

HIV, Human Rights and discrimination

**With thanks to Nenad Petković – Tamás Bereczky –
Gennady Roshchupkin**

UNIVERSAL

Human rights belong to all people.

INALIENABLE

Human rights cannot be taken away.

INTERCONNECTED

Human rights are dependent on one another.

INDIVISIBLE

Human rights cannot be treated in isolation.

NON-DISCRIMINATORY

Human rights should be respected without prejudice.

CONTENTS - AIM OF THIS SESSION

- Overview of human rights landscape
- Relevance for advocacy
- To **inform** change agents, potential change agents and those involved in the ‘business of HIV/AIDS’ about:
 - relevant human rights documents
 - the obligations that arise from them and
 - the steps required for their implementation
- and to **assist** them in their response to HIV and AIDS

OVERVIEW OF THE PRESENTATION

- A. Introduction
- B. Background to international human rights law
- C. International human rights standards
- D. Individual rights
- E. Conclusion and recommendations

Introduction

WHY HUMAN RIGHTS?

- The HIV epidemic has been viewed as a strongly gendered health, development and human rights issue
- The HIV epidemic causes human rights violations and is also driven by human rights violations
- The promotion and protection of human rights must therefore be at the centre of all aspects of an effective response to the epidemic
- This is known as a **human rights-based approach**

WHICH ARE FUNDAMENTAL HUMAN RIGHTS?

Chrome File Edit View History Bookmarks People Window Help

Inbox (9,72) x Facebook x Toggl x Végleges al x (26) Tumblr x bmj kazatc x Michel Kaz x My Webinar x fundamenta x United Natli x Tamás

Secure <https://www.youthforhumanrights.org/what-are-human-rights/universal-declaration-of-human-rights/articles-1-15.html>

Apps Apple dict.cc | Wörterbuc... W Wikipedia News Popular Client Portal Login SZTAKI Szótár Share on Facebook Videos - YouTube Other Bookmarks

Youth for Human Rights
Making Human Rights a Global Reality

HUMANRIGHTS.COM > [EN] LANGUAGE >

About Us What Are Human Rights? Educators Take Action Voices for Human Rights News

WHAT ARE HUMAN RIGHTS? < Prev Next > Table of Contents >

United Nations
Universal Declaration of Human Rights

Simplified Version
This simplified version of the 30 Articles of the Universal Declaration of Human Rights has

<https://www.youthforhumanrights.org>

Viiv Community wo...docx ... Michel Kazatchkine...htm ... 14Dgh3TK54-4.png ... EUPATL_Expert_Trai...png ... EUPATL_Expert_Trai...png ... Show All x

2018-06... 2.20.42

FUNDAMENTAL HUMAN RIGHTS

- **1. We Are All Born Free & Equal.** We are all born free. We all have our own thoughts and ideas. We should all be treated in the same way.
- **2. Don't Discriminate.** These rights belong to everybody, whatever our differences.
- **3. The Right to Life.** We all have the right to life, and to live in freedom and safety.
- **4. No Slavery.** Nobody has any right to make us a slave. We cannot make anyone our slave.
- **5. No Torture.** Nobody has any right to hurt us or to torture us.
- **6. You Have Rights No Matter Where You Go.** I am a person just like you!
- **7. We're All Equal Before the Law.** The law is the same for everyone. It must treat us all fairly.
- **8. Your Human Rights Are Protected by Law.** We can all ask for the law to help us when we are not treated fairly.
- **9. No Unfair Detainment.** Nobody has the right to put us in prison without good reason and keep us there, or to send us away from our country.

FUNDAMENTAL HUMAN RIGHTS

- **10. The Right to Trial.** If we are put on trial this should be in public. The people who try us should not let anyone tell them what to do.
- **11. We're Always Innocent Till Proven Guilty.** Nobody should be blamed for doing something until it is proven. When people say we did a bad thing we have the right to show it is not true.
- **12. The Right to Privacy.** Nobody should try to harm our good name. Nobody has the right to come into our home, open our letters, or bother us or our family without a good reason.
- **13. Freedom to Move.** We all have the right to go where we want in our own country and to travel as we wish.
- **14. The Right to Seek a Safe Place to Live.** If we are frightened of being badly treated in our own country, we all have the right to run away to another country to be safe.
- **15. Right to a Nationality.** We all have the right to belong to a country.

