

Human Rights and HIV/AIDS: Now More than Ever

10 Reasons Why Human Rights Should Occupy the Center of the Global AIDS Struggle

At the 2006 United Nations High Level Meeting on HIV/AIDS, world leaders reaffirmed that “the full realization of all human rights and fundamental freedoms for all is an essential element in the global response to the HIV/AIDS pandemic.” Yet, 25 years into the AIDS epidemic, this “essential element” remains the missing piece in the fight against AIDS.

Now more than ever, law and human rights should occupy the center of the global HIV/AIDS struggle. Here are 10 reasons why.

1. Universal access will never be achieved without human rights.

World leaders in 2006 committed “to pursuing all necessary efforts ... towards the goal of universal access to comprehensive prevention programs, treatment, care and support by 2010.” Yet many of those most in need of HIV services are still the least likely to receive them:

- ▶ People who use drugs represent the smallest fraction of individuals receiving anti-retroviral treatment in many countries, despite accounting for a majority of people living with HIV. This is related to repressive criminal laws and police practices that force drug users away from HIV and other health services, or into prison where they face a high risk of HIV through sex and syringe-sharing.
- ▶ The ability of sex workers to gain access to HIV services is impeded by widespread violence, discrimination, and punitive approaches to

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States' refusal to distribute condoms to prisoners in most developing countries leaves huge numbers of people vulnerable to HIV, a vulnerability heightened by overcrowding and sexual violence.

—Mark Heywood, 2004

sex work and prostitution. In many countries, police confiscate condoms from sex workers and use them as evidence of illegal prostitution. Sex workers are regularly deterred from seeking health services by the fear of forced HIV testing and judgmental treatment by health workers.

- ▶ Men who have sex with men face widespread violence and discrimination around the world, often at the hands of police and security forces charged with enforcing sodomy laws. Outreach workers seeking to provide HIV services to men who have sex with men may also become the targets of police violence. The enduring stereotype of AIDS as a “gay disease” continues to deter many gay and bisexual men from learning their HIV status or seeking HIV-related services.

2. Effective HIV-prevention, treatment and care programs are under attack.

Even in countries that have fought hard to establish effective HIV/AIDS services, international pressure is forcing a retreat to failed approaches. This pressure has been most dramatically exerted in recent years by the United States government, which has used its considerable financial influence to block evidence-based approaches to HIV.

- ▶ In many countries, governments are resorting to coercive methods of HIV prevention such as criminalization of “intentional” HIV transmission and mass HIV testing without informed consent. Such policies have the potential to promote stigma against people living with HIV and to deter people from coming forward for needed health services.
- ▶ In 2003, the United States Congress passed a law requiring all recipients of U.S. global HIV/AIDS funding to adopt an explicit policy “opposing” prostitution—a requirement that placed a chilling effect on efforts to work respectfully with sex workers to prevent HIV. In a case brought by OSI and others, a federal judge ruled that the requirement violated the Constitution’s guarantee of freedom of speech.
- ▶ In 2004–2005, the U.S. government attempted to pressure the United Nations to withdraw its support from needle exchange programs, despite incontrovertible evidence of the programs’ effectiveness. Since 2003, the United States has also placed “abstinence until marriage” programs at the center of its global strategy to prevent sexually transmitted HIV, in many cases withholding factual information about condoms and safer sex from sexually active youth.

3. Women face a higher risk of HIV due to widespread gender discrimination.

Women account for almost half of HIV infections worldwide and a majority of HIV infections in sub-Saharan Africa. This is due to women's deep marginalization and subordination which is inscribed in law and enshrined in culture and practice.

