Human Rights and Public Health in the AIDS Pandemic

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Foreword

The Universal Declaration of Human Rights begins with a recognition of the inherent dignity and the equal and inalienable rights of all people. This is also where the fundamental relationship between human rights, health, and non-discrimination is embedded, giving rise to a highly topical human rights issue, namely that of human rights of people living with HIV/AIDS. The relationship between human rights and HIV/AIDS is complex: the protection of human rights is necessary to reduce vulnerability to HIV infection and to eliminate all forms of discrimination practised against those living with HIV/AIDS, their families, and friends.

It is not necessary to recount the numerous charters and declarations on HIV/AIDS and human rights to understand human rights in the context of HIV/AIDS. All persons are born free and equal in dignity and rights. Everyone, including persons seeking to avoid HIV infection, as well as persons living with HIV/AIDS, is entitled to all the rights and freedoms set forth in the international human rights instruments without discrimination, such as the rights to life, liberty, security of person, privacy, health, education, work, social security, and to marry and found a family. Yet, violations of human rights in the context of HIV/AIDS are a reality to be found in every corner of the globe.

Public health should not be used by states as a justification for coercive powers against persons living with HIV/AIDS. Measures such as the loss of liberty and discriminatory practices in employment, housing, education, insurance and travel continue to affect people living with HIV/AIDS in many countries. Yet, coercive and discriminatory powers do not necessarily promote public health. Coercion and discrimination, by driving people away from prevention and treatment services, can fuel the HIV/AIDS pandemic. One clear message needs to be sent: respect for human rights and advancement of the public health are not in conflict, but in harmony. People cannot fully enjoy and exercise their human rights if they are not healthy, and people cannot remain healthy if they are deprived of their rights.

There exists, therefore, an obligation by states to provide populations, within the limits of their resources, with prevention services, including clear and targeted health information necessary to reduce their risk of contracting HIV infection. It is critically important that individuals and groups be granted access to information necessary to make informed choices about their health as well as the means to protect themselves, in a manner consistent with universally recognized human rights standards yet reconciled within different cultures and religions.

Some groups in society suffering from discrimination in the enjoyment of their fundamental rights and freedoms, such as women and children, are frequently at dispro-

portionally higher risk of HIV/AIDS infection. Substantial efforts are needed by governments and society to protect the rights of such vulnerable groups at the international, national, and local levels. Effective and action-oriented measures to improve their disadvantaged legal, social, and economic status would not only assure the protection of their human rights and fundamental freedoms, but would also lower the risk of HIV infection.

The social and legal status of women in many societies illustrates the connectedness of HIV/AIDS and human rights. Laws, traditions, customs, and practices in some cultures and religions promote the subordinate status and exploitation of women in marriages and relationships, thereby directly increasing women's and their children's vulnerability to HIV infection. The protection of human rights of children is indispensable to avoid their infection or for them to be able to cope when confronted with HIV/AIDS. To guarantee freedom from sexual exploitation and trafficking is even more critical in view of the HIV/AIDS pandemic.

Professor Gostin and Ms. Lazzarini develop with clarity and rigor the fundamental relationships between health and human rights. Their book, and its message of respect for human rights and the promotion of health, demands attention both within the human rights community and the public health community.

As Professor Gostin and Ms. Lazzarini explain in their text, for far too long public health professionals have regarded human rights as peripheral to their interests, failing to see how critical human rights are to achieving improved health for the population. Human rights groups have yet to find the most effective way to integrate health-related, and in particular HIV/AIDS, concerns in their mandates. Our purpose in jointly writing this foreword is to dispel these myths and overcome prevailing apathies. We ask our respective communities to see the synergy between public health and human rights and to embrace both in their important work. The journey begins with a recognition of the inherent dignity and equal rights of all people and an understanding that the protection of human health is indispensable for the protection of the human rights and fundamental freedoms of everyone.

Peter Piot
Executive Director, Joint United Nations Programme on HIV/AIDS
José Ayala-Lasso
United Nations High Commissioner for Human Rights

Acknowledgments

We owe a great intellectual debt to many organizations and individuals who have worked tirelessly on the relationships between health and human rights. The Joint United Nations Programme on HIV/AIDS (UNAIDS)—cosponsored by the United Nations International Children's Educational Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Fund for Population Activity (UNFPA), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), and the World Bank—was instrumental in facilitating this book. The approach of UNAIDS, energetically led by Peter Piot, is that the HIV/AIDS pandemic affects not only public health, but also the economy, educational and resource capabilities, development gains, and human rights within countries. Susan Timberlake, human rights adviser for UNAIDS, has been indispensable not only in relation to this book but in her leadership in bridging the human rights and HIV/AIDS communities.

