

Focus

AIDS and human rights: the need for protection

Safeguarding human rights is an essential part of responding effectively to the AIDS epidemic at individual, national and global levels. HIV strikes hardest where human rights are least protected, particularly among people and communities on the margins of society, including sex workers, injecting drug users and men who have sex with men. Conversely, safeguarding people's fundamental rights improves their ability to protect themselves and others at risk of HIV infection, helps reduce their vulnerability to HIV, and assists them in dealing with the epidemic's impacts.

In recent times, some have argued that human rights-based approaches to HIV prevention in efforts to scale up the AIDS response might have reduced the role of public health, which offers a more applied practical framework. However, experience has clearly shown that it is self-defeating to place public health and human rights in opposition. Public health strategies and human rights protection are mutually reinforcing. Their integration achieves the greatest effect in reducing HIV transmission and improving the quality of life of people living with HIV.

Rights-based achievements

Rights-based approaches to the AIDS epidemic have yielded results by:

- **Enhancing public health outcomes:** Protecting a person's right—particularly a person living with HIV—to achieve the highest attainable standard of physical and mental health has brought about increased confidence in health systems. In turn, this has led more people to seek and receive relevant information on HIV prevention, counselling and care.
- **Ensuring a participatory process** linking patients and care providers, which has improved the relevance and acceptability of public health strategies.
- **Fostering non-discriminatory programmes** that include marginalized groups more vulnerable to HIV infection. For example, the Stopping HIV/AIDS through Knowledge and Training Initiatives project in Bangladesh, and the Sonagachi project in Kolkata, India, have integrated the rights of people in sex work by ensuring that sex workers are part of planning, implementing and assessing all relevant AIDS programmes.
- **Scaling up the AIDS response** through empowering people to claim their rights to gain access to HIV prevention and care services. Several countries in Latin American, including Brazil, Costa Rica, El Salvador, Mexico, and Panama have entrenched this by providing free access to treatment and other related health services for many people living with HIV.
- **Enhancing the accountability of States** through people seeking redress for the negative consequences of health policies. Legal action based on human rights has been a vehicle to enforce people's right to gain access to health care, including antiretroviral treatment. For example, in South Africa, the Treatment Action Campaign won a court ruling that required the Government to supply the antiretroviral drug nevirapine to HIV-positive pregnant women at public health facilities, within a phased roll-out of a comprehensive national programme to prevent mother-to-child HIV transmission.

Progress at the national level

Despite challenges, there have recently been positive developments in addressing human rights issues at the national level. Through participatory processes, HIV-related human rights, particularly the principle of non-discrimination, have been integrated into programme tools such as national AIDS policies, strategies and legislative frameworks. For example, Cambodia adopted a law on HIV/AIDS in January 2003; the Parliament of Malawi adopted a rights-based policy on HIV/AIDS in January 2004; and similar policy and legal reforms have been announced in Belarus, India, Lesotho, Liberia, and the Russian Federation.

Meanwhile, supported by a Small Grants Facility established by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and UNAIDS, young people in Malawi, Sri Lanka, Mozambique, Zambia and Bangladesh have developed and implemented programmes to address stigma and discrimination.

Rights and access to AIDS information and prevention

The right to seek, receive and impart information is a fundamental human right and is a *sine qua non* condition for ensuring effective HIV prevention and AIDS care. People have a right to know how to protect themselves from being infected with HIV. They also have the right to know their HIV status, and if they are infected, they have the right to know how to obtain treatment, care and support.

Adequate information, counselling and testing should be accessible to all those in need through rights-based, ethical and practical models of delivery. Globally, rights-based examples under way include: awareness campaigns targeting specific groups such as men who have sex with men, injecting drug users, medical profes-

sionals and prison populations (Guinea, Italy, Kuwait, Portugal); incorporating AIDS-related programmes into school curricula (Argentina, Cuba, Czech Republic, Mauritius, Saint Vincent); community development of education and prevention programmes (Lebanon, Thailand); and developing culturally specific education and prevention programmes for indigenous people, refugees, asylum-seekers and migrants (Canada, the Netherlands, Norway).

