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Human rights discourses around the provision of antiretroviral drugs to HIV positive pregnant women in South Africa: implications for social work

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APPENDIX I

Universal Declaration of Human Rights

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly *proclaims*

This Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article I

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

(1) Everyone has the right to freedom of movement and residence within the borders of each State.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right to equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of 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.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are 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.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948)

Adopted on December 10, 1948 by the General Assembly of the United Nations (without dissent)

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APPENDIX II

Chapter Two of the Constitution of the Republic of South Africa Act 108 of 1996

Bill of Rights

Rights

7. (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

(2) The state must respect, protect, promote and fulfill the rights in the Bill of Rights.

(3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

Application

8. (1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

(2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.

(3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court

a. in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
b. may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).

(4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

Equality

9. (1) everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

Human dignity

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

Life

11. Everyone has the right to life.

Freedom and security of the person

12. (1) everyone has the right to freedom and security of the person, which includes the right

a. not to be deprived of freedom arbitrarily or without just cause;
b. not to be detained without trial;
c. to be free from all forms of violence from either public or private sources;
d. not to be tortured in any way; and
e. not to be treated or punished in a cruel, inhuman or degrading way.

(2) Everyone has the right to bodily and psychological integrity, which includes the right

a. to make decisions concerning reproduction;
b. to security in and control over their body; and
c. not to be subjected to medical or scientific experiments without their informed consent.

Slavery, servitude and forced labour

13. No one may be subjected to slavery, servitude or forced labour.

Privacy

14. Everyone has the right to privacy, which includes the right not to have

a. their person or home searched;
b. their property searched;

c. their possessions seized; or
d. the privacy of their communications infringed.

Freedom of religion, belief and opinion

15. (1) everyone has the right to freedom of conscience, religion, thought, belief and opinion.

(2) Religious observances may be conducted at state or state-aided institutions, provided that

a. those observances follow rules made by the appropriate public authorities;
b. they are conducted on an equitable basis; and
c. attendance at them is free and voluntary.

(3) a. This section does not prevent legislation recognising

i. marriages concluded under any tradition, or a system of religious, personal or family law; or
ii. systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.

b. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

Freedom of expression

16. (1) everyone has the right to freedom of expression, which includes

a. freedom of the press and other media;
b. freedom to receive or impart information or ideas;
c. freedom of artistic creativity; and
d. academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to

a. propaganda for war;
b. incitement of imminent violence; or
c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

Assembly, demonstration, picket and petition

17. Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

Freedom of association

18. Everyone has the right to freedom of association.

Political rights

19. (1) every citizen is free to make political choices, which includes the right

a. to form a political party;
b. to participate in the activities of, or recruit members for, a political party; and
c. to campaign for a political party or cause.

(2) every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.

(3) every adult citizen has the right

a. to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
b. to stand for public office and, if elected, to hold office.

Citizenship

20. No citizen may be deprived of citizenship.

Freedom of movement and residence

21. (1) everyone has the right to freedom of movement.

(2) everyone has the right to leave the Republic.

(3) every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.

(4) every citizen has the right to a passport.

Freedom of trade, occupation and profession

22. Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

Labour relations

23. (1) everyone has the right to fair labour practices.

(2) Every worker has the right

a. to form and join a trade union;
b. to participate in the activities and programmes of a trade union; and
c. to strike.

(3) Every employer has the right

a. to form and join an employers' organisation; and
b. to participate in the activities and programmes of an employers' organisation.

(4) Every trade union and every employers' organisation has the right

a. to determine its own administration, programmes and activities;
b. to organise; and
c. to form and join a federation.

(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

(6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

Environment

24. Everyone has the right

a. to an environment that is not harmful to their health or well-being; and
b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
    i. prevent pollution and ecological degradation;
    ii. promote conservation; and
    iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Property

25. (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application

a. for a public purpose or in the public interest; and
b. subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including

a. the current use of the property;
b. the history of the acquisition and use of the property;
c. the market value of the property;

d. the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
e. the purpose of the expropriation.

(4) For the purposes of this section

a. the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
b. property is not limited to land.

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).

(9) Parliament must enact the legislation referred to in subsection (6).

Housing

26. (1) everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

Health care, food, water and social security

27. (1) everyone has the right to have access to

a. health care services, including reproductive health care;
b. sufficient food and water; and
c. social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

(3) No one may be refused emergency medical treatment.