FUNDAMENTAL HUMAN RIGHTS

- **16. Marriage and Family.** Every grown-up has the right to marry and have a family if they want to. Men and women have the same rights when they are married, and when they are separated.
- **17. The Right to Your Own Things.** Everyone has the right to own things or share them. Nobody should take our things from us without a good reason.
- **18. Freedom of Thought.** We all have the right to believe in what we want to believe, to have a religion, or to change it if we want.
- **19. Freedom of Expression.** We all have the right to make up our own minds, to think what we like, to say what we think, and to share our ideas with other people.
- **20. The Right to Public Assembly.** We all have the right to meet our friends and to work together in peace to defend our rights. Nobody can make us join a group if we don't want to.
- **21. The Right to Democracy.** We all have the right to take part in the government of our country. Every grown-up should be allowed to choose their own leaders.
- **22. Social Security.** We all have the right to affordable housing, medicine, education, and childcare, enough money to live on and medical help if we are ill or old.

FUNDAMENTAL HUMAN RIGHTS

- **23. Workers' Rights.** Every grown-up has the right to do a job, to a fair wage for their work, and to join a trade union.
- **24. The Right to Play.** We all have the right to rest from work and to relax.
- **25. Food and Shelter for All.** We all have the right to a good life. Mothers and children, people who are old, unemployed or disabled, and all people have the right to be cared for.
- **26. The Right to Education.** Education is a right. Primary school should be free. We should learn about the United Nations and how to get on with others. Our parents can choose what we learn.
- **27. Copyright.** Copyright is a special law that protects one's own artistic creations and writings; others cannot make copies without permission. We all have the right to our own way of life and to enjoy the good things that art, science and learning bring.
- **28. A Fair and Free World.** There must be proper order so we can all enjoy rights and freedoms in our own country and all over the world.
- **29. Responsibility.** We have a duty to other people, and we should protect their rights and freedoms.
- **30. No One Can Take Away Your Human Rights.**

WHAT IS A HUMAN RIGHTS-BASED APPROACH?

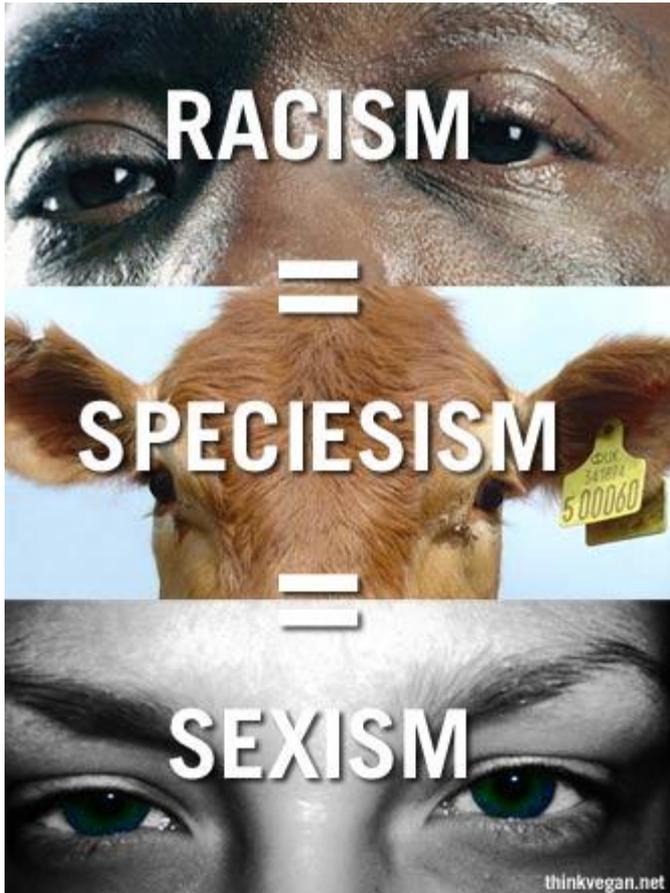
- It is one that focuses on **empowering people** (especially the most vulnerable and marginalized) with the knowledge and resources to understand and assert their rights
- Simultaneously, it focuses on capacity building of **duty-holders** (government) to be able to protect and promote human rights