- ▶ In many countries, national laws restrict women's ability to own, inherit or dispose of property, leaving them economically dependent on husbands who may be violent or unfaithful. Women routinely sink into poverty upon the death of their husband or the dissolution of their marriage, thus increasing their own risk of HIV.
- ▶ Many countries refuse to recognize the crime of marital rape. Marriage and divorce laws may also make it harder for women to obtain a divorce than men, and may consider married women legal "minors" who cannot sign contracts, represent themselves in court, or make financial decisions.
- ▶ Even where laws prohibit violence against women, these laws are rarely enforced. Survivors of rape and sexual violence typically face hostile and corrupt judiciaries, and rarely gain access to post-exposure prophylaxis for HIV infection.
- ▶ Women face systemic discrimination in access to education, housing, information, and other basic services that would help to empower them against HIV infection. Access to comprehensive reproductive health services, which is the core of HIV prevention for women and girls, also remains woefully lacking and restricted by law and practice in every region of the world.

4. Human rights violations fuel social marginalization and risk of HIV.

Many of those at highest risk of HIV have one thing in common: their status is effectively criminalized by law. People who use drugs, sex workers, and men who have sex with men all face the daily threat of arrest, conviction, and incarceration in many countries. Police officers charged with enforcing antidrug, antiprostitution, and antisodomy laws routinely extort bribes and confessions from defenseless people, often committing heinously violent acts including rape and murder. Punitive approaches to drug use, sex work, and homosexuality fuel stigma and hatred against socially marginalized groups, pushing them

The French have a simple term that says it all: HIV has become a problem mainly for *les exclus*, or 'the excluded ones' living at the margin of society.

—Jonathan Mann, 1998

With the expanded resources now available for HIV/AIDS, it is finally possible to imagine HIV treatment programs joining HIV prevention efforts in an integrated, rights-respecting continuum of services. Unfortunately, moralistic approaches to HIV prevention, which place new obstacles in the way of reaching populations that most need information and services, hinder such a comprehensive approach.

—Joseph Amon, 2006

further into hiding and away from HIV/AIDS services. Until the international community places as much effort into addressing this epidemic of human rights abuse as it does into establishing HIV services, the global struggle against AIDS will have only marginal impact.

5. AIDS activists must risk their safety to hold their governments to account.

In many countries, activists who demand access to HIV/AIDS services face the threat of censorship, defamation, violence, imprisonment, and other recriminations by their governments. Whether it is South African activists demanding access to antiretroviral treatment; Chinese farmers demanding compensation for having been infected with HIV through a government blood plasma donation program; Moroccan demonstrators opposing excessive patent protection in the U.S.-Morocco Free Trade Agreement; or people who use drugs in Thailand opposing their country's violent "war on drugs," peaceful demonstrations by AIDS activists have been met with intimidation and violent dispersal. Laws placing restrictions on the establishment of nongovernmental organizations make it difficult for civil society to develop an independent voice for sound and effective AIDS policies in their countries.

6. Increased funding alone will not defeat HIV/AIDS.

Vastly increased funding for the fight against HIV/AIDS has become available in recent years. Initiatives such as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the U.S. President's Emergency Plan for AIDS Relief, the Bill and Melinda Gates Foundation, and the World Health Organization's "Treat 3 Million by 2005" program have changed the landscape of global HIV assistance and created unprecedented momentum to address the HIV epidemic. Even with this funding, however, some of the most proven methods of addressing HIV/AIDS remain banned or restricted by law in many countries.

- ▶ The most proven methods of preventing HIV among people who inject drugs—needle exchange programs and methadone substitution therapy—remain restricted by law or policy in many countries. Even where these programs are legal, people who use drugs may fear using them due to the risk of arrest for possession of drug paraphernalia or controlled substances.

- ▶ Access to opioid pain medication for palliative care remains out of reach to most people who need it, largely because of restrictions on importing and prescribing morphine. This is due in turn to exaggerated fears of morphine’s addictiveness and the failure of governments to educate doctors and other health workers about the importance of morphine to palliative care for AIDS and other life-limiting illnesses.
- ▶ In prisons, where HIV spreads rapidly through sex and injection drug use, access to condoms, sterile syringes, and methadone remains restricted almost everywhere in the world. Access to HIV treatment in prisons is also rare. Such restrictions effectively exclude an entire segment of the population from HIV services, making the goal of universal access impossible to attain.