Children

28. (1) every child has the right

a. to a name and a nationality from birth;
b. to family care or parental care, or to appropriate alternative care when removed from the family environment;
c. to basic nutrition, shelter, basic health care services and social services;
d. to be protected from maltreatment, neglect, abuse or degradation;
e. to be protected from exploitative labour practices;
f. not to be required or permitted to perform work or provide services that
    i. are inappropriate for a person of that child's age; or
    ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
g. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be
    i. kept separately from detained persons over the age of 18 years; and
    ii. treated in a manner, and kept in conditions, that take account of the child's age;
h. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
i. not to be used directly in armed conflict, and to be protected in times of armed conflict.

(2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section "child" means a person under the age of 18 years.

Education

29. (1) everyone has the right

a. to a basic education, including adult basic education; and
b. to further education, which the state, through reasonable measures, must make progressively available and accessible.

(2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account

a. equity;
b. practicability; and
c. the need to redress the results of past racially discriminatory laws and practices.

(3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that

a. do not discriminate on the basis of race;
b. are registered with the state; and
c. maintain standards that are not inferior to standards at comparable public educational institutions.

(4) Subsection (3) does not preclude state subsidies for independent educational institutions.

Language and culture

30. Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

Cultural, religious and linguistic communities

31. (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community

a. to enjoy their culture, practise their religion and use their language; and
b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

Access to information

32. (1) everyone has the right of access to

a. any information held by the state; and
b. any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

Just administrative action

33. (1) everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

(3) National legislation must be enacted to give effect to these rights, and must

a. provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
b. impose a duty on the state to give effect to the rights in subsections (1) and (2); and
c. promote an efficient administration.

Access to courts

34. Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

Arrested, detained and accused persons

35. (1) everyone who is arrested for allegedly committing an offence has the right

a. to remain silent;
b. to be informed promptly
    i. of the right to remain silent; and
    ii. of the consequences of not remaining silent;
c. not to be compelled to make any confession or admission that could be used in evidence against that person;
d. to be brought before a court as soon as reasonably possible, but not later than
    i. 48 hours after the arrest; or
    ii. the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
e. at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
f. to be released from detention if the interests of justice permit, subject to reasonable conditions.

(2) Everyone who is detained, including every sentenced prisoner, has the right

a. to be informed promptly of the reason for being detained;
b. to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
c. to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
d. to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
e. to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and

f. to communicate with, and be visited by, that person's
    i. spouse or partner;
    ii. next of kin;
    iii. chosen religious counsellor; and
    iv. chosen medical practitioner.

(3) Every accused person has a right to a fair trial, which includes the right

a. to be informed of the charge with sufficient detail to answer it;
b. to have adequate time and facilities to prepare a defence;
c. to a public trial before an ordinary court;
d. to have their trial begin and conclude without unreasonable delay;
e. to be present when being tried;
f. to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
g. to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
h. to be presumed innocent, to remain silent, and not to testify during the proceedings;
i. to adduce and challenge evidence;
j. not to be compelled to give self-incriminating evidence;
k. to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
l. not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
m. not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
n. to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
o. of appeal to, or review by, a higher court.

(4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.

(5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

Limitation of rights

36. (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including

a. the nature of the right;
b. the importance of the purpose of the limitation;
c. the nature and extent of the limitation;

d. the relation between the limitation and its purpose; and
e. less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

States of emergency

37. (1) A state of emergency may be declared only in terms of an Act of Parliament, and only when

a. the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
b. the declaration is necessary to restore peace and order.

(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only

a. prospectively; and
b. for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly.

(3) Any competent court may decide on the validity of

a. a declaration of a state of emergency;
b. any extension of a declaration of a state of emergency; or
c. any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.

(4) Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that

a. the derogation is strictly required by the emergency; and
b. the legislation
    i. is consistent with the Republic's obligations under international law applicable to states of emergency;
    ii. conforms to subsection (5); and
    iii. is published in the national Government Gazette as soon as reasonably possible after being enacted.

(5) No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise

a. indemnifying the state, or any person, in respect of any unlawful act;
b. any derogation from this section; or
c. any derogation from a section mentioned in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of the Table.

Table of Non-Derogable Rights

1 **Section Number**	2 **Section Title**	3 **Extent to which the right is protected**
9	Equality	With respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex religion or language
10	Human Dignity	Entirely
11	Life	Entirely
12	Freedom and Security of the person	With respect to subsections (1)(d) and (e) and (2)(c).
13	Slavery, servitude and forced labour	With respect to slavery and servitude
28	Children	With respect to: • subsection (1)(d) and (e); • the rights in subparagraphs (i) and (ii) of subsection (1)(g); and • subsection 1(i) in respect of children of 15 years and younger
35	Arrested, detained and accused persons	With respect to: • subsections (1)(a), (b) and (c) and (2)(d); • the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d) • subsection (4); and • subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.