The original idea for this book arose when one of us (L.O.G.) led the staff at the World Health Organization Global Programme on AIDS (GPA) in an in-house reflection on human rights during the summer of 1991 in Geneva at the invitation of Michael Merson and Dorothy Blake. Several legal and human rights officers for GPA, including Katarina Tomasevski, Lane Porter, and Kelvin Widdows, provided valuable comments and guidance throughout the process. The rigorous work of Sev Fluss, then Chief of Health Legislation and now human rights coordinator at WHO, has been invaluable. Dr. Zbigniew Bankowski, Director of the Council of International Organizations of Medical Sciences (CIOMS), contributed richly to our thinking about the research questions explored in this book.

The fundamental connections between health and human rights, and generally between AIDS and human rights, have been the subject of ongoing interest for a wonderful group of friends and colleagues at the Harvard School of Public Health's François-Xavier Bagnoud Center on Health and Human Rights. Group discussions have informed our research and teaching, as well as our personal concern and dedication to international human rights. Jonathan Mann, François-Xavier Bagnoud Professor of Health and Human Rights, has been an inspirational colleague in exploring the relationship between public health and human rights. He was particularly instrumental in development of the human rights impact assessment and jointly authored the first publication of its principles (Gostin, Mann, 1994). Sophia Gruskin also richly participated in our discussions of the human rights impact assessment.

We are also grateful to our colleagues in the Georgetown /Johns Hopkins University Program on Law and Public Health. Those deserving of special mention are Dean Judith Areen, who provided a Dean's Scholarship Award for this research; professors Gregg Bloche and Carlos Vazquez, who cotaught a workshop at Georgetown University Law Center with one of us (L.O.G.) on human rights; and Ruth Faden and Stephen Teret in the Program on Law, Ethics, and Health at the Johns Hopkins University School of Hygiene and Public Health.

We also are grateful to our students at Harvard Law School, Harvard School of Public Health, Georgetown University Law Center, and the Johns Hopkins School of Hygiene and Public Health for their enthusiasm and intellectual rigor in health and human rights courses. We hope to see the curricula of many Schools of Public Health, Medicine, Nursing, and Law incorporate concepts of health and human rights.

A number of dedicated professionals in public health, medicine, and jurisprudence assisted in the creation of this book. Elizabeth H. Abi-Mershed, staff attorney, Inter-American Commission on Human Rights, deserves special recognition for her conceptualization of the human rights framework discussed early in the book. The following individuals have also been indispensable to the completion of this book, and their contribution is deeply appreciated: Susan Stayn, then a human rights intern at Columbia University School of Law; Kathleen Flaherty, then an editor of the *Harvard Human Rights Law Journal*; and Kathleen Maguire, currently with Georgetown–Johns Hopkins University Program on Law and Public Health. Susan Yeon and Madeline Stein, Harvard Law School; Tamyra Comeaux, Harvard AIDS Institute and Morehouse School of Medicine; and Deirdre Kamber, Hofstra University Law School, also contributed their talents and energies. Warm thanks also go to Professor Ronald Bayer, Columbia University School of Public Health, for thoughtful comments on the manuscript.

Rich and important work on AIDS and human rights enlightened and inspired our thinking. Among many distinctive contributions by individuals and organizations are those of Michael Kirby (High Court of Australia), Julia Hausermann (Rights and Humanity), Elizabeth Reid (United Nations Development Programme), Renee Sabatier (formerly at the Panos Institute), Helen Watchirs (Attorney General's Department, Australia), the late Paul Sieghart (the British Medical Association), and Luis Varela Quiros (United Nations, Special Rapporteur). The collective thinking and action of these and many other highly valued colleagues and advocates will, we hope, bring greater appreciation of the fundamental importance of human rights in AIDS and public health.

Finally, and most important, we want to dedicate this book to our families, the realm in which health and human respect find truest expression.