7. Human rights cannot be separated from good public health.

Some have criticized human rights activists as being more concerned with autonomy, privacy, consent, and other “individual rights” than with the public’s health. Proponents of widespread or “routine” HIV testing, for example, have suggested that rights to consent and confidentiality should not override the importance of early detection of HIV status. Yet human rights activists do not oppose widespread HIV testing, and in fact have been among the first to emphasize the importance of increasing access to HIV testing. Rather, they argue that guaranteeing basic rights such as consent, confidentiality, information, and protection from HIV-related discrimination is not only important in itself, but also increases people’s willingness to take regular HIV tests and to disclose their status to others. In addition, human rights activists are rightly skeptical about pressuring people into taking HIV tests before access to HIV treatment and care services are accessible to them.

8. AIDS is not like other diseases.

Although people with HIV and AIDS *should* be treated with equal respect and dignity, the reality is that HIV/AIDS still attracts deep social stigma. From the beginning of the AIDS epidemic, it was clear that some of those most affected by HIV were persons such as gay men and sex workers who were deemed “deviant” or “immoral.” Even today, those most affected by HIV are disproportionately poor, vulnerable, and politically powerless. This not only poses a challenge for

“Why didn’t you tell us you’re a hemophiliac?” a nurse in a downtown Toronto teaching hospital asked activist James Kreppner when he was in hospital with an AIDS-related illness in the 1990s. “We would have treated you much better.”

—Anne Silversides, 2003

The link between HIV/AIDS and marginalized, “different,” or socially “deviant” populations in the collective consciousness has been strong from the beginning. Hence the public health and human rights question: Would further repression or isolation of these populations be effective in containing the spread of HIV, or would working with them in a rights-respecting way be more effective?

—*Joanne Csete, 2005*

public health programs, but also prevents governments from taking swift action to address the epidemic. Governments continue to devote scant resources to HIV interventions targeting marginalized populations, a pattern the Joint United Nations Programme on HIV/AIDS (UNAIDS) has called “a serious mismanagement of resources and a failure to respect fundamental human rights.”

9. “Rights-based” responses to HIV are practical and effective.

Human rights approaches to HIV are not abstract, but real, practical, and cost-effective. Countries, such as Brazil, that have placed human rights at the center of their AIDS responses have seen epidemics averted or slowed. Examples of human rights responses to HIV include the following:

- ▶ Ensuring that national HIV/AIDS programs include measures to combat discrimination and violence against people living with HIV or AIDS and those at risk
- ▶ Investing in education about human rights and increasing access to legal services for people living with HIV or AIDS
- ▶ Making policy changes to reduce prison overcrowding so that people are less vulnerable to HIV from sex and needle-sharing while incarcerated
- ▶ Removing legal and other barriers that impede access to HIV prevention and treatment for people who use illegal drugs
- ▶ Establishing clear legal remedies for violence and discrimination against sex workers, men who have sex with men, and other marginalized groups
- ▶ Providing women with effective remedies against all forms of gender-based violence, as well as redress against legally sanctioned discrimination in access to property and inheritance

10. Human rights rhetoric is not enough.

On paper, the place of human rights in the global response to HIV/AIDS is well established. Government signatories to the Declaration of Commitment on HIV/AIDS committed to taking action on HIV/AIDS and human rights. However, in practice, very little attention has been paid to securing legal and human rights protections

for people living with and affected by HIV. As of 2003, almost half of governments in sub-Saharan Africa had yet to adopt legislation specifically outlawing discrimination against people living with HIV/AIDS, and only one-third of countries worldwide had adopted legal measures specifically outlawing discrimination against populations especially vulnerable to HIV/AIDS. An evaluation of the implementation of the Declaration of Commitment on HIV/AIDS undertaken in 2006 in 14 countries concluded that “human rights abuses of vulnerable populations continue unabated, denying them access to services and effective tools for preventing HIV infection and to life-saving AIDS drugs that will keep them alive.” In 2003, UN Secretary-General Kofi Annan stated, “HIV-related human rights are not high enough among the priorities of national governments, donors, or human rights organizations.”