HUMAN RIGHTS VIOLATIONS



- **Stigma is high against PLHIV, PWUD, sex workers, gay people and MSM, prisoners, migrants and foreigners**
- **Homophobia fuels the HIV epidemic by keeping people hidden and away from health and HIV services**
- **MSM are confronted with widespread violence and discrimination**
- **Discrimination against women PLHIV in access to sexual and reproductive health services**
- **The chances of sex workers to access HIV services is reduced by rampant violence, discrimination and condemning attitude toward prostitution**

HUMAN RIGHTS VIOLATIONS



- **PLHIV are fired from jobs, often criminalized, children isolated and not allowed to go to school, and people don't receive needed care because of fear of infection.**
- **Insufficient protection of confidentiality of medical files; disclosure of serostatus without the consent of PLHIV.**
- **Discrimination in access to education, social services, employment, etc.**
- **PWUD often face repressive provisions such as: limited access to health care services and prevention - including incarceration and lack of services**

HUMAN RIGHTS NOT FULLY EXPLORED

- Failure to fully implement e.g. VCT, access to treatment, education should not be equated to failure of human rights-based approach.
- Despair leads to symbolic actions and failure.
- Coercion will have very limited success.
- Individual autonomy is the basis of a human rights-based approach.

Practical example 1

- Prevent people living with HIV from receiving needed services
- **Example:** If the existence of men who have sex with men (MSM) or sex workers is denied or criminalized, awareness and education programs may not reach them
- **What else?**

Practical example 2

- Undermine attempts to protect people from becoming HIV positive.
- **Example:** Women, and particularly young women, are more vulnerable to infection if they lack access to information, education and services necessary to ensure sexual and reproductive health and prevention of infection. Human rights violations due to societal conditions such as violence against women, lack of education, harmful cultural practices and restrictions on property and inheritance exacerbate inequalities.
- **What else?**

Background to International Human Rights Law

What are human rights



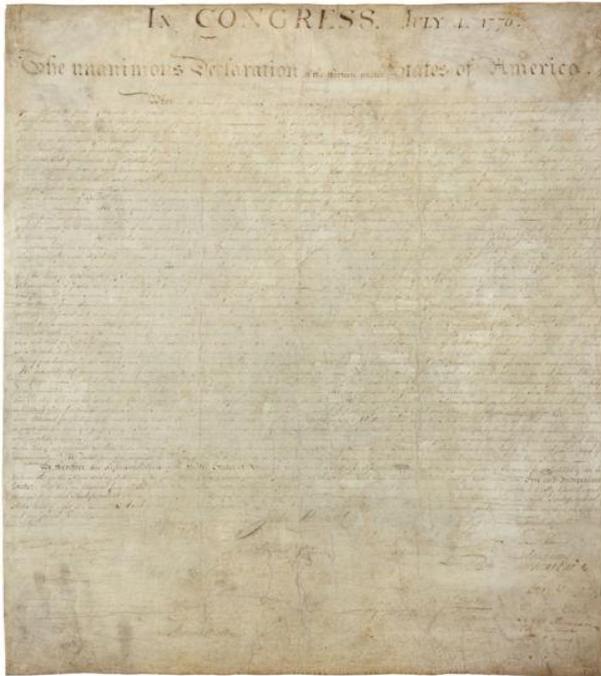
- They belong to every human being by birth.
- They belong to all people without distinction.
- They are located in relation: citizen (individual) vs. state.
- They are determined by the relationship between individual rights and public interest.
- The obligation of states to refrain (e.g. freedom) or to act.

