and concerning persons already infected conform to international human rights standards, and that they re-examine the measures already in force for the protection of human rights in the light of the particular issues raised by HIV/AIDS.
3. The participants recommended to WHO/GPA, in collaboration with the Centre for Human Rights, that it prepare and distribute practical information to national AIDS programmes on the international human rights instruments which are relevant to measures relating to HIV/AIDS and on the importance of the need to comply with these instruments.
4. The participants recommended to the Centre for Human Rights that, in collaboration with WHO/GPA, it prepare and distribute relevant information to international, regional and national human rights organizations on AIDS, the Global AIDS Strategy, and on the need to vigilantly ensure that measures relating to HIV/AIDS are in conformity with human rights standards.

ANNEX I

INTERNATIONAL CONSULTATION ON AIDS AND HUMAN RIGHTS

WHO/CENTRE FOR HUMAN RIGHTS

Geneva, 26-28 July 1989

LIST OF PARTICIPANTS

I. Participants

ANDO, Nisuki	Professor of International Law, Member of Human Rights Committee
BAYER, Ronald	Associate Professor of Public Health, Columbia University, New York
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CHONGWE, Rodger Ma	African Bar Association, Lusaka
CURTIS, Hilary	British Medical Association Foundation for AIDS, London
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DAWSON, John	Undersecretary, British Medical Association, Director, British Medical Association Foundation for AIDS, London
DELANEY, Sister Joan	Consultant, World Council of Churches, Geneva
DICK, Bruce	Health Department, League of Red Cross and Red Crescent Societies, Geneva
DILLOWAY, James A.	International Humanist and Ethical Union, Geneva

I. Participants (cont.)

DIMITRIJEVIC, Vojin	Professor of International Law, Member of Human Rights Committee, Geneva
DORKENOO, Bernard D.	Director, Human Rights Media Service (HURMES), Geneva
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EVATT, Elizabeth	Chairperson, Committee on the Elimination of Discrimination Against Women, Vienna
FLUSS, Sev	Chief of Health Legislation, World Health Organization, Geneva
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International Commission of Health
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NGUEMA, Isaac

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II. Observers

CURTIS, David

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SEGURA, Jorge Rhenán

Deputy Representative,
Committee on Racial Discrimination,
Permanent Mission of Costa Rica, Geneva

ANNEX II

HIV/AIDS AND HUMAN RIGHTS : POINTS FOR CONSIDERATION

The participants considered the breadth of the ethical and human rights issues raised by HIV/AIDS, and of the international human rights instruments and standards relevant to this subject. They considered, for example, the relevance of the International Covenant on Economic, Social and Cultural Rights as well as the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, and other relevant instruments, including the numerous conventions and recommendations adopted under the auspices of the International Labour Organisation.

The participants were assisted by a background paper which outlined some, but by no means all, of the human rights issues raised by HIV/AIDS.

I.

1. AIDS represents an urgent worldwide problem with broad social, cultural, economic, political, ethical and legal dimensions.
2. The Global AIDS Strategy developed by WHO and endorsed by the United Nations General Assembly, has three objectives:
 - (a) to prevent HIV infection;
 - (b) to reduce the personal and social impact of HIV infection;
 - (c) to unify national and international efforts against AIDS.

3. In the realization of these three objectives, human rights must be respected and discrimination must be prevented.

4. International human rights instruments, including regional arrangements, and treaties, and the decisions of courts and bodies established thereunder, provide a framework within which measures to limit the spread of HIV should be formulated.

II.

The following measures are among those which appear consistent with international human rights standards:

A. With respect to the right to marry and found a family, the provision of pre- and post-marriage information on HIV/AIDS and counselling of a non-directive, non-coercive nature, and the offer of voluntary HIV tests to marriage candidates, seem to comply with international human rights standards.

B. Measures based on the explicit, free and informed consent of the persons concerned seem to comply with international human rights standards; for example:

- (a) the voluntary testing of individuals for HIV infection, anonymously or otherwise, with stringent safeguards for confidentiality;
- (b) the counselling of individuals, both before and after they are tested;
- (c) voluntary treatment to mitigate the effects of HIV infection;
- (d) voluntary modifications of the behaviour of HIV infected individuals designed to prevent the transmission of the virus.

III.