Washington, D.C. L. O. G.
Boston, Massachusetts Z. L.
August 1996

Introduction

The AIDS pandemic presents a major challenge to public health and human rights. The burden of HIV/AIDS is borne disproportionately by people and communities already suffering from poverty, hunger, homelessness, inadequate health care, discrimination, and stigmatization. The pandemic has caused enormous suffering throughout the world. The Joint United Nations Programme on HIV/AIDS reports that as of June 1996, nearly 1.3 million people have AIDS, a twenty-five percent increase over a year earlier (United Nations [UNAIDS], 1996c). UNAIDS estimates that twenty-one million adults are currently infected with HIV, and that number is projected to climb to forty million individuals by the year 2000. By then, nine of ten HIV-infected individuals will live in developing countries and rates of new infection in parts of Asia and Latin America likely will match or exceed present rates in Africa. Tragically, AIDS will become a leading cause of death in children, with more than ten million infected by the end of the decade (United Nations [UNAIDS], 1996b; World Health Organization, 1993, 1992b).

From a public health perspective, HIV/AIDS is fundamentally connected with the pandemics of drug abuse (Porter, Gostin, 1992; Normand, Vlahov, et al., 1995), sexually transmitted diseases (Laga, Nzila, et al., 1991), and tuberculosis (DeCock, Soro, et al., 1992). These global health problems will profoundly influence the future epidemiology of HIV/AIDS and will intensify the challenge of prevention as well as the treatment and care of persons living with HIV/AIDS.

Like other blood-borne diseases, HIV/AIDS is transmitted primarily in three ways: through sexual intercourse; through exposure to contaminated drug injection or medical equipment; and from mother-to-child transmission during pregnancy, birth, or breastfeeding. There is no evidence that people are at risk of infection from casual or prolonged contact with someone living with HIV/AIDS. The actual nature of the risk of infection and the *non-communicability* of HIV/AIDS under most circumstances have profound implications for policymakers in designing HIV/AIDS prevention programs.

The burden of the AIDS pandemic extends well beyond public health. HIV/AIDS poses incalculable human, social, cultural, and economic costs. The effects pervade the industrial, agricultural, and health care sectors and permeate society, affecting individuals, families, and communities (Hanson, 1992). HIV/AIDS primarily affects younger and middle-aged people. The death of a parent or wage earner often leaves dependents (both young and old) poor, malnourished, and homeless (Commonwealth Secretariat, 1990).

On the deepest human level, it is hardly possible to convey the degree of human suffering unleashed in a community ravaged by HIV/AIDS. Countless children grow up

without parents and end up roaming through villages or living on the street. People see their loved ones, family members, and friends sapped of health and vitality, and soon, of life itself. In some parts of the world, the disease breaks up families and inflicts such social and economic harm that it threatens the destruction of communities altogether.

There are several disciplinary approaches that could usefully illuminate the social, legal, and ethical aspects of HIV/AIDS. One method of examination used by scholars focuses on the philosophic or ethical framework of autonomy, beneficence, and distributive justice (Bayer, 1991; Daniels, 1985, 1995). While this text borrows from this ethical discourse, its principal method of examination is the body of international law codified in the International Bill of Human Rights.

All persons are born with and possess throughout their lives a set of entitlements which the international community terms human rights. Human rights embody a set of fundamental claims to life, liberty, and equality of opportunity that cannot be taken away by the government, persons, or institutions. The concept of human rights is broader than what lawyers call "negative" rights—i.e., the right to be free from governmental restraint and discrimination. Human rights, properly defined, include "positive" rights—e.g., the right to health. The United Nations Covenant on Economic, Social and Cultural Rights recognizes this affirmative dimension; it proclaims a right to the enjoyment of the highest attainable standard of physical and mental health (Art. 12.1). Under this positivistic human rights framework, government possesses an obligation, within the constraints of its resources, to provide an environment conducive to the public's health and well-being. The specific responsibilities range from providing a safe blood supply and AIDS education to ensuring access to health care, basic housing, and nutrition. Economic, social, and cultural rights emerge as powerful human rights concerns, particularly in poorer communities in developed and developing countries (Commonwealth Secretariat, 1990).

An expansive view of human rights demonstrates their integral role in safeguarding public health. However, human rights and public health concerns are not always in harmony. International codes do not view all human rights as absolute, and they recognize the possibility of the derogation of rights in limited circumstances, particularly to safeguard public health. As one example, governments may justifiably force individuals to be vaccinated to protect the health of the community. Conflicts between human rights and human health are inevitable, and it is important to understand that trade-offs between rights and health may be necessary.

This book aims to show why human rights are as serious and integral as public health in the fight against the AIDS pandemic. Human rights are critical because (1) all people share an inherent worth and dignity which sometimes transcends even their own desire to be healthy and (2) human rights and public health are fundamentally interconnected.