(6) Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:

a. An adult family member or friend of the detainee must be contacted as soon as reasonably possible, and informed that the person has been detained.
b. A notice must be published in the national Government Gazette within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measure in terms of which that person has been detained.
c. The detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner.
d. The detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative.
e. A court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order.
f. A detainee who is not released in terms of a review under paragraph (e), or who is not released in terms of a review under this paragraph, may apply to a court for a further review of the detention at any time after 10 days have passed since the previous review, and the court must release the detainee unless it is still necessary to continue the detention to restore peace and order.
g. The detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention.
h. The state must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.

(7) If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.

(8) Subsections (6) and (7) do not apply to persons who are not South African citizens and who are detained in consequence of an international armed conflict. Instead, the state must comply with the standards binding on the Republic under international humanitarian law in respect of the detention of such persons.

Enforcement of rights

38. Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are -

a. anyone acting in their own interest;
b. anyone acting on behalf of another person who cannot act in their own name;
c. anyone acting as a member of, or in the interest of, a group or class of persons;
d. anyone acting in the public interest; and
e. an association acting in the interest of its members.

Interpretation of Bill of Rights

39. (1) When interpreting the Bill of Rights, a court, tribunal or forum

a. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
b. must consider international law; and
c. may consider foreign law.

(2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.

(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

Source:
http://www.polity.org.za/html/govdocs/constitution/saconst02.html?rebookmark=1 Last date retrieved 21/11/2004

APPENDIX – III

INFORMATION SHEET

July 2003

Dear Sir/Madam,

My name is Misgina Gebregiorgis Tesfamichael, I am a Masters Social Work student at the University of the Witwatersrand. I am doing a research around the provision of Antiretroviral drugs (ARVs) to HIV positive women from a human rights perspective.

I would like to invite you to assist me by participating in the research. Your participation will involve answering several questions during a personal interview with the researcher which will be tape recorded and transcribed for analysis. I would like to assure you that your identity will be kept confidential and your statements anonymous. No identifying information about you would appear in the final research report. The interview transcript would be destroyed at the end of the study.

Your involvement in the research would require your participation in a semi structured interview, which might take up to 60 minutes. I would conduct the interviews myself and no one would be present during that time. I am also the only person who would hear the tape and transcribe the interview.

I would further like to assure you that you have the right to refuse to participate or withdraw at any stage of the interview and not to answer any question if you so choose. Finally, there would be neither rewards for participation nor any negative repercussions from not participating.

Yours faithfully,

Misgina Gebregiorgis
Tel No. (*Cell*) 082 6618 396
(*Home*) 011 717 5414
e-mail misginagebre@yahoo.com

_____

Misgina Gebregiorgis

APPENDIX – IV

LETTER TO AGENCIES

July 2003
Dear Sir/Madam,

My name is Misgina Gebregiorgis Tesfamichael, I am a Masters Social Work student at the University of the Witwatersrand. Currently, I am doing a research around the provision of Antiretroviral drugs (ARVs) to HIV positive pregnant women from a human rights perspective.

The main aim of the study is to explore how discourses of human rights are employed in the debate around the provision of ARVs to HIV positive pregnant women in South Africa. With this study I hope to make a contribution to the ongoing debate.

I would like to assure you that your respondent's information would be treated with respect and confidentiality. The study with its findings will be made available to your office on request.

In order to proceed with this study, I kindly request your written permission to conduct the interview.

Your co-operation will be highly appreciated.

Yours faithfully

_____
Misgina Gebregiorgis Tesfamichael

APPENDIX – V

CONSENT FORM FOR PARTICIPATION IN THE RESEARCH

I _____ (full name) agree to voluntarily participate in the research study on the provision of Antiretroviral Drugs (ARVs) conducted by Mr. Misgina Tesfamichael, a Masters Social Work student currently registered with the University of the Witwatersrand.

I understand the aim of the research.

I understand that the research will take the form of semi-structured interview and could involve up to 60 minutes of my time.

I understand that I will receive no financial or any other form of reward or compensation for any participation in the research.

Moreover, I agree that all the information that I will provide can be used for the said study purposes, that my identity will be kept anonymous and that the recorded interview as well as the typed transcripts will contain no identifying information that can be linked to me.

I also understand that I have the right not to answer any question if I so choose and that I have the right to withdraw from the research at any time.

My signature below shows my willingness and permission to participate.

Signed _____

Date _____