Magna Carta Libertatum - 1215



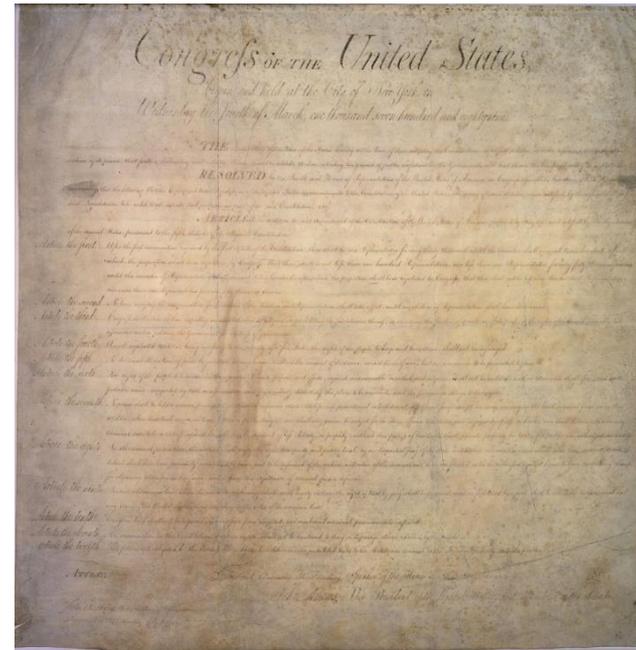
- *No man shall be killed and imprisoned or outlawed or exiled, or in any way deprived of his position, nor will we use force against him, or send others to do so, except on the basis of legal judgment of equal to him or a country law.*

United States Declaration on Independence - 1776



We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Bill of Rights (amendments 1 to 10 to the United States Constitution) – 1789

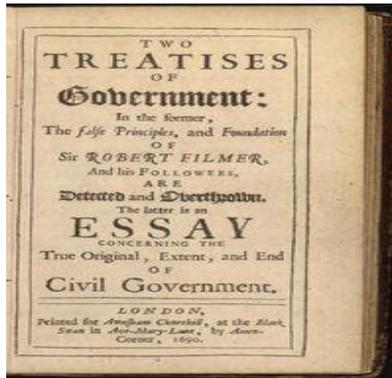


The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

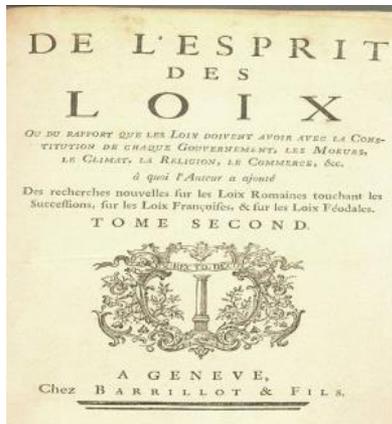


...considering that ignorance, forgetfulness or contempt of human rights of man only causes of accidents and the general corruption of governments, they decided to present in a solemn declaration the natural, inalienable and sacred rights of man, to get them to this declaration, constantly before the eyes of all the members of the society, constantly reminded of their rights and duties ...

Social theories



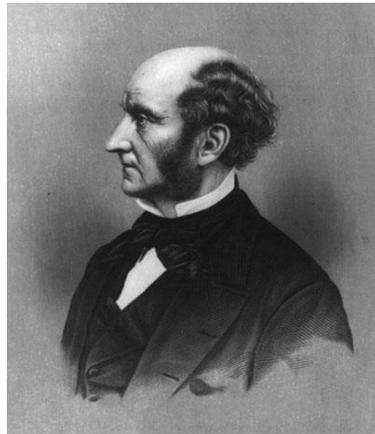
- **John Locke** (In *Two Treatises of Government*, 1690) assumes that people are by nature free, equal and independent.



- **Montesquieu** (In *The Spirit of Laws*, 1748) aspired to preserve the liberty of the citizen, thought it best be achieved by a strict separation of powers between the legislative, judicial and executive.

Utilitarianism

- **John Stuart Mill** – the need to follow the rule, which is formulated in such a way that, in principle, yields the most good to the greatest number of people
- In his book *On Liberty* sought to describe the rules and institutions that best guarantees the freedom and also found room for human rights in the system that they previously did not know.



According to the modern followers of the theory, human rights are rules that experience has shown that yield the most good to the greatest number of people.