How should concepts of dignity and the interdependence of human rights and public health affect our thinking and our subsequent approach to the AIDS pandemic? Many people, particularly in poor areas of the world, will never receive the health care and social support that they deserve as human beings. However, it is well within the power

of all governments to respect and defend the human rights of their populations. A person living with HIV/AIDS can lead a rewarding life if she is free from governmental coercion or punishment and enjoys respect within her community. A person's right to live her life with dignity and pride, free from restraint, animus, and discrimination, becomes a transcendent value. In the global fight against HIV/AIDS, we must regard the rights of people as highly as we do their health.

A human rights approach is important not only because it promotes respect for individuals, but also because such respect is indispensable to improve public health (International Federation of Red Cross and Red Crescent Societies, François-Xavier Bagnoud Center for Health and Human Rights [IFRC, FXB], 1995). Respecting human rights is the surest way to encourage people to participate in public health programs that offer testing, counseling, education, partner notification, and treatment. It simply is not feasible to *impose* substantial behavioral changes to reduce unprotected sex or sharing of drug injection equipment. It is vitally important to human health that people, communities, and public health programs cooperate. Where governments fail to protect human rights, or worse, where they deprive individuals of rights, government policies are more likely to drive people away from public health programs than to ensure their participation.

Public health thinking is undergoing a transformation. While public health officials have historically exercised compulsory powers to control disease epidemics, modern thinking, particularly in HIV/AIDS, has favored a voluntaristic approach. Public health recommendations at the global, regional, and national level rely on principles of confidentiality, consent, and cooperation (United Nations [UNAIDS], 1996; United Nations, 1996a, 1995c). The clear consensus on this ethic of voluntarism demonstrates that respect for human dignity is essential not simply from a rights perspective, but from a public health perspective.

This book addresses the broad audience of concerned individuals and organizations that seeks to protect the health and human rights of persons living with HIV/AIDS. On a national level, those who should understand and apply human rights principles include governmental organizations (e.g., health ministries), nongovernmental organizations, community-based groups, policymakers, and persons living with HIV/AIDS. The book is designed to help these individuals and organizations worldwide to attain "literacy" in human rights and public health (Mann, Gostin, et al., 1994). This entails understanding the essential concepts, instruments, and language of human rights, as well as the most effective public health strategies for impeding the HIV/AIDS pandemic.

The five chapters herein attempt to explain human rights principles and apply them to AIDS policy. Chapter 1 describes the international system for the promotion and protection of human rights by reviewing the International Bill of Human Rights and the mechanisms designed to implement and enforce the standards developed. Next, the chapter provides a more detailed explanation of human rights with special relevance to health. It concludes with an examination of some of the critical challenges to the evolution of human rights doctrine: the abuse by states of provisions which allow for limitation of rights and other enforcement problems, the question of how to resolve conflicting or

competing rights claims, and the issue of universalism versus cultural relativism. The aim of this first chapter is to provide the reader with a basic understanding of the rights framework, its strengths as well as its inherent weaknesses, and a sense of the richness and complexity of human rights doctrine. Advocates and scholars already familiar with human rights may wish to move directly to the discussion of HIV/AIDS and public health that begins in the second chapter.

Chapter 2 discusses the connections between human rights and public health. Public health policies and programs may directly infringe on the human rights of affected individuals. This is most clear in the case of coercive measures, but may also result from voluntary initiatives. Human rights abuses have a direct impact on the health of individuals in the form of immediate and long-term consequences such as death, dismemberment, disfigurement, morbidity, and disability, as well as psychological sequelae. Finally, the promotion of health may require the promotion of the human rights of vulnerable individuals or populations—for example, where this will empower a group, enabling it to take measures to improve its own health. The second section of Chapter 2 illustrates some of the interconnections with reference to international instruments, consensus statements, and guidelines which specifically address the human rights of persons living with HIV/AIDS.

Chapter 3 provides a step-by-step approach to assessing AIDS policies from a human rights perspective. Healthcare professionals and scientists possess many tools with which to evaluate the public health impact of various strategies. Microbiology, virology, immunology, epidemiology, and biostatistics each employ well-developed methods of analysis. Yet public health professionals and community-based organizations often lack the instruments to measure how policies affect the rights of individuals and their communities. This chapter offers a "human rights impact assessment" measure to equip those committed to defending human rights in public health (Gostin, Mann, 1994).

