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 **THE
AIDS
CONSORTIUM**

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TO: Technical Committee on Fundamental Rights During Transition
FAX NO: 397 2211
FROM: Morna Cornell
DATE: 5 August 1993
PAGES (including this one): 12

**PLEASE DELIVER THE ATTACHED DOCUMENTATION TO THE TECHNICAL
COMMITTEE ON FUNDAMENTAL RIGHTS DURING TRANSITION.**

URGENT !!!



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5 August 1993

**SUBMISSIONS TO THE TECHNICAL COMMITTEE
ON FUNDAMENTAL RIGHTS DURING TRANSITION**

In light of the Sixth Progress Report of the Technical Committee on Fundamental Rights during transition (15 July 1993), on behalf and upon the instruction of those present at the Second National Conference on Legal Rights and AIDS, held in Johannesburg on 1 and 2 July 1993, the AIDS Consortium makes the following submissions.

The AIDS Consortium is a national affiliation of nearly 70 organisations which strives to find effective ways of protecting and securing the rights of persons living with HIV or AIDS. As an end to this goal, the AIDS Consortium supports a policy of non-discrimination on the basis of race, gender, sexual orientation, creed, religion, age, disability, medical condition, ethnic origin, language, colour or conscience.

The Charter of Rights on AIDS and HIV (attached), which has been endorsed by ANC President Mr Nelson Mandela, IFP leader Mr M Buthelezi, Health Minister Dr Rina Venter, Dr F Van Zyl Slabbert, the late Mr Chris Hani, Archbishop D Tutu, Reverend F Chikane and numerous other leaders as well as many organisations, embodies this commitment.

It is now clear that:

1. an estimated 500 000 South African citizens already are currently living with HIV or AIDS;
2. an estimated 500 additional people are infected with HIV every day;
3. infection with HIV constitutes a 'disability' on the basis of which people experience widespread irrational and unjustifiable discrimination, including

rejection by and ostracism from their families and communities;

4. discrimination against people with disabilities persists in areas such as employment, housing, education, transportation and access to basic health and other services;
5. as a class, individuals with disabilities are without question able to perform in, contribute to and augment South African society;
6. the goals of eliminating irrational discrimination and assuring equal opportunity to all individuals have now been widely accepted; and
7. discrimination against individuals with disabilities frustrates the goals of the nation of South Africa.

On 1-2 July 1993 the Second National Conference on Legal Rights and AIDS was held in Johannesburg under the auspices of the AIDS Consortium and the Centre for Applied Legal Studies.

Participants at the conference unanimously resolved at the final session of the conference that the Technical Committee on Fundamental Rights during Transition be requested to specifically enumerate 'disability' as a protected condition in Article 2(2) of the proposed list of protected rights.

MOTIVATION AND CONCLUSION

We are advised that your committee, as well as the Negotiating Council, have in fact accepted in principle the need for specific enumeration of protected conditions in the interim constitution's anti-discrimination clause. We support and affirm this approach.

Specific enumeration of disability as a protected condition will avoid judicial uncertainty as to the interpretation of the provisions of Article 2(2). This removes any doubt as to whether the courts will regard a particular condition or disability to be protected.

Finally, enumeration will be vital in enhancing the educative role that a bill of rights will play in creating a climate of greater awareness and knowledge of AIDS and HIV and other disabilities amongst all South Africans.

M Cornell
MORNA CORNELL on behalf of
AIDS CONSORTIUM

THE AIDS CONSORTIUM
CHARTER OF RIGHTS ON AIDS AND HIV

Notes on the Charter

- 1 A number of organizations active in the AIDS field met at the Centre for Applied Legal Studies on Tuesday 12 November 1991 to discuss a proposal to draw up a charter of rights for people with AIDS or HIV.
- 2 The meeting asked a drafting committee of three lawyers (Edwin Cameron and Edward Swanson (CALS) and Mahendra Chetty (LRC)) to compile a draft charter.
- 3 At the same time, those present suggested that an AIDS Consortium should be established, operating from the Centre for Applied Legal Studies, to assist AIDS organisations in various ways.
- 4 At the first meeting of the Consortium on 28 January 1992 the draft was presented and discussed. The draft draws on international documents including the Montreal Manifesto of the Universal Rights and Needs of People Living with HIV Disease and the United Kingdom Declaration of the Rights of People with HIV and AIDS. But it differs from these and other documents in its formulation and content, which have been adapted specifically for South Africa.
- 5 The Charter was extensively discussed and amended in a number of respects at subsequent meetings of the Consortium on 3 and 24 March 1992. It has now been approved by the representatives nationwide of over 40 organisations interested in or concerned with AIDS and HIV.
- 6 The Charter now awaits formal endorsement by the organisations making up the AIDS Consortium, as well as by prominent public figures in all spheres of national life and by organisations countrywide. It is planned to launch the Charter publicly on or near World AIDS Day this year (1 December).