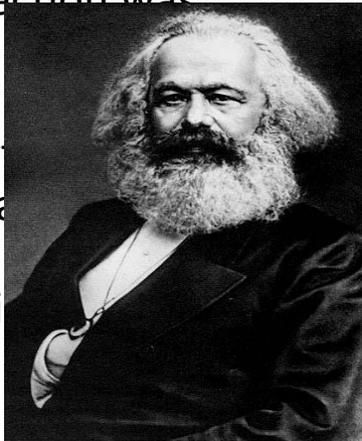
This belief comes down to the claim that human rights are desirable because such an opinion prevails.

No answer on what will happen if that opinion changes and how to explain opposition to such change.

Marxism

It was practically applied in the USSR and the countries of real socialism: For external political reputation human rights were proclaimed, in practice they have not been applied and protection was not guaranteed.

Thanks to support theory it has enhanced awareness of the of economic, social cultural rights.



- The individual has been subjected to the needs and welfare of society, as decided by those who know best (party) or those who are historically authorized.
- The only individual rights are those which the state gives and takes away.

Categories

Civil and political

- Emphasize the autonomy of human against the state, which in his behavior can interfere only to the extent required by the life in society with other people.
- Primarily based on the principle of freedom.
Eg. **Right to life, Right to privacy, Voting rights, Freedom of expression and assembly.**

Economic, Social and Cultural

- Directed to bring people in a similar, just and equal social status in order to really be able to enjoy political rights.
- Primarily based on the principles of equality and solidarity.
Eg. **Right to the highest attainable standard of physical and mental health, Right to social security, assistance and welfare, Right to work, Right to to equal acces to education.**

A PHILOSOPHICAL RIFT

- While human rights are supposed to be universal, they are not universally acknowledged
- Do rights originate from nature or God?
- “Human rights” and “natural right” are social, political and historical constructs
- Some argue that human rights are an extension of liberalism
- Some argue that humans are not moral per se, the “natural right” is not moral but just the opposite
- Can rights be separated from society at all?
- Listen: <https://www.philosophytalk.org/blog/what-are-human-rights>

WHAT IS HUMAN RIGHTS LAW?



International Human Rights
Logo

- A set of performance standards for duty-bearers at all levels of society, but especially organs of the state.
- It serves as a basis for accountability.
- It grants **justiciable legal guarantees** to every individual as a rights-holder.
- It is codified in international, regional and national legal systems.

SOURCES OF HUMAN RIGHTS

- International treaties (universal, regional, political agreements - soft law)
- International customs – moral rules
- General legal principles of civilized nations – *Audiatur et altera pars, nullum crimen sine lege...*
- Decisions of international organizations

Relevance of International human rights treaties to HIV/AIDS

- HIV and AIDS are generally not mentioned by name, but many of the treaty provisions are of relevance.
- Treaties should also be read with the 'General Comments', adopted by the various treaty bodies

Obligations under Human Rights Treaties:

Legally binding human rights obligations apply solely to state actors, whereas non-state actors, including the pharmaceutical industry or NGOs, are seen to hold human rights responsibilities

States should:

- Adopt treaties
- Give effect to treaty provisions
- Submit state reports to treaty bodies
- Involve civil society
- Fulfillment of commitments to treaties is monitored by independent expert committees called **treaty bodies**
- A state has a legal duty to prevent rights violations committed by non-state actors in its jurisdiction

HUMAN RIGHTS OBLIGATIONS OF STATE

4 categories of obligations:

- **Respecting** a right means that a state must not violate a particular right
- **Protecting** a right means that a state has to prevent violations of that right by non-state actors
- **Fulfilling** a right means that a state has to take all appropriate measures, like allotting budgetary resources, to the realization of that right
- **Promoting** a right means that a state must educate the public and raise awareness about that right

International Human Rights Standards

Codification on three levels:

- International (United Nations and agencies)
- Regional/European (Council of Europe, European Union)
- National (Constitution, Law)

UN TREATIES AND TREATY BODIES RELEVANT TO HIV AND AIDS

- International Covenant on Civil and Political Rights (ICCPR) 1966/1976.
- International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966/1976.
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979/1981.
- Convention on the Rights of the Child (CRC) 1989/1990.
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.
- Website: www.ohchr.org

Decisions of international organizations

(not strictly legally binding, but persuasive)