Chapter 4 discusses major areas of AIDS policy and practice around the world. Nations have implemented a wide array of policies in an attempt to reduce the spread of HIV/AIDS. These include prevention and education, casefinding (testing, screening, reporting or notification, and partner notification), compulsory powers (isolation, quarantine, and criminal prosecutions), travel and immigration restrictions, and harm reduction strategies (e.g., needle and syringe exchanges and condom distribution). Chapter 4 examines these policies from a public health and human rights perspective.

The final chapter presents a series of case studies that illustrate key issues in AIDS and human rights. The case studies involve difficult policy and ethical choices: discrimination and the transmission of HIV and tuberculosis in an occupational health care setting; breast-feeding in the least developed countries; and confidentiality and the right of sexual partners to know of potential exposure to HIV. An analysis of the conflicts and possible resolutions helps to show the value of a human rights impact assessment.

This book does not offer easy answers because there are none for the complex AIDS pandemic. Nor does it suggest that the impact on human rights is the only consideration in designing public health policy. But it does argue that human rights need to be treated as seriously as science, medicine, and public health. Policymakers, practitioners, and advocates need to forge new links between human rights and the health of individuals and communities. Incorporating human rights as a global principle in health planning can help revitalize the public health field, renew society's commitment to respect persons, and save lives.

Contents

1

International Human Rights Law in the AIDS Pandemic

THE STRUCTURE OF INTERNATIONAL HUMAN RIGHTS LAW: CODIFICATION, IMPLEMENTATION, ENFORCEMENT

Although human rights and public health present complementary approaches to advancing peoples' well-being, only recently has human rights discourse begun to encompass health-related entitlements. Many reasons exist for this. Perhaps the primary reason, however, involves the evolution of state responsibility for promoting and protecting human rights. Human rights doctrine has always held that "[s]ince human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible" (Proclamation of Teheran, 1968). As the concept of state responsibility for violations developed, debate ensued over the appropriate nature of accountability. The result was a hierarchy of claims, that is, a ranking of rights by enforceability. Because states observe economic and social rights by pursuing certain objectives, rather than by adhering to immediately identifiable standards, rights such as health came to be seen by some as a long-term goal rather than an entitlement. Recent efforts to fully define and analyze the right to health and its relationship to other human rights result from the renewed recognition that all human rights constitute entitlements and are, moreover, inextricably interlinked (Jamar, 1994; Leary, 1994; Mann, Gostin, et al., 1994).

International human rights is a complex and evolving body of law. This chapter sets forth its basic structure, its relevant instruments, and its implementation and enforcement mechanisms. This review is intended not to be comprehensive, but rather to acquaint the reader with the basic concepts of human rights law. A more detailed description will follow of some of the human rights that are most relevant to attaining and advancing individuals' physical and mental well-being. The chapter concludes with a discussion of the issues that continue to influence the development of human rights law.

This chapter seeks to explain the sources of authority in international law for human rights. These sources are indispensable to attaining, advancing, and protecting health.

Understanding them is the first step in recognizing how human rights may promote global strategies to stem the HIV/AIDS pandemic.

Background

The international system to protect human rights grew out of international revulsion at the atrocities committed during World War II. The pre-war international system had focused solely on relations between states; human rights violations that occurred within a country's borders were generally deemed an "internal affair." The horrors of the war exposed the vulnerability of the individual in an international system that was based on state sovereignty and demonstrated the gross inadequacy of previous attempts to protect the victims of war. The violations were recognized as a grave threat to international peace and security and "were linked in the rhetoric of the war and in the plans for peace" (Henkin, 1979). One of the first imperatives of the postwar era was to prevent the recurrence of such egregious affronts to peace and human dignity.

The postwar human rights movement permanently altered the scope of international law (Cassese, 1990). It pierced the veil of national sovereignty and elevated human rights as a matter of international import. The idea that individuals possess inherent rights and freedoms was not new. Recognizing these rights under international law, however, was, as was holding states accountable for violations.

Codification

The UN Charter

In its preamble, the United Nations Charter articulates the international community's determination "to reaffirm faith in fundamental human rights, [and] in the dignity and worth of the human person." One of the central purposes of the United Nations is to achieve international cooperation in "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction" (UN Charter, Art. 1). The Charter, as a binding treaty, pledges member states to promote:

> Higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; international cultural and educational cooperation; and, universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. (UN Charter, Art. 55, 56).