In March 2004, the UN Theme Groups on HIV/AIDS in Cambodia, Fiji, Nepal, and Thailand led national AIDS and Human Rights consultations. Furthermore, a meeting was held on AIDS and Human Rights in the Asia-Pacific region, sponsored by UNAIDS, the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the International Labour Organization (ILO), the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC) and the Policy Project. It was attended by representatives from 20 countries in the region, including government officials, national AIDS councils, lawyers, doctors, people living with HIV, injecting drug users, male and female sex workers, men who have sex with men, young people, mobile populations and ethnic minorities.

Recommendations from these consultations are contributing to advocacy activities, including the Asia-Pacific Leadership Forum. They are helping to improve training and guidance to increase the understanding of AIDS-related human rights issues in the region, and are assisting in identifying best practices.

In other regions, UNESCO and UNAIDS have provided support for young people's training sessions on human rights and AIDS. Sessions have been held in the Middle East and North

Africa (Beirut, Lebanon); in Francophone Africa (Yaoundé, Cameroon); and in Eastern Europe (Croatia). The training covered the knowledge, skills and attitudes needed to foster positive behaviour change. It also focused on the role of media and communications in rights-based messages, including how to dispel myths and fears that often create and reinforce AIDS-related stigma and discrimination. By the end of 2003, young people from over 60 countries had been trained.

AIDS mainstreamed into international human rights mechanisms

Increasingly, the UN and other organizations have focused on the principle that all people have the right to the highest attainable standard of physical and mental health. This has reinforced HIV-related human rights. In September 2002, the United Nations Commission on Human Rights appointed a Special Rapporteur on the Right to Health, who has paid close attention to AIDS-related issues. In June 2003, UNAIDS and the Office of the High Commissioner for Human Rights convened a meeting for Special Procedures on HIV/AIDS and Human Rights in order to develop a strategic approach to integrating AIDS-related issues into their respective mandates, and in so doing to strengthen AIDS-related human rights work at the country level.

AIDS issues have also been integrated into the work of other Special Rapporteurs, Independent Experts and Special Representatives on the situation of human rights in Cambodia, Haiti, Liberia, Myanmar, Somalia, Uganda and Yemen. In addition, Thematic Rapporteurs are monitoring AIDS-related rights. These include the Special Rapporteurs on violence against women, on housing and on the human rights of migrants.

The Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography has addressed the links between sexual exploitation of children and AIDS, and has identified practical steps governments can take to improve protection of children's rights in this regard. The Special Rapporteur Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment has particularly focused on prisoners.

Resolutions on AIDS passed by the UN Commission on Human Rights, including the resolution relating to access to AIDS treatment, have catalysed political engagement and served to monitor AIDS-related rights.

In January 2003, the General Comment on HIV/AIDS and the Rights of the Child was issued by the UN Committee on the Rights of the Child, and was the first General Comment on the AIDS epidemic to be issued by a treaty-monitoring mechanism. The General Comment identifies good practices and specifically prohibits discrimination against children on the basis of real or perceived HIV status. It calls for countries to report on measures they have implemented to protect children from HIV.

The enduring challenge

Despite these gains, in various parts of the world grave AIDS-related human rights violations continue to occur with depressing regularity. Furthermore, serious gaps prevail between the time that governments pass laws and policies and when they actually implement them. Relatively few countries are on track to meet their human rights commitments.

Stigma and discrimination

AIDS-related stigma remains one of the greatest obstacles to people living with HIV being able to fulfil their human rights. Stigma is also a

major barrier to creating and implementing HIV programming. Stigma is a multi-layered process of devaluation that tends to reinforce negative connotations by associating HIV and AIDS with already-marginalized groups. Stigma lies at the root of discriminatory actions that exclude people who need AIDS-related services.