A. The following measures should be reviewed in light of relevant international human rights standards:

- (a) the mandatory testing of any individuals (other than voluntary donors of blood, semen, or other tissues or organs) for HIV infection, however they are selected;
- (b) the compulsory registration of HIV-infected persons;
- (c) the mandatory collection, storage and processing by a public authority of identifiable personal information about HIV-infected persons or those with AIDS without protecting the information concerned by the strictest rules of medical confidentiality or by anonymity;
- (d) the disclosure of the results of HIV tests to third persons (including health professionals without the patients' consent) or permitting the improper discovery of such results by third persons (see below point K);
- (e) enforced admission to a hospital or hospice of such persons (see below point J);
- (f) compulsory isolation, quarantine or internment in a colony removed from the rest of society of such persons (see below point J).

IV.

A. Discrimination on the grounds of HIV/AIDS in areas such as access to education, employment, housing, has to be examined from the viewpoint of applicable international human rights standards.

g. The right to marry and found a family may be affected by:

- (a) compulsory HIV tests for persons who wish to marry;
- (b) mandatory abortions for or sterilizations of HIV-infected women;

C. HIV/AIDS also affects the rights of children. Particular issues which need to be examined include, inter alia:

- (a) the rights of children to information and education to enable them to protect themselves and others against HIV infection;
- (b) the difficulties of providing care and support for HIV infected children or children from HIV infected families, especially those who lose one or both parents.

D. HIV/AIDS also raises special concerns about human rights of women. These include, inter alia:

- (a) vulnerability of women to HIV infection due to their disadvantaged position in the family and society;
- (b) issues related to pregnancy in the context of HIV/AIDS;
- (c) feminization of poverty and its relationship to prostitution.

E. The right of HIV infected people and those with AIDS to public social security, social and medical assistance, or social welfare services needs to be analyzed from the viewpoint of applicable international human rights standards.

F. The right to freedom of movement has been affected:

- (a) when the entry into a country of its own nationals is conditional on their taking an HIV test, or obtaining a negative result; or

- (b) when the entry of aliens who would be otherwise admissible has been restricted on the grounds of HIV/AIDS status;
 - (c) when the entry of aliens has been restricted on HIV/AIDS grounds, this interferes with their enjoyment of other rights guaranteed to them by the applicable international human rights standards;
 - (d) by cases of expulsion on the grounds of HIV/AIDS status only;
 - (e) by cases of restriction of liberty of movement within the territory of a State or the freedom to choose a residence for nationals or for aliens lawfully within that territory.
- G. The denial of admission, attendance or exclusion from school of someone solely on the ground that he or she is HIV-infected needs to be examined from the viewpoint of international human rights standards relating to education.
- H. The denial of work, or refusal of employment or dismissal of an employee solely on the ground that he or she is - or is suspected of being - HIV-infected needs to be examined from the viewpoint of international human rights standards relating to work and of the public health rationale for any restrictions considered. Compulsory or routine pre-employment or post-employment HIV testing need particular attention.
- I. The right to privacy of the individuals needs to be examined in the following circumstances:

- (a) when the prevalence of HIV in the existing populations is estimated by unlinked anonymous screening. This is an epidemiologic technique whereby samples of blood specimen that have been taken from individuals for other legitimate purposes is made completely anonymous ("unlinked") so as to make it impossible to relate the sample back to the individual from whom it was taken;

- (b) when AIDS or HIV infection is made a notifiable disease by law, provided that the information reported is either wholly anonymous in the first place, or is protected by the strictest compliance with rules of medical confidentiality - that is, that it would only be released either anonymously, or with the express and informed consent of the person to whom it relates.

J. The following measures need to be examined from the human rights and public health viewpoint:

- (a) the detention in an emergency of an individual known to be HIV-infected and who is unable to take care of him or herself and who thereby presents an acute risk of infection to others;
- (b) the detention of an individual while he or she is deliberately trying to infect others with HIV, provided that the person thus detained has the right to have the lawfulness of his or her detention established initially, and thereafter periodically, by an independent judicial tribunal.

K. The following measures which sometimes appear necessary to protect the rights of others may be considered provided that the person concerned is counselled, refuses to co-operate, and all persuasion failing, that the least restrictive measure is applied and, where relevant, a procedure for its revocation established. These measures include, for example:

- (a) in the case of a high degree of risk of the transmission of HIV, informing the person at risk of the patient's known HIV-status, provided that the circumstances in which this is allowed are either clearly defined by law or can be legally justified;
- (b) the application of restrictive measures against an HIV-infected person who refuses to take preventive measures so as not to spread the infection.