Additional Resources:

Accion Ciudadana Contra el Sida (Venezuela)

This website, in Spanish only, contains many relevant materials including a manual on HIV/AIDS and human rights.

www.accsi.org.ve

AIDS Law Project (South Africa)

Together with the website of the Canadian HIV/AIDS Legal Network, this site is the most comprehensive source for information on legal and human rights issues related to HIV/AIDS.

www.alp.org.za

AIDS Law Unit of the Legal Assistance Centre (Namibia)

www.lac.org.na/alu/default.htm

AIDS Legal Network (South Africa)

Among other things, this website contains information on a *Training Manual—HIV/AIDS & Human Rights*, which contains several relevant modules.

www.aln.org.za

AIDS Rights Alliance for Southern Africa (ARASA)

www.arasa.info/

Botswana Network on Ethics, Law, and HIV (BONELA)

www.bonela.botsnet.co.bw

Canadian HIV/AIDS Legal Network

Together with the website of the AIDS Law Project (South Africa), this site is the most comprehensive source for information on legal and human rights issues related to HIV/AIDS. All materials are in English and French, and some are also available in Spanish, Russian and other languages.

www.aidslaw.ca

Health Action AIDS (USA)

A project of Physicians for Human Rights (www.phrusa.org) in coordination with Partners in Health (www.pih.org), this site contains a section on HIV/AIDS and human rights.

www.phrusa.org/campaigns/aids/index.html

Human Rights Watch

The website of Human Rights Watch contains an extensive section on HIV/AIDS and human rights with many reports and other materials on human rights abuses in the context of the global HIV/AIDS epidemic.

www.hrw.org

Hungarian Civil Liberties Union

Among other things, HCLU has produced a book on HIV/AIDS and human rights in Hungary and a policy paper on HIV/AIDS. Their website is in Hungarian and English.

www.tasz.hu

Realization of human rights and fundamental freedoms for all is essential to reduce vulnerability to HIV/AIDS.

—United Nations General Assembly Special Session on HIV/AIDS, Declaration of Commitment on HIV/AIDS, para. 58

International Council of AIDS Service Organizations (ICASO)

This website contains documents on issues related to HIV/AIDS and human rights, including an advocates' guide to the International Guidelines on HIV/AIDS and Human Rights and a paper entitled, "HIV/AIDS and Human Rights in a Nutshell."

www.icaso.org

Lawyers Collective HIV/AIDS Unit (India)

www.lawyerscollective.org

Office of the United Nations High Commissioner for Human Rights

This website contains a section dedicated to HIV/AIDS and human rights, including an "Introduction to HIV/AIDS and Human Rights" and a list of documents, including resolutions, general comments and reports by various UN bodies on issues related to HIV/AIDS and human rights.

www.ohchr.org/english/issues/hiv/index.htm

Open Society Institute Public Health Program

www.soros.org/initiatives/health/

Program on International Health and Human Rights (United States)

This website contains a number of publications and other information about HIV/AIDS and human rights.

www.hsph.harvard.edu/pihhr/index.html

The Center for HIV Law and Policy

www.hivlawandpolicy.org/

Uganda Network on Law, Ethics, and HIV

www.uganet.org

UK AIDS and Human Rights Project

Among other things, this website contains a series of fact sheets on HIV/AIDS and human rights and on HIV/AIDS and prisoners' rights.

www.aidsrightsproject.org.uk

Joint United Nations Programme on HIV/AIDS (UNAIDS)

www.unaids.org

United Nations Development Programme (UNDP)

This website contains materials related to human rights and HIV/AIDS, including a discussion paper on human rights, gender and HIV/AIDS prepared for the 2005, UN General Assembly High Level Meeting on HIV/AIDS.

www.undp.org/hiv/focus03.htm

World Health Organization (WHO)

This website contains information about WHO's work on health and human rights and a number of publications on the topic.

www.who.int/hhr/en/

Zambia AIDS Law Research and Advocacy Network (ZARAN)

www.zaran.org

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