- Universal Declaration of Human Rights, Resolution of the UN General Assembly, 1948
- United Nations Millennium Declaration, Resolution of the UN GA, – Goal 6, 2000
- Declaration of Commitment on HIV/AIDS, Resolution of the UN GA, 2001
- Dublin Declaration on Partnership to Fight HIV/AIDS, Resolution of the UN GA, 2004
- Political Declaration on HIV/AIDS, Resolution of the UN GA, 2006, 2011
- International Guidelines on HIV/AIDS and Human Rights, 2006
- UNAIDS/WHO recommendations regarding HIV testing
- UNAIDS GIPA Principles

UN DECLARATION OF COMMITMENT ON HIV/AIDS

- Contains a checklist with questions concerning national compliance with the MDGs
- For instance, countries have to adopt “laws and regulations that protect against discrimination of people living with HIV”, and “laws and regulations that protect against discrimination of people identified as being especially vulnerable to HIV/AIDS”

Greater Involvement of People Living with HIV - GIPA

Chrome File Edit View History Bookmarks People Window Help

STEP-UP module 3 HIV & Human Rights Tamás.ppt

Inbox x GoFu x (1) Fa x Toggl x Végle x (23) x bmk x Mich x deni x Intro x What x gipa x The C x Tamás

data.unaids.org/pub/briefingnote/2007/jc1299_policy_brief_gipa.pdf

Apps Apple dict.cc | Wörterbuc... W Wikipedia News Popular Client Portal Login SZTAKI Szótár Share on Facebook Videos - YouTube Other Bookmarks

 **UNAIDS**
UNITED NATIONS PROGRAMME ON HIV/AIDS

The Greater Involvement of People Living with HIV (GIPA)

POLICY BRIEF

Context

Nearly 40 million people in the world are living with HIV.¹ In countries such as Botswana and Swaziland, people living with HIV make up a quarter or more of the population.

People living with HIV are entitled to the same human rights as everyone else, including the right to access appropriate services, gender equality,² self-determination and participation in decisions affecting their quality of life, and freedom from discrimination³.

All national governments and leading development institutions have committed to meeting the eight Millennium Development Goals, which include halving extreme poverty, halting and beginning to reverse HIV⁴ and providing universal primary education by 2015. GIPA or the Greater Involvement of People Living with HIV is critical to halting and reversing the epidemic; in many countries reversing the epidemic is also critical to reducing poverty.

What is GIPA?

GIPA is not a project or programme. It is a principle that aims to realize the rights and responsibilities of people liv-

at the 2006 High Level Meeting on AIDS also advocated the greater involvement of people living with HIV.

Why GIPA?

People living with HIV have directly experienced the factors that make individuals and communities vulnerable to HIV infection—and once infected, the HIV-related illnesses and strategies for managing them. Their involvement in programme development and implementation and policy-making will improve the relevance, acceptability and effectiveness of programmes. Measuring involvement of people living with HIV in policy is not an easy or exact science. However, experiences⁵ have shown that when communities are proactively involved in ensuring their own well-being, success is more likely. GIPA seeks to ensure that people living with HIV are equal partners and breaks down simplistic (and false) assumptions of “service providers” (as those living without HIV) and “service receivers” (as those living with HIV).

The engagement of people living with HIV is all the more urgent as countries scale up their national AIDS responses to achieve the goal of universal access to preven-