CHARTER OF RIGHTS ON AIDS AND HIV

(REDRAFT APPROVED AT CONSORTIUM MEETING 24 MARCH 1992)

PREAMBLE

In the light of

- *the existing discrimination against persons with AIDS or HIV and their partners, families and care-givers,*
- *the danger that the growth of the epidemic in South Africa will lead to an increase in unfair and irrational treatment of those affected by AIDS and HIV,*
- *the desirability of greater awareness and knowledge of AIDS and HIV among all South Africans, and*
- *the need for concerted action by all South Africans to stop the spread of HIV,*

we, the undersigned individuals and organizations, think it necessary to set out those basic rights which all citizens enjoy or should enjoy and which should not be denied to persons affected by HIV or AIDS, as well as certain duties.

1 LIBERTY, AUTONOMY, SECURITY OF THE PERSON AND FREEDOM OF MOVEMENT

- 1.1 Persons with HIV or AIDS have the same rights to liberty and autonomy, security of the person and to freedom of movement as the rest of the population.
- 1.2 No restriction should be placed on the free movement of persons within and between states on the ground of HIV or AIDS.
- 1.3 Segregation, isolation or quarantine of persons in prisons, schools, hospitals or elsewhere merely on the ground of AIDS or HIV is unacceptable.
- 1.4 Persons with HIV or AIDS are entitled to autonomy in decisions regarding marriage and child-bearing although counselling about the consequences of their decisions should be provided.

2 CONFIDENTIALITY AND PRIVACY

- 2.1 Persons with HIV or AIDS have the right to confidentiality and privacy concerning their health and HIV status.
- 2.2 Information regarding a person's HIV status must not be disclosed without that person's consent, and, after death, except when required by law, without the consent of his or her family or partner, except in cases of clear threat to and disregard of an identifiable individual's life interests.

3 TESTING

- 3.1 HIV antibody testing must occur only with free and informed consent, except in the case of unlinked, anonymous epidemiological screening programmes.
- 3.2 Anonymous and confidential HIV antibody testing with pre- and post-test counselling should be available to all.
- 3.3 Persons who test HIV positive should have access to continuing support and health services.

4 EDUCATION ON AIDS AND HIV

- 4.1 All persons have the right to proper education and full information about HIV and AIDS, as well as the right to full access to and information about prevention methods.
- 4.2 Public education with the specific objective of eliminating discrimination against persons with HIV or AIDS should be provided.

5 EMPLOYMENT

- 5.1 HIV should not be a basis for pre-employment testing or a ground for refusing to employ any person.
- 5.2 HIV or AIDS do not, by themselves, justify termination of employment or demotion, transfer or discrimination in employment.
- 5.3 The mere fact that an employee is HIV positive or has AIDS does not have to be disclosed to the employer.
- 5.4 There is no warrant for requiring existing employees to undergo testing for HIV.

5.5 Information and education on HIV and AIDS, as well as access to counselling and referral, should be provided in the workplace after appropriate consultation with representative employee groups.

6 HEALTH AND SUPPORT SERVICES

- 6.1 Persons with HIV or AIDS have rights to housing, food, social security, medical assistance and welfare equal to all members of our society.
- 6.2 Reasonable accommodation in public services and facilities should be provided for those affected by HIV or AIDS.
- 6.3 The source of a person's infection should not be a ground for discrimination in the provision of health services, facilities or medication.
- 6.4 HIV or AIDS should not provide the basis for discrimination by medical aid funds and services.

7 MEDIA

- 7.1 Persons with HIV or AIDS have the right to fair treatment by the media and to observance of their rights to privacy and confidentiality.
- 7.2 The public has the right to informed and balanced coverage of, and the presentation of information and education on, HIV and AIDS.

8 INSURANCE

Persons with HIV or AIDS, and those suspected to be 'at risk' of having HIV or AIDS, should be protected from arbitrary discrimination in insurance.

9 GENDER AND SEXUAL PARTNERS

- 9.1 All persons have the right to insist that they or their sexual partners take appropriate precautionary measures to prevent transmission of HIV.
- 9.2 The specially vulnerable position of women in this regard should be recognized and addressed, as should the specially vulnerable position of youth and children.

10 PRISONERS

- 10.1 Prisoners with HIV should enjoy standards of care and treatment equal to those of other prisoners.
- 10.2 Prisoners with AIDS should have access to special care which is equivalent to that enjoyed by other prisoners with serious illness.
- 10.3 Prisoners should have the same access to education, information and preventive measures as the general population.

11 EQUAL PROTECTION OF THE LAW AND ACCESS TO PUBLIC BENEFITS

- 11.1 Persons with AIDS or HIV should have equal access to public benefits and opportunities, and HIV testing should not be required as a precondition for eligibility to such advantages.
- 11.2 Public measures should be adopted to protect people with HIV or AIDS from discrimination in employment, housing, education, child care and custody and the provision of medical, social and welfare services.

12 DUTIES OF PERSONS WITH HIV OR AIDS

Persons with HIV or AIDS have the duty to respect the rights, health and physical integrity of others, and to take appropriate steps to ensure this where necessary.