Discrimination is an infringement of human rights that often leads to people being subjected to various forms of abuse. For instance, the Asia-Pacific Network of People Living with HIV/AIDS carried out research among HIV-positive people in India, Indonesia, the Philippines and Thailand. The research found a wide and persistent range of discrimination against people living with or perceived to be living with HIV. This included discrimination by friends and employees in workplace and health-care settings, as well as exclusion from social functions and being denied benefits, privileges or services.

Similar research in four Nigerian states found discriminatory and unethical AIDS-related behaviour among doctors, nurses and midwives. Abuses included denial of care, breaches of confidentiality, and HIV testing without consent. One in ten care providers reported refusing to care for HIV-positive patients, and 10% reported refusing them admission to a hospital. Furthermore, 65% reported seeing other health-care workers refusing to care for an HIV or AIDS patient. Some 20% felt that many people living with HIV had behaved immorally and deserved to be infected.

These studies confirm that creating and enforcing anti-discrimination policies and legislation are necessary. But they need to be accompanied by other measures such as

in-service training and providing adequate resources for the health sector.

Denial of women's property and inheritance rights

About half of all people living with HIV are women; they face a variety of human rights concerns in the context of the epidemic. Two issues that need urgent action by governments are property and inheritance rights. When a woman's husband or father dies, other relatives may seize all property and evict orphans and widows. Women in this situation are sometimes stripped of their possessions and forced to engage in sex work or transactional sex in exchange for survival items such as food, protection and cash.

This gender inequality puts women at a much higher risk of HIV infection than men. It continues despite the fact that States are bound by the principles of the UN Charter, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

Sexual exploitation of children

Sexual exploitation of children is a persistent flagrant violation of human rights. In the AIDS era, young girls have proven to be especially vulnerable to violence, or to being trafficked or coerced into sex work, since their youth and perceived virginity are associated with freedom from disease. Rates of HIV infection among sexually exploited children are unknown. But in 1999, country research in Asia found that 69% of sexually exploited children in Bangladesh and 70% of those in Viet Nam were infected with a sexually transmitted infection.

Ensuring a rights-based approach

As AIDS responses are scaled up worldwide, they need to be grounded in sound public health practice and they also need to respect, protect and fulfil human rights norms and standards. This is particularly important when it comes to HIV testing as a prerequisite for expanded access to treatment (see 'Prevention' chapter).

The concept that HIV testing must remain voluntary is at the heart of all HIV policies and programmes. Voluntary testing complies with human rights principles and ensures sustained public health benefits. The following mutually reinforcing key factors need to be addressed simultaneously:

1. Ensuring an ethical process for conducting the testing: this includes defining the purpose of the test and benefits to the individuals being tested and assuring there are links between the site where the test is conducted and relevant treatment, care and other services. Furthermore, testing needs to take place in an environment that guarantees confidentiality of all medical information.
2. Addressing the implications of a positive test result: people who test HIV-positive should not face discrimination and should have access to sustainable treatment.
3. Reducing AIDS-related stigma and discrimination at all levels, notably within health-care settings.
4. Ensuring a supportive legal and policy framework for scaling up the response, including safeguarding the human rights of people seeking AIDS-related services.
5. Ensuring that health-care infrastructure is adequate to address the above issues and that there is enough trained staff to meet the increased demand for testing, treatment and related services.

Source: UNAIDS Global Reference Group on HIV/AIDS and Human Rights

Reappearance of restrictive policies and laws

In recent years, a number of policies and laws have emerged that restrict the human rights of people living with HIV or AIDS, or those assumed to be infected.

Experience has confirmed that protecting people's human rights decreases their vulnerability to HIV and reduces the negative impacts of HIV and AIDS. Much progress has been achieved, but the world now needs to be vigilant to prevent backsliding toward practices that are not rights-based. 