Slide 37 of 51 92%

FIIPATI webinar

Macintosh HD screen shot IMG_0494.jpg c5 2018-06... 2.20.42

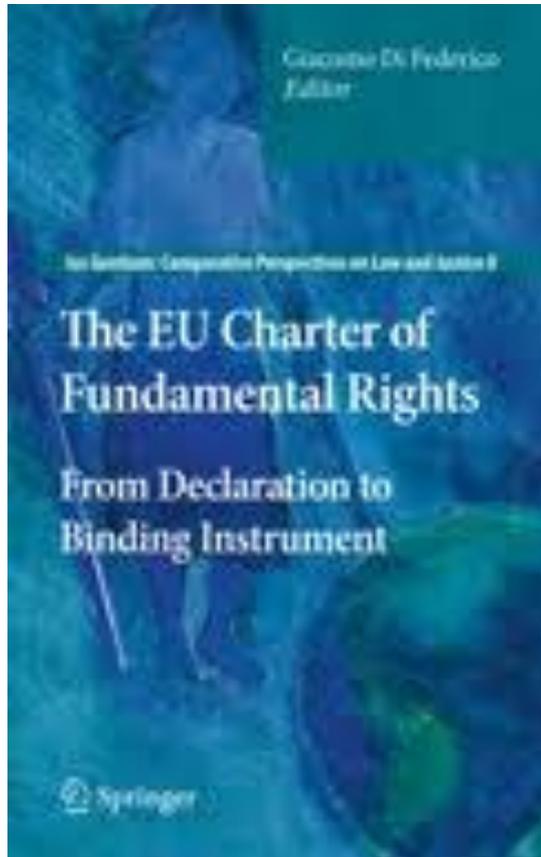
Examples of provisions relevant to HIV and AIDS

- Right to life
- Right to health
- Right to privacy
- Right to non-discrimination and equality before the law
- Right to liberty and security of the person
- Right to free movement
- Right to freedom of expression
- Right to be free from torture and cruel treatment

INTERNATIONAL GUIDELINES ON HIV/AIDS AND HUMAN RIGHTS

- **Guideline 1:** States should adopt multi-sectorial approaches to establish an effective national framework for the response to the HIV epidemic.
- **Guideline 2:** States should enable community organizations to carry out activities in the field of ethics, human rights and law. States should also consult widely with such organizations in drafting all HIV policies
- **Guideline 5:** States should enact or strengthen anti-discrimination laws to protect vulnerable groups. States should also ensure privacy, confidentiality and ethical behavior in research involving human subjects

EUROPE - regional treaties



- **European Convention for the Protection of Human Rights and Fundamental Freedoms – Council of Europe (COE)**

<http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>

- **Charter of Fundamental Rights – EU**

http://www.europarl.europa.eu/charter/default_en.htm

- **political agreement**

- **A strategy for combating HIV/AIDS in the EU and neighbouring countries 2009-2013 and The Action Plan 2014 - 2016**

European Court for Human Rights



ECHR cases:

- *Khudoyorov v. Russia* (app. no. 6847/02),
- *Enhom v. Sweden* (app. No. 56529/00),
- *CARDOSO and JOHANSEN - United Kingdom* (app. No. 47061/99)

<http://www.echr.coe.int/ECHR/EN/hudoc>

Individual rights

PRINCIPLE OF EQUALITY - PROHIBITION OF DISCRIMINATION

- Discrimination is any unjustified distinction on any basis (gender, health status, sexual orientation, race, color, religion)
- Fighting discrimination
- Initiation of proceedings
- Affirmative action -positive discrimination

all different
all equal

Right to Health

- Everyone has the right to the highest attainable standard of physical and mental health
- Individual biological preconditions
- Socio-economic conditions

Right to privacy

- The right to identity and integrity
- Intimacy
- It's a private matter: health status, sexual orientation
...

Data confidentiality on health of a PLHIV

- Testing, and confidentiality of testing
- Keeping a register of people living with HIV
- Management and availability of medical records of people living with HIV
- Disclosure of HIV status

Practical example 3

The disclosure of information about a person living with HIV to:

- a doctor
- a sexual partner
- police
- the public

Conclusions and recommendations

Conclusion

- Promoting human rights in the context of HIV / AIDS is not only an imperative of justice to overcome existing forms of discrimination and intolerance. It is also a tool that can prevent further spread of the epidemic
- AIDS can leave us with a more equal, just and tolerant society - if we focus on human rights and the schisms that exist

Recommendations

- **RATIFY** all the mentioned treaties
- **ACCEPT** the OPTIONAL COMPLAINTS mechanism to allow for individual' s complaints
- **SUBMIT** state human rights reports regularly
- **DOMESTICATE** the treaty norm by adopting LAWS and programmes in line with treaty provisions
- **ENSURE** that the laws are made accessible through information campaigns and legal aid
- **MAINSTREAM** equality: Vulnerable group' s equality should be part of all national laws, policies and programs dealing with HIV and AIDS.
- **FOCUS on GIPA** in your own work and relationships