Although somewhat amorphous in that it requires only "promotional" activities, the statement nonetheless recognizes a connection between basic needs and freedom from want, and respect for and observance of fundamental civil and political rights.

The International Bill of Human Rights

The Universal Declaration of Human Rights (UDHR), adopted in 1948, built upon the UN Charter's promise by identifying specific rights and freedoms that deserve promotion and protection. The UDHR's adoption set the stage for a treaty-based scheme to promote and protect human rights, realized in 1966 when the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted. After ratification or accession by at least thirty-five member countries, the Covenants entered into force in 1976. Together, the Universal Declaration and the two International Covenants on Human Rights (along with the subsequently enhanced Optional Protocol to the ICCPR) constitute the International Bill of Human Rights, the backbone of the international human rights system.

The Universal Declaration of Human Rights

The UDHR, approved by forty-eight states with eight abstentions, was the organized international community's first attempt to establish "a common standard of achievement for all peoples and all nations" to promote human rights. The document proclaims the equal significance of civil and political rights and economic, social, and cultural rights. The Declaration's thirty articles are based upon the principle that "[a]ll human beings are born free and equal in dignity and rights" (Art. 1). The rights set forth are to be respected without discrimination and include the right to life, liberty, and security of person; the prohibition of slavery, torture, and cruel, inhuman, or degrading treatment; the right to an effective judicial remedy; the prohibition of arbitrary arrest, detention, and exile; the right to be presumed innocent until proven guilty and to receive a fair trial; freedom from arbitrary interference with one's privacy, family, or home; freedom of movement and residence; freedom of conscience, religion, and expression; freedom of association; and the right to participate in the government of one's country.

The UDHR characterizes economic, social, and cultural rights as "indispensable for [a person's] dignity and the development of his personality" (Art. 22). Set forth in Articles 22 through 27, these rights include the right to social security; the right to work, to receive equal pay for equal work, and to remuneration ensuring "an existence worthy of human dignity"; the right to education; and the right to share in the cultural life of the community and "to share in scientific advancement and its benefits." Article 25 of the UDHR expressly recognizes a claim to health:

> Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Interestingly, during the drafting of the UDHR, the emphasis shifted from a direct focus on the right to health to its current focus on the economic necessities essential to achieving

human health. The original draft declared that "[e]veryone, without distinction as to economic and social conditions, has the right to the preservation of his health" through the appropriate standard of food, clothing, housing, and medical care. This language was subsequently deleted in favor of the "right to a standard of living necessary for health and general well-being" (United Nations Yearbook, 1948). The difference is subtle, but the current document appears to emphasize economic policies that will ensure a minimal standard of health, as opposed to a range of policies designed to protect the community's health.

The Universal Declaration has largely fulfilled the promise of its preamble, becoming the "common standard" for evaluating respect for human rights. Although it was not promulgated to legally bind member states, its key provisions have so often been applied and accepted that they are now widely considered to have attained the status of customary international law. The Universal Declaration embodies what is meant by "human rights" in the international community, and it has inspired successive generations of legally binding human rights instruments.

The International Bill of Human Rights recognizes individuals' duty to the community, creates absolute (nonderogable) rights, and outlines criteria for the limitation of other rights.

In acknowledging the individual's duty to the community, Article 29 of the Universal Declaration states simply: "Everyone has duties to the community in which alone the free and full development of his personality is possible." The drafters, however, offered little guidance regarding the meaning. Logically, individuals' duties must include respect for the human rights of others, including the right to health. Individuals, therefore, have a responsibility to behave in ways that will not harm others, for example, by not exposing their sexual or needle-sharing partners to the risk of HIV infection. In December 1995, the World AIDS Day theme was "shared rights, shared responsibilities," suggesting that all members of a community have a responsibility to respect and protect their own and other's rights and health.

Certain rights are so essential to human dignity and well-being as to be absolute (e.g., the right to be free from torture). Absolute rights can never be abrogated, regardless of the justification; international human rights law permits no exceptions. In some sense, international law provides a "stopping rule" that will not countenance acts which are so abhorrent to humankind that they can never be justified, even for an ostensibly greater good.

Other human rights, however, may be limited in certain situations. Article 29 of the Universal Declaration counsels that such restrictions must be "determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." Generally, restrictions on human rights must be (1) *prescribed by law in a democratic society*—based upon the legislature's thoughtful consideration and (2) *necessary to protect a valued social goal*—promoting a compelling public interest (e.g., safety or health). Balancing individual rights against larger