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22 July 1993

**THE AIDS & HIV CHARTER HAS BEEN ENDORSED BY THE
FOLLOWING:**

Dr Nelson Mandela
Dr Rina Venter, Minister of Health
Chris Hanl
Dr M Buthelezi
Dr F Van Zyl Slabbert
Archbishop Desmond Tutu
Rev Frank Chikane
Rev Ray McCauley
Dr J Gerwel, Rector, University of Western Cape
Amy Kleynhans
John Berke
Saira Essa
Bruce Fordyce
Augustine Masilela
Jennifer Ferguson
Ablgail Khubeka
P.J.Powers
Hugh Masekela
Ray Chikapa Phiri
Sheena Duncan
Wendy Ackerman
June Crichton
Susan Hyde
Dr Clive Evian
Claire Pooley

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**Steve McGarry
Angela du Plessis
Dr Jacob A Gayle
June Mathleson
Dr Malcolm Steinberg
Mondli Gumgubele
Prof Alan Fleming
Dr James McIntyre
Esda van der Watt
Herman van der Watt
Dr Lerato Mohapi
Zola Dambula
Sue Thonell
Jenni Gillies
Dr Terri L Cohen
Professor Edwin Cameron
Morna Cornell
Dr Helen Schneider**

**Inkatha Party
Solidarity Party
Medical University of Southern Africa (MEDUNSA)
Wilgespruit Fellowship Centre
Methodist Church of Southern Africa
African Independent Churches (Khanya)
The South African Council of Churches
African Methodist Episcopal Church
Hervormde Kerk in Suidelike Afrika
The Reformed Presbyterian Church in Southern Africa
Baptist Convention of Southern Africa
United Congregational Church of Southern Africa
Rhema Church
Pick 'n Pay
AIDSLINK
Hospice Association of the Witwatersrand
Friends for life
National Progressive Primary Health Care Network AIDS Programme
Living in Hope
ACT-UP
HIV Education & Support Group, East Rand
AIDS Training, Information & Counselling Centre, Port Elizabeth**

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AIDS Support & Education Trust
Medecins du Monde
Association of Drama, AIDS, Puppetry & Theatre
National Association of Child Care Workers
Lawyers for Human Rights
South African National Council on Alcoholism & Drug Dependence
Planned Parenthood Association of South Africa
South African Black Social Workers Association
AIDS Foundation of South Africa
Hospice East Rand
AIDS Centre, South African Institute of Medical Research
Centre for Health Policy, Wits Medical School
Lifeline Southern Africa
Workplace Information Group
Northern Transvaal Aids Centre
Baragwanath and Soweto Clinics AIDS Co-ordinating Committee
Association for Childbirth and Parenthood
Baragwanath Hospital, Department of Obstetrics and Gynaecology
AIDS and HIV Support Clinic (Obs.& Gynae.Dept.) Baragwanath Hospital
The Quarterly/Exit Newspaper
Body Positive, Cape Town
Muse International Aid Foundation
Law Faculty, University of the Witwatersrand

International endorsements:

Egon A Klepsch, The President of the European Parliament
Nicole Pery, Vice-President, European Parliament
Georgios Anastassopoulos, Vice-President, European Parliament
Georgios Romeos, Vice-President, European Parliament
Antonio Capucho, Vice-President, European Parliament; Vice-President of the Liberal & Democratic Reformist Group
Roberto Barzanti, Vice-President, European Parliament
Nicolas Estgen, Vice-President, European Parliament
Jean-Pierre Cot, President of the European Socialist Group
Pia Oomen-Ruijten, Vice-President of the Group of the European People's Party
Paul Lannoye, President of the Green Group, European Parliament
Henri Saby, President of the Development Committee, European Parliament
Francis Wurtz, Vice-President of the Committee on Development & Co-operation, European Parliament
Barbara Simons, Vice-President of the Joint Assembly between the African,

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Caribbean and Pacific States, European Parliament
Wilfried Telkamper, Vice-President of the Joint Assembly between the
African, Caribbean and Pacific States, European Parliament
Alexander Langer, President of the Delegation for Relations with Albania,
Bulgaria and Rumania, European Parliament
Jas Gawronski, President of the Delegation for Relations with Poland,
European Parliament
Agostino Mantovani, Vice-President of the Delegation for Relations with
Iceland, European Parliament
Janey Buchan, Member of the Committee on Development & Co-operation,
Member of the Joint Assembly between the African, Caribbean &
Pacific States & the European Community
Ernest Glinne, Member of the Committee on Social Affairs, Employment &
the Working Environment; Member of the Committee on Institutional
Affairs; Member of the Delegation for Relations with the United States,
European Parliament
Edward Kellett-Bowman, Member of the European Parliament, UK
Brigitte Ernst de la Graete, Member of the European Parliament, Belgium
Marijke van Hemeldonck, Member of the European Parliament, Belgium
Barbara Schmidbauer, Member of the European Parliament, Germany
Maartje van Putten, Member of the European Parliament, The Netherlands
Ann Hermans, Member of the European Parliament, Belgium
Paul Staes, Member of the European Parliament, Belgium
Marguerite Dinguirard, Member of the European Parliament, France
Karl Partsch, Member of the European Parliament, Germany
Jean Pierre Raffin, Member of the European Parliament, France

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